FreightCar America, Inc.
Form 10-K/A
September 16, 2009

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-K/A
Amendment No. 1

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

For the fiscal year ended December 31, 2008

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 o NO þ

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 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 , non-accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

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, 2008 was $418.4 million, based on the closing price of $35.50 per share on the Nasdaq Global Market.

As of August 31, 2009, there were 11,950,885 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 2009 annual meeting of stockholders filed pursuant to Regulation 14A on April 8, 2009	Part III

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EXPLANATORY NOTE
Restatement of Consolidated Financial Statements

On July 28, 2009, the Company announced that it had identified historical accounting errors relating to accounts payable. The accounting errors have resulted in the understatement of cumulative net earnings since the fourth quarter of 2007. The Company has no evidence that the errors resulted from any fraud or intentional misconduct.

The Company undertook a review to determine the total amount of the errors and the accounting periods in which the errors occurred. The Company s review determined that the errors were attributable to flaws in the design of internal IT and accounting processes to account for receipt of certain goods that were implemented in the fourth quarter of 2007. These flaws represented material weaknesses in the Company s internal controls relating to changes in information systems, inventory valuation and account reconciliations. Management identified the accounting errors in connection with the implementation of a new enterprise-wide reporting and management software platform system to improve processes and strengthen controls throughout the Company.

The Company s review was overseen by the audit committee of the board of directors of the Company (the Audit Committee) with the assistance of management, and legal counsel, IT consultants and forensic accountants engaged by management. The Audit Committee concluded on July 27, 2009 that the Company s previously issued audited consolidated financial statements as of and for the fiscal years ended December 31, 2008 and December 31, 2007, and unaudited interim consolidated financial statements as of and for the quarterly periods ended March 31, 2009, September 30, 2008, June 30, 2008 and March 31, 2008 should no longer be relied upon because of these errors in the financial statements. The Company s board of directors agreed with the Audit Committee s conclusions. After analyzing the size and timing of the errors, the Company determined that, in the aggregate, the errors were material and would require the Company to restate certain of its previously issued financial statements. Primarily, the errors understated operating income, pre-tax income and net income for the periods involved, together with related cash flows. Inventories, accounts payable and, to a lesser extent, leased assets were also impacted.

Because of the nature and timing of the review, the Company was unable to file its quarterly report on Form 10-Q for the period ended June 30, 2009 on time. Such filing will be made concurrent with or as soon as possible after the filing of this amended annual report on Form 10-K/A and the filing of the Company s amended quarterly report on Form 10-Q/A for the three months ended March 31, 2009.

As more fully described in Note 20 to the accompanying consolidated financial statements for the fiscal year ended December 31, 2008, the Company has restated its consolidated financial statements and the related disclosures for the fiscal years ended December 31, 2008 and 2007. Specifically, the Company has restated its consolidated balance sheets and the related consolidated statements of income, statements of stockholders equity and statements of cash flows as of and for the years ended December 31, 2008 and 2007. The accompanying Management s Discussion and Analysis of Financial Condition and Results of Operations in Part II, Item 7, has been updated to reflect the effects of the restatement.

In addition, the unaudited quarterly data set forth in this amended annual report on Form 10-K/A presents the condensed consolidated financial information revised to reflect the effects of the restatement on the quarterly periods ended December 31, 2008, September 30, 2008, June 30, 2008, March 31, 2008 and December 31, 2007. The Selected Financial Data included in Item 6 of this amended annual report on Form 10-K/A has also been revised to reflect the effect of the restatement on each period presented.

The Company reassessed its evaluation of the effectiveness of its internal control over financial reporting as of December 31, 2008 based on the framework established in *Internal Control Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). As a result of that assessment, management identified control deficiencies that constituted material weaknesses and, accordingly, has concluded that the Company did not maintain effective internal control over financial reporting as of December 31, 2008. For a description of the material weaknesses identified by management as a result of this review and management s plan to remediate those material weaknesses, see Part II Item 9A Controls and Procedures.

The restatement has caused the Company to fail to comply with certain representations and covenants in each of the Second Amended and Restated Credit Agreement, dated as of August 24, 2007 (as amended) (the Company Credit Agreement), and the Credit Agreement, dated as of September 30, 2008 (as amended) (the JAIX Credit Agreement), relating to the provision of annual and quarterly financial statements. These credit agreements are described in detail in Note 9 to the accompanying consolidated financial statements for the fiscal year ended

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December 31, 2008. The Company does not currently have any borrowings outstanding under either of these credit facilities. The Company has received waivers of these representations and covenants from the lenders under each of the Company Credit Agreement and the JAIX Credit Agreement. These waivers are subject to the conditions subsequent that the Company file its quarterly report on Form 10-Q for the period ended June 30, 2009 and comply with the other representations and covenants under the credit agreements by September 30, 2009. The Company was otherwise in compliance with the representations and covenants contained in these agreements.

Except as discussed above, we have not modified or updated disclosures presented in our annual report on Form 10-K for the period ended December 31, 2008 filed with the Securities and Exchange Commission on March 13, 2009 (the Original Filing), except as required to reflect the effects of the restatement. Accordingly, this amended annual report does not reflect events occurring after the Original Filing or modify or update those disclosures affected by subsequent events, except as specifically referenced herein. Information not affected by the restatement is unchanged and reflects the disclosures made at the time of the Original Filing. References to this annual report on Form 10-K , this annual report on Form 10-K/A and this amended annual report on Form 10-K/A herein shall refer to the Original Filing as amended by this amended annual report on Form 10-K/A. The following items have been amended as a result of the restatement:

Part I, Item 1A. Risk Factors;

Part II, Item 6. Selected Financial Data;

Part II, Item 7. Management s Discussion and Analysis of Financial Condition and Results of Operations;

Part III, Item 8. Financial Statements and Supplementary Data;

Part III, Item 9A. Controls and Procedures;

Part III, Item 11. Executive Compensation; and

Part IV, Item 15. Exhibits, Financial Statement Schedules.

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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 69% of our deliveries of railcars in 2008 and 86% of our deliveries of railcars in 2007, 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 70% of the coal-carrying railcars delivered over the three years ended December 31, 2008 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 railroads, shippers and financial institutions, which represented 51%, 25% and 24%, respectively, of our total sales attributable to each type of customer for the year ended December 31, 2008. In the year ended December 31, 2008, we delivered 10,349 railcars, including 7,090 aluminum-bodied coal-carrying railcars. Our total backlog of firm orders for railcars decreased from 5,399 railcars as of December 31, 2007 to 2,620 railcars as of December 31, 2008, representing estimated sales of $422 million and $185 million as of December 31, 2007 and 2008, 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, 2008, included 240 units under firm operating leases with independent third parties and 196 rebuild/refurbishment cars. 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.

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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 BethGon is the leader in the aluminum-bodied coal-carrying gondola railcar segment. Since we introduced the steel BethGon railcar in the late 1970 s 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, and we expect the prototypes to begin shipping during 2009. 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 20 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. 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 2008, revenue from three customers, Norfolk Southern Corporation, CSX Transportation, Inc. and First Union Rail, accounted for approximately 22%, 21% and 10% of total revenue, respectively. In 2008, sales to our top five customers accounted for approximately 64% of total revenue. Our railcar sales to customers outside the United States were $85.0 million in 2008. 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 20 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 $2.0 million, $2.0 million and $0.9 million for the years ended December 31, 2008, 2007 and 2006, 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,		
	2008	**2007**	**2006**
Railcar backlog at start of period	5,399	9,315	20,729
Railcars delivered	(10,349)	(10,282)	(18,764)
Railcar orders	7,570	6,366	7,350
Railcar backlog at end of period	2,620	5,399	9,315
Estimated backlog at end of period (in thousands) (1)	$ 184,840	$ 422,054	$ 697,054

(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, 2008, included 240 units under firm operating leases with independent third parties and 196 rebuild/refurbishment cars. 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.

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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 center sill is formed into its final shape without heating by passing steel plate through a series of progressive rolls.

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 91% and 96% of our railcars produced in 2008 and 2007, 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 22% and 28% of our total purchases in 2008 and 2007, respectively. Our top ten suppliers accounted for 68% and 67% of our total purchases in 2008 and 2007, 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.

We also use a proprietary software system that integrates our accounting and production systems, including quality control, purchasing, inventory control and accounts receivable. We have an experienced team in place to operate the hardware, software and communications platforms.

EMPLOYEES

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 downturn 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 59,954 in 2008. Our railcar deliveries trended downward from 18,764 in 2006 to 10,349 in 2008. 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.

The current 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. The prices for steel and aluminum, the primary raw material inputs of our railcars, increased in 2006, 2007 and the first part of 2008 as a result of strong demand, limited availability of production inputs for steel and aluminum, including scrap metal, industry consolidation and import trade barriers. In addition, the price and availability of other railcar components that are made of steel have been adversely affected by the increased cost and limited availability of steel. Although prices for aluminum dropped dramatically during the latter part of 2008, aluminum prices may not remain at these lower costs. 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.

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 54% of our total sales for the five-year period. In 2008, sales to our top three customers accounted for approximately 22%, 21% and 10%, respectively, of our total sales. In 2007, sales to our top three customers accounted for approximately 15%, 11% and 11%, 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

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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.

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 2008. While the availability of railcar components continued to improve during recent years, the railcar industry continues to be adversely impacted by shortages of wheels and other components as a result of reorganization and consolidation of domestic suppliers, increased demand for new railcars and railroad maintenance requirements. 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.

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.

RISKS RELATED TO OUR BUSINESS

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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 89% and 85% of our sales in 2008 and 2007, respectively, and 92% and 88% of the total railcars that we delivered in 2008 and 2007, respectively. 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 oil 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 2008 and 2007 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. 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 by union agreements. For example, as of December 31, 2008, our postretirement benefit obligation was $60.7 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 fund 100% of the health care coverage costs 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, 2008, our accumulated benefit obligation under our defined benefit pension plans exceeded the fair value of plan assets by $26.7 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 and 2008 as a result of plan curtailment and special termination benefit costs (as described in Note 3 and Note 11 to the Consolidated Financial Statements). We made contributions to our pension plans of $6.8 million during the year ended December 31, 2008. 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/A, 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 would 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. Our management has identified control deficiencies 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 to address the material weaknesses, the material weaknesses identified by management are not fully remediated as of the date of the filing of this amended annual report on Form 10-K/A. 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 do not fully remediate the material weaknesses identified by management or 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 currently are implementing 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 the conversion to 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, 2008, we had collective bargaining agreements with unions representing approximately 52% 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.

We use and rely significantly on a proprietary software system to manage our accounting and production systems, the failure of which may lead to data loss, significant business interruption and financial loss.

We use and rely significantly on a proprietary software system that integrates our accounting and production systems, including production engineering, quality control, purchasing, inventory control and accounts receivable systems. In the future, we may discover significant errors or defects in this software system that we may not be able to correct. If this software system is disrupted or fails for any reason, or if our systems or facilities are infiltrated or damaged by unauthorized persons or a software virus, we could experience data loss, financial loss and significant business interruption. If that happens, we may be unable to meet production targets, our customers may terminate contracts, our reputation may be negatively affected, and there could be a material adverse effect on our business and financial results.

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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 20, 2009, the trading price of our common stock ranged from a low of $16.00 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 railcar production facilities in Danville, Illinois and Johnstown, Pennsylvania 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, 2008:

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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*
Railcar assembly and component manufacturing	Johnstown, Pennsylvania	564,983 square feet on 31.9 acres of land	Owned	
Administrative	Johnstown, Pennsylvania	29,500 square feet on 1.02 acres of land	Owned	
Light storage	Johnstown, Pennsylvania	1,633 square feet on 14.26 acres of land	Owned	
Parts warehouse	Johnstown, Pennsylvania	86,000 square feet	Leased	December 31, 2016

* The lease agreement provides that we or Norfolk Southern, the lessor, can terminate this lease at any time after December 31, 2009.

As of December 31, 2008, our facilities in Danville, Illinois and Roanoke, Virginia operated one daily shift; we believe our capacity is suitable and adequate for our current operations. Our facilities have the capacity to operate additional shifts should the need arise for additional capacity.

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 union representing our Johnstown employees regarding labor costs at our Johnstown facility, but did not reach an agreement with the union that would have allowed us to continue to operate the facility in a cost-effective way.

Item 3. Legal Proceedings.

On August 15, 2007, a lawsuit (the Sowers/Hayden class action litigation) was filed against us in the U.S. District Court for the Western District of Pennsylvania by certain members of the United Steelworkers of America (the USWA) alleging that they and other workers at the facility were laid off by us to prevent them from becoming eligible for certain retirement benefits and seeking, among other things, an injunction that would require us to return the laid-off employees to work. On March 4, 2008, the Court of Appeals for the Third Circuit granted a stay of the preliminary injunction pending an appeal of the preliminary injunction that was granted by the District Court on January 11, 2008.

On April 1, 2007, the USWA filed a grievance on behalf of certain workers at our Johnstown facility alleging that we had violated the collective bargaining agreement (the CBA). The dispute involved the interpretation of language in the CBA regarding the classification of employees years of service and our obligations to employees based on their years of service. On May 6, 2008, an arbitrator issued a ruling against us in this grievance proceeding. On June 24, 2008, we announced a tentative global settlement with the USWA and the plaintiffs in the Sowers/Hayden class action litigation. The settlement was ratified by the Johnstown USWA membership on June 26, 2008 and approved by the court in the Sowers/Hayden litigation on November 19, 2008. The time for an appeal of the court s order has expired and the settlement is final. As a consequence, all existing legal disputes relating to

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our Johnstown, Pennsylvania manufacturing facility and its workforce, including the Sowers/Hayden class action litigation and the contested grievance ruling, are now resolved and closed.

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. We have filed a motion in the Pennsylvania Lawsuit asking for that case to be transferred and consolidated into the Illinois Lawsuit. On February 10, 2009, a mandatory mediation took place in the Illinois Lawsuit, but the mediation did not result in a settlement agreement. 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.

Item 4. Submission of Matters to a Vote of Security Holders.

None.

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 28, 2009, there were approximately 35 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.

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	Common stock price High	Low
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.

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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, 2008 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.

COMPARISON OF 5-YEAR CUMULATIVE TOTAL RETURN
AMONG FREIGHTCAR AMERICA,
NASDAQ MARKET INDEX AND DJ TRANSPORTATION INDEX

Assumes $100 invested on 4/6/2005
Assumes Dividend Reinvested
Fiscal Year Ended 12/31/2008

	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
FreightCar America, Inc.	$100.00	$ 94.29	$228.96	$264.59	$264.72	$228.94	$168.02	$170.94	$88.44
Nasdaq Composite Index	$100.00	$103.48	$111.17	$110.07	$122.69	$132.37	$134.89	$116.34	$80.01
DJ Transportation Index	$100.00	$ 94.18	$113.89	$134.44	$125.07	$140.61	$126.85	$120.30	$85.98

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Item 6. Selected Financial Data.

The selected financial data presented for each of the years in the five-year period ended December 31, 2008 was derived from our audited consolidated financial statements. We have restated our consolidated financial statements as of and for each of the years ended December 31, 2008 and December 31, 2007, which is reflected in the following selected financial data. The restatement is more fully described in the Explanatory Note immediately preceding Part I, Item 1 of this annual report on Form 10-K/A and in Note 20 to the 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/A.

	Year Ended December 31,				
	2008 (as restated)	**2007** (as restated)	**2006**	**2005**	**2004**
	(in thousands, except share and per share data and railcar amounts)				
Statements of operations data:					
Revenues	$ 746,390	$ 817,025	$ 1,444,800	$ 927,187	$ 482,180
Cost of sales	679,597	712,124	1,211,349	820,638	468,309
Gross profit	66,793	104,901	233,451	106,549	13,871
Selling, general and administrative expense	31,717	38,914	34,390	28,461	32,660
Plant closure charges(5)	20,037	30,836			
Operating income (loss)	15,039	35,151	199,061	78,088	(18,789)
Interest income	3,827	8,349	5,860	1,225	282
Interest expense	396	420	352	11,082	13,856
Amortization and write-off of deferred financing costs	281	232	306	776	459
Income (loss) before income taxes	18,189	42,848	204,263	67,455	(32,822)
Income tax provision (benefit)	6,769	15,389	75,530	21,762	(7,962)
Net income (loss)	11,420	27,459	128,733	45,693	(24,860)
Redeemable preferred stock dividends accumulated				311	1,062
Net income (loss) attributable to common stockholders	11,420	27,459	128,733	45,382	(25,922)
Less: Net income attributable to noncontrolling interest in India JV					
Net income (loss) attributable to FreightCar America	$ 11,420	$ 27,459	$ 128,733	$ 45,382	$ (25,922)
Weighted average common shares outstanding basic	11,788,400	12,115,712	12,586,889	11,135,440	6,888,750

Weighted average common shares outstanding diluted	11,833,132	12,188,901	12,785,015	11,234,075	6,888,750
Per share data:					
Net income (loss) per common share attributable to FreightCar America basic	$ 0.97	$ 2.27	$ 10.23	$ 4.08	$ (3.76)
Net income (loss) per share common attributable to FreightCar America diluted	$ 0.97	$ 2.25	$ 10.07	$ 4.04	$ (3.76)
Dividends declared per common share	$ 0.24	$ 0.24	$ 0.15	$ 0.06	$ 0.00
Other financial and operating data:					
Capital expenditures, including railcars on operating leases produced or acquired	$ 42,192	$ 6,073	$ 6,903	$ 7,520	$ 2,215
Railcars delivered	10,349	10,282	18,764	13,031	7,484
Railcar orders	7,570	6,366	7,350	22,363	12,437
Railcar backlog	2,620	5,399	9,315	20,729	11,397
Estimated backlog	$ 184,840	$ 422,054	$ 697,054	$ 1,412,424	$ 747,842

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	Year Ended December 31,				
	2008 (as restated)	2007 (as restated)	2006	2005	2004
	(in thousands, except share and per share data and railcar amounts)				
Balance sheet data (at period end):					
Cash and cash equivalents	$ 129,192	$ 197,042	$ 212,026	$ 61,737	$ 11,213
Restricted cash[2]					12,955
Total assets	383,293	354,119	419,981	225,282	191,143
Total debt[3]	28	93	154	224	56,058
Rights to additional acquisition consideration, including accumulated accretion[1][4]					28,581
Total redeemable preferred stock					12,182
Total stockholders equity (deficit)	204,725	199,063	203,869	92,199	(37,089)

(1) Rights to additional acquisition consideration refers to the additional acquisition consideration related to the acquisition of our business in 1999 that became due, and was paid, upon the completion of our initial public offering in April 2005.

