FreightCar America, Inc.
Form 10-K
March 15, 2010

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-K

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

For the fiscal year ended December 31, 2009

or

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

Commission file number: 000-51237
FREIGHTCAR AMERICA, INC.
(Exact name of registrant as specified in its charter)

Delaware	**25-1837219**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
Two North Riverside Plaza, Suite 1250, Chicago, Illinois	**60606**
(Address of principal executive offices)	**(Zip Code)**

(800) 458-2235
(Registrant s telephone number, including area code)
Securities registered pursuant to Section 12(b) of the Act:

Title of class	**Name of Each Exchange on Which Registered**
Common stock, par value $0.01 per share	Nasdaq Global Market

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 o NO þ

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 o NO þ

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 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 of this Form 10-K. o

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 (§ 232.405 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 o NO o

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 o	Accelerated filer þ	Non-accelerated filer o	Smaller reporting company o
		(Do not check if a smaller reporting company)	

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). YES o NO þ

The aggregate market value of the registrant s common stock held by non-affiliates of the registrant as of June 30, 2009 was $198.6 million, based on the closing price of $16.81 per share on the Nasdaq Global Market.

As of March 11, 2010, there were 11,937,896 shares of the registrant s common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Documents	**Part of Form 10-K**
Portions of the registrant s definitive Proxy Statement for the 2010 annual meeting of stockholders to be filed pursuant to Regulation 14A within 120 days of the end of the registrant s fiscal year ended December 31, 2009.	Part III

FREIGHTCAR AMERICA, INC.
TABLE OF CONTENTS

PART I

Item 1. Business.

OVERVIEW

We and our predecessors have been manufacturing railcars since 1901. We are the leading manufacturer of aluminum-bodied railcars in North America, based on the number of railcars delivered. We specialize in the production of aluminum-bodied coal-carrying railcars, which represented 86% of our deliveries of railcars in 2009 and 69% of our deliveries of railcars in 2008, while the balance of our production consisted of a broad spectrum of railcar types, including aluminum-bodied and steel-bodied railcars. We also refurbish and rebuild railcars and sell forged, cast and fabricated parts for all of the railcars we produce, as well as those manufactured by others.

We are the leading North American manufacturer of coal-carrying railcars. We estimate that we have manufactured 65% of the coal-carrying railcars delivered over the three years ended December 31, 2009 in the North American market. Our BethGon® railcar has been the leading aluminum-bodied coal-carrying railcar sold in North America for nearly 20 years. Over the last 25 years, we believe we have built and introduced more types of coal-carrying railcars than all other manufacturers in North America combined.

Our current manufacturing facilities are located in Danville, Illinois and Roanoke, Virginia. Both facilities have the capability to manufacture a variety of types of railcars, including aluminum-bodied and steel-bodied railcars. We commenced operations at our leased manufacturing facility in Roanoke, Virginia in December 2004, and we delivered the first railcar manufactured at the Roanoke facility during the second quarter of 2005. In May 2008, we closed our manufacturing facility located in Johnstown, Pennsylvania.

Our primary customers are financial institutions, shippers and railroads, which represented 49%, 43% and 8%, respectively, of our total sales attributable to each type of customer for the year ended December 31, 2009. In the year ended December 31, 2009, we delivered 3,377 railcars, including 2,876 aluminum-bodied coal-carrying railcars. Our total backlog of firm orders for railcars decreased from 2,424 railcars as of December 31, 2008 to 265 railcars as of December 31, 2009, representing estimated sales of $183 million and $25 million as of December 31, 2008 and 2009, respectively, attributable to such backlog. In 2008, we began offering railcar leasing and refurbishment alternatives to our customers; an approach designed to enhance our position as a full service provider to the railcar industry. As a result of our expansion into these services, our backlog at December 31, 2009 included 60 units under firm operating leases with independent third parties. Although we continually look for opportunities to package our leased assets for sale to our leasing company partners, these leased assets may not be converted to sales, and will remain revenue producing assets into the foreseeable future.

Our Internet website is www.freightcaramerica.com. We make available free of charge on or through our website items related to corporate governance, including, among other things, our corporate governance guidelines, charters of various committees of the Board of Directors and our code of business conduct and ethics. Our annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K, and amendments thereto, are available on our website and on the SEC s website at www.sec.gov. Any stockholder of our company may also obtain copies of these documents, free of charge, by sending a request in writing to Investor Relations at FreightCar America, Inc., Two North Riverside Plaza, Suite 1250, Chicago, Illinois 60606.

OUR PRODUCTS AND SERVICES

We design and manufacture aluminum-bodied and steel-bodied railcars that are used in various industries. The types of railcars listed below include the major types of railcars that we are capable of manufacturing; however, some of the types of railcars listed below have not been ordered by any of our customers or manufactured by us in a number of years.

Any of the railcar types listed below may be further developed with particular characteristics, depending on the nature of the materials being transported and customer specifications. In addition, we refurbish and rebuild railcars and sell forged, cast and fabricated parts for all of the railcars that we manufacture, as well as those manufactured by others.

We manufacture two primary types of coal-carrying railcars: gondolas and open-top hoppers. We build all of our coal-carrying railcars using a patented one-piece center sill, the main longitudinal structural component of the railcar. The one-piece center sill provides a higher carrying capacity and weighs significantly less than traditional multiple-piece center sills.

BethGon Series. The BethGonÒ is the leader in the aluminum-bodied coal-carrying gondola railcar segment. Since we introduced the steel BethGon railcar in the late 1970s and the aluminum BethGon railcar in 1986, the BethGon railcar has become the most widely used coal-carrying railcar in North America. Our current BethGon II features lighter weight, higher capacity and increased durability suitable for long-haul coal carrying railcar service. We have received several patents on the features of the BethGon II and continue to explore ways to increase the BethGon II s capacity and improve its reliability.

AutoFlood Series. Our aluminum bodied open-top hopper railcar, the AutoFlood , is a five-pocket coal-carrying railcar equipped with a bottom discharge gate mechanism. We began manufacturing AutoFlood railcars in 1984, and introduced the AutoFlood II and AutoFlood III designs in 1996 and 2002, respectively. Both the AutoFlood II and AutoFlood III design incorporate the automatic rapid discharge system, the MegaFlo door system, a patented mechanism that uses an over-center locking design, enabling the cargo door to close with tension rather than by compression. Further, AutoFlood railcars can be equipped with rotary couplers to permit rotary unloading.

Other Coal-Carrying Railcars. We also manufacture a variety of other types of aluminum and steel-bodied coal-carrying railcars, including triple hopper, hybrid aluminum/stainless steel and flat bottom gondola railcars.

Other Railcar Types. Our portfolio of other railcar types includes the following: The AVC Aluminum Vehicle Carrier design is used to transport commercial and light vehicles (automobiles and trucks) from assembly plants and ports to rail distribution centers; the Articulated Bulk Container railcar is designed to carry dense bulk products such as waste products in 20 foot containers; Intermodal Double Stack railcars, including a stand-alone, 40 foot well car and the DynaStackÒ articulated, 5-unit, 40 foot well car for international containers; a Small Cube Covered Hopper railcar used to transport high density products such as roofing granules, fly ash, sand and cement; a Mill Gondola Railcar used to transport steel products and scrap; Slab and Coil steel railcars designed specifically for transportation of steel slabs and coil steel products, respectively; Flat Railcars, Bulkhead Flat Railcars and Centerbeam Flat Railcars designed to transport a variety of products, including machinery and equipment, steel and structural steel components (including pipe), forest products and other bulky industrial products; a Woodchip Gondola Railcar designed to haul woodchips and municipal waste or other high-volume, low-density commodities; and a variety of non-coal carrying open top hopper railcars designed to carry aggregates, iron ore, taconite pellets, petroleum coke and other bulk commodities. For example, our VersaFlood aggregate car features the MegaFlo IA independent automatic door system with an optional hybrid aluminum/carbon steel body design

International Railcar Designs. We have established a licensing arrangement with a railcar manufacturer in Brazil pursuant to which our technology is used to produce various types of railcars in Brazil. In addition, we manufacture coal-carrying railcars for export to Latin America and have manufactured intermodal railcars for export to the Middle East. Railroads outside of North America have a variety of track gauges that are sized differently than in North America, which requires us, in some cases, to alter manufacturing specifications for foreign sales. In 2008 we established a joint venture in India. The joint venture company, Titagarh FreightCar Private Ltd., is developing prototype railcars based on our designs. We continue to explore opportunities in other international markets.

Spare Parts. We sell replacement parts for our railcars and railcars built by others.

We have added 15 new or redesigned products to our portfolio in the last five years, including the AVC, slab railcar, coil steel railcar, triple hopper railcars and hybrid aluminum/stainless steel railcars, ore cars, ballast cars and aggregate cars. We expect to continue introducing new or redesigned products.

MANUFACTURING

We operate railcar production facilities in Danville, Illinois and Roanoke, Virginia. Our Danville and Roanoke facilities are each certified or approved for certification by the Association of American Railroads, or the AAR, which sets railcar manufacturing industry standards for quality control. At our Danville and Roanoke facilities, we will continue to adjust salaried and hourly labor personnel levels to coincide with production requirements.

In May 2008, we closed our manufacturing facility located in Johnstown, Pennsylvania. This action was taken to further our strategy of maintaining our competitive position by optimizing production at our low-cost facilities and continuing our focus on cost control.

Our manufacturing process involves four basic steps: fabrication, assembly, finishing and inspection. Each of our facilities has numerous checkpoints at which we inspect products to maintain quality control, a process that our operations management continuously monitors. In our fabrication processes, we employ standard metal working tools, many of which are computer controlled. Each assembly line typically involves 15 to 20 manufacturing positions, depending on the complexity of the particular railcar design. We use mechanical fastening in the fitting and assembly of our aluminum-bodied railcar parts, while we typically use welding for the assembly of our steel-bodied railcars. For aluminum-bodied railcars, we begin the finishing process by cleaning the railcar s surface and then applying the decals. In the case of steel-bodied railcars, we begin the finishing process by blasting the surface area of the railcar and then painting it. We use water-based paints to reduce the emission of volatile organic compounds, and we meet state and U.S. federal regulations for control of emissions and disposal of hazardous materials. Once we have completed the finishing process, our employees, along with representatives of the customer purchasing the particular railcars, inspect all railcars for adherence to specifications.

We have focused on making our manufacturing facilities more flexible and lean. Lean manufacturing reduces product change-overs and improves product quality. We believe our focus on lean manufacturing principles will change the competitive landscape while generating new profitability and market share.

CUSTOMERS

We have strong long-term relationships with many large purchasers of railcars. Long-term customer relationships are particularly important in the railcar industry, given the limited number of buyers of railcars.

Our customer base consists mostly of North American financial institutions, shippers and railroads. We believe that our customers preference for reliable, high-quality products, the relatively high cost for customers to switch manufacturers, our technological leadership in developing and enhancing innovative products and the competitive pricing of our railcars have helped us maintain our long-standing relationships with our customers.

In 2009, revenue from three customers, Mitsui Rail Capital, Grand River Dam Authority and Bank of America Leasing, accounted for approximately 15%, 15% and 14% of total revenue, respectively. In 2009, sales to our top five customers accounted for approximately 63% of total revenue. Our railcar sales to customers outside the United States were $43.1 million in 2009. While we maintain strong relationships with our customers and we serve over 70 active customers, many customers do not purchase railcars every year since railcar fleets are not necessarily replenished or augmented every year. The size and frequency of railcar orders often results in a small number of customers representing a significant portion of our sales in a given year.

SALES AND MARKETING

Our direct sales group is organized geographically and consists of regional sales managers and contract administrators, a manager of customer service and support staff. The regional sales managers are responsible for managing customer relationships. Our contract administrators are responsible for preparing proposals and other inside sales activities. Our manager of customer service is responsible for after-sale follow-up and in-field product performance reviews.

RESEARCH AND DEVELOPMENT

Our railcar research and development activities provide us with an important competitive advantage. Although railcar designs have been historically slow to change in our industry, we have introduced 15 new railcar designs or product-line extensions in the last five years. Our research and development team, working within our engineering group, is dedicated to the design of new products. In addition, the team continuously identifies design upgrades for our existing railcars, which we implement as part of our effort to reduce costs and improve quality. We introduce new railcar designs as a result of a combination of customer feedback and close observation of market demand trends. Our engineers use current modeling software and three-dimensional modeling technology to assist with product design. New product designs are tested for compliance with AAR standards prior to introduction. Costs associated with research and development are expensed as incurred and totaled $0.8 million, $2.0 million and $2.0 million for the years ended December 31, 2009, 2008 and 2007, respectively.

BACKLOG

We define backlog as the value of those products or services which our customers have committed in writing to purchase from us, but which have not been recognized as sales. Our contracts include cancellation clauses under which customers are required, upon cancellation of the contract, to reimburse us for costs incurred in reliance on an order and to compensate us for lost profits. However, customer orders may be subject to customer requests for delays in railcar deliveries, inspection rights and other customary industry terms and conditions, which could prevent or delay backlog from being converted into sales.

The following table depicts our reported railcar backlog in number of railcars and estimated future sales value attributable to such backlog, for the periods shown.