(2) Our restricted cash as of December 31, 2004 included cash collateral of $3.8 million plus interest held in escrow for our participation in a residual support guarantee

agreement with respect to railcars that we sold to a customer that are presently leased by the customer to a third party. Our restricted cash as of December 31, 2004 also included $7.5 million held in a restricted cash account as additional collateral for our former revolving credit facility, which was released to us after we entered into our revolving credit facility agreement and $1.2 million in escrow, representing security for workers compensation insurance. As of December 31, 2005, we no longer had any remaining restricted cash. Restricted cash in the amount of $13.0 million was released during the year ended December 31, 2005 as follows: the $7.5 million attributable to cash held as additional collateral under the former revolving credit facility was released upon signing the new credit facility agreement; $1.2 million held in escrow as security for worker s compensation insurance was replaced by a letter of credit; and $4.3 million held in escrow for a residual support guaranty relating to railcars we sold to a financial institution that are leased by a third-party customer was released by the financial institution.

(3) 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.

(4) Our recorded liability under the rights to additional acquisition consideration was based on the fair value of the rights to additional acquisition consideration at the time that we acquired our business from TTII in 1999, using a discount rate of 25% and an expected redemption period of seven years. As a result of our initial public offering, we were required to pay the additional acquisition consideration in the aggregate amount of $35.0 million.

(5) 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. See Note 3 to the consolidated financial statements.

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Item 7. Management s Discussion and Analysis of Financial Condition and Results of Operations.

OVERVIEW

All of the financial information presented in this Item 7 has been adjusted to reflect the restatement of our consolidated financial statements as of and for the fiscal years ended December 31, 2008 and December 31, 2007. Specifically, we have restated our consolidated balance sheets and the related consolidated statements of income, consolidated statements of stockholders equity and consolidated statements of cash flows as of and for the years ended December 31, 2008 and 2007. The restatement is more fully described in the Explanatory Note immediately preceding Part I, Item 1 and in Note 20 Restatement of Consolidated Financial Statements, which is included in Financial Statements and Supplementary Data in Item 8 of this Form 10-K/A. 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/A. 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 shippers, railroads and financial institutions.

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 10,349 units for the year ended December 31, 2008, including 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 and 73 rebuild/refurbishment cars sold, compared to 10,282 units in the same period of 2007. Our total backlog of firm orders for railcars decreased by approximately 51%, from 5,399 railcars as of December 31, 2007 to 2,620 railcars as of December 31, 2008. Our backlog at December 31, 2008, included 240 units under firm operating leases with independent third parties and 196 rebuild/refurbishment cars.

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. We were able to pass on increased material costs to our customers with respect to a portion of our railcar deliveries in 2008. Notwithstanding fluctuations in the cost of raw materials, a significant majority of the contracts covering our current backlog include provisions that allow for variable pricing to protect us against future changes in the cost of raw materials.

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 our long-term supply agreements, 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 January 2007, our Board of Directors announced a share repurchase program of up to $50 million. These shares were purchased in the open market through the third quarter of 2007. The total number of shares purchased was 1,048,300 at an average cost of $47.70 per share.

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

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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 would resolve 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 settlement with the USWA and the plaintiffs in the Sowers/Hayden lawsuit was ratified by the Johnstown USWA membership on June 26, 2008 and approved by the court on November 19, 2008. 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.

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/A.

FINANCIAL STATEMENT PRESENTATION

Restatement of Consolidated Financial Statements

On July 28, 2009, we announced that we had identified historical accounting errors relating to accounts payable. The accounting errors have resulted in the understatement of cumulative net earnings since the fourth quarter of 2007. We undertook a review to determine the total amount of the errors and the accounting periods in which the errors occurred. Our review determined that the errors were attributable to flaws in the design of internal IT and accounting processes to account for receipt of certain goods that were implemented in the fourth quarter of 2007. These flaws represented material weaknesses in the Company s internal controls relating to changes in information systems, inventory valuation and account reconciliations.

Our review was overseen by the Audit Committee with the assistance of management, and legal counsel, IT consultants and forensic accountants engaged by management. After analyzing the size and timing of the errors, we determined that, in aggregate, the errors were material and would require us to restate certain of our previously issued financial statements. Specifically, we have restated our consolidated balance sheets and the related consolidated statements of income, consolidated statements of stockholders equity and consolidated statements of cash flows as of and for the years ended December 31, 2008 and 2007.

The effects of the restatement on selected income statement line items for the years ended December 31, 2008 and 2007, are as follows:

Increase/(Decrease) in income statement line items (amounts in thousands, except per share data)	**2008**	**2007**
Cost of Sales	$(11,124)	$(1,537)
Gross profit	11,124	1,537
Income before income taxes	11,124	1,537
Income tax provision	4,318	546
Net income attributable to common stockholders	6,806	991
Net income per common share attributable to common stockholders basic	0.58	0.08
Net income per common share attributable to common stockholders diluted	0.58	0.08

The cumulative effects of the restatement on selected balance sheet line items as of December 31, 2008 and 2007, are as follows:

Increase/(Decrease) in balance sheet line items (amounts in thousands)	2008	2007
Inventories	$ (548)	$(1,218)
Leased assets held for sale	(213)	
Other current assets	(4,299)	(531)
Deferred income taxes current	(633)	(16)
Railcars on operating leases	(236)	
Deferred income taxes non-current	68	
Accounts payable	(13,658)	(2,756)
Retained earnings	7,797	991

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, such as coal, 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 2008 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 less a normal profit margin. 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 reduce the costs of new products that we have recently introduced.

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. We were able to pass on increased material costs to our customers with respect to a portion of our railcar deliveries in 2008. Notwithstanding fluctuations in the cost of raw materials, a significant majority of the contracts covering our current backlog include provisions that allow for variable pricing to protect us against future changes in the cost of raw materials

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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, 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 10,349 were 67 units above the 2007 level.

Railcar deliveries for the year ended December 31, 2008, including 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 and 73 rebuild/refurbishment 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 change in margin rate was driven primarily by sharp cost increases on raw material inputs and the aggressive pricing environment in which we are operating. 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. We expect most future contracts to include variable pricing provisions to mitigate this risk in the future. 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 employee 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.

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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, 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.

Year Ended December 31, 2007 compared to Year Ended December 31, 2006

Sales

Our sales for the year ended December 31, 2007 were $817.0 million as compared to $1,444.8 million for the year ended December 31, 2006 while railcar deliveries of 10,282 were 8,482 units below the 2006 level. The decrease in sales revenue and deliveries was due primarily to lower industry volume as well as lower demand for coal cars. In addition, the competitive environment increased as demand slackened with a negative impact on the price of railcars. Average railcar pricing declined between 2006 and 2007. The decline in average selling price was partially offset by a shift in product mix. Our coal-carrying railcars remain an essential part of our portfolio. Deliveries of our BethGon® II and AutoFlood III coal-carrying railcars comprised 85% of our total railcar deliveries for the year ended December 31, 2007.

Gross Profit

Gross profit for the year ended December 31, 2007 was $104.9 million as compared to $233.5 million for the year ended December 31, 2006, representing a decrease of $128.6 million. The decrease in gross profit was due primarily to lower volume. In addition, the gross margin was impacted by lower operating leverage due to the change in volume and the lower pricing environment. Favorable product mix and continuous cost reduction efforts partially mitigated the impact of lower production activity and the adverse pricing environment. 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, 2007 were $38.9 million as compared to $34.4 million for the year ended December 31, 2006, representing an increase of $4.5 million. Selling, general and administrative expenses were 4.8% of our sales for 2007 and 2.4% for 2006. The increase was primarily attributable to higher employee compensation costs of $3.0 million, a special charge of $3.8 million for contingency losses related to litigation and a $1.1 million increase in investment for product development programs. These increases were partially offset by a reduction in the costs of outside professional services of $1.8 million. Increases in selling, general and administrative expenses for 2007 were also partially offset by decreases in several expense categories that were not significant individually but have helped to minimize the impact of the increases previously described.

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Plant Closure Charges

In December 2007 we incurred plant closure charges of $30.8 million. These charges include net curtailment losses and special termination and contractual benefit costs of $27.7 million arising under our pension and other postretirement benefit plans as well as contractual employee termination benefits of $2.2 million for severance and medical insurance. These charges also include a non-cash impairment of the carrying value of certain assets at our Johnstown manufacturing facility of $950,000.

Interest Expense/Income

Total interest expense for each of the years ended December 31, 2007 and 2006, was $0.7 million. For the years ended December 31, 2007 and 2006, interest expense consisted of third-party interest expense and the amortization of deferred financing costs. Interest income for the year ended December 31, 2007 was $8.3 million as compared to $5.9 million for the year ended December 31, 2006, representing an increase of $2.4 million, primarily attributable to a higher average cash balance during 2007. Interest income represents the proceeds of short-term investments of our cash balances, which decreased by approximately 7.1% at December 31, 2007 compared to December 31, 2006. Interest rates rose steadily during 2006 and into 2007 but decreased significantly during the second half of 2007.

Income Taxes

The provision for income taxes was $15.4 million for the year ended December 31, 2007, as compared to a provision for income taxes of $75.5 million for the year ended December 31, 2006. The effective tax rates for the years ended December 31, 2007 and 2006, were 35.9% and 37.0%, respectively. The effective 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. The effective tax rate for the year ended December 31, 2006 was higher than the statutory U.S. federal income tax rate of 35% due to a 4.2% blended state rate less a 2.2% effect for other permanent differences.

Net Income

As a result of the foregoing, net income and net income attributable to FreightCar America each were $27.5 million for the year ended December 31, 2007, reflecting a decrease of $101.2 million from net income and net income attributable to common stockholders of $128.7 million for the year ended December 31, 2006. 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. For 2006, our basic and diluted net income per share were $10.23 and $10.07, respectively, on basic and diluted shares outstanding of 12,586,889 and 12,785,015, respectively. The reduction in net income for 2007 compared to 2006 is primarily the result of decreased sales volumes during 2007.

LIQUIDITY AND CAPITAL RESOURCES

Our primary source of liquidity for the years ended December 31, 2008 and 2007 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 are 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) an amount equal to a percentage of eligible accounts receivable plus a percentage of eligible finished inventory plus a percentage of semi-finished inventory.

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, 2008 and 2007, we had no borrowings under our revolving credit facilities. We had $11.5 million and $8.8 million in outstanding letters of credit under the letter of credit sub-facility as of December 31, 2008 and 2007, 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.

Also 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, FCA guaranteed the JAIX Revolving Credit Facility.

Availability under the JAIX Revolving Credit Facility is based on a percentage of the Eligible Railcar Leases (as defined in the agreement) held under the JAIX Revolving Credit Facility. 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 Revolving 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, 2008 we had no borrowings under the JAIX Revolving Credit Agreement.

As more fully described in Note 20 to the consolidated financial statements, we have restated our consolidated financial statements and the related disclosures for the fiscal years ended December 31, 2008 and 2007. The restatement has caused us to fail to comply with certain representations and covenants in each of the Second Amended and Restated Credit Agreement and the JAIX Revolving Credit Facility referred to above. We have received waivers of these representations and covenants from the lenders under each of the credit agreements. These waivers are subject to the conditions subsequent that the Company file its quarterly report on Form 10-Q for the period ended June 30, 2009 and comply with the other representations and covenants under the credit agreements by September 30, 2009. We were otherwise in compliance with the representations and covenants contained in these agreements as of December 31, 2008.

During 2008, in response to competitive market conditions, 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 three years. The Company also continually evaluates opportunities to package and sell its leases to its operating lease customers. As of December 31, 2008, the value of railcars under operating leases was $46.2 million, the investment in which was funded by cash flows from operations rather than the JAIX Credit Agreement. In 2009, the Company anticipates that it will 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 2009. 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 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. 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, 2008, our benefit obligation under our defined benefit pension plans and our postretirement benefit plan was $59.7 million and $60.7 million, respectively, which exceeded the fair value of plan assets by $26.7 million and $60.7 million, respectively. As disclosed in Note 11 to the consolidated financial statements, we expect to make contributions relating to our defined benefit pension plans of approximately $11.2 million in 2009. 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.

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, 2008, 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)		
Capital leases from long-term debt	$ 28	$ 28	$	$	$
Operating leases	14,850	2,067	4,644	4,687	3,452
Used railcar purchases	3,024	3,024			
Material and component purchases	154,148	38,681	63,731	51,736	
Total	$ 172,050	$ 43,800	$ 68,375	$ 56,423	$ 3,452

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 9 to the consolidated financial statements.

We also paid consulting fees to one of our directors. The amount paid for his consulting services was $13,000 for the year ended December 31, 2008 and $50,000 for each of the years ended December 31, 2007 and 2006. The agreement governing this arrangement expired in April 2008. See Note 19 to the consolidated financial statements.
The above table excludes $5.6 million of long-term liabilities for unrecognized tax benefits and accrued interest and penalties at December 31, 2008 because the timing of the payout of these liabilities cannot be determined.
We are a party to employment agreements with our President and Chief Executive Officer and our 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 11 to the consolidated financial statements regarding our expected contributions to our pension plans and our expected postretirement welfare benefit payments for 2009.

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, 2008, 2007 and 2006:
(Amounts in thousands)

	2008 (as restated)	**2007** (as restated)	**2006**
Net cash (used in) provided by:			
Operating activities	$ (23,065)	$ 41,398	$ 154,156
Investing activities	(42,174)	(6,062)	(5,821)
Financing activities	(2,611)	(50,320)	1,954
Total	$ (67,850)	$ (14,984)	$ 150,289

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 used in operating activities for the year ended December 31, 2008 was $23.1 million compared to net cash provided by operating activities of $41.4 million for the year ended December 31, 2007. The decrease of $64.5 million in cash flows from operating activities (year over year) was primarily due to the reduction of $27.9 million in net income adjusted for non-cash items and a decrease of $131.7 million generated by working capital accounts such as accounts receivable, inventories, leased assets held for sale and customer deposits, partially offset by an increase of $82.1 million in cash applicable to accounts payable and income taxes.
Our net cash provided by operating activities for the year ended December 31, 2007 was $41.4 million as compared to net cash provided by operating activities of $154.2 million for the year ended December 31, 2006. The decrease of $112.8 million in net cash provided by operating activities was primarily due to the reduction of $69.4 million in net income adjusted for non-cash items and a decrease of $14.5 million generated by working capital accounts such as accounts receivable and inventories, net of accounts payable, partially offset by the increase of $7.7 million in cash applicable to payroll, pensions and postretirement obligations.

Investing Activities. Net cash used in investing activities for the year ended December 31, 2008 was $42.2 million as compared to $6.1 million for the year ended December 31, 2007. 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 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.

Net cash used in investing activities for the year ended December 31, 2006 was $5.8 million and consisted of capital expenditures of $6.9 million partially offset by the proceeds of $1.1 million from the sale of property, plant and equipment, primarily $1.0 million from the sale of the Shell plant in Johnstown, Pennsylvania. For the year ended December 31, 2006, $3.3 million of the $6.9 million of total capital expenditures were used for the expansion of production capacity to accommodate the manufacture of hybrid stainless steel/aluminum coal-carrying railcars.

Financing Activities. Net cash used in financing activities for the year ended December 31, 2008 was $2.6 million as compared to net cash used in financing activities of 50.3 million for the year ended December 31, 2007. 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 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.

Net cash provided by financing activities for the year ended December 31, 2006 was $2.0 million and included $2.1 million in stock options exercised and $1.8 million in excess tax benefit from stock-based compensation. These were partially offset by the use of $1.9 million to pay cash dividends to our stockholders.

Capital Expenditures

Our capital expenditures were $7.0 million in the year ended December 31, 2008 as compared to $6.1 million in the year ended December 31, 2007. 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 a 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.

Our capital expenditures were $6.9 million for the year ended December 31, 2006 and were partially offset by the proceeds of $1.1 million from the sale of property, plant and equipment, primarily $1.0 million from the sale of the Shell plant in Johnstown, Pennsylvania. For the year ended December 31, 2006, $3.3 million of the $6.9 million of total capital expenditures were used at a manufacturing facility, primarily relating to cost reduction initiatives and the expansion of production capacity to accommodate a new railcar type.

Excluding unforeseen expenditures, management expects that capital expenditures will be approximately $7.4 million in 2009. These expenditures include $4.7 million to maintain our existing facilities and update manufacturing equipment and $2.7 million of IT related costs, primarily related to our implementation of a new ERP system. 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 SFAS 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. We recorded impairment charges of $597,000 for leased railcars held for sale during 2008 (see note 5 to the consolidated financial statements). There were no impairment charges recorded for long-lived assets during 2006.

Impairment of goodwill and intangible assets

We have recorded on our balance sheet both goodwill and intangible assets, which consist primarily of patents and an intangible asset related to our defined benefit plans. On December 31, 2006 the adoption of SFAS No. 158 resulted in the derecognition of the intangible asset related to our defined benefit pension plans. See Note 11 to the consolidated financial statements. We perform the goodwill impairment test required by SFAS No. 142, *Goodwill and Other Intangible Assets*, as of January 1 of each year. We also 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 the testing for recoverability under SFAS No. 144. Accordingly we tested goodwill for impairment as of December 31, 2007 in connection with our testing of long-lived assets at our Johnstown facility for recoverability, in addition to performing our annual tests as of January 1, 2008, January 1, 2007 and January 1, 2006. We have not noted any such impairment.

We test goodwill for impairment at least annually based on management s assessment of the fair value of our assets as compared to the carrying value of our assets. 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 assets and liabilities were less than their carrying value. The process of assessing fair value involves management making estimates with respect to future sales volume, pricing, economic and industry data, anticipated cost environment and overall market conditions, and because these estimates form the basis for the determination of whether or not an impairment charge should be recorded, these estimates are considered to be critical accounting estimates.

Our method to determine fair value to test goodwill for impairment considers three valuation approaches: the discounted cash flow method, the guideline company method and the transaction method. The results of each of these three methods are reviewed by management and a fair value is then assigned. For our latest valuation, as of January 1, 2008, management estimated that the fair value of our company exceeded the carrying value of our company by a substantial amount.

The discounted cash flow method involves significant judgment based on a market-derived rate of return to discount short-term and long-term projections of the future performance of our company. The major assumptions that influence future performance include:

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

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estimated margins on railcar sales; and

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

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. While a negative 1% adjustment to the volume projections used in the discounted cash flow method would reduce the excess of the fair value of our company compared to its carrying value by approximately 2%, management estimates that the fair value would still exceed the carrying value by a substantial amount.