	Year Ended December 31,		
	2009	**2008**	**2007**
Railcar backlog at start of period	2,424	5,399	9,315
Railcars delivered	(3,377)	(10,276)	(10,282)
Railcar orders, net of cancellations	1,218	7,301	6,366
Railcar backlog at end of period	265	2,424	5,399
Estimated backlog at end of period (in thousands) (1)	$ 24,839	$ 183,441	$ 422,054

(1) Estimated backlog reflects the total sales attributable to the backlog reported at the end of the particular period as if such backlog were converted to actual sales. Estimated backlog does not reflect potential price increases and decreases under customer contracts that provide for variable pricing

based on changes in the cost of raw materials. Estimated backlog includes leased railcars as if sold. Although we continually look for opportunities to package our leased assets for sale to our leasing company partners, these leased assets may not be converted to sales

Our backlog at December 31, 2009 included 60 units under firm operating leases with independent third parties. Although our reported backlog is typically converted to sales within one year, our reported backlog may not be converted to sales in any particular period, if at all, and the actual sales from these contracts may not equal our reported backlog estimates. See Item 1A. Risk Factors Risks Related to Our Business The level of our reported backlog may not necessarily indicate what our future sales will be and our actual sales may fall short of the estimated sales value attributed to our backlog. In addition, due to the large size of railcar orders and variations in the mix of railcars, the size of our reported backlog at the end of any given period may fluctuate significantly. See Item 1A. Risk Factors Risks Related to the Railcar Industry The variable purchase patterns of our customers and the timing of completion, delivery and acceptance of customer orders may cause our sales and income from operations to vary substantially each quarter, which will result in significant fluctuations in our quarterly results.

SUPPLIERS AND MATERIALS

The cost of raw materials and components represents a substantial majority of the manufacturing costs of most of our railcar product lines. As a result, the management of purchasing raw materials and components is critical to our profitability. We enjoy generally strong relationships with our suppliers, which helps to ensure access to supplies when railcar demand is high.

Our primary aluminum suppliers are Alcoa Inc. and Alcan Inc. Aluminum prices generally are fixed at the time a railcar order is accepted, mitigating the effect of future fluctuations in prices. We purchase steel primarily from U.S. sources, except for our cold-rolled center sills, which we purchase from a single Canadian supplier. A center sill is the primary structural component of a railcar.

Our primary component suppliers include Amsted Industries, Inc., which supplies us with castings and couplers through its American Steel Foundries subsidiary, wheels through its Griffin Wheel Company subsidiary, draft components through its Keystone subsidiary and bearings through its Brenco subsidiary. Roll Form Group, a division of Samuel Manu-Tech, Inc., is the sole supplier of our cold-rolled center sills, which were used in 99% and 91% of our railcars produced in 2009 and 2008, respectively. Other suppliers provide brake systems, wheels, castings, axles and bearings. The railcar industry is subject to supply constraints for some of the key railcar components. See Item 1A. Risk Factors Risks Related to the Railcar Industry Limitations on the supply of wheels and other railcar components could adversely affect our business because they may limit the number of railcars we can manufacture.

Except as described above, there are usually at least two suppliers for each of our raw materials and specialty components, and we actively purchase from over 200 suppliers. No single supplier accounted for more than 21% and 22% of our total purchases in 2009 and 2008, respectively. Our top ten suppliers accounted for 69% and 68% of our total purchases in 2009 and 2008, respectively.

COMPETITION

We operate in a highly competitive marketplace. Competition is based on price, product design, reputation for product quality, reliability of delivery and customer service and support.

We have four principal competitors in the North American railcar market that primarily manufacture railcars for third-party customers, which are Trinity Industries, Inc., National Steel Car Limited, The Greenbrier Companies, Inc. and American Railcar Industries, Inc.

Competition in the North American market from railcar manufacturers located outside of North America is limited by, among other factors, high shipping costs and familiarity with the North American market.

INTELLECTUAL PROPERTY

We have several U.S. and non-U.S. patents and pending applications, registered trademarks, copyrights and trade names. Our key patents are for our one-piece center sill, our MegaFlo door system and our top chord and side stake for coal-carrying railcars. The protection of our intellectual property is important to our business.

EMPLOYEES

As of December 31, 2009, we had 188 employees, of whom 121 were salaried and 67 were hourly wage earners. As of December 31, 2009, approximately 58, or 31%, of our employees were members of unions. As of December 31, 2008, we had 875 employees, of whom 173 were salaried and 702 were hourly wage earners. As of December 31, 2008, approximately 452, or 52%, of our employees were members of unions. See Item 1A. Risk Factors Risks Related to Our Business Labor disputes could disrupt our operations and divert the attention of our management and may have a material adverse effect on our operations and profitability.

REGULATION

The Federal Railroad Administration, or FRA, administers and enforces U.S. federal laws and regulations relating to railroad safety. These regulations govern equipment and safety compliance standards for freight railcars and other rail equipment used in interstate commerce. The AAR promulgates a wide variety of rules and regulations governing safety and design of equipment, relationships among railroads with respect to freight railcars in interchange and other matters. The AAR also certifies freight railcar manufacturers and component manufacturers that provide equipment for use on railroads in the United States. New products must generally undergo AAR testing and approval processes. As a result of these regulations, we must maintain certifications with the AAR as a freight railcar manufacturer, and products that we sell must meet AAR and FRA standards.

We are also subject to oversight in other jurisdictions by foreign regulatory agencies and to the extent that we expand our business internationally, we will increasingly be subject to the regulations of other non-U.S. jurisdictions.

ENVIRONMENTAL MATTERS

We are subject to comprehensive federal, state, local and international environmental laws and regulations relating to the release or discharge of materials into the environment, the management, use, processing, handling, storage, transport or disposal of hazardous materials, or otherwise relating to the protection of human health and the environment. These laws and regulations not only expose us to liability for our own negligent acts, but also may expose us to liability for the conduct of others or for our actions that were in compliance with all applicable laws at the time these actions were taken. In addition, these laws may require significant expenditures to achieve compliance, and are frequently modified or revised to impose new obligations. Civil and criminal fines and penalties may be imposed for non-compliance with these environmental laws and regulations. Our operations that involve hazardous materials also raise potential risks of liability under the common law.

Environmental operating permits are, or may be, required for our operations under these laws and regulations. These operating permits are subject to modification, renewal and revocation. We regularly monitor and review our operations, procedures and policies for compliance with these laws and regulations. Despite these compliance efforts, risk of environmental liability is inherent in the operation of our businesses, as it is with other companies engaged in similar businesses. We believe that our operations and facilities are in substantial compliance with applicable laws and regulations and that any noncompliance is not likely to have a material adverse effect on our operations or financial condition.

Future events, such as changes in or modified interpretations of existing laws and regulations or enforcement policies, or further investigation or evaluation of the potential health hazards of products or business activities, may give rise to additional compliance and other costs that could have a material adverse effect on our financial condition and operations. In addition, we have in the past conducted investigation and remediation activities at properties that we own to address historic contamination. To date, such costs have not been material. Although we believe we have satisfactorily addressed all known material contamination through our remediation activities, there can be no assurance that these activities have addressed all historic contamination. The discovery of historic contamination or the release of hazardous substances into the environment could require us in the future to incur investigative or remedial costs or other liabilities that could be material or that could interfere with the operation of our business.

In addition to environmental laws, the transportation of commodities by railcar raises potential risks in the event of a derailment or other accident. Generally, liability under existing law in the United States for a derailment or other accident depends on the negligence of the party, such as the railroad, the shipper or the manufacturer of the railcar or its components. However, for the shipment of certain hazardous commodities, strict liability concepts may apply.

Item 1A. Risk Factors.

The factors described below are the principal risks that could materially adversely affect our operating results and financial condition. Other factors may exist that we do not consider significant based on information that is currently available. In addition, new risks may emerge at any time, and we cannot predict those risks or estimate the extent to which they may affect us.

RISKS RELATED TO THE RAILCAR INDUSTRY

We operate in a highly cyclical industry, and our industry and markets are influenced by factors that are beyond our control, including U.S. economic conditions. In addition, the current weakness in the credit markets may limit our customers ability to obtain financing to purchase railcars from us. Such factors could adversely affect demand for our railcar offerings.

Historically, the North American railcar market has been highly cyclical and we expect it to continue to be highly cyclical. During the most recent industry cycle, industry-wide railcar deliveries declined from a peak of 75,704 railcars in 1998 to a low of 17,736 railcars in 2002. During this period, our railcar production declined from approximately 9,000 railcars in 1998 to 4,067 railcars in 2002. Industry-wide railcar deliveries again peaked in 2006 with deliveries of 74,729 before declining to 21,682 in 2009. Our railcar deliveries trended downward from

18,764 in 2006 to 3,377 in 2009. Our industry and the markets for which we supply railcars are influenced by factors that are beyond our control, including U.S. economic conditions. Downturns in economic conditions could result in lower sales volumes, lower prices for railcars and a loss of profits. The cyclicality of the markets in which we operate may adversely affect our operating results and cash flow. In addition, fluctuations in the demand for our railcars may cause comparisons of our sales and operating results between different fiscal years to be less meaningful as indicators of our future performance.

We depend upon a small number of customers that represent a large percentage of our sales. The loss of any single customer, or a reduction in sales to any such customer, could have a material adverse effect on our business, financial condition and results of operations.

Since railcars are typically sold pursuant to large, periodic orders, a limited number of customers typically represent a significant percentage of our railcar sales in any given year. Over the last five years, our top five customers in each year based on sales represented, in the aggregate, approximately 33% of our total sales for the five-year period. In 2009, sales to our top three customers accounted for approximately 15%, 15% and 14%, respectively, of our total sales. In 2008, sales to our top three customers accounted for approximately 22%, 21% and 10%, respectively, of our total sales. Although we have long-standing relationships with many of our major customers, the loss of any significant portion of our sales to any major customer, the loss of a single major customer or a material adverse change in the financial condition of any one of our major customers could have a material adverse effect on our business and financial results.

The variable purchase patterns of our customers and the timing of completion, delivery and acceptance of customer orders may cause our sales and income from operations to vary substantially each quarter, which will result in significant fluctuations in our quarterly results.

Most of our individual customers do not make purchases every year, since they do not need to replace or replenish their railcar fleets on a yearly basis. Many of our customers place orders for products on an as-needed basis, sometimes only once every few years. As a result, the order levels for railcars, the mix of railcar types ordered and the railcars ordered by any particular customer have varied significantly from quarterly period to quarterly period in the past and may continue to vary significantly in the future. Therefore, our results of operations in any particular quarterly period may be significantly affected by the number of railcars ordered and delivered and product mix of railcars ordered in any given quarterly period. Additionally, because we record the sale of a railcar at the time we complete production, the railcar is accepted by the customer following inspection, the risk for any damage or loss with respect to the railcar passes to the customer and title to the railcar transfers to the customer, and not when the order is taken, the timing of completion, delivery and acceptance of significant customer orders will have a considerable effect on fluctuations in our quarterly results. As a result of these quarterly fluctuations, we believe that comparisons of our sales and operating results between quarterly periods may not be meaningful and, as such, these comparisons should not be relied upon as indicators of our future performance.

We operate in a highly competitive industry and we may be unable to compete successfully against other railcar manufacturers.

We operate in a competitive marketplace and face substantial competition from established competitors in the railcar industry in North America. We have four principal competitors that primarily manufacture railcars for third-party customers. Some of these manufacturers have greater financial and technological resources than us, and they may increase their participation in the railcar segments in which we compete. Railcar purchasers sensitivity to price and strong price competition within the industry have historically limited our ability to increase prices. In addition to price, competition is based on product performance and technological innovation, quality, reliability of delivery, customer service and other factors. In particular, technological innovation by any of our existing competitors, or new competitors entering any of the markets in which we do business, could put us at a competitive disadvantage. We may be unable to compete successfully against other railcar manufacturers or retain our market share in our established markets. Increased competition for the sales of our railcar products, particularly our coal-carrying railcars, could result in price reductions, reduced margins and loss of market share, which could negatively affect our prospects, business, financial condition and results of operations.

Further consolidation of the railroad industry may adversely affect our business.

Over the past 12 years, there has been a consolidation of railroad carriers operating in North America. Railroad carriers are large purchasers of railcars and represent a significant portion of our historical customer base. Future consolidation of railroad carriers may adversely affect our sales and reduce our income from operations because with fewer railroad carriers, each railroad carrier will have proportionately greater buying power and operating efficiency, which may intensify competition among railcar manufacturers to retain customer relationships with the consolidated railroad carriers and cause our prices to decline.

The potential cost volatility of the raw materials that we use to manufacture railcars, especially aluminum and steel, and delivery delays associated with these raw materials may adversely affect our financial condition and results of operations.

The production of railcars and our operations require substantial amounts of aluminum and steel. The cost of aluminum, steel and all other materials (including scrap metal) used in the production of our railcars represents a significant majority of our direct manufacturing costs. Our business is subject to the risk of price increases and periodic delays in the delivery of aluminum, steel and other materials, all of which are beyond our control. Any fluctuations in the price or availability of aluminum or steel, or any other material used in the production of our railcars, may have a material adverse effect on our business, results of operations or financial condition. In addition, if any of our suppliers were unable to continue its business or were to seek bankruptcy relief, the availability or price of the materials we use could be adversely affected. Deliveries of our materials may also fluctuate depending on supply and demand for the material or governmental regulation relating to the material, including regulation relating to the importation of the material.