Our estimated margins used in the discounted cash flow method are based primarily on historical margins. The price of raw materials has increased significantly since November 2003. Aluminum and steel prices have historically accounted for approximately 30% to 35% of our total cost of sales. Changes in aluminum and steel prices typically only affect margins on signed contracts for railcars forming part of our backlog as management historically has used aluminum and steel prices at the time a contract is signed as the basis for its selling price. Some of our contracts provide for raw material cost escalation. However, there is no assurance that our customers will accept variable pricing in the future, which would subject our margins and performance to variability primarily in the event of changes in the price of aluminum and steel. While an increase of 1% in aluminum and steel prices for backlog and projected volume in the discounted cash flow method would reduce the excess of the fair value of our company compared to its carrying value by approximately 2%, management estimates that the fair value would still exceed the carrying value by a substantial amount.

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 14% for our January 1, 2008 goodwill impairment valuation analysis based on our mix of equity and debt. While an increase of 1% in the WACC used in the discounted cash flow method would reduce the excess of the fair value of our company compared to its carrying value by approximately 15%, management estimates that the fair value would still exceed the carrying value by a substantial amount.

The assumptions supporting our estimated future cash flows, including the discount rate used and estimated terminal value, reflect our best estimates.

The guideline company method and transaction method use market valuation multiples of similar publicly traded companies for the guideline company method and recent transactions for the transaction method and, as a result, involve less judgment in their application.

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 2008, we assumed that the expected long-term rate of return on pension plan assets would be 8.25%. As permitted under SFAS No. 87, 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:

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	1% Increase	1% Decrease
	(in thousands)	
Effect on net periodic benefit cost	$(456)	$ 456

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, 2008, we determined this rate to be 6.85%, an increase of 0.45% from the 6.40% rate used at December 31, 2007. 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	$(140)	$ 410

For the years ended December 31, 2008, 2007 and 2006, we recognized consolidated pre-tax pension cost of $10.8 million, $17.1 million and $4.0 million, respectively. 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 11 Employee Benefit Plans to our consolidated financial statements for a description of these actions). We currently expect to contribute approximately $11.2 million to our pension plans during 2009. 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, 2008, 2007 and 2006, we recognized a consolidated pre-tax postretirement welfare benefit cost of $11.8 million, $18.9 million and $5.6 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 11 Employee Benefit Plans to our consolidated financial statements for a description of these actions). We currently expect to pay approximately $5.4 million during 2009 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 evaluate quarterly the realizability of our net deferred tax assets and assess the valuation allowance, adjusting the amount of such allowance, if necessary. The factors used to assess the likelihood of realization are our forecast of future taxable income and the availability of tax planning strategies that can be implemented to realize the net deferred tax assets. 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.

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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, including scheduled reversals of deferred tax liabilities, projected future taxable income, tax planning strategies and recent financial operations. In the event we were to determine that we would be able to realize our deferred income tax assets in the future in excess of their net recorded amount, we would make an adjustment to the valuation allowance which would reduce the provision for income taxes.

At December 31, 2008, we had total net deferred tax assets of $39.3 million. Although realization of our net deferred tax assets is not certain, management has concluded that 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, 2008, we had a valuation allowance of $7.0 million, based on management s conclusion that it was more likely than not that certain of our net deferred tax assets in Pennsylvania would not be realized.

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 $0.7 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 $36,000.

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 and rebuilt 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. Revenue from leasing is recognized ratably during the lease term.

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 June 2006, the Financial Accounting Standards Board (FASB) issued FIN No. 48, *Accounting for Uncertainty in Income Taxes An Interpretation of FASB Standard No. 109*. FIN No. 48 prescribes a recognition threshold and measurement attribute for financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return, and also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure and transition. FIN No. 48 is effective for fiscal years beginning after December 15, 2006. We adopted the provisions of FIN No. 48 on January 1, 2007. As a result of the implementation of FIN No. 48, we recorded an increase in gross unrecognized tax benefits of $2,638 and a decrease to retained earnings and accumulated other comprehensive loss of $1,936 and $94, respectively. It is expected that the amount of unrecognized tax benefits will change in the next twelve months. However, we do not expect the change to have a significant impact on its results of operations or financial condition. We recognize accrued interest related to unrecognized tax benefits and penalties in income tax expense in the consolidated statements of income. As of January 1, 2007, we recorded a liability of $681 for the payment of interest and penalties.

In September 2006, the FASB issued Statement of Financial Accounting Standards (SFAS) No. 157, *Fair Value Measurements*. SFAS No. 157 defines fair value, establishes a framework for measuring fair value and expands disclosures about fair value measurements. SFAS No. 157 requires companies to disclose the fair value of their financial instruments according to a fair value hierarchy as defined in the standard. Additionally, companies are required to provide enhanced disclosure regarding financial instruments in one of the valuation categories, including a separate reconciliation of the beginning and ending balances for each major category of assets and liabilities. SFAS No. 157 is effective for financial assets and financial liabilities for fiscal years beginning after November 15, 2007, and interim periods within those fiscal years. The FASB deferred the effective date of SFAS No. 157 for all nonfinancial assets and liabilities, except those that are recognized or disclosed at fair value in the financial statements on at least an annual basis, until January 1, 2009 for calendar year-end entities. Implementation of the provisions of SFAS No. 157 did not have a material impact on our financial statements, as we do not currently hold financial assets and liabilities that are required to be marked to fair value.

In September 2006, the FASB issued SFAS No. 158, *Employers Accounting for Defined Benefit Pension and Other Postretirement Plans An amendment of FASB Statements No. 87, 88, 106 and 132(R)*. SFAS No. 158 requires the recognition of the funded status of a benefit plan in the balance sheet; the recognition in other comprehensive income of gains or losses and prior service costs or credits arising during the period but which are not included as components of periodic benefit cost; the measurement of defined benefit plan assets and obligations as of the balance sheet date; and disclosure of additional information about the effects on periodic benefit cost for the following fiscal year arising from delayed recognition of gains and losses in the current period. We adopted SFAS No. 158 as of December 31, 2006. See Note 11 to the Consolidated Financial Statements for additional disclosures required by SFAS No. 158 and the effects of adoption.

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities.* SFAS No. 159 permits companies to measure certain financial instruments and certain other items at fair value. The standard requires that unrealized gains and losses on items for which the fair value option has been elected be reported in earnings. We implemented SFAS No. 159 effective January 1, 2008, but elected not to apply the provisions of SFAS No. 159 to any of our existing financial assets or liabilities, therefore the provisions of SFAS No. 159 did not have an impact on our financial statements.

In December 2007, the FASB issued SFAS No. 141(R), *Business Combinations,* which retains the fundamental requirements of SFAS No. 141, including that the purchase method be used for all business combinations and for an acquirer to be identified for each business combination. SFAS No. 141(R) defines the acquirer as the entity that obtains control of one or more businesses in a business combination and establishes the acquisition date as the date that the acquirer achieves control instead of the date that the consideration is transferred. This standard requires an acquirer in a business combination to recognize the assets acquired, liabilities assumed, and any noncontrolling interest in the acquiree at the acquisition date, measured at their fair values as of that date. It also requires the recognition of assets acquired and liabilities assumed arising from certain contractual contingencies as of the acquisition date, measured at their acquisition-date fair values. SFAS No. 141(R) is effective for any business combination with an acquisition date on or after January 1, 2009. We are in the process of evaluating the requirements of SFAS No. 141(R), but expect only prospective impact on the Company s financial statements.

As of January 1, 2009, we adopted the provisions of FASB Statement No. 160, *Noncontrolling Interests in Consolidated Financial Statements: An amendment of ARB No. 51* (SFAS No. 160). SFAS No. 160 requires the us to present our interest in less than 100% owned subsidiaries in which we retain control as a component of stockholders equity in the balance sheet and recharacterize the component formerly known as minority interest as noncontrolling interest. SFAS No. 160 also requires us to show the amount of net income attributable to both FreightCar America, Inc. and the noncontrolling interest on the face of the statement of income and in the summary of comprehensive income. The retroactive effect of applying SFAS No. 160 was an increase of $101,000 to total stockholders equity on our December 31, 2008 balance sheet, and a corresponding decrease to minority interests.

FORWARD-LOOKING STATEMENTS

This annual report on Form 10-K/A contains certain forward-looking statements including, in particular, statements about our plans, strategies and prospects. We have used the words may, will, expect, anticipate, believe, estima plan, intend and similar expressions in this prospectus to identify forward-looking statements. We have based these forward-looking statements on our current views with respect to future events and financial performance. Our actual results could differ materially from those projected in the forward-looking statements.

Our forward-looking statements are subject to risks and uncertainties, including:

- the cyclical nature of our business;
- adverse economic and market conditions;
- fluctuating costs of raw materials, including steel and aluminum, and delays in the delivery of raw materials;
- our ability to maintain relationships with our suppliers of railcar components;
- our reliance upon a small number of customers that represent a large percentage of our sales;
- the variable purchase patterns of our customers and the timing of completion, delivery and acceptance of customer orders;
- the highly competitive nature of our industry;
- risks relating to our relationship with our unionized employees and their unions;
- our ability to manage our health care and pension costs;
- our reliance on the sales of our aluminum-bodied coal-carrying railcars;
- shortages of skilled labor;
- the risk of lack of acceptance of our new railcar offerings by our customers;
- the cost of complying with environmental laws and regulations;
- the costs associated with being a public company;
- potential significant warranty claims; and

various covenants in the agreement governing our indebtedness that limit our management s discretion in the operation of our businesses.

Our actual results could be different from the results described in or anticipated by our forward-looking statements due to the inherent uncertainty of estimates, forecasts and projections and may be better or worse than anticipated. Given these uncertainties, you should not rely on forward-looking statements. Forward-looking statements represent our estimates and assumptions only as of the date that they were made. We expressly disclaim any duty to provide updates to forward-looking statements, and the estimates and assumptions associated with them, in order to reflect changes in circumstances or expectations or the occurrence of unanticipated events except to the extent required by applicable securities laws. All of the forward-looking statements are qualified in their entirety by reference to the factors discussed under Item 1A. Risk Factors.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk.

We have a $50.0 million revolving credit facility, which provides for financing of our working capital requirements and contains a sub-facility for letters of credit and a $5.0 million sub-facility for a swing line loan. As of December

31, 2008, there were no borrowings under the revolving credit facility and we had issued approximately $11.5 million in letters of credit under the sub-facility for letters of credit.

We also have a $60.0 million revolving credit facility, which provides for the financing of the production or acquisition of railcars to be leased. As of December 31, 2008, there were no borrowings under this credit facility. On an annual basis, a 1% change in the interest rate in our revolving credit facilities will increase or decrease our interest expense by $10,000 for every $1.0 million of outstanding borrowings.

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. The prices for steel and aluminum, the primary raw material inputs of our railcars, increased in 2006, 2007 and the first part of 2008 as a result of strong demand, limited availability of production inputs for steel and aluminum, including scrap metal, industry consolidation and import trade barriers. In addition, the price and availability of other railcar components that are made of steel have been adversely affected by the increased cost and limited availability of steel. 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. We currently do not plan to enter into any hedging arrangements to manage the price risks associated with raw materials, although we may do so in the future. Historically, we have either renegotiated existing contracts or entered into new contracts with our customers that allow for variable pricing to protect us against future changes in the cost of raw materials. However, current market conditions and competitive pricing have limited our ability to negotiate variable pricing contracts. When raw material prices increase rapidly or to levels significantly higher than normal, we may not be able to pass price increases through to our customers, which could adversely affect our operating margins and cash flows.

To the extent that we are unsuccessful in passing on increases in the cost of aluminum and steel to our customers, a 1% increase in the cost of aluminum and steel would increase our average cost of sales by approximately $224 per railcar, which, for the year ended December 31, 2008, would have reduced income before income taxes by approximately $2.3 million.

We are not exposed to any significant foreign currency exchange risks as our general policy is to denominate foreign sales and purchases in U.S. dollars.

Item 8. Financial Statements and Supplementary Data.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
FreightCar America, Inc.

We have audited the accompanying consolidated balance sheets of FreightCar America, Inc. and subsidiaries (the Company) as of December 31, 2008 and 2007, and the related consolidated statements of income, stockholders equity, and cash flows for each of the three years in the period ended December 31, 2008. Our audits also included the financial statement schedule listed in the Index at Item 15. These financial statements and financial statement schedule are the responsibility of the Company s management. Our responsibility is to express an opinion on the financial statements and financial statement schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of FreightCar America, Inc. and subsidiaries as of December 31, 2008 and 2007, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2008, in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, such financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

As discussed in Note 20 to the consolidated financial statements, the accompanying 2008 and 2007 financial statements have been restated.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company s internal control over financial reporting as of December 31, 2008, based on the criteria established in *Internal Control Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 13, 2009 (September 16, 2009 as to the effects of the material weaknesses described in Management s Report on Internal Control over Financial Reporting (as revised)) expressed an adverse opinion on the Company s internal control over financial reporting because of the material weaknesses.

/s/ Deloitte & Touche LLP
Pittsburgh, Pennsylvania
March 13, 2009 (September 16, 2009 as to the effects of the restatement discussed in Note 20)

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
FreightCar America, Inc.

We have audited FreightCar America, Inc. and subsidiaries (the Company s) internal control over financial reporting as of December 31, 2008, based on criteria established in *Internal Control Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. The Company s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management s Report on Internal Control over Financial Reporting (as revised). Our responsibility is to express an opinion on the Company s internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on that risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company s internal control over financial reporting is a process designed by, or under the supervision of, the company s principal executive and principal financial officers, or persons performing similar functions, and effected by the company s board of directors, management, and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company s internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company s assets that could have a material effect on the financial statements.

Because of the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected on a timely basis. Also, projections of any evaluation of the effectiveness of the internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our report dated March 13, 2009, we expressed an unqualified opinion on internal control over financial reporting. As described in the following paragraph, material weaknesses were subsequently identified as a result of the restatement of the previously issued financial statements. Accordingly, management has revised its assessment about the effectiveness of the Company s internal control over financial reporting and our present opinion on the effectiveness of the Company s internal control over financial reporting as of December 31, 2008, as expressed herein, is different from that expressed in our previous report.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company s annual or interim financial statements will not be prevented or detected on a timely basis. The following material weaknesses have been identified and included in management s assessment:

<u>System Change Controls</u> The Company s controls to test changes in its information system did not operate effectively. Upon implementation, the third-party inventory processing system was not appropriately tested prior to migration to the production environment. As a result, inaccurate and incomplete programming logic was utilized in the third-party inventory processing system.

Inventory Valuation Controls   The Company s controls to value assembled components did not operate effectively. The third-party inventory processing system did not consistently or accurately calculate inventory values or appropriately relieve the corresponding unvouchered payables to the cost of the assembled components. As a result, inaccurate amounts were recorded to inventories, cost of goods sold, leased assets held for sale, railcars on operating leases, and unvouchered payables.

Account Reconciliation Controls The Company s controls to reconcile unvouchered payables were not designed effectively. The reconciliation did not contain a sufficient level of detail or analysis to detect errors in the account balance. As a result, misstatements in the unvouchered payables account were not detected in a timely manner.

These material weaknesses were considered in determining the nature, timing, and extent of audit tests applied in our audit of the consolidated financial statements and financial statement schedule of the Company as of and for the year ended December 31, 2008, and this report does not affect our report on such financial statements and financial statement schedule.

In our opinion, because of the effect of the material weaknesses identified above on the achievement of the objectives of the control criteria, the Company has not maintained effective internal control over financial reporting as of December 31, 2008, based on the criteria established in *Internal Control Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated financial statements and financial statement schedule as of and for the year ended December 31, 2008, of the Company and our report dated March 13, 2009 (September 16, 2009 as to the effects of the restatement discussed in Note 20 to the financial statements) expressed an unqualified opinion on those financial statements and financial statement schedule and included an explanatory paragraph regarding the restatement.

/s/ Deloitte & Touche LLP

Pittsburgh, Pennsylvania

March 13, 2009 (September 16, 2009 as to the effects of the material weaknesses)

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FreightCar America, Inc. and Subsidiaries
CONSOLIDATED BALANCE SHEETS
(in thousands except share and per share data)

	December 31, 2008 (as restated)	December 31, 2007 (as restated)
Assets		
Current assets		
Cash and cash equivalents	$ 129,192	$ 197,042
Accounts receivable, net of allowance for doubtful accounts of $330 and $223, respectively	73,120	13,068
Inventories	31,096	48,627
Leased assets held for sale	11,490	
Other current assets	6,789	6,692
Deferred income taxes, net	16,003	13,504
Total current assets	267,690	278,933
Property, plant and equipment, net	30,582	26,921
Railcars on operating leases	34,735	
Goodwill	21,521	21,521
Deferred income taxes, net	23,281	21,035
Other long-term assets	5,484	5,709
Total assets	$ 383,293	$ 354,119
Liabilities and Stockholders Equity		
Current liabilities		
Accounts payable	$ 47,328	$ 36,769
Accrued payroll and employee benefits	9,530	13,320
Accrued postretirement benefits	5,364	5,188
Accrued warranty	11,476	10,551
Customer deposits	7,367	19,836
Other current liabilities	7,939	7,100
Total current liabilities	89,004	92,764
Accrued pension costs	26,763	10,685
Accrued postretirement benefits, less current portion	55,293	47,890
Other long-term liabilities	7,407	3,717
Total liabilities	178,467	155,056
Commitments and contingencies		
Stockholders equity		

Preferred stock, $0.01 par value, 2,500,000 shares authorized (100,000 shares each designated as Series A voting and Series B non-voting, 0 shares issued and outstanding at December 31, 2008 and 2007)				
Common stock, $0.01 par value, 50,000,000 shares authorized, 12,731,678 and 12,731,678 shares issued at December 31, 2008 and 2007, respectively		127		127
Additional paid in capital		98,253		99,270
Treasury stock, at cost, 821,182 and 918,257 shares at December 31, 2008 and 2007, respectively		(38,871)		(43,597)
Accumulated other comprehensive loss		(16,471)		(9,857)
Retained earnings		161,687		153,120
Total FreightCar America stockholders equity		204,725		199,063
Noncontrolling interest in India JV		101		
Total stockholders equity		204,826		199,063
Total liabilities and stockholders equity	$	383,293	$	354,119

See notes to the consolidated financial statements.

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FreightCar America, Inc. and Subsidiaries
CONSOLIDATED STATEMENTS OF INCOME
(in thousands, except share and per share data)

	Year Ended December 31, 2008 (as restated)	2007 (as restated)	2006
Revenues	$ 746,390	$ 817,025	$ 1,444,800
Cost of sales	679,597	712,124	1,211,349
Gross profit	66,793	104,901	233,451
Selling, general and administrative expense (including non-cash stock-based compensation expense of $2,852, $2,804 and $2,130, respectively)	31,717	38,914	34,390
Plant closure charges	20,037	30,836	
Operating income	15,039	35,151	199,061
Interest income	3,827	8,349	5,860
Interest expense	396	420	352
Amortization and write-off of deferred financing costs	281	232	306
Income before income taxes	18,189	42,848	204,263
Income tax provision	6,769	15,389	75,530
Net income	11,420	27,459	128,733
Less: Net income attributable to noncontrolling interest in India JV			
Net income attributable to FreightCar America	$ 11,420	$ 27,459	$ 128,733
Net income per common share attributable to FreightCar America basic	$ 0.97	$ 2.27	$ 10.23
Net income per common share attributable to FreightCar America diluted	$ 0.97	$ 2.25	$ 10.07
Weighted average common shares outstanding basic	11,788,400	12,115,712	12,586,889
Weighted average common shares outstanding diluted	11,833,132	12,188,901	12,785,015
Dividends declared per common share	$ 0.24	$ 0.24	$ 0.15

See notes to the consolidated financial statements.

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FreightCar America, Inc. and Subsidiaries
CONSOLIDATED STATEMENTS OF STOCKHOLDERS EQUITY
(in thousands, except for share data)

	FreightCar America Shareholders								
	Common Stock Shares	Common Stock Amount	Additional Paid In Capital	Treasury Stock Shares	Treasury Stock Amount	Accumulated Other Comprehensive Loss	Retained Earnings	Noncontrolling Interest	Total Stockholders Equity
Balance, January 1, 2006	12,570,200	126	93,932			(5,556)	3,697		92,199
Net income							128,733		128,733
Additional minimum pension liability, net of tax (see Notes 10 and 11)						1,950			1,950
Comprehensive income									130,683
Adjustment related to initial application of SFAS No. 158 pension liability, net of tax (see Notes 10 and 11)						(7,599)			(7,599)
Adjustment related to initial application of SFAS No. 158 postretirement liability, net of tax (see Notes 10 and 11)						(15,569)			(15,569)
Stock options exercised	109,936	1	2,088						2,089
Restricted stock awards	3,542		221						221
Forfeiture of restricted stock awards	(2,167)								
Unvested restricted stock			(125)						(125)

Stock-based compensation recognized			2,034					2,034
Excess tax benefit from stock-based compensation			1,831					1,831
Cash dividends							(1,895)	(1,895)
Balance, December 31, 2006	12,681,511	127	99,981			(26,774)	130,535	203,869
Net income (as restated)							27,459	27,459
Pension liability activity, net of tax						6,868		6,868
Postretirement liability activity, net of tax						10,049		10,049
Comprehensive income (as restated)								44,376
Adjustment for adoption of FIN No. 48 (see Note 2)							(1,936)	(1,936)
Stock repurchases				(1,048,300)	(50,000)			(50,000)
Stock options exercised			(3,322)	109,936	5,410			2,088
Restricted stock awards	52,000		(1,030)	20,940	1,030			
Forfeiture of restricted stock awards	(1,833)		37	(833)	(37)			
Stock-based compensation recognized			2,804					2,804
Excess tax benefit from stock-based compensation			800					800
Cash dividends							(2,938)	(2,938)
	12,731,678	$ 127	$ 99,270	(918,257)	$ (43,597)	$ (9,857)	$ 153,120	$ 199,063

Balance, December 31, 2007 (as restated)									
Net income (as restated)							11,420		11,420
Pension liability activity, net of tax						(7,503)			(7,503)
Postretirement liability activity, net of tax						889			889
Comprehensive (loss) income (as restated)									4,806
Investment in noncontrolling interest by joint venture partner								101	101
Stock options exercised			(1,564)	54,968	2,609				1,045
Restricted stock awards			(2,305)	48,547	2,305				
Forfeiture of restricted stock awards			188	(6,440)	(188)				
Stock-based compensation recognized			2,852						2,852
Deficiency of tax benefit from stock-based compensation			(188)						(188)
Cash dividends							(2,853)		(2,853)
Balance, December 31, 2008 (as restated)	12,731,678	$ 127	$ 98,253	(821,182)	$ (38,871)	$ (16,471)	$ 161,687	$ 101	$ 204,826

See notes to the consolidated financial statements.

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FreightCar America, Inc. and Subsidiaries
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Year Ended December 31, 2008 (as restated)	2007 (as restated)	2006
Cash flows from operating activities			
Net income	$ 11,420	$ 27,459	$ 128,733
Adjustments to reconcile net income to net cash flows (used in) provided by operating activities			
Plant closure	20,037	30,836	
Depreciation and amortization	4,380	3,910	5,442
Other non-cash items, net	589	2,160	259
Deferred income taxes	(516)	(11,895)	2,568
Compensation expense under stock option and restricted share award agreements	2,852	2,804	2,130
Changes in operating assets and liabilities:			
Accounts receivable	(60,052)	(1,699)	(7,515)
Inventories	17,522	56,093	(31,554)
Leased railcars held for sale	(11,490)		
Other current assets	2,346	(312)	(1,012)
Accounts payable	10,148	(65,498)	42,448
Accrued payroll and employee benefits	(4,475)	(2,004)	3,414
Income taxes receivable/payable	(4,936)	(11,391)	5,581
Accrued warranty	925	(1,500)	4,173
Customer deposits and other current liabilities	(11,871)	11,448	11,614
Deferred revenue, non-current	1,800		
Accrued pension costs and accrued postretirement benefits	(1,744)	987	(12,125)
Net cash flows (used in) provided by operating activities	(23,065)	41,398	154,156
Cash flows from investing activities			
Purchases of property, plant and equipment	(6,991)	(6,073)	(6,903)
Cost of railcars on operating leases produced or acquired	(35,201)		
Proceeds from sale of property, plant and equipment	18	11	1,082
Net cash flows (used in) provided by investing activities	(42,174)	(6,062)	(5,821)
Cash flows from financing activities			
Payments on long-term debt	(65)	(60)	(71)
Deferred financing costs paid	(838)	(211)	
Stock repurchases		(50,000)	
Issuance of common stock (net of issuance costs and deferred offering costs)	1,045	2,089	2,089
Investment in noncontrolling interest by joint venture partner	101		
Excess tax benefit from stock-based compensation		800	1,831
Cash dividends paid to stockholders	(2,854)	(2,938)	(1,895)

Net cash flows (used in) provided by financing activities	(2,611)	(50,320)	1,954
Net (decrease) increase in cash and cash equivalents	(67,850)	(14,984)	150,289
Cash and cash equivalents at beginning of year	197,042	212,026	61,737
Cash and cash equivalents at end of year	$ 129,192	$ 197,042	$ 212,026
Supplemental cash flow information			
Cash paid for:			
Interest	$ 311	$ 515	$ 360
Income tax refunds received	$ 1,737	$ 70	$
Income taxes paid	$ 9,740	$ 37,147	$ 65,581
Non-cash transactions:			
Increase (decrease) in balance of property, plant and equipment on account	$ 235	$ (771)	$ 1,076

See notes to the consolidated financial statements.

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FreightCar America, Inc. and Subsidiaries
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
For the Years Ended December 31, 2008, 2007 and 2006
(in thousands, except for share and per share data)

Note 1 Description of the Business

FreightCar America, Inc. (America), through its direct and indirect wholly owned subsidiaries, JAC Intermedco, Inc. (Intermedco), JAC Operations, Inc. (Operations), Johnstown America Corporation (JAC), Freight Car Services, Inc. (FCS), JAIX Leasing Company (JAIX), JAC Patent Company (JAC Patent) and FreightCar Roanoke, Inc. (FCR) (herein collectively referred to as the Company) manufactures, rebuilds, repairs, sells and leases freight cars used for hauling coal, other bulk commodities, steel and other metals, forest products and automobiles. The Company has facilities in Danville, Illinois, Roanoke, Virginia and Johnstown, Pennsylvania. The Company s operations comprise one operating segment. The Company and its direct and indirect wholly owned subsidiaries are all Delaware corporations.

Note 2 Summary of Significant Accounting Policies

Principles of Consolidation

The accompanying consolidated financial statements include the accounts of America, Intermedco, Operations, JAC, FCS, JAIX, JAC Patent and FCR. All significant intercompany accounts and transactions have been eliminated.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management 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 revenues and expenses during the reporting period. Significant estimates include the valuation of used railcars received in sale transactions, useful lives of long-lived assets, warranty and workers compensation accruals, pension and postretirement benefit assumptions, stock compensation and the valuation reserve on the net deferred tax asset. Actual results could differ from those estimates.

Cash Equivalents

The Company considers all unrestricted short-term investments with original maturities of three months or less when acquired to be cash equivalents.

On a daily basis, cash in excess of current operating requirements is invested in various highly liquid investments having a typical maturity date of three months or less at the date of acquisition. These investments are carried at cost, which approximates market value, and are classified as cash equivalents.

Inventories

Inventories are stated at the lower of first-in, first-out cost or market and include material, labor and manufacturing overhead. The Company s inventory consists of raw materials, work in progress and finished goods for individual customer contracts. Management established a reserve of $150 and $1,177 relating to slow-moving inventory for raw materials or work in progress at December 31, 2008 and 2007, respectively.

Property, Plant and Equipment

Property, plant and equipment are stated at acquisition cost less accumulated depreciation. Depreciation is provided using the straight-line method over the estimated useful lives of the assets, which are as follows:

Description of Assets	Life
Buildings and improvements	10-40 years
Machinery and equipment	3-12 years

Maintenance and repairs are charged to expense as incurred, while major replacements and improvements are capitalized. The cost and accumulated depreciation of items sold or retired are removed from the property accounts and any gain or loss is recorded in the consolidated statement of income upon disposal or retirement.

Long-Lived Assets

The Company evaluates long-lived assets under the provisions of Statement of Financial Accounting Standards No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets* (SFAS No. 144), 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, the Company groups 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. 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. The future cash flow estimates used by the Company exclude interest charges. The Company tests 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. The Company routinely evaluates its manufacturing footprint to assess its manufacturing capacity and cost of production in an effort to optimize production at its low-cost manufacturing facilities. In December 2007, the Company announced the planned closure of its manufacturing facility located in Johnstown, Pennsylvania, and as a result, it tested long-lived assets at the Johnstown facility for recoverability using estimated fair values. Fair values were estimated using the cost approach based on the assumption that the reproduction or replacement cost normally sets the upper limit of value and the sales comparison approach which relies on the assumption that value can be measured by the selling prices of similar assets. Impairment charges of $950 were recorded for land, building and improvements during 2007. The Company recorded impairment charges of $597 for leased railcars held for sale during 2008 (see note 5). There were no impairment charges recorded for long-lived assets during 2006.

Research and Development

Costs associated with research and development are expensed as incurred and totaled approximately $1,959, $1,966 and $890 for the years ended December 31, 2008, 2007 and 2006, respectively. Such costs are reflected within selling, general and administrative expenses in the consolidated statements of income.

Goodwill and Intangible Assets

The Company performs the goodwill impairment test required by SFAS No. 142, *Goodwill and Other Intangible Assets*, as of January 1 of each year. The valuation uses a combination of methods to determine the fair value of the Company (which consists of one reporting unit) including prices of comparable businesses, a present value technique and recent transactions involving businesses similar to the Company. There was no adjustment required based on the annual impairment tests for 2008, 2007 and 2006.

The Company tests goodwill for impairment between annual tests if an event occurs or circumstances change that may reduce the fair value of the Company below its carrying amount. These events or circumstances include an impairment recorded under SFAS No. 144. Accordingly, the Company tested goodwill for impairment as of December 31, 2007 in connection with its testing of long-lived assets at the Johnstown facility for recoverability, in addition to performing its annual test as of January 1, 2007. There was no adjustment required based on the impairment test as of December 31, 2007 or 2008.

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Patents are amortized on a straight-line method over their remaining legal life from the date of acquisition.

Income Taxes

For Federal income tax purposes, the Company files a consolidated federal tax return. JAC files separately in Pennsylvania and FCR files separately in Virginia. The Company files a combined return in Illinois. The Company s operations are not significant in any states other than Illinois, Pennsylvania and Virginia. In conformity with SFAS No. 109, *Accounting for Income Taxes,* the Company provides for deferred income taxes on differences between the book and tax bases of its assets and liabilities and for items that are reported for financial statement purposes in periods different from those for income tax reporting purposes. Management evaluates deferred tax assets and provides a valuation allowance when it believes that it is more likely than not that some portion of these assets will not be realized.

Tax benefits related to uncertain tax positions taken or expected to be taken on a tax return are recorded when such benefits meet a more likely than not threshold. Otherwise, these tax benefits are recorded when a tax position has been effectively settled, which means that the appropriate taxing authority has completed their examination even though the statute of limitations remains open, or the statute of limitation expires. Interest and penalties related to uncertain tax positions are recognized as part of the provision for income taxes and are accrued beginning in the period that such interest and penalties would be applicable under relevant tax law until such time that the related tax benefits are recognized.

The Company recognizes accrued interest related to unrecognized tax benefits and penalties in income tax expense in the consolidated statements of income.

Product Warranties

The Company establishes a warranty reserve for new railcar sales at the time of sale, estimates the amount of the warranty accrual for new railcars sold based on the history of warranty claims for the type of railcar, and adjusts the reserve for significant known claims in excess of established reserves.

Revenue Recognition

Revenues on new and rebuilt railcars are recognized when individual cars are completed, 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. There are no returns or allowances recorded against sales. Pursuant to Accounting Principles Board (APB) Opinion No. 29, *Accounting for Non-Monetary Transactions,* and Emerging Issues Task Force (EITF) Issue No. 01-2, *Interpretations of APB No. 29,* revenue is recognized 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. Used railcars received are valued at their estimated fair market value at the date of receipt less a normal profit margin. Revenue from leasing is recognized ratably during the lease term.

The Company recognizes service-related revenue from rebuilding and repairs when all significant rebuilding or repair services have been completed and accepted by the customer.

The Company recognizes revenue from the sale of railcars under operating leases on a gross basis as manufacturing sales and cost of sales if the railcars are sold within 12 months and on a net basis in leasing revenue as a gain (loss) on sale of leased railcars if the railcars are held in excess of 12 months.

The Company s sales to customers outside the United States were $84,784, $85,980 and $43,493 in 2008, 2007 and 2006, respectively.

The Company accrues for loss contracts when it has a contractual commitment to manufacture railcars at an estimated cost in excess of the contractual selling price.

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The Company records amounts billed to customers for shipping and handling as part of sales in accordance with EITF 00-10, *Accounting for Shipping and Handling Fees and Costs*, and records related costs in cost of sales.

Financial Instruments

Management estimates that all financial instruments (including cash and long-term debt) as of December 31, 2008 and 2007, have fair values that approximate their carrying values.

Comprehensive Income (Loss)

Comprehensive income (loss) is defined as the change in equity of a business enterprise during a period from transactions and other events and circumstances from non-owner sources. Comprehensive income (loss) consists of net income (loss) and unrecognized pension and postretirement benefit cost, which is shown net of tax.

Earnings Per Share

Basic earnings per share are calculated as net income attributable to common stockholders divided by the weighted-average number of common shares outstanding during the respective period. The Company includes contingently issuable shares in its calculation of the weighted average number of common shares outstanding. Contingently issuable shares are shares subject to options which require little or no cash consideration. Diluted earnings per share are calculated by dividing net income attributable to common stockholders by the weighted-average number of shares outstanding plus dilutive potential common shares outstanding during the year.

Stock-Based Compensation

The Company applies the provisions of SFAS No. 123 (R), *Share-Based Payment,* for its stock-based compensation plan based on the modified prospective basis. As a result, the Company recognizes stock-based compensation expense for stock awards based on the grant-date fair value of the award. That cost is recognized over the period during which an employee is required to provide service in exchange for the award, which is usually the vesting period. See Note 13.

Recent Accounting Pronouncements

In June 2006, the Financial Accounting Standards Board (FASB) issued FIN No. 48, *Accounting for Uncertainty in Income Taxes An Interpretation of FASB Standard No. 109*. FIN No. 48 prescribes a recognition threshold and measurement attribute for financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return, and also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure and transition. FIN No. 48 is effective for fiscal years beginning after December 15, 2006. The Company adopted the provisions of FIN No. 48 on January 1, 2007. As a result of the implementation of FIN No. 48, the Company recorded an increase in gross unrecognized tax benefits of $2,638 and a decrease to retained earnings and accumulated other comprehensive loss of $1,936 and $94, respectively. It is expected that the amount of unrecognized tax benefits will change in the next twelve months. However, the Company does not expect the change to have a significant impact on its results of operations or financial condition. The Company recognizes accrued interest related to unrecognized tax benefits and penalties in income tax expense in the consolidated statements of income. As of January 1, 2007, the Company recorded a liability of $681 for the payment of interest and penalties.

In September 2006, the FASB issued Statement of Financial Accounting Standards (SFAS) No. 157, *Fair Value Measurements*. SFAS No. 157 defines fair value, establishes a framework for measuring fair value and expands disclosures about fair value measurements. SFAS No. 157 requires companies to disclose the fair value of their financial instruments according to a fair value hierarchy as defined in the standard. Additionally, companies are required to provide enhanced disclosure regarding financial instruments in one of the valuation categories, including a separate reconciliation of the beginning and ending balances for each major category of assets and liabilities. SFAS No. 157 is effective for financial assets and financial liabilities for fiscal years beginning after November 15, 2007, and interim periods within those fiscal years. The FASB deferred the effective date of SFAS No. 157 for all nonfinancial assets and liabilities, except those that are recognized or disclosed at fair value in the financial statements on at least an annual basis, until January 1, 2009 for calendar year-end entities. Implementation of the provisions of SFAS No. 157 did not have a material impact on the Company s financial statements, as the Company does not currently hold financial assets and liabilities that are required to be marked to fair value.

In September 2006, the FASB issued SFAS No. 158, *Employers Accounting for Defined Benefit Pension and Other Postretirement Plans An amendment of FASB Statements No. 87, 88, 106 and 132(R)*. SFAS No. 158 requires the recognition of the funded status of a benefit plan in the balance sheet; the recognition in other comprehensive income of gains or losses and prior service costs or credits arising during the period but which are not included as components of periodic benefit cost; the measurement of defined benefit plan assets and obligations as of the balance sheet date; and disclosure of additional information about the effects on periodic benefit cost for the following fiscal year arising from delayed recognition of gains and losses in the current period. The Company adopted SFAS No. 158 as of December 31, 2006. See Note 11 for additional disclosures required by SFAS No. 158 and the effects of adoption.