Limitations on the supply of wheels and other railcar components could adversely affect our business because they may limit the number of railcars we can manufacture.

We rely upon third-party suppliers for wheels and other components for our railcars. For the year ended December 31, 2004, due to a shortage of wheels and other railcar components, our deliveries were limited to 7,484 railcars, even though we had orders and production capacity to manufacture more railcars. The limited supply of wheels and other railcar components did not impact our deliveries for the years ended December 31, 2005 through 2009. In the future suppliers of railcar components may be unable to meet the short-term or longer-term demand of our industry for wheel and other railcar components. In the event that any of our suppliers of railcar components were to stop or reduce the production of wheels or the other railcar components that we use, go out of business, refuse to continue their business relationships with us or become subject to work stoppages, our business would be disrupted. We have in the past experienced challenges sourcing these railcar components to meet our increasing production requirements. Our ability to increase our railcar production to expand our business and/or meet any increase in demand, with new or additional manufacturing capabilities, depends on our ability to obtain an adequate supply of these railcar components. While we believe that we could secure alternative sources for these components, we may incur substantial delays and significant expense in doing so, the quality and reliability of these alternative sources may not be the same and our operating results may be significantly affected. In an effort to secure a supply of wheels, we have developed foreign sources that require deposits on some occasions. In the event of a material adverse business condition, such deposits may be forfeited. In addition, if one of our competitors entered into a preferred supply arrangement with, or was otherwise favored by, a particular supplier, we would be at a competitive disadvantage, which could negatively affect our operating results. Furthermore, alternative suppliers might charge significantly higher prices for wheels or other railcar components than we currently pay. Under such circumstances, the disruption to our business could have a material adverse impact on our customer relationships, financial condition and operating results.

RISKS RELATED TO OUR BUSINESS

The weak global economy and tight credit markets may continue to adversely affect our business.

The slowdown in the global economy likely has contributed to a near-term decline in the Company s sales levels. The uncertainty surrounding the duration and severity of the current economic conditions makes it difficult for us to predict the full impact of this slowdown on our business, results of operations and cash flows. While the financial condition of many of our customers, including railroad and utility companies, remains generally stable, certain of our customers may face financial difficulties, the unavailability of or reduction in commercial credit, or both, that may result in decreased sales for the Company. The weakness in the global economy also may adversely affect key suppliers of the Company, negatively impacting our ability to secure adequate materials for our manufacture of railcars on a timely basis.

While the Company currently does not have any borrowings outstanding under its two revolving credit facilities, the availability of credit under these facilities positively contributes to the Company s liquidity position. The continuation of severe economic conditions may adversely affect the financial institutions that participate in our credit facilities, which could limit their ability to lend if the Company were to seek to borrow under its current arrangements.

We rely significantly on the sales of our coal-carrying railcars. Future demand for coal could decrease, which could adversely affect our business, financial condition and results of operations.

Coal-carrying railcars are our primary railcar type, representing 92% and 89% of our sales revenues in 2009 and 2008, respectively, and 92% of the total railcars that we delivered in both 2009 and 2008. Fluctuations in the price of coal relative to other energy sources may cause utility companies, which are significant customers of our coal-carrying railcar lines, to select an alternative energy source to coal, thereby reducing the strength of the market for coal-carrying railcars. For example, if utility companies were to begin preferring natural gas instead of coal as an energy source, demand for our coal-carrying railcar lines would decrease and our operating results may be negatively affected.

The U.S. federal and state governments may adopt new legislation and/or regulations, or judicial or administrative interpretations of existing laws and regulations, that materially adversely affect the coal industry and/or our customers ability to use coal or to continue to use coal at present rates. Such legislation or proposed legislation and/or regulations may include proposals for more stringent protections of the environment that would further regulate and tax the coal industry. This legislation could significantly reduce demand for coal, adversely affect the demand for our coal-carrying railcars and have a material adverse effect on our financial condition and results of operations.

We rely upon a single supplier to supply us with all of our cold-rolled center sills for our railcars, and any disruption of our relationship with this supplier could adversely affect our business.

We rely upon a single supplier to manufacture all of our cold-rolled center sills for our railcars, which are based upon our proprietary and patented process. A center sill is the primary longitudinal structural component of a railcar, which helps the railcar withstand the weight of the cargo and the force of being pulled during transport. Our center sill is formed into its final shape without heating by passing steel plate through a series of rollers. Substantially all of the railcars that we produced in 2009 and 2008 were manufactured using this cold-rolled center sill. Although we have a good relationship with our supplier and have not experienced any significant delays, manufacturing shortages or failures to meet our quality requirements and production specifications in the past, our supplier could stop production of our cold-rolled center sills, go out of business, refuse to continue its business relationship with us or become subject to work stoppages. While we believe that we could secure alternative manufacturing sources, our present supplier is currently the only manufacturer of our cold-rolled center sills for our railcars. We may incur substantial delays and significant expense in finding an alternative source, our results of operations may be significantly affected and the quality and reliability of these alternative sources may not be the same. Moreover, alternative suppliers might charge significantly higher prices for our cold-rolled center sills than we currently pay. The prices for our cold-rolled center sills may also be impacted by the rising cost of steel and all other materials used in the production of our cold-rolled center sills. Under such circumstances, the disruption to our business may have a material adverse impact on our financial condition and results of operations.

Equipment failures, delays in deliveries or extensive damage to our facilities could lead to production or service curtailments or shutdowns.

We have production facilities in Danville, Illinois and Roanoke, Virginia. An interruption in production capabilities at these facilities, as a result of equipment failure or other reasons, could reduce or prevent the production of our railcars. A halt of production at any of our manufacturing facilities could severely affect delivery times to our customers. Any significant delay in deliveries to our customers could result in the termination of contracts, cause us to lose future sales and negatively affect our reputation among our customers and in the railcar industry and our results of operations. Our facilities are also subject to the risk of catastrophic loss due to unanticipated events, such as fires, explosions, floods or weather conditions. We may experience plant shutdowns or periods of reduced production as a result of equipment failures, delays in deliveries or extensive damage to any of our facilities, which could have a material adverse effect on our business, results of operations or financial condition.

An increase in health care costs could adversely affect our results of operations.
The cost of health care benefits in the United States has increased significantly, leading to higher costs for us to provide health care benefits to our active and retired employees, and we expect these costs to increase in the future. If these costs continue to rise, our results of operations will be adversely affected. During the term of our existing union agreements we are unable to limit our costs by changing or eliminating coverage under our employee benefit plans because a significant majority of our employee benefits are governed these agreements. For example, as of December 31, 2009, our postretirement benefit obligation was $63.3 million, all of which is unfunded. Although the Johnstown settlement during 2003 limits our future liabilities for health care coverage for our retired unionized Johnstown employees, we will continue to be impacted by the health care cost increases of our active employees. If our costs under our employee benefit plans for active employees exceed our projections, our business and financial results could be materially adversely affected.

Our pension obligations are currently underfunded. We may have to make significant cash payments to our pension plans, which would reduce the cash available for our business.
As of December 31, 2009, our accumulated benefit obligation under our defined benefit pension plans exceeded the fair value of plan assets by $15.5 million. The underfunding was caused, in part, by fluctuations in the financial markets that have caused the valuation of the assets in our defined benefit pension plans to decrease. Further, additional benefit obligations were added to our existing defined benefit pension plans in 2007, 2008 and 2009 as a result of plan curtailment and special termination benefit costs (as described in Note 3 and Note 12 to the Consolidated Financial Statements). We made contributions to our pension plans of $12.6 million during the year ended December 31, 2009. Management expects that any future obligations under our pension plans that are not currently funded will be funded from our future cash flow from operations. If our contributions to our pension plans are insufficient to fund the pension plans adequately to cover our future pension obligations, the performance of the assets in our pension plans does not meet our expectations or other actuarial assumptions are modified, our contributions to our pension plans could be materially higher than we expect, which would reduce the cash available for our business.

The level of our reported backlog may not necessarily indicate what our future sales will be and our actual sales may fall short of the estimated sales value attributed to our backlog.
We define backlog as the sales value of products or services to which our customers have committed in writing to purchase from us, that have not been recognized as sales. In this annual report on Form 10-K, we have disclosed our backlog, or the number of railcars for which we have purchase orders, in various periods and the estimated sales value (in dollars) that would be attributable to this backlog once the backlog is converted to actual sales. We consider backlog to be an indicator of future sales of railcars. However, our reported backlog may not be converted into sales in any particular period, if at all, and the actual sales (including any compensation for lost profits and reimbursement for costs) from such contracts may not equal our reported estimates of backlog value. For example, we rely on third-party suppliers for heavy castings, wheels and components for our railcars and if these third parties were to stop or reduce their supply of heavy castings, wheels and other components, our actual sales could fall short of the estimated sales value attributed to our backlog. Also, customer orders may be subject to cancellation, inspection rights and other customary industry terms, and delivery dates may be subject to delay, thereby extending the date on which we will deliver the associated railcars and realize revenues attributable to such railcar backlog. Furthermore, any contract included in our reported backlog that actually generates sales may not be profitable. Therefore, our current level of reported backlog may not necessarily represent the level of sales that we may generate in any future period.

As a public company, we are required to comply with the reporting obligations of the Exchange Act and Section 404 of the Sarbanes-Oxley Act of 2002. If we fail to comply with the reporting obligations of the Exchange Act and Section 404 of the Sarbanes-Oxley Act or if we fail to maintain adequate internal controls over financial reporting, our business, results of operations and financial condition could be materially adversely affected.
As a public company, we are required to comply with the periodic reporting obligations of the Securities Exchange Act of 1934, as amended (the Exchange Act), including preparing annual reports and quarterly reports. Our failure to prepare and disclose this information in a timely manner could subject us to penalties under federal securities laws,

expose us to lawsuits and restrict our ability to access financing. In addition, we are required under applicable law and regulations to design and implement internal controls over financial reporting, and evaluate our existing internal controls with respect to the standards adopted by the Public Company Accounting Oversight Board. On July 29, 2009 our management identified control deficiencies that existed as of December 31, 2008 and December 31, 2007 that constituted material weaknesses and resulted in material errors and the restatement of the Company s audited annual financial statements as of and for the years ended December 31, 2008 and December 31, 2007 and unaudited interim financial statements as of and for the quarterly periods ended March 31, 2009, September 30, 2008, June 30, 2008 and March 31, 2008. Although we have implemented measures that have remediated the material weaknesses, we cannot assure you that we will not identify additional control deficiencies that may constitute significant deficiencies or material weaknesses in our internal controls in the future. As a result, we may be required to implement further remedial measures and to design enhanced processes and controls to address issues identified through future reviews. This could result in significant delays and costs to us and require us to divert substantial resources, including management time, from other activities.

If we fail to maintain the adequacy of our internal controls in the future, we may not be able to ensure that we can conclude on an ongoing basis that we have effective internal controls over financial reporting in accordance with the Sarbanes-Oxley Act. Moreover, effective internal controls are necessary for us to produce reliable financial reports and are important to help prevent fraud. As a result, any failure to satisfy the requirements of Section 404 on a timely basis could result in the loss of investor confidence in the reliability of our financial statements, which in turn could harm our business and negatively impact the trading price of our common stock.

We recently implemented a new enterprise-wide financial reporting system which may cause operating or reporting disruptions.

In 2008, the Company initiated the implementation of an enterprise-wide financial reporting system to improve processes, enhance the access and timeliness of critical business information and strengthen controls throughout the Company. The Company s new enterprise-wide financial reporting system went live on August 1, 2009. Many companies have experienced operating or reporting disruptions when converting to a new ERP system, including limitations on a company s ability to deliver and bill for customer shipments, maintain current and complete books and records, and meet external reporting deadlines. While we have not had any significant operating or reporting disruptions to our business to date from the conversion, and do not currently anticipate any, any major difficulty in using the new reporting system could negatively impact the Company s business, results of operations and cash flows.

If we lose key personnel, our operations and ability to manage the day-to-day aspects of our business will be adversely affected.

We believe our success depends to a significant degree upon the continued contributions of our executive officers and key employees, both individually and as a group. Our future performance will substantially depend on our ability to retain and motivate them. If we lose key personnel or are unable to recruit qualified personnel, our ability to manage the day-to-day aspects of our business will be adversely affected.

The loss of the services of one or more members of our senior management team could have a material adverse effect on our business, financial condition and results of operations. Because our senior management team has many years of experience in the railcar industry and other manufacturing and capital equipment industries, it would be difficult to replace any of them without adversely affecting our business operations. Our future success will also depend in part upon our continuing ability to attract and retain highly qualified personnel. We do not currently maintain key person life insurance.

Labor disputes could disrupt our operations and divert the attention of our management and may have a material adverse effect on our operations and profitability.

As of December 31, 2009, we had collective bargaining agreements with unions representing approximately 31% of our total active labor force.

Disputes with the unions representing our employees could result in strikes or other labor protests which could disrupt our operations and divert the attention of management from operating our business. If we were to experience a strike or work stoppage, it could be difficult for us to find a sufficient number of employees with the necessary skills to replace these employees. Any such labor disputes could have a material adverse effect on our financial condition, results of operations or cash flows.