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities.* SFAS No. 159 permits companies to measure certain financial instruments and certain other items at fair value. The standard requires that unrealized gains and losses on items for which the fair value option has been elected be reported in earnings. The Company implemented SFAS No. 159 effective January 1, 2008, but elected not to apply the provisions of SFAS No. 159 to any of its existing financial assets or liabilities, therefore the provisions of SFAS No. 159 did not have an impact on the Company s financial statements.

In December 2007, the FASB issued SFAS No. 141(R), *Business Combinations,* which retains the fundamental requirements of SFAS No. 141, including that the purchase method be used for all business combinations and for an acquirer to be identified for each business combination. SFAS No. 141(R) defines the acquirer as the entity that obtains control of one or more businesses in a business combination and establishes the acquisition date as the date that the acquirer achieves control instead of the date that the consideration is transferred. This standard requires an acquirer in a business combination to recognize the assets acquired, liabilities assumed, and any noncontrolling interest in the acquiree at the acquisition date, measured at their fair values as of that date. It also requires the recognition of assets acquired and liabilities assumed arising from certain contractual contingencies as of the acquisition date, measured at their acquisition-date fair values. SFAS No. 141(R) is effective for any business combination with an acquisition date on or after January 1, 2009. The Company is in the process of evaluating the requirements of SFAS No. 141(R), but expects only prospective impact on the Company s financial statements.

As of January 1, 2009, the Company adopted the provisions of FASB Statement No. 160, *Noncontrolling Interests in Consolidated Financial Statements: An amendment of ARB No. 51* (SFAS No. 160). SFAS No. 160 requires the Company to present its interest in less than 100% owned subsidiaries in which it retains control as a component of stockholders equity in the balance sheet and recharacterize the component formerly known as minority interest as noncontrolling interest. SFAS No. 160 also requires the Company to show the amount of net income attributable to both the Company and the noncontrolling interest on the face of the statement of income and in the summary of comprehensive income. The retroactive effect of applying SFAS No. 160 was an increase of $101 to total stockholders equity on the Company s December 31, 2008 balance sheet, and a corresponding decrease to minority interests.

Note 3 Plant Closure Charges

In December 2007, the Company announced that it planned to close its manufacturing facility located in Johnstown, Pennsylvania. This action was taken to further the Company s strategy of optimizing production at its low-cost facilities and continuing its focus on cost control. The Company had entered into decisional bargaining with the USWA, but did not reach an agreement with the USWA that would have allowed the Company to continue to operate the facility in a cost-effective way. In December 2007, the Company recorded curtailment and impairment charges of $30,836 related to these actions.

On May 6, 2008, an arbitrator issued a ruling in a grievance proceeding brought against the Company by the USWA. The grievance proceeding, which was first filed by the USWA on April 1, 2007, surrounded the interpretation of provisions in the collective bargaining agreement (CBA) covering employees at the Johnstown facility. The dispute involved the interpretation of language regarding the classification of employees years of

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service and the Company s obligations to employees based on their years of service. The arbitrator s ruling held the Company responsible for providing back pay and appropriate benefits to affected employees, a group that included over one-half of the workers who were employed at the Johnstown facility at the time the grievance was filed. As a result of the ruling, the Company recorded an additional amount for the Company s estimate of the probable cost of the back pay and benefits under the ruling during the three months ended March 31, 2008. On June 4, 2008 the Company filed a lawsuit against the USWA asking the court to vacate the arbitrator s ruling.

On June 24, 2008, the Company announced a tentative global settlement that would resolve all legal disputes relating to the Johnstown facility and its workforce, including the Sowers/Hayden class action litigation, the above-mentioned contested arbitration ruling and other pending grievance proceedings. The settlement, with the USWA and the plaintiffs in the Sowers/Hayden lawsuit, was ratified by the Johnstown USWA membership on June 26, 2008 and approved by the court on November 19, 2008. The time for an appeal of the court s order has now expired and the settlement is final. As a consequence, all existing legal disputes relating to the Company s Johnstown, Pennsylvania manufacturing facility and its workforce, including the Sowers/Hayden class action litigation and contested grievance ruling, are now resolved and closed. Under the terms of the settlement, the collective bargaining agreement between the Company and the USWA was terminated effective May 15, 2008 and the Johnstown facility was closed. The settlement provided special pension benefits to certain workers at the Johnstown facility and deferred vested benefits to other workers, as well as health care benefits, severance pay and/or settlement bonus payments to workers depending on their years of service at the facility. During 2008, the Company recorded plant closure charges of $20,037 related to these actions bringing total plant closure charges through December 31, 2008 to $50,873. It is anticipated that payments for employee termination benefits and other related costs will be made during the first quarter of 2009, while pension benefits will be funded through plan assets and future Company contributions to the pension plans. Payments for postretirement benefits will be made from future operating cash flows.

The components of the plant closure charges incurred for the years ended December 31, 2008 and 2007 are as follows:

	2008	2007
Pension plan curtailment loss and special termination benefit costs	$10,112	$14,478
Postretirement plan curtailment loss and contractual benefit charges	8,866	13,204
Employee termination benefits	11	2,204
Other related costs	1,048	
Impairment charge for plant building and land		950
Total plant closure charges	$20,037	$30,836

Note 4 Inventories

Inventories consist of the following:

	December 31,	
	2008	**2007**
Work in progress	$ 23,618	$ 46,870
Finished new railcars	5,513	1,757
Used railcars acquired upon trade-in	1,965	
Total inventories	$ 31,096	$ 48,627

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Note 5 Leased Railcars

In response to competitive market conditions, the Company began offering railcar leasing to its customers on a selective and limited basis during 2008. The Company offers railcar leases to its customers generally at market rates with terms and conditions that have been negotiated with the customers. Railcar leases generally have terms of up to seven years. It is the Company s strategy to generally offer these leased assets for sale to leasing companies and financial institutions as market opportunities arise, rather than holding them to maturity.

Initially as of the date of manufacture and on a quarterly basis thereafter the Company evaluates leased railcars under the provisions of Statement of Financial Accounting Standards (SFAS) No. 144 to determine if the leased railcars qualify as assets held for sale. If all of the held for sale criteria of SFAS No. 144 are met, including the determination by management that the sale of the railcars is probable, and transfer of the railcars is expected to qualify for recognition as a completed sale within one year, then the leased railcars are treated as assets held for sale and classified as current assets on the balance sheet (leased assets held for sale). In determining whether it is probable that the leased railcars will be sold within one year, management considers general market conditions for similar railcars and considers whether those market conditions are indicative of a potential sales price that will be acceptable to the Company to sell the cars within one year. Leased railcars held for sale are carried at the lower of carrying value or fair value less cost to sell and are not depreciated.

Leased railcars that do not meet all of the held for sale criteria are included in railcars on operating leases on the balance sheet and are depreciated over 40 years. Depreciation on railcars on operating leases was $369 for the year ended December 31, 2008.

The Company recognizes operating lease revenue on leased railcars on a straight-line basis over the life of the lease. The Company recognizes 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 SFAS No. 144 and represents the completion of the sales process. The Company recognizes 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.

Leased railcars at December 31, 2008 included leased railcars classified as held for sale of $11,490 and railcars on operating leases classified as long-term assets of $34,735. Due to a decline in asset values in the current market, an impairment write-down of $597 related to these railcars on operating leases was recorded during the year ended December 31, 2008. Leased railcars at December 31, 2008 are subject to lease agreements with external customers with terms of up to three years (leases with terms greater than three years have been executed during 2009). The Company had no leased railcars at December 31, 2007.

Future minimum rental revenues on leases at December 31, 2008 are as follows:

Year ending December 31, 2009	$ 3,610
Year ending December 31, 2010	3,299
Year ending December 31, 2011	2,303
	$ 9,212

Note 6 Property, Plant and Equipment

Property, plant and equipment consists of the following:

	December 31, 2008	December 31, 2007
Land	$ 701	$ 701
Buildings and improvements	20,918	20,559
Machinery and equipment	42,352	40,228
Cost of buildings, improvements, machinery and equipment	63,270	60,787
Less: Accumulated depreciation and amortization	(38,996)	(35,697)
Buildings, improvements, machinery and equipment net of accumulated depreciation and amortization	24,274	25,090
Construction in process	5,607	1,130
Total property, plant and equipment	$ 30,582	$ 26,921

Depreciation expense for the years ended December 31, 2008, 2007 and 2006 was $3,420, $3,320 and $4,852, respectively.

The Company monitors its long-lived assets for impairment indicators on an ongoing basis in accordance with SFAS No. 144. If impairment indicators exist, the Company performs the required analysis and records impairment charges in accordance with SFAS No. 144. In conducting its analysis, the Company compares undiscounted cash flows expected to be generated from the long-lived assets to the related net book values. If assets are found to be impaired, the amount of the impairment loss is measured by comparing the net book values and the fair values of the long-lived assets. In December 2007, the Company announced the planned closure of its manufacturing facility located in Johnstown, Pennsylvania and, as a result it tested long-lived assets at the Johnstown facility for recoverability using estimated fair values. Fair values were estimated using the cost approach based on the assumption that the reproduction or replacement cost normally sets the upper limit of value and the sales comparison approach, which relies on the assumption that value can be measured by the selling prices of similar assets. Impairment charges of $21 were recorded for land and $929 for building and improvements during 2007 and are reported in Plant closure charges in the consolidated statements of income.

Note 7 Intangible Assets

Intangible assets consist of the following:

	December 31, 2008	December 31, 2007
Patents	$ 13,097	$ 13,097
Accumulated amortization	(8,604)	(8,014)
Patents, net of accumulated amortization	$ 4,493	$ 5,083

Patents are being amortized on a straight-line method over their remaining legal life from the date of acquisition. The weighted average remaining life of the Company s patents is 8 years. Amortization expense related to patents, which is included in cost of sales, was $590 for each of the years ended December 31, 2008, 2007 and 2006. The Company estimates amortization expense for each of the two years in the period ending December 31, 2010 will be approximately $590, for each of the two years ending December 31, 2012 will be $586 and for the year ending December 31, 2013 will be $582.

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Note 8 Product Warranties

Warranty terms are based on the negotiated railcar sales contracts and typically are for periods of one to five years. The changes in the warranty reserve for the years ended December 31, 2008, 2007 and 2006, are as follows:

	December 31,		
	2008	2007	2006
Balance at the beginning of the year	$ 10,551	$ 12,051	$ 7,878
Warranties issued during the year	4,621	3,353	6,056
Reductions for payments, costs of repairs and other	(3,696)	(4,853)	(1,883)
Balance at the end of the year	$ 11,476	$ 10,551	$ 12,051

Note 9 Revolving Credit Facilities

On August 24, 2007, the Company 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 are used to finance the working capital requirements of the Company through direct borrowings and the issuance of stand-by letters of credit. The Credit Agreement consists of a total facility of $50,000 senior secured revolving credit facility, including: (i) a sub-facility for letters of credit in an amount not to exceed $50,000; and (ii) a sub-facility for a swing line loan in an amount not to exceed $5,000. The amount available under the revolving credit facility is based on the lesser of (i) $50,000 or (ii) an amount equal to a percentage of eligible accounts receivable plus a percentage of eligible finished inventory plus a percentage of semi-finished inventory.

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). The Company is 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 the assets of the Company 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, 2008 and 2007, the Company had no borrowings under the revolving credit facility. Any borrowings under the revolving credit facility would have bore interest at 1.75% as of December 31, 2008. The Company had $11,490 and $8,828 in outstanding letters of credit under the letter of credit sub-facility as of December 31, 2008 and 2007, respectively and the ability to borrow $38,510 under the revolving credit facility as of December 31, 2008. Under the revolving credit facility, the Company s subsidiaries are permitted to pay dividends and transfer funds to the Company without restriction.

<u>JAIX Revolving Credit Facility</u>

Also 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) with the lenders party thereto (collectively, the JAIX Lenders). The JAIX Credit Agreement consists of a $60,000 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, FCA guaranteed the JAIX revolving Credit Facility.

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Availability under the JAIX Revolving Credit Facility is based on a percentage of the Eligible Railcar Leases (as defined in the agreement) held under the JAIX Revolving Credit Facility. 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 Revolving 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, 2008 the Company had no borrowings under the JAIC Revolving Credit Agreement.

As more fully described in Note 20, the Company has restated its consolidated financial statements and the related disclosures for the fiscal years ended December 31, 2008 and 2007. The restatement has caused the Company to fail to comply with certain representations and covenants in each of the Second Amended and Restated Credit Agreement and the JAIX Revolving Credit Facility referred to above. The Company has received waivers of these representations and covenants from the lenders under each of the credit agreements. These waivers are subject to the conditions subsequent that the Company file its quarterly report on Form 10-Q for the period ended June 30, 2009 and comply with the other representations and covenants under the credit agreements by September 30, 2009. The Company was otherwise in compliance with the representations and covenants contained in these agreements as of December 31, 2008.

Note 10 Accumulated Other Comprehensive Income (Loss)

The changes in accumulated other comprehensive income (loss) consist of the following:

	Pre-Tax	Tax	After-Tax
Year ended December 31, 2006			
Additional minimum pension liability	$ 3,168	$ (1,218)	$ 1,950
Adjustment related to initial application of SFAS No. 158 pension liability (See Note 11)	(12,049)	4,450	(7,599)
Adjustment related to initial application of SFAS No. 158 postretirement liability (See Note 11)	(24,685)	9,116	(15,569)
	$ (33,566)	$ 12,348	$ (21,218)
Year ended December 31, 2007			
Pension liability activity	$ 10,905	$ (4,037)	$ 6,868
Postretirement liability activity	15,954	(5,905)	10,049
	$ 26,859	$ (9,942)	$ 16,917
Year ended December 31, 2008			
Pension liability activity	$ (12,141)	$ 4,638	$ (7,503)
Postretirement liability activity	1,299	(410)	889
	$ (10,842)	$ 4,228	$ (6,614)

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The components of accumulated other comprehensive loss consist of the following:

	December 31,	
	2008	2007
Unrecognized pension cost, net of tax of $7,162 and $2,524	$ 11,840	$ 4,337
Unrecognized postretirement cost, net of tax of $2,801 and $3,211	4,631	5,520
	$ 16,471	$ 9,857

Note 11 Employee Benefit Plans

The Company has qualified, defined benefit pension plans covering substantially all of the employees of JAC, Operations and JAIX. The Company uses a measurement date of December 31 for all of its employee benefit plans. Generally, contributions to the plans are not less than the minimum amounts required under the Employee Retirement Income Security Act and not more than the maximum amount that can be deducted for federal income tax purposes. The plans assets are held by independent trustees and consist primarily of equity and fixed income securities. Pension benefits that accrued as a result of employee service before June 4, 1999 remained the responsibility of TTII, the former owner of JAC, FCS, JAIX and JAC Patent (for employee service during the period October 28, 1991 through June 3, 1999), or Bethlehem Steel Corporation (Bethlehem) (for employee service prior to October 28, 1991), the owner of JAC prior to TTII. The Company initiated new pension plans for such employees for service subsequent to June 3, 1999, which essentially provide benefits similar to the former plans.

The Company also provides certain postretirement health care benefits for certain of its retired salaried and hourly employees. Employees may become eligible for health care benefits if they retire after attaining specified age and service requirements. These benefits are subject to deductibles, co-payment provisions and other limitations.

As discussed in Note 2, the Company adopted SFAS No. 158 as of December 31, 2006. SFAS No. 158 requires that the Company recognize on a prospective basis the funded status of its defined benefit pension and other postretirement benefit plans on the consolidated balance sheet and recognize as a component of accumulated other comprehensive income (loss), net of tax, the gains or losses and prior service costs or credits that arise during the period but are not recognized as components of net periodic benefit cost. Additional minimum pension liabilities and related intangible assets are also derecognized upon adoption of the new standard. The adjustments for SFAS No. 158 affected the Company s Consolidated Balance Sheet at December 31, 2006 as follows:

Decrease in prepaid pension benefit cost	$ (266)
Decrease in intangible asset	(6,099)
Increase in accrued pension benefits	(5,684)
Increase in accrued postretirement benefits	(24,685)
Increase in accumulated other comprehensive loss, pretax	(36,734)
Increase in deferred tax assets	13,566
Increase in accumulated other comprehensive loss, net of tax	$ (23,168)

Costs of benefits relating to current service for those employees to whom the Company is responsible to provide benefits are expensed currently. The changes in benefit obligation, change in plan assets and funded status as of December 31, 2008 and 2007, are as follows:

	Pension Benefits		Postretirement Benefits	
	2008	2007	2008	2007
Change in benefit obligation				
Benefit obligation Beginning of year	$ 55,393	$ 49,065	$ 53,078	$ 52,936
Service cost	1,128	2,229	69	683
Interest cost	3,370	2,771	3,231	2,946
Plan curtailment		(54)		40
Actuarial loss (gain)	(6,884)	(4,930)	(913)	(3,719)
Special termination benefit loss	10,111	8,952	8,866	3,028
Benefits paid	(3,430)	(2,640)	(3,674)	(2,836)
Benefit obligation End of year	59,688	55,393	60,657	53,078
Change in plan assets				
Plan assets Beginning of year	44,973	39,489		
Actual return on plan assets	(15,294)	2,750		
Employer contributions	6,750	5,373	3,674	2,836
Benefits paid	(3,430)	(2,639)	(3,674)	(2,836)
Plan assets at fair value End of year	32,999	44,973		
Funded status of plans End of year	$ (26,689)	$ (10,420)	$ (60,657)	$ (53,078)

	Pension Benefits		Postretirement Benefits	
	2008	2007	2008	2007
Amounts recognized in the Consolidated Balance Sheets				
Noncurrent assets	$ 75	$ 265	$	$
Current liabilities			(5,364)	(5,188)
Noncurrent liabilities	(26,764)	(10,685)	(55,293)	(47,890)
Net amount recognized at December 31	$ (26,689)	$ (10,420)	$ (60,657)	$ (53,078)

The accumulated benefit obligation for the Company s defined benefit pension plans was $57,361 and $53,434 at December 31, 2008 and 2007, respectively.