Shortages of skilled labor may adversely impact our operations.

We depend on skilled labor in the manufacture of railcars. Some of our facilities are located in areas where demand for skilled laborers often exceeds supply. Shortages of some types of skilled laborers may restrict our ability to increase production rates and could cause our labor costs to increase.

Lack of acceptance of our new railcar offerings by our customers could adversely affect our business.

Our strategy depends in part on our continued development and sale of new railcar designs and design changes to existing railcars to penetrate railcar markets in which we currently do not compete and to expand or maintain our market share in the railcar markets in which we currently compete. We have dedicated significant resources to the development, manufacturing and marketing of new railcar designs. We typically make decisions to develop and market new railcars and railcars with modified designs without firm indications of customer acceptance. New or modified railcar designs may require customers to alter their existing business methods or threaten to displace existing equipment in which our customers may have a substantial capital investment. Many railcar purchasers prefer to maintain a standardized fleet of railcars and railcar purchasers with established railcar fleets are generally resistant to railcar design changes. Therefore, any new or modified railcar designs that we develop may not gain widespread acceptance in the marketplace and any such products may not be able to compete successfully with existing railcar designs or new railcar designs that may be introduced by our competitors.

Our production of new railcar product lines may not be initially profitable and may result in financial losses.

When we begin production of a new railcar product line, we usually anticipate that our initial costs of production will be higher due to initial labor and operating inefficiencies associated with new manufacturing processes. Due to pricing pressures in our industry, the pricing for the new railcars in customer contracts usually does not reflect the initial additional costs, and our costs of production may exceed the anticipated revenues until we are able to gain labor efficiencies. For example, in 2005, we had losses of $1.5 million relating to our contract for the manufacture of box railcars, a type of railcar that we had not manufactured in the past. To the extent that the total costs of production significantly exceed our anticipated costs of production, we may be unable to gain any profit from our sale of the railcars or we may incur a loss.

We may pursue acquisitions that involve inherent risks, any of which may cause us not to realize anticipated benefits.

Our business strategy includes the potential acquisition of businesses and entering into joint ventures and other business combinations that we expect would complement and expand our existing products and services and the markets where we sell our products and services and improve our market position. We may not be able to successfully identify suitable acquisition or joint venture opportunities or complete any particular acquisition, combination, joint venture or other transaction on acceptable terms. We cannot predict the timing and success of our efforts to acquire any particular business and integrate the acquired business into our existing operations. Also, efforts to acquire other businesses or the implementation of other elements of this business strategy may divert managerial resources away from our business operations. In addition, our ability to engage in strategic acquisitions may depend on our ability to raise substantial capital and we may not be able to raise the funds necessary to implement our acquisition strategy on terms satisfactory to us, if at all. Our failure to identify suitable acquisition or joint venture opportunities may restrict our ability to grow our business. In addition, we may not be able to successfully integrate businesses that we acquire in the future, which could have a material adverse effect on our business, results of operations and financial condition.

We might fail to adequately protect our intellectual property, which may result in our loss of market share, or third parties might assert that our intellectual property infringes on their intellectual property, which would be costly to defend and divert the attention of our management.

The protection of our intellectual property is important to our business. We rely on a combination of trademarks, copyrights, patents and trade secrets to protect our intellectual property. However, these protections might be inadequate. For example, we have patents for portions of our railcar designs that are important to our market leadership in the coal-carrying railcar segment. Our pending or future trademark, copyright and patent applications might not be approved or, if allowed, might not be sufficiently broad. Conversely, third parties might assert that our technologies or other intellectual property infringe on their proprietary rights. In either case, litigation may result, which could result in substantial costs and diversion of our and our management team s efforts. Regardless of whether we are ultimately successful in any litigation, such litigation could adversely affect our business, results of operations and financial condition.

We are subject to a variety of environmental laws and regulations and the cost of complying with environmental requirements or any failure by us to comply with such requirements may have a material adverse effect on our business, financial condition and results of operations.

We are subject to a variety of federal, state and local environmental laws and regulations, including those governing air quality and the handling, disposal and remediation of waste products, fuel products and hazardous substances. Although we believe that we are in material compliance with all of the various regulations and permits applicable to our business, we may not at all times be in compliance with such requirements. The cost of complying with environmental requirements may also increase substantially in future years. If we violate or fail to comply with these regulations, we could be fined or otherwise sanctioned by regulators. In addition, these requirements are complex, change frequently and may become more stringent over time, which could have a material adverse effect on our business. We have in the past conducted investigation and remediation activities at properties that we own to address historic contamination. However, there can be no assurance that these remediation activities have addressed all historic contamination. Environmental liabilities that we incur, including those relating to the off-site disposal of our wastes, if not covered by adequate insurance or indemnification, will increase our costs and have a negative impact on our profitability.

Our warranties may expose us to potentially significant claims, which may damage our reputation and adversely affect our business, financial condition and results of operations.

We warrant the workmanship and materials of many of our manufactured new products under limited warranties, generally for periods of five years or less. Accordingly, we may be subject to a risk of product liability or warranty claims in the event that the failure of any of our products results in personal injury or death, or does not conform to our customers specifications. Although we currently maintain product liability insurance coverage, product liability claims, if made, may exceed our insurance coverage limits or insurance may not continue to be available on commercially acceptable terms, if at all. We have never experienced any material losses attributable to warranty claims, but it is possible for these types of warranty claims to result in costly product recalls, significant repair costs and damage to our reputation, all of which would adversely affect our results of operations.

The agreements governing our revolving credit facilities contain various covenants that, among other things, limit our discretion in operating our business and provide for certain minimum financial requirements.

The agreements governing our revolving credit facilities contain various covenants that, among other things, limit our management s discretion by restricting our ability to incur additional debt, redeem our capital stock, enter into certain transactions with affiliates, pay dividends and make other distributions, make investments and other restricted payments and create liens. Our failure to comply with the financial covenants set forth above and other covenants under our revolving credit facilities could lead to an event of default under the agreements governing any other indebtedness that we may have outstanding at the time, permitting the lenders to accelerate all borrowings under such agreements and to foreclose on any collateral. In addition, any such events may make it more difficult or costly for us to borrow additional funds in the future.

To the extent we expand our sales of products and services internationally, we will increase our exposure to international economic and political risks.

Conducting business outside the United States, for example through our joint venture in India and our sales to South America, subjects us to various risks, including changing economic, legal and political conditions, work stoppages, exchange controls, currency fluctuations, terrorist activities directed at U.S. companies, armed conflicts and unexpected changes in the United States and the laws of other countries relating to tariffs, trade restrictions, transportation regulations, foreign investments and taxation. If we fail to obtain and maintain certifications of our railcars and railcar parts in the various countries where we may operate, we may be unable to market and sell our railcars in those countries.

In addition, unexpected changes in regulatory requirements, tariffs and other trade barriers, more stringent rules relating to labor or the environment, adverse tax consequences and price exchange controls could limit our operations and make the manufacture and distribution of our products internationally more difficult. Furthermore, any material changes in the quotas, regulations or duties on imports imposed by the U.S. government and agencies or on exports by non-U.S. governments and their respective agencies could affect our ability to export the railcars that we manufacture in the United States. The uncertainty of the legal environment could limit our ability to enforce our rights effectively.

The market price of our securities may fluctuate significantly, which may make it difficult for stockholders to sell shares of our common stock when desired or at attractive prices.

Since our initial public offering in April 2005 until February 22, 2010, the trading price of our common stock ranged from a low of $14.05 per share to a high of $78.34 per share. The price for our common stock may fluctuate in response to a number of events and factors, such as quarterly variations in operating results and our reported backlog, the cyclical nature of the railcar market, announcements of new products by us or our competitors, changes in financial estimates and recommendations by securities analysts, the operating and stock price performance of other companies that investors may deem comparable to us, and news reports relating to trends in our markets or general economic conditions. Additionally, volatility or a lack of positive performance in our stock price may adversely affect our ability to retain key employees, all of whom have been granted stock options or other stock awards.

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties.

We own a railcar production facility in Danville, Illinois and we lease a railcar production facility in Roanoke, Virginia. The following table presents information on our leased and owned operating properties as of December 31, 2009:

Use	Location	Size	Leased or Owned	Lease Expiration Date
Corporate headquarters	Chicago, Illinois	8,574 square feet	Leased	September 30, 2013
Railcar assembly and component manufacturing	Danville, Illinois	308,665 square feet on 36.5 acres of land	Owned	
Railcar assembly and component Manufacturing	Roanoke, Virginia	383,709 square feet on 15.5 acres of land	Leased	November 30, 2014
Administrative	Johnstown, Pennsylvania	29,500 square feet on 1.02 acres of land	Owned	
Parts warehouse	Johnstown, Pennsylvania	86,000 square feet	Leased	December 31, 2016

As of December 31, 2009, our facility in Danville, Illinois operated one daily shift. In response to reduced industry demand for railcars over the short-term, our facility in Roanoke, Virginia ceased production of new railcars in July 2009. We expect to resume production of new railcars at our Roanoke facility in the future as industry demand improves.

Item 3. Legal Proceedings.

On September 29, 2008, Bral Corporation, a supplier of certain railcar parts to us, filed a complaint against us in the U.S. District Court for the Western District of Pennsylvania (the Pennsylvania Lawsuit). The complaint alleges that we breached an exclusive supply agreement with Bral by purchasing parts from CMN Components, Inc. (CMN). On December 14, 2007, Bral sued CMN in the U.S. District Court for the Northern District of Illinois, alleging among other things that CMN interfered in the business relationship between Bral and us (the Illinois Lawsuit). On October 22, 2008, we entered into an Assignment of Claims Agreement with CMN under which CMN assigned to us its counterclaims against Bral in the Illinois Lawsuit and we agreed to defend and indemnify CMN against Bral s claims in that lawsuit. The parties have been conducting coordinated discovery in both matters. While the ultimate outcomes of the Pennsylvania Lawsuit and the Illinois Lawsuit cannot be determined at this time, it is the opinion of management that the resolution of these lawsuits will not have a material adverse effect on our financial condition or results of operations.

In addition to the foregoing, we are involved in certain other threatened and pending legal proceedings, including commercial disputes and workers compensation and employee matters arising out of the conduct of our business. While the ultimate outcome of these other legal proceedings cannot be determined at this time, it is the opinion of management that the resolution of these other actions will not have a material adverse effect on our financial condition, results of operations or cash flows.

PART II

Item 5. Market for Registrant s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

Our common stock has been quoted on the Nasdaq Global Market under the symbol RAIL since April 6, 2005. Prior to that time, there was no public market for our common stock. As of February 22, 2010, there were approximately 39 holders of record of our common stock, which does not include persons whose shares of common stock are held by a bank, brokerage house or clearing agency. The following table sets forth quarterly high and low closing prices of our common stock since April 6, 2005, as reported on the Nasdaq Global Market.

	Common stock price	
	High	Low
2009		
Fourth quarter	$ 26.91	$ 18.10
Third quarter	$ 25.54	$ 16.26
Second quarter	$ 20.24	$ 15.38
First quarter	$ 21.63	$ 14.52
2008		
Fourth quarter	$ 28.39	$ 17.01
Third quarter	$ 39.16	$ 27.94
Second quarter	$ 44.63	$ 33.56
First quarter	$ 41.88	$ 28.86
2007		
Fourth quarter	$ 43.20	$ 32.29
Third quarter	$ 54.60	$ 38.20
Second quarter	$ 51.80	$ 45.14
First quarter	$ 58.87	$ 46.85
2006		
Fourth quarter	$ 57.07	$ 48.79
Third quarter	$ 60.05	$ 45.10
Second quarter	$ 76.57	$ 46.60
First quarter	$ 72.10	$ 47.06
2005		
Fourth quarter	$ 49.55	$ 35.45
Third quarter	$ 40.87	$ 19.01
Second quarter (from April 6, 2005)	$ 22.00	$ 17.55

Dividend Policy

Prior to September 2005, our board of directors had never declared any cash dividends on our common stock. Beginning in September 2005, we paid a recurring quarterly cash dividend of $0.03 per share of common stock. In November 2006, the quarterly cash dividend increased to $0.06 per share of common stock.

Our declaration and payment of future dividends will be at the discretion of our board of directors and will depend on, among other things, general economic and business conditions, our strategic plans, our financial results, contractual and legal restrictions on the payment of dividends by us and our subsidiaries and such other factors as our board of directors considers to be relevant.

Our revolving credit agreements contain covenants that limit our ability to pay dividends to holders of our common stock except under certain circumstances. Additionally, the ability of our board of directors to declare a dividend on our common stock is limited by Delaware law.

Performance Graph

The following performance graph and related information shall not be deemed soliciting material or to be filed with the Securities and Exchange Commission, nor shall such information be incorporated by reference into any future filing under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, except to the extent that the Company specifically incorporates it by reference into such filing.