Amounts recognized in accumulated other comprehensive loss but not yet recognized in earnings at December 31, 2008 and 2007, are as follows:

	Pension Benefits		Postretirement Benefits	
	2008	2007	2008	2007
Net actuarial loss	$ 18,113	$ 5,972	$ 6,067	$ 7,142

Prior service cost	889	889	1,365	1,589
	$ 19,002	$ 6,861	$ 7,432	$ 8,731

The estimated net loss and prior service cost for the defined benefit pension plan that will be amortized from accumulated other comprehensive loss into net periodic benefit cost in 2009 are $768 and $103, respectively. The estimated net loss and prior service cost for the postretirement benefit plan that will be amortized from accumulated other comprehensive loss into net periodic benefit cost in 2009 are $0 and $224, respectively. The Company s decision in December 2007 to close its manufacturing facility in Johnstown, Pennsylvania significantly affected current and future employment levels and resulted in a decrease in the estimated remaining future service years for the employees covered by the plans. The decrease in the estimated remaining future service years resulted in plan curtailments for the defined benefit pension plans and the postretirement benefit plan and caused the Company to immediately recognize a substantial portion of the net actuarial loss and prior service cost relating to these plans that had not yet been recognized in earnings. Curtailment charges of $5,526 and $10,175 were recognized for the Company s pension and

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postretirement plans, respectively during 2007. In addition, the plant closure decision triggered contractual special pension benefits of $10,111 and $8,952 that were recognized for the Company s pension plan during 2008 and 2007, respectively, and contractual termination benefits of $8,866 and $3,028 that were recognized for the Company s postretirement plan during 2008 and 2007, respectively. These pension and postretirement benefit costs are included in Plant closure charges on the consolidated statements of income.

Components of net periodic benefit cost for the years ended December 31, 2008, 2007 and 2006 are as follows:

	Pension Benefits			**Postretirement Benefits**		
	2008	**2007**	**2006**	**2008**	**2007**	**2006**
Components of net periodic benefit cost						
Service cost	$ 1,128	$ 2,229	$ 2,386	$ 69	$ 683	$ 683
Interest cost	3,370	2,771	2,511	3,231	2,946	2,843
Expected return on plan assets	(3,758)	(3,508)	(2,161)			
Amortization of unrecognized prior service cost		712	712	224	1,725	1,648
Amortization of unrecognized net loss	27	441	558	162	374	400
Curtailment recognition		5,526			10,176	
Contractual benefit charge	10,112	8,952		8,866	3,028	
Total net periodic benefit cost	$ 10,879	$ 17,123	$ 4,006	$ 12,552	$ 18,932	$ 5,574

The increase (decrease) in accumulated other comprehensive loss (pre-tax) for the years ended December 31, 2008 and 2007 are as follows:

	2008		2007	
	Pension Benefits	**Postretirement Benefits**	**Pension Benefits**	**Postretirement Benefits**
Net actuarial gain	$ 12,168	$ (913)	$ (4,173)	$ (3,718)
Amortization of net actuarial gain	(27)	(162)	(441)	(374)
Amortization of prior service cost		(224)	(712)	(1,725)
Curtailment prior service cost			(5,457)	(10,137)
Curtailment net actuarial gain			(122)	
Total recognized in accumulated other comprehensive loss (gain)	$ 12,141	$ (1,299)	$ (10,905)	$ (15,954)

The following benefit payments, which reflect expected future service, as appropriate, were expected to be paid as of December 31, 2008:

	Pension Benefits	**Postretirement Benefits**
2009	$5,427	$ 5,400
2010	5,720	5,300
2011	5,519	5,300
2012	5,419	5,100
2013	5,019	5,000

The Company expects to contribute approximately $11,200 to its pension plans in 2009.

The assumptions used to determine end of year benefit obligations are shown in the following table:

	Pension Benefits		Postretirement Benefits	
	2008	2007	2008	2007
Discount rate	6.85%	6.40%	6.85%	6.40%
Rate of compensation increase	3.00%	3.00%-4.00%		

The assumptions used in the measurement of net periodic cost are shown in the following table:

	Pension Benefits			Postretirement Benefits		
	2008	2007	2006	2008	2007	2006
Discount rate	6.40%	5.90%	5.75%	6.40%	5.90%	5.75%
Expected return on plan assets	8.25%	8.25%	8.25%			
Rate of compensation increase	3.00%-4.00%	3.00%-4.00%	3.00%-4.00%			

Assumed health care cost trend rates at December 31 are set forth below:

	2008	2007	2006
Health care cost trend rate assigned for next year	9.00%	9.00%	10.00%
Rate to which cost trend is assumed to decline	5.50%	5.50%	5.50%
Year the rate reaches the ultimate trend rate	2015	2014	2014

As benefits under these plans have been capped, assumed health care cost trend rates have no effect on the amounts reported for the health care plans.

The Company s pension plans investment policy, weighted average asset allocations at December 31, 2008 and 2007, and target allocations for 2009, by asset category, are as follows:

	Plan Assets at December 31,		Target Allocation
	2008	2007	2009
Asset Category			
Equity securities	56%	72%	70%
Debt securities	44%	28%	30%
	100%	100%	100%

The basic goal underlying the pension plan investment policy is to ensure that the assets of the plans, along with expected plan sponsor contributions, will be invested in a prudent manner to meet the obligations of the plans as those obligations come due. Investment practices must comply with the requirements of the Employee Retirement Income Security Act of 1974 (ERISA) and any other applicable laws and regulations. The Company, in consultation with its investment advisors, has determined a targeted allocation of invested assets by category and it works with its advisors to reasonably maintain the actual allocation of assets near the target. During 2008, and in particular the fourth quarter of the year, equity market returns declined rapidly in general and in relation to debt market returns, causing a significant deviation in the actual allocation of assets from target. The Company is working with its advisors to address appropriate actions for the rebalancing of the investment portfolio.

The long term return on assets was estimated based upon historical market performance, expectations of future market performance for debt and equity securities and the related risks of various allocations between debt and equity securities. Numerous asset classes with differing expected rates of return, return volatility and correlations are utilized to reduce risk through diversification.

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The Company also maintains qualified defined contribution plans, which provide benefits to their employees based on employee contributions, years of service, employee earnings or certain subsidiary earnings, with discretionary contributions allowed. Expenses related to these plans were $1,628, $1,421 and $1,662 for the years ended December 31, 2008, 2007 and 2006, respectively.

Note 12 Income Taxes

The provision (benefit) for income taxes for the periods indicated includes current and deferred components as follows:

	Year Ended December 31,		
	2008	**2007**	**2006**
Current taxes			
Federal	$ 3,234	$ 22,244	$ 62,433
State	2,046	4,848	10,529
	5,280	27,092	72,962
Deferred taxes			
Federal	1,823	(10,363)	1,935
State	(992)	(1,533)	633
	831	(11,896)	2,568
Interest and penalties expense, gross of related tax effects	658	193	
Total	$ 6,769	$ 15,389	$ 75,530

The provision (benefit) for income taxes for the periods indicated differs from the amounts computed by applying the federal statutory rate as follows:

	Year Ended December 31,		
	2008	**2007**	**2006**
Statutory U.S. federal income tax rate	35.0%	35.0%	35.0%
State income taxes, net of federal tax benefit	(2.8)%	1.9%	4.2%
Valuation allowance	7.7%	2.8%	(0.7)%
Goodwill amortization for tax reporting purposes	(3.3)%	(1.4)%	(0.3)%
Manufacturing deduction	(0.4)%	(3.4)%	(1.0)%
Nondeductible expenses	0.3%		
Other	0.7%	1.0%	(0.2)%
Effective income tax rate	37.2%	35.9%	37.0%

Deferred income taxes result from temporary differences in the financial and tax basis of assets and liabilities. Components of deferred tax assets (liabilities) consisted of the following:

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Description	December 31, 2008 Assets	December 31, 2008 Liabilities	December 31, 2007 Assets	December 31, 2007 Liabilities
Accrued post-retirement and pension benefits-long term	$ 33,909	$	$ 22,338	$
Intangible assets	533		1,137	
Accrued workers compensation costs	1,137		1,083	
Accrued warranty costs	5,302		5,003	
Accrued bonuses	130		57	
Accrued vacation	811		915	
Accrued contingencies	4,580		2,784	
Accrued severance	999		787	
Inventory valuation	1,667		1,621	
Property, plant and equipment and railcars on operating leases		(8,249)		(984)
State net operating loss carryforwards	2,595		1,875	
Stock compensation expense	961		920	
Other	1,944		588	
	54,568	(8,249)	39,108	(984)
Valuation allowance	(7,037)		(3,585)	
Deferred tax assets (liabilities)	$ 47,531	$ (8,249)	$ 35,523	$ (984)
Increase (decrease) in valuation allowance	$ 3,452		$ 664	

In the consolidated balance sheets, these deferred tax assets and liabilities are classified as current or noncurrent, based on the classification of the related asset or liability for financial reporting. A deferred tax asset or liability that is not related to an asset or liability for financial reporting, including deferred tax assets related to carryforwards, is classified according to the expected reversal date of the temporary differences as of the end of the year. A valuation allowance is provided when it is more likely than not that some portion or all of the deferred tax assets will not be realized. A valuation allowance of $7,037 and $3,585 has been recorded at December 31, 2008 and 2007, respectively, as management concluded it was more likely than not that certain net Pennsylvania deferred tax assets would not be realized. The Pennsylvania deferred tax assets increased due to the plant closure charges that were accrued during 2008. In addition, the Company had Pennsylvania net operating loss carryforwards of $26,993, which will expire between 2021 and 2027.

As a result of the implementation of FIN No. 48, the Company recorded an increase in gross unrecognized tax benefits of $2,638 and a decrease to retained earnings and accumulated other comprehensive loss of $1,936 and $94, respectively. As of January 1, 2007, the Company recorded a liability of $681 for the payment of interest and penalties. Changes in the liability for unrecognized tax benefits for the year ended December 31, 2008 were as follows:

	2008	2007
Beginning of year balance	$2,821	$2,638
Increases in prior period tax positions	163	
Decreases in prior period tax positions		(80)
Increases in current period tax positions	1,368	263

Settlements		
End of year balance	$4,352	$2,821

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The total estimated unrecognized tax benefit that, if recognized, would affect the Company s effective tax rate was approximately $2,736 and $2,573 as of December 31, 2008 and 2007 respectively. It is expected that the amount of unrecognized tax benefits will change in the next twelve months. It is reasonably possible that unrecognized tax benefits will decrease by $1,760 during the next twelve months, as the result of the anticipated closure of the current IRS examination. Such unrecognized tax benefits related to tax deductions for which the ultimate deductibility is highly certain but for which there is uncertainty about the timing of such deductibility. A change in the period of deductibility would not affect the effective tax rate but would impact the timing of cash payments to the taxing authorities and the calculation of interest and penalties. The Company s income tax provision included $411 of expense (net of a federal tax benefit of $247) and $117 of expense (net of a federal tax benefit of $70) related to interest and penalties for the years ended December 31, 2008 and 2007, respectively. Such expenses increased the balance of accrued interest and penalties to $1,526 and $868 at December 31, 2008 and 2007, respectively.
The Company, and/or one of its subsidiaries, files income tax returns with the U.S. Federal government and in various state jurisdictions. A summary of tax years that remain subject to examination is as follows:

Jurisdiction	Earliest Year Open To Examination
U.S. Federal	2003
States:	
Pennsylvania	2003
Virginia	2005
Illinois	2003

Note 13 Stock-Based Compensation

In December 2004, the FASB issued SFAS No. 123 (R), *Share-Based Payment,* which establishes the accounting for transactions in which an entity exchanges its equity instruments or certain liabilities based upon the entity s equity instruments for goods or services. The revision to SFAS No. 123 generally requires that publicly traded companies measure the cost of employee services received in exchange for an award of equity instruments based on the fair value of the award on the grant date. That cost will be recognized over the period during which an employee is required to provide service in exchange for the award, which is usually the vesting period. The Company adopted SFAS No. 123 (R) effective January 1, 2006 using the modified prospective method and, as such, results for prior periods have not been restated.
On April 11, 2005, the Company adopted a stock option plan titled The 2005 Long-Term Incentive Plan (the Plan). The Plan is intended to provide incentives to attract, retain and motivate employees and directors. The Company believes that such awards better align the interests of its employees and directors with those of its stockholders. The Plan provides for the grant to eligible persons of stock options, share appreciation rights, or SARs, restricted shares, restricted share units, or RSUs, performance shares, performance units, dividend equivalents and other share-based awards, referred to collectively as the awards. Option awards generally vest based on one to three years of service and have 10 year contractual terms. Share awards generally vest over one to three years. Certain option and share awards provide for accelerated vesting if there is a change in control (as defined in the Plan). The Plan was effective April 11, 2005 and will terminate as to future awards on April 11, 2015. Under the Plan, 1,659,616 shares of common stock have been reserved for issuance, of which 1,074,280 were available for issuance at December 31, 2008. Prior to January 1, 2006, the Company accounted for the Plan under the recognition and measurement principles of APB Opinion No. 25, *Accounting for Stock Issued to Employees*, and its related interpretations.
Stock-based compensation expense of $2,852, $2,804 and $2,130 is included within selling, general and administrative expense for the years ended December 31, 2008, 2007 and 2006, respectively. The total income tax benefit recognized on the income statement for share-based compensation arrangements was $1,070, $1,049 and $787 for the years ended December 31, 2008, 2007 and 2006, respectively.

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On January 13, 2008, the Company awarded 190,100 non-qualified stock options to certain employees of the Company pursuant to its 2005 Long Term Incentive Plan. The stock options will vest in three equal annual installments beginning on January 13, 2009 and have a contractual term of 10 years. The exercise price of each option is $30.47, which was the fair market value of the Company s stock on the date of the grant. The Company recognizes stock compensation expense based on the fair value of the award on the grant date using the Black-Scholes option valuation model. The estimated fair value of $12.36 per option will be recognized over the period during which an employee is required to provide service in exchange for the award, which is usually the vesting period. The following assumptions were used to value the 2008 stock options: expected lives of the options of 6 years; expected volatility of 40.78%; risk-free interest rate of 3.08%; and expected dividend yield of 0.79%. Expected life in years was determined using the simplified method because the Company did not have sufficient historical exercise data to provide a reasonable basis upon which to estimate the expected term due to the limited period of time its shares have been publicly traded and the limited number of stock option grants to date. The Company believes that its option awards in 2008, which vest ratably over a three year period, qualify for use of the simplified method for plain vanilla options granted after December 31, 2007 as described in Staff Accounting Bulletin No. 110.

Expected volatility was based on the historical volatility of the Company s stock. The risk-free interest rate was based on the U.S. Treasury bond rate for the expected life of the option. The expected dividend yield was based on the latest annualized dividend rate and the current market price of the underlying common stock on the date of the grant.

No stock options were issued in 2007 and 2006. The following assumptions were used to value the 2005 stock options: expected lives of the options ranging between 5.5 and 6.5 years, expected volatility of 35%, risk-free interest rates ranging between 4.17% and 4.24% and an expected dividend yield of 0.5%. Expected life in years is determined by using the simplified method allowed by the Securities and Exchange Commission in accordance with Staff Accounting Bulletin No. 107. Expected volatility is based on the historical volatility of stock for comparable public companies and the implied volatility is derived from current publicly traded call option prices of comparable public companies. The risk-free interest rate is based on the U.S. Treasury bond rate for the expected life of the option. The expected dividend yield is based on the latest annualized dividend rate and the current market price of the underlying common stock.

Stock Option Activity

A summary of the Company s stock options activity and related information at December 31, 2008 and 2007, and changes during the years then ended is presented below:

	December 31,			
	2008		2007	
	Options Outstanding	Weighted-Average Exercise Price (per share)	Options Outstanding	Weighted-Average Exercise Price (per share)
Outstanding at the beginning of the year	64,968	$23.76	229,872	$20.34
Granted	190,100	30.47		
Exercised	(54,968)	19.00	(109,936)	19.00
Forfeited or expired	(40,860)	30.47	(54,968)	19.00
Outstanding at the end of the year	159,240	$31.69	64,968	$23.76
Exercisable at the end of the year	10,000	$49.90	6,666	$49.90

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A summary of the Company s stock options outstanding as of December 31, 2008 is presented below:

	Options Outstanding	Weighted-Average Remaining Contractual Term (in years)	Weighted-Average Exercise Price (per share)	Aggregate Intrinsic Value
Options outstanding	159,240	8.9	$31.69	$
Vested or expected to vest	159,240	8.9	$31.69	$
Options exercisable	10,000	6.9	$49.90	

The total intrinsic value of stock options exercised during the years ended December 31, 2008 and 2007, was $767 and $3,193, respectively. The cash received from exercise of stock option awards was $1,045 and $2,089 during the years ended December 31, 2008 and 2007, respectively. The actual tax benefit realized for the tax deductions from exercise of the stock option awards was $289 and $1,270 for the years ended December 31, 2008 and 2007, respectively, of which $87 and $835, respectively was recorded to additional paid in capital as excess tax benefit from stock-based compensation. As of December 31, 2008, there was $1,147 of total unrecognized compensation expense related to nonvested options, which will be recognized over the average remaining requisite service period of 2.0 years.

Nonvested Stock Activity

A summary of the Company s nonvested shares as of December 31, 2008 and 2007, and changes during the years then ended is presented below:

	December 31, 2008		December 31, 2007	
	Shares	Weighted-Average Grant Date Fair Value (per share)	Shares	Weighted-Average Grant Date Fair Value (per share)
Nonvested at the beginning of the year	82,853	$53.38	25,021	$51.53
Granted	48,547	31.47	72,940	53.85
Vested	(46,186)	52.51	(12,442)	53.18
Forfeited or expired	(6,440)	30.47	(2,666)	49.90
Nonvested at the end of the year	78,774	$42.25	82,853	$53.38
Expected to vest	78,774	$42.25	82,853	$53.38

The fair value of stock awards vested during the years ended December 31, 2008 and 2007, was $1,724 and $600, respectively, based on the value at vesting date. The actual tax benefit realized for the tax deductions from vesting of stock awards was $650 and $239 for the years ended December 31, 2008 and 2007, respectively, of which ($275) and ($35), respectively was recorded to additional paid in capital as (tax deficiency)/excess tax benefit from stock-based compensation. As of December 31, 2008, there was $3,131 of total unrecognized compensation expense related to nonvested stock awards, which will be recognized over the average remaining requisite service period of 1.7 years.

Note 14 Risks and Contingencies

The Company is involved in various warranty and repair claims and related threatened and pending legal proceedings with its customers in the normal course of business. In the opinion of management, the Company s potential losses in excess of the accrued warranty provisions, if any, are not expected to be material to the Company s financial condition, results of operations or cash flows.

The Company relies upon third-party suppliers for railcar heavy castings, wheels and other components for its railcars. In particular, it purchases a substantial percentage of its railcar heavy castings and wheels from subsidiaries of one entity. The Company also relies upon a single supplier to manufacture all of its cold-rolled center sills for its railcars. Any inability by these suppliers to provide the Company with components for its railcars, any significant decline in the quality of these components or any failure of these suppliers to meet the Company s planned requirements for such components may have a material adverse impact on the Company s financial condition and results of operations. While the Company believes that it could secure alternative manufacturing sources for these components, the Company may incur substantial delays and significant expense in doing so, the quality and reliability of these alternative sources may not be the same and the Company s operating results may be significantly affected.

On August 15, 2007, a lawsuit (the Sowers/Hayden class action litigation) was filed against the Company in the U.S. District Court for the Western District of Pennsylvania by certain members of the United Steelworkers of America (the USWA) alleging that they and other workers at the facility were laid off by the Company to prevent them from becoming eligible for certain retirement benefits and seeking, among other things, an injunction that would require the Company to return the laid-off employees to work. On March 4, 2008, the Court of Appeals for the Third Circuit granted a stay of the preliminary injunction pending an appeal of the preliminary injunction that was granted by the District Court on January 11, 2008.

On April 1, 2007, the USWA filed a grievance on behalf of certain workers at the Company s Johnstown facility alleging that the Company had violated the collective bargaining agreement (the CBA). The dispute involved the interpretation of language in the CBA regarding the classification of employees years of service and the Company s obligations to employees based on their years of service. On May 6, 2008, an arbitrator issued a ruling against the Company in this grievance proceeding. On June 24, 2008, the Company announced a tentative global settlement with the USWA and the plaintiffs in the Sowers/Hayden class action litigation. The settlement was ratified by the Johnstown USWA membership on June 26, 2008 and approved by the court in the Sowers/Hayden litigation on November 19, 2008. The time for an appeal of the court s order has now expired and the settlement is final. As a consequence, all existing legal disputes relating to the Company s Johnstown, Pennsylvania manufacturing facility and its workforce, including the Sowers/Hayden class action litigation and the contested grievance ruling, are now resolved and closed.

On September 29, 2008, Bral Corporation, a supplier of certain railcar parts to the Company, filed a complaint against the Company in the U.S. District Court for the Western District of Pennsylvania (the Pennsylvania Lawsuit). The complaint alleges that the Company 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 the Company (the Illinois Lawsuit). On October 22, 2008, the Company entered into an Assignment of Claims Agreement with CMN under which CMN assigned the Company its counterclaims against Bral in the Illinois Lawsuit and the Company agreed to defend and indemnify CMN against Bral s claims in that lawsuit. The Company has filed a motion in the Pennsylvania Lawsuit asking for that case to be transferred and consolidated into the Illinois Lawsuit. On February 10, 2009, a mandatory mediation took place in the Illinois Lawsuit, but the mediation did not result in a settlement agreement. While the ultimate outcome 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 the Company s financial condition and results of operations.

On a quarterly basis, the Company evaluates the potential outcome of all significant contingencies utilizing guidance provided in FASB Statement No. 5, *Accounting for Contingencies*. As required by FASB No. 5, the Company estimates the likelihood that a future event or events will confirm the loss of an asset or incurrence of a liability. When information available prior to issuance of the Company s financial statements indicates that in management s judgment, it is probable that an asset had been impaired or a liability had been incurred at the date of the financial statements and the amount of loss can be reasonably estimated, the contingency is accrued by a charge to income. During the fourth quarter of 2007, the Company recorded contingency losses of $3,884, related to all the above

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matters which are reported in the Company s Consolidated Statements of Income in Selling, general and administrative expense .

Note 15 Other Commitments

The Company leases certain property and equipment under long-term operating leases expiring at various dates through 2016. The leases generally contain specific renewal or purchase options at lease-end at the then fair market amounts.

Future minimum lease payments at December 31, 2008 are as follows:

2009	$ 2,067
2010	2,308
2011	2,336
2012	2,372
2013	2,315
Thereafter	3,452
	$ 14,850

The Company is liable for maintenance, insurance and similar costs under most of its leases and such costs are not included in the future minimum lease payments. Total rental expense for the years ended December 31, 2008, 2007 and 2006, was approximately $2,184, $2,156 and $1,894, respectively.

The Company has aluminum purchase commitments, which are non-cancelable agreements to purchase fixed amounts of materials used in the manufacturing process. Purchase commitments are made at a fixed price and are typically entered into after a customer places an order for railcars. At December 31, 2008, the Company had aluminum purchase commitments of $6,032 for 2009.

The Company has wheel and axle purchase commitments consisting of a non-cancelable agreement with one of its suppliers to purchase materials used in the manufacturing process. The Company has center sill purchase commitments consisting of a non-cancelable agreement with one of its suppliers to purchase center sills used in the manufacturing process. The estimated amounts may vary based on the actual quantities and price. At December 31, 2008, the Company had wheel and axle purchase commitments of $32,069, $36,405, $22,099, $23,425 and $24,831 for 2009, 2010, 2011, 2012 and 2013, respectively, and center sill purchase commitments of $0, $588, $4,639 and $3,480 for 2009, 2010, 2011 and 2012, respectively.

At December 31, 2008, the Company had consigned inventory of $580 and used railcar purchase commitments of $3,024 to be settled in 2009.

The Company has employment agreements with certain members of management which provide for base compensation, bonus, incentive compensation, employee benefits and severance payments under certain circumstances. The employment agreements generally have terms that range between two and three years and automatically extend for one-year periods until terminated prior to the end of the term by either party upon 90 days notice. Annual base compensation for the executives with employment agreements ranges between $228 and $640. Certain of the executives are entitled to participate in management incentive plans and other benefits as made available to the Company s executives.

See Note 19 relating to consulting fees that the Company has paid to certain of its stockholders.

Note 16 Earnings Per Share

The weighted average common shares outstanding are computed as follows:

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	Year Ended December 31, 2008	2007	2006
Weighted average common shares outstanding	11,788,400	12,115,712	12,586,889
Dilutive effect of employee stock options and restricted share awards	44,732	73,189	198,126
Weighted average diluted common shares outstanding	11,833,132	12,188,901	12,785,015

For the years ended December 31, 2008 and 2007, 103,037 and 70,940 shares, respectively, were not included in the weighted average common shares outstanding calculation as they were anti-dilutive. No shares were anti-dilutive for the year ended December 31, 2006.

Note 17 Operating Segment and Concentration of Sales

The Company s operations consist of a single reporting segment. The Company s sales include new railcars, used railcars, leasing and other. The following table sets forth the Company s sales resulting from new railcars, used railcars, leasing and other for the periods indicated below:

	Year ended December 31, 2008	2007	2006
New railcar sales	$ 712,432	$ 800,542	$ 1,435,391
Used railcar sales	14,368	5,928	
Leasing revenues	2,955	39	222
Other sales	16,635	10,516	9,187
	$ 746,390	$ 817,025	$ 1,444,800

Due to the nature of its operations, the Company is subject to significant concentration of risks related to business with a few customers. Sales to the Company s top three customers accounted for 22%, 21% and 10%, respectively, of revenues for the year ended December 31, 2008. Sales to the Company s top three customers accounted for 15%, 11% and 11%, respectively, of revenues for the year ended December 31, 2007. Sales to the Company s top three customers accounted for 12%, 11% and 9%, respectively, of revenues for the year ended December 31, 2006.

Note 18 Labor Agreements

A collective bargaining agreement at one of the Company s facilities covered approximately 10% of the Company s active labor force at December 31, 2007 under an agreement that expired on May 15, 2008. In December 2007, the Company announced that it planned to close this manufacturing facility located in Johnstown, Pennsylvania. See Note 3 Plant Closure Charges for a description of these actions and Note 14 on related litigation with the Johnstown union.

An additional collective bargaining agreement at a different facility covered approximately 41% and 35% of the Company s active labor force at December 31, 2008 and 2007, respectively, under an agreement that expires in October 2012.

An additional collective bargaining agreement at a different facility covers approximately 10% and 7% of the Company s active labor force at December 31, 2008 and 2007, respectively. The agreement was ratified on February 1, 2006 and expires on January 31, 2011.

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Note 19 Related Party Transactions

In June 1999, the Company and certain of its subsidiaries entered into a consulting agreement with one of the Company s directors, which provided that he would provide the Company with consulting services on all matters relating to the Company s business and that of the Company s subsidiaries and would serve as a member of the Company s board of directors. The agreement provided for a consulting fee of $50 per year. Payments for these services totaled $13 for the year ended December 31, 2008 and $50 for each of the years ended December 31, 2007 and 2006. This agreement expired in April 2008.

Note 20 Restatement of Consolidated Financial Statements

On July 28, 2009, the Company announced that it had identified historical accounting errors relating to accounts payable. The accounting errors have resulted in the understatement of cumulative net earnings since the fourth quarter of 2007.

The Company undertook a review to determine the total amount of the errors and the accounting periods in which the errors occurred. The Company s review determined that the errors were attributable to flaws in the design of internal IT and accounting processes to account for receipt of certain goods that were implemented in the fourth quarter of 2007. These flaws represented material weaknesses in the Company s internal controls relating to changes in information systems, inventory valuation and account reconciliations. Management identified the accounting errors in connection with the implementation of a new enterprise-wide reporting and management software platform system to improve processes and strengthen controls throughout the Company.

The Company s review was overseen by the Audit Committee with the assistance of management, and legal counsel, IT consultants and forensic accountants engaged by management. After analyzing the size and timing of the errors, the Company determined that, in the aggregate, the errors were material and would require the Company to restate its 2008 and 2007 consolidated financial statements. Primarily, the errors understated operating income, pre-tax income and net income for the periods involved, together with related cash flows. Inventories, accounts payable and to a lesser extent, leased assets were also impacted.

The Company has restated the accompanying consolidated balance sheets and the related consolidated statements of income, stockholders equity and cash flows as of and for the years ended December 31, 2008 and 2007. The following discloses each line item on the Company s consolidated financial statements as originally reported in the Company s annual report on Form 10-K for the year ended December 31, 2008 filed with the Securities and Exchange Commission on March 13, 2009, the increase (decrease) in each line item on the Company s consolidated financial statements as a result of the restatement and each line item on the Company s consolidated financial statements as restated.

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CONSOLIDATED BALANCE SHEETS
(in thousands except share and per share data)

	December 31, 2008			December 31, 2007		
	As Previously Reported	Effect of Restatement	Restated	As Previously Reported	Effect of Restatement	Restated
Assets						
Current assets						
Cash and cash equivalents	$ 129,192	$	$ 129,192	$ 197,042	$	$ 197,042
Accounts receivable, net of allowance for doubtful accounts of $330 and $223, respectively	73,120		73,120	13,068		13,068
Inventories	31,644	(548)	31,096	49,845	(1,218)	48,627
Leased assets held for sale	11,703	(213)	11,490			
Other current assets	11,088	(4,299)	6,789	7,223	(531)	6,692
Deferred income taxes	16,636	(633)	16,003	13,520	(16)	13,504
Total current assets	273,383	(5,693)	267,690	280,698	(1,765)	278,933
Property, plant and equipment, net	30,582		30,582	26,921		26,921
Railcars on operating leases	34,971	(236)	34,735			
Goodwill	21,521		21,521	21,521		21,521
Deferred income taxes	23,213	68	23,281	21,035		21,035
Other long-term assets	5,484		5,484	5,709		5,709
Total assets	$ 389,154	$ (5,861)	$ 383,293	$ 355,884	$ (1,765)	$ 354,119
Liabilities and Stockholders Equity						
Current liabilities						
Accounts payable	$ 60,986	$ (13,658)	$ 47,328	$ 39,525	$ (2,756)	$ 36,769
Accrued payroll and employee benefits	9,530		9,530	13,320		13,320
Accrued postretirement benefits	5,364		5,364	5,188		5,188
Accrued warranty	11,476		11,476	10,551		10,551
Customer deposits	7,367		7,367	19,836		19,836
Other current liabilities	7,939		7,939	7,100		7,100
Total current liabilities	102,662	(13,658)	89,004	95,520	(2,756)	92,764
Accrued pension costs	26,763		26,763	10,685		10,685
Accrued postretirement benefits, less current portion	55,293		55,293	47,890		47,890
Other long-term liabilities	7,407		7,407	3,717		3,717

Total liabilities	192,125	(13,658)	178,467	157,812	(2,756)	155,056
Commitments and contingencies						
Stockholders equity						
Preferred stock, $0.01 par value, 2,500,000 shares authorized (100,000 shares each designated as Series A voting and Series B non-voting, 0 shares issued and outstanding at December 31, 2008 and 2007)						
Common stock, $0.01 par value, 50,000,000 shares authorized, 12,731,678 and 12,731,678 shares issued at December 31, 2008 and 2007, respectively	127		127	127		127
Additional paid in capital	98,253		98,253	99,270		99,270
Treasury stock, at cost, 821,182 and 918,257 shares at December 31, 2008 and 2007, respectively	(38,871)		(38,871)	(43,597)		(43,597)
Accumulated other comprehensive loss	(16,471)		(16,471)	(9,857)		(9,857)
Retained earnings	153,890	7,797	161,687	152,129	991	153,120
Total FreightCar America stockholders equity	196,928	7,797	204,725	198,072	991	199,063
Noncontrolling interest in India JV	101		101			
Total stockholders equity	197,029	7,797	204,826	198,072	991	199,063
Total liabilities and stockholders equity	$ 389,154	$ (5,861)	$ 383,293	$ 355,884	$ (1,765)	$ 354,119

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CONSOLIDATED STATEMENTS OF INCOME
(in thousands except share and per share data)

	Year Ended December 31, 2008			2007		
	As Previously Reported	Effect of Restatement	Restated	As Previously Reported	Effect of Restatement	Restated
Revenues	$ 746,390	$	$ 746,390	$ 817,025	$	$ 817,025
Cost of sales	690,721	(11,124)	679,597	713,661	(1,537)	712,124
Gross profit	55,669	11,124	66,793	103,364	1,537	104,901
Selling, general and administrative expense (including non-cash stock-based compensation expense of $2,852 and $2,804, respectively)	31,717		31,717	38,914		38,914
Plant closure charges	20,037		20,037	30,836		30,836
Operating income	3,915	11,124	15,039	33,614	1,537	35,151
Interest income	3,827		3,827	8,349		8,349
Interest expense	396		396	420		420
Amortization and write-off of deferred financing costs	281		281	232		232
Income before income taxes	7,065	11,124	18,189	41,311	1,537	42,848
Income tax provision	2,451	4,318	6,769	14,843	546	15,389
Net income	4,614	6,806	11,420	26,468	991	27,459
Less: Net income attributable to noncontrolling interest in India JV						
Net income attributable to FreightCar America	$ 4,614	$ 6,806	$ 11,420	$ 26,468	$ 991	$ 27,459
Net income per common share attributable to FreightCar America basic	$ 0.39	$ 0.58	$ 0.97	$ 2.18	$ 0.08	$ 2.27

Net income per common share attributable to FreightCar America diluted	$ 0.39	$ 0.58	$ 0.97	$ 2.17	$ 0.08	$ 2.25
Weighted average common shares outstanding basic	11,788,400		11,788,400	12,115,712		12,115,712
Weighted average common shares outstanding diluted	11,833,132		11,833,132	12,188,901		12,188,901
Dividends declared per common share	$ 0.24		$ 0.24	$ 0.24		$ 0.24

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CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Year Ended December 31,					
	2008			2007		
	As Previously Reported	Effect of Restatement	Restated	As Previously Reported	Effect of Restatement	Restated
Cash flows from operating activities						
Net income	$ 4,614	$ 6,806	$ 11,420	$ 26,468	$ 991	$ 27,459
Adjustments to reconcile net income to net cash flows (used in) provided by operating activities						
Plant closure	20,037		20,037	30,836		30,836
Depreciation and amortization	4,380		4,380	3,910		3,910
Other non-cash items	589		589	2,160		2,160
Deferred income taxes	(1,065)	549	(516)	(11,911)	16	(11,895)
Compensation expense under stock option and restricted share award agreements	2,852		2,852	2,804		2,804
Changes in operating assets and liabilities:						
Accounts receivable	(60,052)		(60,052)	(1,699)		(1,699)
Inventories	18,193	(671)	17,522	54,875	1,218	56,093
Leased railcars held for sale	(11,703)	213	(11,490)			
Other current assets	2,346		2,346	(312)		(312)
Accounts payable	21,050	(10,902)	10,148	(62,742)	(2,756)	(65,498)
Accrued payroll and employee benefits	(4,475)		(4,475)	(2,004)		(2,004)
Income taxes receivable/payable	(8,705)	3,769	(4,936)	(11,922)	531	(11,391)
Accrued warranty	925		925	(1,500)		(1,500)
Customer deposits and other current liabilities	(11,871)		(11,871)	11,448		11,448
Deferred revenue, non-current	1,800		1,800			
Accrued pension costs and accrued postretirement benefits	(1,744)		(1,744)	987		987
Net cash flows (used in) provided by operating activities	(22,829)	(236)	(23,065)	41,398		41,398
Cash flows from investing activities						
Purchases of property, plant and equipment	(6,991)		(6,991)	(6,073)		(6,073)
	(35,437)	236	(35,201)			

Cost of railcars on operating leases produced or acquired						
Proceeds from sale of property, plant and equipment	18		18	11		11
Net cash flows (used in) provided by investing activities	(42,410)	236	(42,174)	(6,062)		(6,062)
Cash flows from financing activities						
Payments on long-term debt	(65)		(65)	(60)		(60)
Deferred financing costs paid	(838)		(838)	(211)		(211)
Stock repurchases				(50,000)		(50,000)
Issuance of common stock (net of issuance costs and deferred offering costs)	1,045		1,045	2,089		2,089
Investment in noncontrolling interest by joint venture partner	101		101			
Excess tax benefit from stock-based compensation				800		800
Cash dividends paid to stockholders	(2,854)		(2,854)	(2,938)		(2,938)
Net cash flows (used in) provided by financing activities	(2,611)		(2,611)	(50,320)		(50,320)
Net (decrease) increase in cash and cash equivalents	(67,850)		(67,850)	(14,984)		(14,984)
Cash and cash equivalents at beginning of year	197,042		197,042	212,026		212,026
Cash and cash equivalents at end of year	$ 129,192	$	$ 129,192	$ 197,042	$	$ 197,042
Supplemental cash flow information						
Cash paid for:						
Interest	$ 311	$	$ 311	$ 515	$	$ 515
Income tax refunds received	$ 1,737	$	$ 1,737	$ 70	$	$ 70
Income taxes paid	$ 9,740	$	$ 9,740	$ 37,147	$	$ 37,147

Non-cash transactions:						
Increase (decrease) in balance of property, plant and equipment on account	$ 235	$	$ 235	$ (771)	$	$ (771)

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Note 21 Selected Quarterly Financial Data (Unaudited)

Quarterly financial data is as follows:

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
	(in thousands except for per share data)			
2008 (as restated for all quarters)				
Sales	$ 95,098	$ 141,335	$ 238,008	$ 271,949
Gross profit	9,223	7,396	22,588	27,587
Net (loss) income attributable to FreightCar America(1)	(10,254)	(368)	10,043	12,000
Net (loss) income per common share attributable to FreightCar America basic(1)	(0.87)	(0.03)	0.85	1.01
Net (loss) income per common share attributable to FreightCar America diluted(1)	$ (0.87)	$ (0.03)	$ 0.85	$ 1.01
2007 (as restated for the fourth quarter)				
Sales	$322,451	$ 195,360	$ 162,112	$ 137,102
Gross profit	44,133	24,693	19,398	16,677
Net income (loss) attributable to FreightCar America(1)	22,952	11,453	8,681	(15,628)
Net income (loss) per common share attributable to FreightCar America basic(1)	1.82	0.94	0.73	(1.33)
Net income (loss) per common share attributable to FreightCar America diluted(1)	$ 1.80	$ 0.93	$ 0.73	$ (1.33)

(1) Results for the first quarter of 2008 and the fourth quarter of 2007 include plant closure charges of $18.3 million and $30.8 million, respectively (See Note 3 Plant Closure Charges for a description of these actions).