The following graph illustrates the cumulative total stockholder return on our common stock during the period from April 6, 2005, which is the date our common stock was initially listed on the Nasdaq Global Market, through December 31, 2009 and compares it with the cumulative total return on the NASDAQ Composite Index and DJ Transportation Index. The comparison assumes $100 was invested on April 6, 2005 in our common stock and in each of the foregoing indices and assumes reinvestment of dividends, if any. The performance shown is not necessarily indicative of future performance.

	April 6, 2005	June 30, 2005	Dec. 31, 2005	June 30, 2006	Dec. 31, 2006	June 30, 2007	Dec. 31, 2007	June. 30, 2008	Dec. 31, 2008	June. 30, 2009	Dec. 31, 2009
FreightCar America, Inc.	$ 100.00	$ 94.29	$ 228.96	$ 264.59	$ 264.72	$ 228.94	$ 168.02	$ 170.94	$ 88.44	$ 81.94	$ 97.26
Nasdaq Composite Index	$ 100.00	$ 103.48	$ 111.17	$ 110.07	$ 122.69	$ 132.37	$ 135.63	$ 117.71	$ 81.34	$ 95.16	$ 118.20
DJ Transportation Index	$ 100.00	$ 94.18	$ 113.89	$ 134.45	$ 125.08	$ 140.62	$ 126.87	$ 138.23	$ 99.71	$ 92.39	$ 118.26

Item 6. Selected Financial Data.

The selected financial data presented for each of the years in the five-year period ended December 31, 2009 was derived from our audited consolidated financial statements. The selected financial data should be read in conjunction with Management s Discussion and Analysis of Financial Condition and Results of Operations and the consolidated financial statements and notes thereto included in Item 7 and Item 8, respectively, of this annual report on Form 10-K.

	Year Ended December 31,				
	2009	**2008**	**2007**	**2006**	**2005**
	(in thousands, except share and per share data and railcar amounts)				
Statements of operations data:					
Revenues	$ 248,462	$ 746,390	$ 817,025	$ 1,444,800	$ 927,187
Cost of sales	211,940	679,597	712,124	1,211,349	820,638
Gross profit	36,522	66,793	104,901	233,451	106,549
Selling, general and administrative expense	31,316	31,717	38,914	34,390	28,461
Plant closure charges (income)(3)	(495)	20,037	30,836		
Operating income	5,701	15,039	35,151	199,061	78,088
Interest income	124	3,827	8,349	5,860	1,225
Interest expense	523	396	420	352	11,082
Amortization and write-off of deferred financing costs	270	281	232	306	776
Income before income taxes	5,032	18,189	42,848	204,263	67,455
Income tax provision	248	6,769	15,389	75,530	21,762
Net income	4,784	11,420	27,459	128,733	45,693
Redeemable preferred stock dividends accumulated					311
Net income attributable to common stockholders	4,784	11,420	27,459	128,733	45,382
Less: Net income attributable to noncontrolling interest in India JV	(156)				
Net income attributable to FreightCar America	$ 4,940	$ 11,420	$ 27,459	$ 128,733	$ 45,382
Weighted average common shares outstanding basic	11,861,366	11,788,400	12,115,712	12,586,889	11,135,440
Weighted average common shares outstanding diluted	11,870,350	11,833,132	12,188,901	12,785,015	11,234,075
Per share data:					
Net income per common share attributable to FreightCar	$ 0.42	$ 0.97	$ 2.27	$ 10.23	$ 4.08

America basic										
Net income per share common attributable to FreightCar America diluted	$	0.42	$	0.97	$	2.25	$	10.07	$	4.04
Dividends declared per common share	$	0.24	$	0.24	$	0.24	$	0.15	$	0.06
Other financial and operating data:										
Capital expenditures, including railcars on operating leases produced or acquired	$	19,920	$	42,192	$	6,073	$	6,903	$	7,520
Railcars delivered		3,377		10,276		10,282		18,764		13,031
Railcar orders		1,218		7,301		6,366		7,350		22,363
Railcar backlog		265		2,424		5,399		9,315		20,729
Estimated backlog	$	24,839	$	183,441	$	422,054	$	697,054	$	1,412,424
Balance sheet data (at period end):										
Cash and cash equivalents	$	98,015	$	129,192	$	197,042	$	212,026	$	61,737
Restricted cash[(1)]		1,420								
Total assets		335,566		383,293		354,119		419,981		225,282
Total debt[(2)]				28		93		154		224
Total redeemable preferred stock										
Total stockholders equity (deficit)		206,253		204,826		199,063		203,869		92,199

(1) During 2009 we established restricted cash balances in lieu of standby letters of credit for purchase price payment guarantees and performance guarantees. The restrictions expire upon our delivery of certain railcars to customers.

(2)

Our total debt includes current maturities of long-term debt and our variable rate demand industrial revenue bonds due 2010, which are classified as short-term debt. We repaid all of our debt that existed prior to the initial public offering with the net proceeds of the initial public offering and available cash.

(3) For the year ended December 31, 2007, we recorded plant closure charges of $30.8 million relating to the planned closure of our Johnstown facility, which included curtailment and special termination benefits for our pension and postretirement benefit plans of $27.7 million, one-time employee termination benefits of $2.2 million and fixed asset impairment charges of

$950,000. For the year ended December 31, 2008, we recorded additional plant closure charges of $20.0 million, which included special termination benefits for our pension and postretirement benefit plans of $19.0 million, and other related costs of $1.1 million. Plant closure income for the year ended December 31, 2009 represents insurance recoveries and adjustments to employment termination benefits. See Note 3 to the consolidated financial statements.

Item 7. Management s Discussion and Analysis of Financial Condition and Results of Operations.
OVERVIEW
You should read the following discussion in conjunction with our consolidated financial statements and related notes included elsewhere in this annual report on Form 10-K. This discussion contains forward-looking statements that are based on management s current expectations, estimates and projections about our business and operations. Our actual results may differ materially from those currently anticipated and expressed in such forward-looking statements. See Forward-Looking Statements.

We are the leading manufacturer of aluminum-bodied railcars and coal-carrying railcars in North America, based on the number of railcars delivered. We also refurbish and rebuild railcars and sell forged, cast and fabricated parts for the railcars we produce, as well as those manufactured by others. Our primary customers are financial institutions, shippers and railroads.

Our manufacturing facilities are located in Danville, Illinois and Roanoke, Virginia. Each of our manufacturing facilities has the capability to manufacture a variety of types of railcars.

Railcar deliveries totaled 3,377 units for the year ended December 31, 2009, including delivery of 2,297 cars sold and delivery of 1,080 cars leased, compared to 10,276 units in the same period of 2008. Our total backlog of firm orders for railcars decreased by approximately 89%, from 2,424 railcars as of December 31, 2008 to 265 railcars as of December 31, 2009. Our backlog at December 31, 2009, included 60 units under firm operating leases with independent third parties. Subsequent to December 31, 2009 the Company received additional orders for more than 3,000 new railcars to be manufactured and delivered over the course of 2010 and 2011.

Prices for steel and aluminum, the primary raw material components of our railcars, and surcharges on steel and railcar components were at historically high levels for the first half of 2008 and since then prices have dropped significantly. Substantially all of the contracts covering our current backlog are fixed-rate contracts. Therefore, if material costs were to increase, we may not be able to pass on these increased costs to our customers.

The North American railcar market is highly cyclical and the trends in the railcar industry are closely related to the overall level of economic activity. We expect railroads and utilities to continue to upgrade their fleets of aging steel-bodied coal-carrying railcars to lighter and more durable aluminum-bodied coal-carrying railcars. Despite the decline in our backlog, we believe that the long-term outlook for railcar demand is positive, due to increased rail traffic and the replacement of aging railcar fleets. We also believe that the long-term outlook for our business, including the demand for our coal-carrying railcars, is positive, based on the historic cyclicality of the industry, our expanding product portfolio, our operational efficiency in manufacturing railcars and our international opportunities. However, U.S. economic conditions may not result in a sustained economic recovery, and our business is subject to these and significant other risks that may cause our current positive outlook to change. See Item 1A. Risk Factors.

In May 2008, we closed our manufacturing facility located in Johnstown, Pennsylvania. This action was taken to further our strategy of optimizing production at our low-cost facilities and continuing our focus on cost control. We had entered into decisional bargaining with the USWA, but did not reach an agreement with the USWA that would have allowed us to continue to operate the facility in a cost-effective way. In December 2007, we recorded plant closure charges of $30.8 million related to these actions.

On June 24, 2008, we announced a tentative global settlement that upon ratification by the Johnstown USWA membership and approval by the court resolved all legal disputes relating to the Johnstown facility and its workforce, including the Sowers/Hayden class action litigation, contested arbitration ruling and other pending grievance proceedings. The time for an appeal of the court s order has now run out and the settlement has expired. During 2008 we recorded $20.0 million in plant closure charges related to these actions. The total plant closure charges recognized in 2007 and 2008 were primarily related to our pension and postretirement benefit plans.

During the fiscal year ended December 31, 2008, management, after a thorough evaluation of the Company s current information technology systems and its future needs, determined to upgrade the Company s existing information technology system to a fully integrated ERP system to be provided by Oracle Corporation. The Company s new enterprise-wide financial system went live on August 1, 2009. In addition to the implementation of the ERP system and in connection with the restatement of our consolidated financial statements for the years ended

December 31, 2008 and 2007, there have been changes in our internal control over financial reporting as more fully described in Item 9A of this annual report on Form 10-K.

FINANCIAL STATEMENT PRESENTATION

Revenues

Our revenues are generated primarily from sales of the railcars that we manufacture. Our sales depend on industry demand for new railcars, which is driven by overall economic conditions and the demand for railcar transportation of various products, primarily coal but also other products such as motor vehicles, steel products, forest products, minerals, cement and agricultural commodities. Our sales are also affected by competitive market pressures that impact the prices for our railcars and by the types of railcars sold. Revenues for 2009 also include lease payments received from railcars under operating leases to the same customer base to which we sell railcars.

We generally manufacture railcars under firm orders from our customers. We recognize sales, which we sometimes refer to as deliveries, of new and rebuilt railcars when we complete the individual railcars, the railcars are accepted by the customer following inspection, the risk of any damage or other loss with respect to the railcars passes to the customer and title to the railcars transfers to the customer. Deliveries include new, used and repair/refurbished cars sold and cars contracted under operating leases in that period. With respect to sales transactions involving the trading-in of used railcars, in accordance with accounting rules, we recognize sales for the entire transaction when the cash consideration received is in excess of 25% of the total transaction value and on a pro rata portion of the total transaction value when the cash consideration received is less than 25% of the total transaction value. We value used railcars received at their estimated fair market value. The variable purchase patterns of our customers and the timing of completion, delivery and acceptance of customer orders may cause our sales and income from operations to vary substantially each quarter, which will result in significant fluctuations in our quarterly results.

Cost of sales

Our cost of sales includes the cost of raw materials such as aluminum and steel, as well as the cost of finished railcar components, such as castings, wheels, truck components and couplers, and other specialty components. Our cost of sales also includes labor, utilities, freight, manufacturing depreciation and other manufacturing overhead costs. Factors that have affected our cost of sales include the recent volatility in the cost of steel and aluminum, our closure of our Johnstown, Pennsylvania facility and our efforts to continually reduce manufacturing costs at our other manufacturing facilities.

Prices for steel and aluminum, the primary raw material components of our railcars, and surcharges on steel and railcar components were at historically high levels for the first half of 2008 and since then prices have dropped significantly. Substantially all of the contracts covering our current backlog are fixed-rate contracts. Therefore, if material costs were to increase, we may not be able to pass on these increased costs to our customers.

Operating income

Operating income represents total sales less cost of sales, selling, general and administrative expenses, compensation expense under stock option and restricted share award agreements and plant closure charges.

RESULTS OF OPERATIONS

Year Ended December 31, 2009 compared to Year Ended December 31, 2008

Revenues

Our sales for the year ended December 31, 2009 were $248.5 million as compared to $746.4 million for the year ended December 31, 2008 while railcar deliveries of 3,377 were 6,899 units below the 2008 level. Railcar deliveries for the year ended December 31, 2009 included delivery of 2,297 cars sold and delivery of 1,080 cars leased. Revenues for the year ended December 31, 2009 included $3.9 million generated from contract termination fees resulting from a customer s reduction of a sales order. The decrease in sales revenue for the year ended December 31, 2009 compared to 2008 levels was due primarily to lower sales of coal-carrying cars driven by reduced industry demand. Coal loadings in 2009 have significantly decreased from 2008 levels, and the number of railcars in storage remains high. Recession-driven reductions in demand for electricity, ample utility stockpiles, lower production and decelerating export activity contributed to the decline in coal activity during 2009.

Gross Profit

Gross profit for the year ended December 31, 2009 was $36.5 million as compared to $66.8 million for the year ended December 31, 2008, representing a decrease of $30.3 million. The corresponding margin rate was 14.7% for the year ended December 31, 2009 compared to 8.9% for the year ended December 31, 2008. The change in margin rate was driven primarily by a favorable product mix. The contract termination fee of $3.9 million also contributed to the margin rate improvement for 2009.

Selling, General and Administrative Expense

Selling, general and administrative expenses for the year ended December 31, 2009 were $31.3 million as compared to $31.7 million for the year ended December 31, 2008, representing a decrease of $0.4 million. We took significant actions in 2009 to reduce selling, general and administrative expenses, however those reductions were partially offset by increases for severance costs of $3.1 million, costs associated with the restatement of our financial statements of $1.0 million, costs associated with the suspension or our salaried pension plan of $0.8 million and expenses associated with the implementation of our ERP system of $0.4 million.

Plant Closure Charges

Plant closure income for the year ended December 31, 2009 represent insurance recoveries and accrual adjustments related to employee termination benefits. Plant closure charges for the year ended December 31, 2008 represent the incremental costs associated with our decision, in December 2007, to close our Johnstown, Pennsylvania manufacturing facility and included charges arising under our pension and postretirement benefit plans as well as employment termination and related closure costs. See Note 3 to the consolidated financial statements.

Interest Expense/Income

Total interest expense for the year ended December 31, 2009 was $0.8 million compared to $0.7 million for the year ended December 31, 2008. Interest expense consisted of commitment fees on our credit facilities and the amortization of deferred financing costs. Interest income for the year ended December 31, 2009 was $0.1 million compared to $3.8 million for the year ended December 31, 2008, representing a decrease of $3.7 million as interest rates decreased compared to 2008 levels.

Income Taxes

The provision for income taxes was $0.2 million for the year ended December 31, 2009, compared to a provision for income taxes of $6.8 million for the year ended December 31, 2008. The effective tax rates for the years ended December 31, 2009 and 2008, were 4.9% and 37.2%, respectively. The effective tax rate for the year ended December 31, 2009 was lower than the statutory U.S. federal income tax rate of 35% due to a decrease of 13.9% resulting from a change in the blended state rate, a decrease of 12.1% for tax deductible goodwill, a decrease of 8.7% for the impact of the rate change on deferred taxes, an increase of 3.2% caused by a change in the valuation allowance, an increase of 0.7% for nondeductible expenses and an increase of 0.7% for the effect of other differences. The effective tax rate for the year ended December 31, 2008 was higher than the statutory U.S. federal income tax rate of 35% due to an increase of 7.7% caused by a change in the valuation allowance and an increase of 0.6% for the effect of other differences, partially offset by a decrease of 3.3% for tax deductible goodwill and a decrease of 2.8% due to a change in the blended state rate,. The increase in the valuation allowance for 2008 was primarily due to plant closure charges that caused the Pennsylvania deferred tax assets to increase resulting in a corresponding increase to the valuation allowance.

Net Income

As a result of the foregoing, net income attributable to FreightCar America was $4.9 million for the year ended December 31, 2009, reflecting a decrease of $6.5 million from net income of $11.4 million for the year ended December 31, 2008. For 2009, our basic and diluted net income per share were both $0.42, on basic and diluted shares outstanding of 11,861,366 and 11,870,350, respectively. For 2008, our basic and diluted net income per share were both $0.97, on basic and diluted shares outstanding of 11,788,400 and 11,833,132, respectively.

Year Ended December 31, 2008 compared to Year Ended December 31, 2007

Revenues

Our sales for the year ended December 31, 2008 were $746.4 million as compared to $817.0 million for the year ended December 31, 2007 while railcar deliveries of 10,276 were 6 units below the 2007 level.

Railcar deliveries for the year ended December 31, 2008 included delivery of 9,022 new cars sold and delivery of 735 leased cars that have not yet been sold as well as delivery of 519 used cars sold. The decrease in sales revenue was due primarily to heightened competition and general market conditions as average railcar pricing declined between 2007 and 2008. This reflects a shift in product mix to car types with different material costs and, more importantly, pricing pressures dictated by softer demand. Our coal-carrying railcars remain an essential part of our portfolio. Deliveries of our BethGon® II and AutoFlood III coal-carrying railcars comprised 69% of our total railcar deliveries for the year ended December 31, 2008.

Gross Profit

Gross profit for the year ended December 31, 2008 was $66.8 million as compared to $104.9 million for the year ended December 31, 2007, representing a decrease of $38.1 million. The corresponding margin rate was 8.9% for the year ended December 31, 2008 compared to 12.8% for the year ended December 31, 2007. The margin for 2008 was negatively impacted by material price increases and surcharges that we were unable to pass on to our customers due to fixed price sales contracts and the aggressive pricing environment in which we are operating. For the year ended December 31, 2007, we were able to pass on increases in raw material costs to our customers with respect to 80% of our railcar deliveries.

Selling, General and Administrative Expense

Selling, general and administrative expenses for the year ended December 31, 2008 were $31.7 million as compared to $38.9 million for the year ended December 31, 2007, representing a decrease of $7.2 million. Selling, general and administrative expenses were 4.3% of our sales for 2008 and 4.8% for 2007. The decrease in selling, general and administrative expenses for the year ended December 31, 2008 compared to 2007 was primarily attributable to reductions in outside professional services of $1.3 million, contingent liabilities of $3.9 million and incentive plan costs of $2.2 million.

Plant Closure Charges

Plant closure charges for the year ended December 31, 2008 represent the incremental costs associated with our decision, in December 2007, to close our Johnstown, Pennsylvania manufacturing facility. As a result of the previously described global settlement, total plant closure costs incurred through December 31, 2008 were $50.9 million. These costs include charges arising under our pension and postretirement benefit plans as well as employment termination and related closure costs. See Note 3 to the consolidated financial statements.

Interest Expense/Income

Total interest expense for each of the years ended December 31, 2008 and 2007 was $0.7 million. Interest expense consisted of third-party interest expense and the amortization of deferred financing costs. Interest income for the year ended December 31, 2008 was $3.8 million as compared to $8.3 million for the year ended December 31, 2007, representing a decrease of $4.5 million as both interest rates and our cash balances decreased compared to 2007 levels.

Income Taxes

The provision for income taxes was $6.8 million for the year ended December 31, 2008, compared to a provision for income taxes of $15.4 million for the year ended December 31, 2007. The effective tax rates for the years ended December 31, 2008 and 2007, were 37.2% and 35.9%, respectively. The effective tax rate for the year ended December 31, 2008 was higher than the statutory U.S. federal income tax rate of 35% due to a decrease of 3.3% for goodwill, a decrease of 2.8% due to a change in the blended state rate, an increase of 7.7% caused by a change in the valuation allowance and an increase of 0.6% for the effect of other differences. The increase in the valuation allowance was primarily due to plant closure charges in 2008 that caused the Pennsylvania deferred tax assets to increase resulting in a corresponding increase to the valuation allowance. The effective tax rate for the year ended December 31, 2007 was slightly higher than the statutory U.S. federal income tax rate due to the addition of a 1.9% blended state rate and a 2.8% increase caused by a change in the valuation allowance. These increases were virtually offset by a decrease in the effective rate caused by the domestic manufacturing deduction.

Net Income

As a result of the foregoing, net income attributable to FreightCar America was $11.4 million for the year ended December 31, 2008, reflecting a decrease of $16.1 million from net income of $27.5 million for the year ended December 31, 2007. For 2008, our basic and diluted net income per share were both $0.97, on basic and diluted shares outstanding of 11,788,400 and 11,833,132, respectively. For 2007, our basic and diluted net income per share were $2.27 and $2.25, respectively, on basic and diluted shares outstanding of 12,115,712 and 12,188,901, respectively. Net income for both 2008 and 2007 was significantly impacted by plant closure costs, with pre-tax charges of $20.0 million in 2008 and pre-tax charges of $30.8 million in 2007.

LIQUIDITY AND CAPITAL RESOURCES

Our primary source of liquidity for the years ended December 31, 2009 and 2008, was our cash generated by cash flows from operations in prior periods. See Cash Flows.

On August 24, 2007, we entered into the Second Amended and Restated Credit Agreement with the lenders party thereto (collectively, the Lenders) and LaSalle Bank National Association (LaSalle) as administrative agent (as amended by the First Amendment to Second Amended and Restated Credit Agreement dated as of September 30, 2008 and the Second Amendment to Second Amended and Restated Credit Agreement dated as of March 11, 2009 the Credit Agreement). The proceeds of the revolving credit facility under the Credit Agreement can be used to finance our working capital requirements through direct borrowings and the issuance of stand-by letters of credit. The Credit Agreement consists of a total facility of $50.0 million senior secured revolving credit facility, including: (i) a sub-facility for letters of credit in an amount not to exceed $50.0 million; and (ii) a sub-facility for a swing line loan in an amount not to exceed $5.0 million. The amount available under the revolving credit facility is based on the lesser of (i) $50.0 million or (ii) The borrowing base representing a portion of working capital, calculated as a percentage of eligible accounts receivable plus percentages of eligible finished inventory and semi-finished inventory, less a $20.0 million borrowing base reserve. Since our accounts receivable and inventory balances fluctuate considerably based on the cyclical nature of the business and the timing of orders, the amount available for borrowing also fluctuates considerably. Under the borrowing base calculation, the amount available for borrowing was $3.2 million and $38.5 million as of December 31, 2009 and 2008, respectively.

The Credit Agreement has a term ending on May 31, 2012 and bears interest at a rate of LIBOR plus an applicable margin of between 1.50% and 2.25% depending on Revolving Loan Availability (as defined in the Credit Agreement). We are required to pay a commitment fee of between 0.175% and 0.250% based on Revolving Loan Availability. Borrowings under the Credit Agreement are collateralized by substantially all of our assets and guaranteed by an unsecured guarantee made by JAIX in favor of LaSalle for the benefit of the Lenders. The Credit Agreement has both affirmative and negative covenants, including a minimum fixed charge coverage ratio and limitations on debt, liens, dividends, investments, acquisitions and capital expenditures. The Revolving Credit Agreement also provides for customary events of default.

As of December 31, 2009 and 2008, we had no borrowings under our revolving credit facilities. We had $1.2 million and $11.5 million in outstanding letters of credit under the letter of credit sub-facility as of December 31, 2009 and 2008, respectively which reduced the amount available for borrowing under the facility. Under the revolving credit facility, our subsidiaries are permitted to pay dividends and transfer funds to the Company without restriction.

On September 30, 2008, JAIX entered into a Credit Agreement (as amended by the First Amendment to Credit Agreement dated as of March 11, 2009, the JAIX Credit Agreement) to be used to fund our leasing operations. The JAIX Credit Agreement consists of a $60 million senior secured revolving credit facility. The JAIX Credit Agreement has a term ending on March 31, 2012 and bears interest at the Eurodollar Loan Rate (as defined in the

JAIX Credit Agreement) plus 2.00% for the first two years of the JAIX Credit Agreement (the Revolving Period) and plus 2.50% for the remainder of the term until the termination date. JAIX is required to pay an annual commitment fee of 0.30% during the Revolving Period. Borrowings under the JAIX Credit Agreement are collateralized by substantially all of the assets of JAIX. Additionally, America guaranteed the JAIX Credit Agreement.
Availability under the JAIX Credit Agreement is based on a percentage of the Eligible Railcar Leases (as defined in the agreement) held under the JAIX Credit Agreement. For the first two years the facility requires interest only payments, thereafter the amount drawn on each group of Eligible Railcars under lease is required to be repaid in equal installments at the 6, 12 and 18 month anniversaries of such leases The JAIX Credit Agreement has both affirmative and negative covenants, including, without limitation, a minimum fixed charge coverage ratio, a minimum tangible net worth, a requirement to deposit restricted cash and limitations on debt, liens, dividends, investments, acquisitions and capital expenditures. The JAIX Credit Agreement also provides for customary events of default. As of December 31, 2009 and 2008, we had no borrowings under the JAIX Credit Agreement.
As of December 31, 2009, we were in compliance with all covenant requirements under our revolving credit facilities.
During 2008, in response to competitive market conditions and the deterioration of the financial markets, the Company selectively began to produce and offer railcars under operating lease arrangements with certain customers. These term of the leases vary but generally is less than seven years. The Company also continually evaluates opportunities to package and sell its leases to its operating lease customers. As of December 31, 2009, the value of railcars under operating leases was $61.0 million, the investment in which was funded by cash flows from operations rather than the JAIX Credit Agreement. In 2010, the Company anticipates that it may continue to offer railcars under operating leases to certain customers and pursue opportunities to sell leases in its portfolio. Additional railcars under lease may be funded by cash flows from operations, borrowings under its credit facilities, or both, as the Company evaluates its liquidity and capital resources.
Based on our current level of operations, we believe that our proceeds from operating cash flows and our cash balances, together with amounts available under our revolving credit facilities, will be sufficient to meet our anticipated liquidity needs for 2010. Our long-term liquidity is contingent upon future operating performance and our ability to continue to meet financial covenants under our revolving credit facilities and any other indebtedness. We may also require additional capital in the future to fund working capital as demand for railcars increases, organic growth opportunities and cost reduction programs, including new plant and equipment, development of railcars, joint ventures and acquisitions, and these capital requirements could be substantial. Management continuously evaluates manufacturing facility requirements based upon market demand and may elect to make capital investments at higher levels in the future. We are also exploring product diversification initiatives and international and other opportunities.
Our long-term liquidity needs also depend to a significant extent on our obligations related to our pension and welfare benefit plans. We provide pension and retiree welfare benefits to certain salaried and hourly employees upon their retirement. Benefits under our pension plans are now frozen and will not be impacted by increases due to future service. The most significant assumptions used in determining our net periodic benefit costs are the discount rate used on our pension and postretirement welfare obligations and expected return on pension plan assets. Our management expects that any future obligations under our pension plans that are not currently funded will be funded out of our future cash flow from operations. As of December 31, 2009, our benefit obligation under our defined benefit pension plans and our postretirement benefit plan was $61.5 million and $63.3 million, respectively, which exceeded the fair value of plan assets by $15.5 million and $63.3 million, respectively. As disclosed in Note 12 to the consolidated financial statements, we expect to make no contributions relating to our defined benefit pension plans in 2010. We may elect to adjust the level of contributions to our pension plans based on a number of factors, including performance of pension investments, changes in interest rates and changes in workforce compensation. The Pension Protection Act of 2006 provides for changes to the method of valuing pension plan assets and liabilities for funding purposes as well as minimum funding levels. Our defined benefit pension plans are in compliance with the minimum funding levels established in the Pension Protection Act. Funding levels will be affected by future contributions, investment returns on plan assets, growth in plan liabilities and interest rates. Assuming that the plans are fully funded as that term is defined in the Pension Protection Act, we will be required to fund the ongoing growth in plan liabilities on an annual basis. We anticipate funding pension contributions with cash from operations.

26

Based upon our operating performance, capital requirements and obligations under our pension and welfare benefit plans, we may, from time to time, be required to raise additional funds through additional offerings of our common stock and through long-term borrowings. There can be no assurance that long-term debt, if needed, will be available on terms attractive to us, or at all. Furthermore, any additional equity financing may be dilutive to stockholders and debt financing, if available, may involve restrictive covenants. Our failure to raise capital if and when needed could have a material adverse effect on our results of operations and financial condition.

Contractual Obligations

The following table summarizes our contractual obligations as of December 31, 2009, and the effect that these obligations and commitments would be expected to have on our liquidity and cash flow in future periods:

	Payments Due by Period				
Contractual Obligations	**Total**	**1 Year**	**2-3 Years**	**4-5 Years**	**After 5 Years**
			(In thousands)		
Operating leases	$ 13,768	$ 2,587	$ 5,275	$ 4,846	$ 1,060
Material and component purchases	117,523	23,872	50,965	42,686	
Total	$ 131,291	$ 26,459	$ 56,240	$ 47,532	$ 1,060

Material and component purchases consist of non-cancelable agreements with suppliers to purchase materials used in the manufacturing process. Purchase commitments for aluminum are made at a fixed price and are typically entered into after a customer places an order for railcars. The estimated amounts above may vary based on the actual quantities and price.

In addition to the contractual obligations set forth above, we also will have interest payment obligations on any borrowings under the revolving credit facilities. See Note 10 to the consolidated financial statements.

We also paid consulting fees to one of our directors in the amount of $13,000 for the year ended December 31, 2008 and $50,000 for the year ended December 31, 2007. The agreement governing this arrangement expired in April 2008. See Note 20 to the consolidated financial statements.

The above table excludes $5.2 million related to a reserve for unrecognized tax benefits and accrued interest and penalties at December 31, 2009 because the timing of the payout of these amounts cannot be determined.

We are a party to employment agreements with our President and Chief Executive Officer, Vice President, Finance, Chief Financial Officer and Treasurer, as well as other members of our executive management team. See Item 11. Executive Compensation.

We are also required to make minimum contributions to our pension and postretirement welfare plans. See Note 12 to the consolidated financial statements regarding our expected contributions to our pension plans and our expected postretirement welfare benefit payments for 2010.

Cash Flows

The following table summarizes our net cash provided by or used in operating activities, investing activities and financing activities for the years ended December 31, 2009, 2008 and 2007:

(Amounts in thousands)	**2009**	**2008**	**2007**
Net cash (used in) provided by:			
Operating activities	$ 22,864	(23,065)	$ 41,398
Investing activities	(51,284)	(42,174)	(6,062)
Financing activities	(2,757)	(2,611)	(50,320)
Total	$ (31,177)	$ (67,850)	$ (14,984)

27

Operating Activities. Our net cash provided by or used in operating activities reflects net income or loss adjusted for non-cash charges and changes in net working capital (including non-current assets and liabilities). Cash flows from operating activities are affected by several factors, including fluctuations in business volume, contract terms for billings and collections, the timing of collections on our contract receivables, processing of bi-weekly payroll and associated taxes, and payment to our suppliers. Our working capital accounts also fluctuate from quarter to quarter due to the timing of certain events, such as the payment or non-payment for our railcars. As some of our customers accept delivery of new railcars in train-set quantities, consisting on average of 120 to 135 railcars, variations in our sales lead to significant fluctuations in our operating profits and cash from operating activities. We do not usually experience business credit issues, although a payment may be delayed pending completion of closing documentation, and a typical order of railcars may not yield cash proceeds until after the end of a reporting period.

Our net cash provided by operating activities for the year ended December 31, 2009 was $22.9 million compared to net cash used in operating activities of $23.1 million for the year ended December 31, 2008. Net cash provided by operating activities for the year ended December 1, 2009 included increases in cash due to changes in accounts receivable of $69.4 million and increases in cash due to changes in income taxes of $6.6 million, that were partially offset by decreases in cash due to changes in accounts payable of $29.9 million, decreases in cash due to changes in inventories of $18.3 million, and decreases in cash related to changes in accrued pension and postretirement benefits of $10.6 million. Net cash used in operating activities for the year ended December 31, 2008 included decreases in cash due to changes in accounts receivable of $60.1 million, the cost of leased railcars held for sale of $11.5 million and decreases in cash due to changes in customer deposits and other current liabilities of $11.9 million that were partially offset by increases in cash due to changes in inventories of $17.5 million and increases in cash due to changes in accounts payable of $10.1 million. Cash flows for the year ended December 31, 2008 also included increases from net income of $11.4 million and adjustments for non-cash items, most significantly plant closure charges of $20.0 million.

Our net cash provided by operating activities for the year ended December 31, 2007 was $41.4 million and included increases from net income of $27.5 million and adjustments for non-cash items, most significantly plant closure charges of $30.8 million, as well as increases in cash due to changes in inventories of $56.1 million and increases due to changes in customer deposits and other current liabilities of $11.4 million. Increases in cash flows for the year ended December 31, 2007 were partially offset by decreases in cash due to changes in accounts payable of $65.5 million and decreases in cash due to changes in income taxes of $23.3 million.

Investing Activities. Net cash used in investing activities for the year ended December 31, 2009 was $51.3 million as compared to $42.2 million for the year ended December 31, 2008. Net cash used in investing activities for the year ended December 31, 2009 included the cost of purchasing securities available for sale of $49.9 million, cost of railcars on operating leases produced or acquired of $15.6 million and capital expenditures of $4.3 million, partially offset by $20.0 million of proceeds from the sale of securities available for sale. Net cash used in investing activities for the year ended December 31, 2008 included the cost of railcars on operating leases produced or acquired of $35.2 million and capital expenditures of $7.0 million.

Net cash used in investing activities for the year ended December 31, 2007 was $6.1 million and consisted primarily of capital expenditures. For the year ended December 31, 2007, $4.3 million of the $6.1 million of total capital expenditures was used for cost reduction initiatives and the expansion of the production capacity to accommodate the manufacture of a new railcar type.

Financing Activities. Net cash used in financing activities for the year ended December 31, 2009 was $2.8 million as compared to net cash used in financing activities of $2.6 million for the year ended December 31, 2008. Net cash used in financing activities for the year ended December 31, 2009 included $2.9 million of cash dividends paid to our stockholders, partially offset by a $0.1 million investment in noncontrolling interest by our joint venture partner. Net cash used in financing activities for the year ended December 31, 2008 included $2.9 million of cash dividends paid to our stockholders and $0.9 million in deferred financing costs, partially offset by $1.1 million of treasury stock issued for stock options exercised.

Net cash used in financing activities for the year ended December 31, 2007 was $50.3 million and included $50.0 million for stock repurchases, $2.9 million to pay cash dividends to our stockholders and $0.2 million related to deferred financing costs. These were partially offset by the receipt of $2.1 million for stock options exercised and $0.8 million in excess tax benefit from stock-based compensation.

Capital Expenditures

Our capital expenditures were $4.3 million in the year ended December 31, 2009 as compared to $7.0 million in the year ended December 31, 2008. For the year ended December 31, 2009, capital expenditures were primarily cash outlays for our new ERP system. For the year ended December 31, 2008, capital expenditures were primarily comprised of equipment expenditures to enable us to build wheel and truck assemblies in-house and side sheet assemblies as well as cash outlays for our new ERP system.

Our capital expenditures were $6.1 million in the year ended December 31, 2007 and included $4.3 million of capital expenditures used for the expansion of production capacity to accommodate the manufacture of hybrid stainless steel/aluminum coal-carrying railcars.

Excluding unforeseen expenditures, management expects that capital expenditures will be approximately $0.9 million in 2010 and will be used to maintain our existing facilities and update manufacturing equipment. Management continuously evaluates manufacturing facility requirements based upon market demand and may elect to make capital investments at higher levels in the future.

CRITICAL ACCOUNTING POLICIES

We prepare our consolidated financial statements in accordance with accounting principles generally accepted in the United States. The preparation of our financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of sales and expenses during the reporting period. Significant estimates include long-lived assets, goodwill, pension and postretirement benefit assumptions, the valuation reserve on the net deferred tax asset, warranty accrual and contingencies and litigation. Actual results could differ from those estimates. Our critical accounting policies include the following:

Long-lived assets

We evaluate long-lived assets, including property, plant and equipment, under the provisions of ASC 360 *Property, Plant and Equipment*, (formerly, Statement of Financial Accounting Standards No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets)*, which addresses financial accounting and reporting for the impairment of long-lived assets and for long-lived assets to be disposed of. For assets to be held or used, we group a long-lived asset or assets with other assets and liabilities at the lowest level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities. An impairment loss for an asset group reduces only the carrying amounts of a long-lived asset or assets of the group being evaluated. Our estimates of future cash flows used to test the recoverability of a long-lived asset group include only the future cash flows that are directly associated with and that are expected to arise as a direct result of the use and eventual disposition of the asset group. Our future cash flow estimates exclude interest charges.

We test long-lived assets for recoverability whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. These changes in circumstances may include a significant decrease in the market value of an asset or the extent or manner in which an asset is used. We routinely evaluate our manufacturing footprint to assess our manufacturing capacity and cost of production in an effort to optimize production at our low-cost manufacturing facilities.

In December 2007, we announced our planned closure of our manufacturing facility located in Johnstown, Pennsylvania and, as a result, we tested long-lived assets at our Johnstown facility for recoverability using estimated fair values. We recorded impairment charges of $950,000 for land, building and improvements during 2007.

In response to reduced industry demand for railcars, our manufacturing facility in Roanoke, Virginia ceased production of new railcars in July 2009. As a result, we tested long-lived assets at its Roanoke and Danville facilities for recoverability as of December 31, 2009 using estimated future cashflows derived from the Company s strategic plan. In connection with the analysis, management had to make estimates regarding future sales volumes, gross margins and selling, general and administrative expenses, as well the split of future production levels between the Company s two plants. The analysis indicates that there was no impairment of the long-lived assets for the Roanoke, Virginia and Danville, Illinois facilities as of December 31, 2009. Because of the inherent uncertainty of its projections, management also performed sensitivity analyses around these estimates and determined that an impairment would not occur under a range of operating results, including shifts in the allocation of production, future railcar volumes and future gross margins.

We recorded impairment charges of $597,000 for leased railcars held for sale during 2008 and $800,000 during 2009 (see Note 6 to the consolidated financial statements).

Impairment of goodwill and intangible assets

We have recorded on our balance sheet both goodwill and intangible assets, which consist of patents. We perform the goodwill impairment test required by ASC 350, *Intangibles Goodwill and Other*, (formerly SFAS No. 142, *Goodwill and Other Intangible Assets*), as of January 1 of each year. No adjustments to goodwill were required based on the annual impairment tests as of January 1, 2009, 2008 and 2007.

We test goodwill for impairment between annual tests if an event occurs or circumstances change that may reduce the fair value of our Company below its carrying amount. These events or circumstances include an impairment recorded under ASC 360. Accordingly, we tested goodwill for impairment as of December 31, 2007 in connection with our testing of long-lived assets at the Johnstown facility for recoverability, in addition to performing our annual test as of January 1, 2007. We also tested goodwill for impairment as of December 31, 2009 in connection with an extended downturn in the market for new coal-carrying railcars and our testing of long-lived assets at our Roanoke, Virginia and Danville, Illinois facilities for recoverability. No adjustments to goodwill were required based on the impairment tests as of December 31, 2007 or 2009.

Management estimates the valuation of the company (which consists of one reporting unit) using a combination of methods, as are considered appropriate in the circumstances, including discounted future cash flows, the prices of comparable businesses, recent transactions involving businesses similar to our company, and the company s market capitalization. As of December 31, 2009, the industry in which our Company operates is experiencing an extended cyclical downturn. As a result, our Company s recent and near-term future earnings are below normalized levels. However, our Company has a sizable liquidity position relative to its book and market capitalization, as well as substantially no indebtedness, which serve to provide a floor to its valuation. In light of these conditions, management does not believe that using the prices of comparable business or recent transactions that rely on earnings as a basis for the valuation provide a reasonable value for our Company s net assets as of December 31, 2009. Accordingly, management evaluated our Company s discounted cash flows and market capitalization to provide a basis for the valuation of our Company s net assets. We concluded that the estimated fair value of our Company s net assets exceeded the carrying value as of December 31, 2009. Additional steps, including an allocation of the estimated fair value to our assets and liabilities, would be necessary to determine the amount, if any, of goodwill impairment if the fair value of our net assets were less than their carrying value.

The discounted cash flow method involves management making estimates with respect to a variety of factors that will significantly impact the future performance of the business, including:

- Future railcar volume projections based on an industry-specific outlook for railcar demand and specifically coal railcar demand;

- estimated margins on railcar sales; and

- weighted-average cost of capital (or WACC) used to discount future performance of our company.

Because these estimates form a basis for the determination of whether or not an impairment charge should be recorded, these estimates are considered to be critical accounting estimates.

We use industry data to estimate volume projections in our discounted cash flow method. We believe that this independent industry data is the best indicator of expected future performance assuming that we maintain a consistent market share, which management believes is supportable based on historical performance. Our estimated margins used in the discounted cash flow method are based primarily on historical margins. The WACC used to discount our future performance in the discounted cash flow method is based on an estimated rate of return of companies in our industry and interest rates for corporate debt rated Baa or the equivalent by Moody s Investors Service. Management estimated a WACC of 15% for our December 31, 2009 goodwill impairment valuation analysis based on a targeted mix of equity and debt.

During 2009 the outlook for railcar demand and specifically coal-carrying railcar demand worsened considerably. As a result, small changes in our assumptions used in the discounted cash flow method have a more significant impact on the estimated fair value of our net assets using the discounted cash flow method than in previous periods. We compared the estimated fair value of our net assets using the discounted cash flow method in the base case scenario to three alternate scenarios including the impact of a negative 1% adjustment to the volume projections, impact of a 1% negative adjustment to the margin projections and impact of a 1% increase in the WACC used in the discounted cash flow method. Each of these three alternate scenarios reduced the estimated fair value of our net assets using the discounted cash flow method by between 4% and 11% compared to the estimated fair value of our net assets in the base case. The discounted cash flow method is the lower range of management s estimate of the fair value of our net assets, therefore each of the alternate scenarios lowered the lower range of management s estimate of the fair value of our net assets as of December 31, 2009. As a result, the lower range of management s estimate of the fair value of our net assets in some of the alternate scenarios is slightly below the carrying amount of our net assets as of December 31, 2009. Although future results may differ from those used in the base case scenario, management believes that the discounted cash flow method using the base case scenario is the best estimate of the lower range of fair value of our net assets as of December 31, 2009.

Pensions and postretirement benefits

We provide pension and retiree welfare benefits to certain salaried and hourly employees upon their retirement. The most significant assumptions used in determining our net periodic benefit costs are the expected return on pension plan assets and the discount rate used to calculate the present value of our pension and postretirement welfare plan liabilities.

In 2009, we assumed that the expected long-term rate of return on pension plan assets would be 8.25%. As permitted under ASC 715 (*formerly SFAS No. 87, Employers Accounting for Pensions*) the assumed long-term rate of return on assets is applied to a calculated value of plan assets, which recognizes changes in the fair value of plan assets in a systematic manner over five years. This produces the expected return on plan assets that is included in our net periodic benefit cost. The difference between this expected return and the actual return on plan assets is deferred. The net deferral of past asset gains (losses) affects the calculated value of plan assets and, ultimately, future net periodic benefit cost. We review the expected return on plan assets annually and would revise it if conditions should warrant. A change of one percentage point in the expected long-term rate of return on plan assets would have the following effect:

	1% Increase	1% Decrease
	(in thousands)	
Effect on net periodic benefit cost	$ (357)	$ 357

At the end of each year, we determine the discount rate to be used to calculate the present value of our pension and postretirement welfare plan liabilities. The discount rate is an estimate of the current interest rate at which our pension liabilities could be effectively settled at the end of the year. In estimating this rate, we look to rates of return on high-quality, fixed-income investments that receive one of the two highest ratings given by a recognized ratings agency. At December 31, 2009, we determined this rate to be 5.76%, a decrease of 1.09% from the 6.85% rate used at December 31, 2008. A change of one percentage point in the discount rate would have the following effect:

	1% Increase	1% Decrease
	(in thousands)	
Effect on net periodic benefit cost	$ (79)	$ 28

For the years ended December 31, 2009, 2008 and 2007, we recognized consolidated pre-tax pension cost of $2.7 million, $10.8 million and $17.1 million, respectively. Pension costs for 2009 include accelerated recognition of unrecognized prior service cost of $0.8 million resulting from the suspension of our pension plan for salaried employees. Pension costs for 2008 include special termination benefit costs of $10.1 million resulting from our plant closure decision while pension costs for 2007 include pension plan curtailment losses and special termination benefit costs of $14.5 million resulting from our plant closure decision (See Note 3, Plant Closure Charges and Note

12, Employee Benefit Plans to our consolidated financial statements for a description of these actions). We currently expect to make no contributions to our pension plans during 2010. However, we may elect to adjust the level of contributions based on a number of factors, including performance of pension investments, changes in interest rates and changes in workforce compensation. The Pension Protection Act of 2006 provided for changes to the method of valuing pension plan assets and liabilities for funding purposes as well as requiring minimum funding levels. Our defined benefit pension plans are in compliance with minimum funding levels established in the Pension Protection Act. Funding levels will be affected by future contributions, investment returns on plan assets, growth in plan liabilities and interest rates. Once the plan is fully funded as that term is defined within the Pension Protection Act, we will be required to fund the ongoing growth in plan liabilities on an annual basis. We anticipate funding pension contributions with cash from operations.

For the years ended December 31, 2009, 2008 and 2007, we recognized a consolidated pre-tax postretirement welfare benefit cost of $4.2 million, $12.6 million and $18.9 million, respectively. Postretirement welfare benefit costs for 2008 include contractual benefit charges of $8.9 million resulting from our plant closure decision while postretirement welfare benefit costs for 2007 include plan curtailment losses and contractual benefit charges of $13.2 million resulting from our plant closure decision (See Note 3, Plant Closure Charges and Note 12, Employee Benefit Plans to our consolidated financial statements for a description of these actions). We currently expect to pay approximately $5.4 million during 2010 in postretirement welfare benefits.

Income taxes

On January 1, 2007, we adopted the Financial Accounting Standards Board (the FASB) Interpretation (FIN) No. 48, *Accounting for Uncertainty in Income Taxes An Interpretation of FASB Standard No. 109*. FIN No. 48 prescribes a comprehensive model for how a company should recognize, measure, present and disclose in its financial statements, uncertain tax positions that it has taken or expects to take on a tax return. This Interpretation requires that a company recognize in its financial statements the impact of tax positions that meet a more likely than not threshold, based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position should be measured based on the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement.

Management judgment is required in developing our provision for income taxes, including the determination of deferred tax assets, liabilities and any valuation allowances recorded against the deferred tax assets. We record net deferred tax assets to the extent we believe these assets will more likely than not be realized. In making such determinations, we consider all available positive and negative evidence. Positive evidence would include the projection of future taxable income, the reversals of existing taxable temporary differences and tax planning strategies. Negative evidence would include any recent historical losses and any projected losses. We evaluate the realizability of our net deferred tax assets and assess the valuation allowance on a quarterly basis, adjusting the amount of such allowance, if necessary. Failure to achieve forecasted taxable income might affect the ultimate realization of the net deferred tax assets. Factors that may affect our ability to achieve sufficient forecasted taxable income include, but are not limited to, increased competition, a decline in sales or margins and loss of market share.

At December 31, 2009, we had total net deferred tax assets of $28.7 million. In evaluating whether it is more likely than not that the net deferred tax assets will be realized, we considered both near-term and longer-term projections of operating results. The railcar industry is in the midst of an extended cyclical downturn. However, the railcar market has an established history of cyclicality based on significant swings in customer demand. Industry projections forecast this trend to continue, with a recovery in demand in 2011-2012 and continuing for several years thereafter. Although realization of our net deferred tax assets is not certain, management has concluded that, based on the expected improvement in railcar demand and, therefore, operating results, we will more likely than not realize the full benefit of the deferred tax assets except for our net deferred tax assets in Pennsylvania. At December 31, 2009, we had a valuation allowance of $7.2 million against net operating losses in Pennsylvania.

We provide for deferred income taxes based on differences between the book and tax bases of our assets and liabilities and for items that are reported for financial statement purposes in periods different from those for income tax reporting purposes. The deferred tax liability or asset amounts are based upon the enacted tax rates expected to apply to taxable income in the periods in which the deferred tax liability or asset is expected to be settled or realized. The deferred tax liabilities and assets that we record relate to the enacted federal, Illinois and Virginia tax rates, since net operating loss carryforwards and deferred tax assets arising under Pennsylvania state law have been fully reserved. A 1% change in the rate of federal income taxes would increase or decrease our deferred tax assets by $0.6 million. A 1% change in the rate of Illinois income taxes would increase or decrease our deferred tax assets by $0.3 million. A 1% change in the rate of Virginia income taxes would increase or decrease our deferred tax assets by $50,000.

Product warranties
We establish a warranty reserve for railcars sold and estimate the amount of the warranty accrual based on the history of warranty claims for the type of railcar, adjusted for significant known claims in excess of established reserves. Warranty terms are based on the negotiated railcar sales contracts and typically are for periods of one to five years.
Revenue recognition
We generally manufacture railcars under firm orders from third parties. We recognize revenue on new railcars when we complete the individual railcars, the railcars are accepted by the customer following inspection, the risk for any damage or other loss with respect to the railcars passes to the customer and title to the railcars transfers to the customer. We do not record any returns or allowances against sales. We recognize service-related revenue from rebuilding and repairs when all significant rebuilding or repair services have been completed and accepted by the customer. We recognize revenue for the entire transaction on transactions involving used railcar trades when the cash consideration is in excess of 25% of the total transaction value and on a pro-rata portion of the total transaction value when the cash consideration is less than 25% of the total transaction value. We value used railcars received at their estimated fair market value at the date of receipt.
We recognize operating lease revenue on leased railcars on a straight-line basis over the life of the lease. We recognize revenue from the sale of railcars under operating leases on a gross basis in manufacturing sales and cost of sales if the railcars are sold within 12 months as the manufacture of the railcars and the sale is within the 12-month period specified by accounting guidance and represents the completion of the sales process. We recognize revenue from the sale of railcars under operating leases on a net basis in leasing revenue as a gain (loss) on sale (i.e. net) of leased railcars if the railcars are held in excess of 12 months as the sale represents the disposal of a long-term asset.
We accrue for loss contracts when we have a contractual commitment to manufacture railcars at an estimated cost in excess of the contractual selling price.
We record amounts billed to customers for shipping and handling as part of sales and record related costs in cost of sales.
Compensation expense under stock option agreements and restricted stock awards
We have historically granted certain stock-based awards to employees and directors in the form of non-qualified stock options, incentive stock options and restricted stock. At the date that an award is granted, we determine the fair value of the award and recognize the compensation expense over the requisite service period, which typically is the period over which the award vests. The restricted stock units are valued at the fair market value of our stock on the grant date. The fair value of stock options is estimated using the Black-Scholes option-pricing model. Determining the fair value of stock options at the grant date requires us to apply judgment and use highly subjective assumptions, including expected stock-price volatility, expected exercise behavior, expected dividend yield and expected forfeitures. While the assumptions that we develop are based on our best expectations, they involve inherent uncertainties based on market conditions and employee behavior that are outside of our control. If actual results are not consistent with the assumptions used, the stock-based compensation expense reported in our financial statements could be impacted.
Contingencies and litigation
We are subject to the possibility of various loss contingencies related to certain legal proceedings arising in the ordinary course of business. We consider the likelihood of loss or the incurrence of a liability, as well as our ability to reasonably estimate the amounts of loss, in the determination of loss contingencies. We accrue an estimated loss contingency when it is probable that a liability has been incurred and the amount of loss can be reasonably estimated. We regularly evaluate current information available to us based on our ongoing monitoring activities to determine whether the accruals should be adjusted. If the amount of the actual loss is greater than the amount we have accrued, this would have an adverse impact on our operating results in that period. During the fourth quarter of

2007 we recorded contingency losses of $3.9 million which are included in our Consolidated Statements of Income in Selling, general and administrative expense .

RECENT ACCOUNTING PRONOUNCEMENTS

In December 2008, the FASB issued changes to ASC 715, *Compensation-Retirement Benefits* (formerly FASB Staff Position No. FAS 132 (R)-1, *Employers Disclosures about Postretirement Benefit Plan Assets*). ASC 715 now requires additional disclosures about plan assets for defined benefit pension and other postretirement benefit plans. The additional disclosures required by ASC 715 are effective for fiscal years ending after December 15, 2009. Upon initial application, the provisions of ASC 715 are not required for earlier periods that are presented for comparative purposes. Since ASC 715 requires enhanced disclosures without a change to existing standards relative to measurement and recognition, the adoption of ASC 715 will not have an impact on our results of operations or financial position.