The Company has restated its consolidated balance sheets and the related consolidated statements of income, stockholders equity and cash flows as of and for the years ended December 31, 2008 and 2007 as discussed in Note 20. The following tables present the effects of the restatement on the Company s unaudited interim financial statements for the periods presented.

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CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)

	March 31, 2008			June 30, 2008		
	As Previously Reported	Effect of Restatement	Restated	As Previously Reported	Effect of Restatement	Restated
Assets						
Current assets						
Cash and cash equivalents	$ 161,747	$	$ 161,747	$ 150,855	$	$ 150,855
Accounts receivable, net of allowance for doubtful accounts of $274 and $351, respectively	6,295		6,295	6,806		6,806
Inventories	84,141	(813)	83,328	95,158	1,011	96,169
Leased assets held for sale	7,723	(11)	7,712	46,380	(279)	46,101
Other current assets	11,331	(509)	10,822	12,744	(758)	11,986
Deferred income taxes	10,863	(16)	10,847	16,390	(16)	16,374
Total current assets	282,100	(1,349)	280,751	328,333	(42)	328,291
Property, plant and equipment, net	27,292		27,292	27,717		27,717
Railcars on operating leases						
Goodwill	21,521		21,521	21,521		21,521
Deferred income taxes	25,838		25,838	26,909		26,909
Other long-term assets	5,541		5,541	5,373		5,373
Total assets	$ 362,292	$ (1,349)	$ 360,943	$ 409,853	$ (42)	$ 409,811
Liabilities and Stockholders Equity						
Current liabilities						
Accounts payable	$ 60,851	$ (2,301)	$ 58,550	$ 106,105	$ (1,512)	$ 104,593
Accrued payroll and employee benefits	19,286		19,286	9,363		9,363
Accrued postretirement benefits	5,188		5,188	5,188		5,188
Accrued warranty	10,173		10,173	10,916		10,916
Customer deposits				2,262		2,262
Other current liabilities	8,222		8,222	6,772		6,772
Total current liabilities	103,720	(2,301)	101,419	140,606	(1,512)	139,094
Accrued pension costs	15,367		15,367	20,881		20,881
Accrued postretirement benefits, less current portion	51,941		51,941	56,619		56,619

Other long-term liabilities	3,700		3,700	3,843		3,843
Total liabilities	174,728	(2,301)	172,427	221,949	(1,512)	220,437
Stockholders equity						
Preferred stock, $0.01 par value, 2,500,000 shares authorized (100,000 shares each designated as Series A voting and Series B non-voting, 0 shares issued and outstanding at March 31, 2008 and June 30, 2008)						
Common stock, $0.01 par value, 50,000,000 shares authorized, 12,731,678 and 12,731,678 shares issued at March 31, 2008 and June 30, 2008, respectively	127		127	127		127
Additional paid in capital	98,268		98,268	97,527		97,527
Treasury stock, at cost, 876,832 and 836,729 shares at March 31, 2008 and June 30, 2008, respectively	(41,630)		(41,630)	(39,726)		(39,726)
Accumulated other comprehensive loss	(9,691)		(9,691)	(9,627)		(9,627)
Retained earnings	140,490	952	141,442	139,603	1,470	141,073
Total FreightCar America stockholders equity	187,564	952	188,516	187,904	1,470	189,374
Noncontrolling interest in India JV						
Total stockholders equity	187,564	952	188,516	187,904	1,470	189,374
Total liabilities and stockholders equity	$ 362,292	$ (1,349)	$ 360,943	$ 409,853	$ (42)	$ 409,811

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CONDENSED CONSOLIDATED BALANCE SHEET
(in thousands, except share and per share data)

	September 30, 2008		
	As Previously Reported	Effect of Restatement	Restated
Assets			
Current assets			
Cash and cash equivalents	$ 128,053	$	$ 128,053
Accounts receivable, net of allowance for doubtful accounts of $275	68,320		68,320
Inventories	114,386	817	115,203
Leased assets held for sale	705		705
Other current assets	11,531		11,531
Deferred income taxes	13,052	(16)	13,036
Total current assets	336,047	801	336,848
Property, plant and equipment, net	30,184		30,184
Railcars on operating leases	35,156	(236)	34,920
Goodwill	21,521		21,521
Deferred income taxes	29,299		29,299
Other long-term assets	5,873		5,873
Total assets	$ 458,080	$ 565	$ 458,645
Liabilities and Stockholders Equity			
Current liabilities			
Accounts payable	$ 120,583	$ (5,833)	$ 114,750
Accrued payroll and employee benefits	9,442		9,442
Accrued postretirement benefits	5,188		5,188
Accrued warranty	11,303		11,303
Customer deposits	29,285		29,285
Other current liabilities	12,275	2,274	14,549
Total current liabilities	188,076	(3,559)	184,517
Accrued pension costs	14,316		14,316
Accrued postretirement benefits, less current portion	56,516		56,516
Other long-term liabilities	3,920		3,920
Total liabilities	262,828	(3,559)	259,269
Stockholders equity			
Preferred stock, $0.01 par value, 2,500,000 shares authorized (100,000 shares each designated as Series A voting and Series B			

non-voting, 0 shares issued and outstanding at September 30, 2008)			
Common stock, $0.01 par value, 50,000,000 shares authorized, 12,731,678 shares issued at September 30, 2008	127		127
Additional paid in capital	98,216		98,216
Treasury stock, at cost, 838,909 shares at September 30, 2008	(39,807)		(39,807)
Accumulated other comprehensive loss	(9,562)		(9,562)
Retained earnings	146,278	4,124	150,402
Total FreightCar America stockholders equity	195,252	4,124	199,376
Noncontrolling interest in India JV			
Total stockholders equity	195,252	4,124	199,376
Total liabilities and stockholders equity	$ 458,080	$ 565	$ 458,645

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CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except share and per share data)

	Three Months Ended					
	March 31, 2008			June 30, 2008		
	As Previously Reported	Effect of Restatement	Restated	As Previously Reported	Effect of Restatement	Restated
Revenues	$ 95,098	$	$ 95,098	$ 141,335	$	$ 141,335
Cost of sales	85,815	60	85,875	134,706	(767)	133,939
Gross profit	9,283	(60)	9,223	6,629	767	7,396
Selling, general and administrative expense (including non-cash stock-based compensation expense of $964 and $729, respectively)	8,586		8,586	7,283		7,283
Plant closure charges	18,263		18,263	1,602		1,602
Operating (loss) income	(17,566)	(60)	(17,626)	(2,256)	767	(1,489)
Interest income	1,344		1,344	746		746
Interest expense	82		82	76		76
Amortization and write-off of deferred financing costs	20		20	21		21
Operating (loss) income before income taxes	(16,324)	(60)	(16,384)	(1,607)	767	(840)
Income tax (benefit) provision	(6,108)	(22)	(6,130)	(721)	249	(472)
Net (loss) income	(10,216)	(38)	(10,254)	(886)	518	(368)
Less: Net income attributable to noncontrolling interest in India JV						
Net (loss) income attributable to FreightCar America	$ (10,216)	$ (38)	$ (10,254)	$ (886)	$ 518	$ (368)
Net (loss) income per common share attributable to FreightCar America basic	$ (0.87)	$ 0.00	$ (0.87)	$ (0.08)	$ 0.04	$ (0.03)

Net (loss) income per common share attributable to FreightCar America diluted	$ (0.87)	$ 0.00	$ (0.87)	$ (0.08)	$ 0.04	$ (0.03)
Weighted average common shares outstanding basic	11,739,799		11,739,799	11,780,327		11,780,327
Weighted average common shares outstanding diluted	11,739,799		11,739,799	11,780,327		11,780,327
Dividends declared per common share	$ 0.12		$ 0.12	$		$

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CONDENSED CONSOLIDATED STATEMENTS OF INCOME
(in thousands, except share and per share data)

	Three Months Ended					
	September 30, 2008			December 31, 2008		
	As Previously Reported	Effect of Restatement	Restated	As Previously Reported	Effect of Restatement	Restated
Revenues	$ 238,008	$	$ 238,008	$ 271,949	$	$ 271,949
Cost of sales	219,591	(4,171)	215,420	250,609	(6,247)	244,362
Gross profit	18,417	4,171	22,588	21,340	6,247	27,587
Selling, general and administrative expense (including non-cash stock-based compensation expense of $608 and $551, respectively)	7,207		7,207	8,641		8,641
Plant closure charges	268		268	(96)		(96)
Operating income	10,942	4,171	15,113	12,795	6,247	19,042
Interest income	884		884	853		853
Interest expense	81		81	157		157
Amortization and write-off of deferred financing costs	171		171	69		69
Income before income taxes	11,574	4,171	15,745	13,422	6,247	19,669
Income tax provision	4,185	1,517	5,702	5,095	2,574	7,669
Net income	7,389	2,654	10,043	8,327	3,673	12,000
Less: Net income attributable to noncontrolling interest in India JV						
Net income attributable to FreightCar America	$ 7,389	$ 2,654	$ 10,043	$ 8,327	$ 3,673	$ 12,000
Net income per common share attributable to FreightCar America basic	$ 0.63	$ 0.22	$ 0.85	$ 0.70	$ 0.31	$ 1.01

Net income per common share attributable to FreightCar America diluted	$	0.62	$	0.22	$	0.85	$	0.70	$	0.31	$	1.01
Weighted average common shares outstanding basic		11,809,024				11,809.024		11,823,835				11,823,835
Weighted average common shares outstanding diluted		11,841,236				11,841,236		11,826,598				11,826,598
Dividends declared per common share	$	0.06			$	0.06	$	0.06			$	0.06

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CONDENSED CONSOLIDATED STATEMENT OF OPERATIONS
(in thousands, except share and per share data)

	Three Months Ended December 31, 2007		
	As Previously Reported	Effect of Restatement	Restated
Revenues	$ 137,102	$	$ 137,102
Cost of sales	121,962	(1,537)	120,425
Gross profit	15,140	1,537	16,677
Selling, general and administrative expense (including non-cash stock-based compensation expense of $724)	12,379		12,379
Plant closure charges	30,836		30,836
Operating (loss) income	(28,075)	1,537	(26,538)
Interest income	1,781		1,781
Interest expense	68		68
Amortization and write-off of deferred financing costs	22		22
Operating (loss) income before income taxes	(26,384)	1,537	(24,847)
Income tax (benefit) provision	(9,766)	546	(9,220)
Net (loss) income	(16,618)	991	(15,627)
Less: Net income attributable to noncontrolling interest in India JV			
Net (loss) income attributable to FreightCar America	$ (16,618)	$ 991	$ (15,627)
Net (loss) income per common share attributable to FreightCar America basic	$ (1.42)	$ 0.08	$ (1.33)
Net (loss) income per common share attributable to FreightCar America diluted	$ (1.42)	$ 0.08	$ (1.33)
Weighted average common shares outstanding basic	11,730,568		11,730,568
Weighted average common shares outstanding diluted	11,730,568		11,730,568

Dividends declared per common share	$ 0.06	$ 0.06

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Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure.
None.
Item 9A. Controls and Procedures.
Evaluation of Disclosure Controls and Procedures
Under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, management evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the Exchange Act)), as of the end of the period covered by our annual report on Form 10-K for the fiscal year ended December 31, 2008 (the Evaluation Date). Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer previously concluded that, as of the Evaluation Date, our disclosure controls and procedures were effective to ensure that information required to be disclosed in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Securities and Exchange Commission s rules and forms. In connection with the restatement of our financial statements in this annual report on Form 10-K/A described in the introductory Explanatory Note, management reevaluated the effectiveness of the design and operation of our disclosure controls and procedures as of the Evaluation Date. Based on that reevaluation, the Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were not effective as of the Evaluation Date.
Background of Restatement
On July 28, 2009, the Company announced that it had identified historical accounting errors relating to accounts payable. The accounting errors have resulted in the understatement of cumulative net earnings since the fourth quarter of 2007. The Company undertook a review to determine the total amount of the errors and the accounting periods in which the errors occurred.
The Company purchases certain components for the manufacture of railcars that are assembled by third parties. After assembly, the components are shipped to one of the Company s manufacturing locations. The Company owns the components during the third-party assembly, even though the components are not delivered to the Company until assembly is complete. These components are made from commodity metals (e.g., steel and aluminum). Price revisions of commodity metals are reflected in surcharges by the suppliers.
In October 2007, the Company put in place a new process that was intended to allow it to better track and reconcile inventory held at third-party assemblers. The process included a new program within the Company s information technology operating system (the third-party inventory processing system) that was intended to capture third-party inventory activity, post this activity, and accrue the related payable (the unvouchered payable) in advance of receiving an invoice In connection with the implementation of the Company s new Enterprise Resource Planning (ERP) system, the Company discovered that the balance in the unvouchered payables account was significantly overstated. Examples of the types of transactions that were improperly accounted for and contributed to this overstatement include:

(1) Surcharge Processing The differences between the estimated surcharge amounts (which were used to determine the accrual amount) and the actual surcharge amount listed on the invoice were not consistently reflected as adjustments to the carrying value of inventory by the third-party inventory processing system and a significant portion of these differences remained in the unvouchered payables account rather than properly being relieved to the cost of the assembled components.

(2) Credit Memo Recording Credit memos were incorrectly recorded by the Company. In certain cases, when a credit memo received from a vendor was processed, the amount of the credit memo was improperly posted to the unvouchered payables account rather than relieved to the cost of the inventory.

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The Company has determined that these errors occurred due to flaws in the testing and design of the third-party inventory processing system noted above as well as a failure of the accounting controls designed to detect such errors. Due to the nature and amount of the errors, the Company has concluded that these IT and accounting deficiencies represent material weaknesses as more fully described below.

The Company s review was overseen by the Audit Committee with the assistance of management, and legal counsel, IT consultants and forensic accountants engaged by management. The Audit Committee concluded on July 27, 2009 that the Company s previously issued audited consolidated financial statements as of and for the fiscal years ended December 31, 2008 and December 31, 2007, and unaudited interim consolidated financial statements as of and for the quarterly periods ended March 31, 2009, September 30, 2008, June 30, 2008 and March 31, 2008 should no longer be relied upon because of these errors in the financial statements. The Company s board of directors agreed with the Audit Committee s conclusions.

Inherent Limitations on Effectiveness of Controls

The Company s management, including the Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent or detect all error and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system s objectives will be met. The design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Further, because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, within the Company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty and that breakdowns can occur because of simple error or mistake. Controls can also be circumvented by the individual acts of some persons, by collusion of two or more people or by management override of the controls. The design of any system of controls is based in part on certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Projections of any evaluation of controls effectiveness to future periods are subject to risks. Over time, controls may become inadequate because of changes in conditions or deterioration in the degree of compliance with policies or procedures.

MANAGEMENT S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING (AS REVISED)

Management, under the supervision of the Chief Executive Officer and Chief Financial Officer, is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting, as defined in Rules 13a-15(f) and 15d-15(f) promulgated under the Exchange Act, is a process designed by, or under the supervision of, the Chief Executive Officer and Chief Financial Officer and effected by the board of directors, management and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with GAAP.

Internal control over financial reporting includes those policies and procedures that:

- pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company;

- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP;

- provide reasonable assurance that receipts and expenditures of the Company are being made only in accordance with appropriate authorization of management and the board of directors; and

- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company s assets that could have a material effect on the financial statements.

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In connection with the preparation of this amended annual report and restatement of the Company s 2008 and 2007 consolidated financial statements, management, under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, reassessed its evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2008 based on the framework established in *Internal Control Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). As a result of that reassessment, management identified control deficiencies as of December 31, 2008 that constituted material weaknesses and, accordingly, the Chief Executive Officer and Chief Financial Officer concluded that the Company did not maintain effective internal control over financial reporting as of December 31, 2008.

Description of Material Weaknesses

A material weakness in internal control over financial reporting is defined as a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the Company s annual or interim financial statements will not be prevented or detected on a timely basis.

Management identified the following control deficiencies as of December 31, 2008 that constituted material weaknesses:

System Change Controls

The Company s controls to test changes in its information system did not operate effectively. Upon implementation, the third-party inventory processing system was not appropriately tested prior to migration to the production environment. As a result, inaccurate and incomplete programming logic was utilized in the third-party inventory processing system.

Inventory Valuation Controls

The Company s controls to value assembled components did not operate effectively. The third-party inventory processing system did not consistently or accurately calculate inventory values or appropriately relieve the corresponding unvouchered payables to the cost of the assembled components. As a result, inaccurate amounts were recorded to inventories, cost of sales, leased assets held for sale, railcars on operating leases, and unvouchered payables.

Account Reconciliation Controls

The Company s controls to reconcile unvouchered payables were not designed effectively. The reconciliation did not contain a sufficient level of detail or analysis to detect errors in the account balance. As a result, misstatements in the unvouchered payables account were not detected in a timely manner.

These material weaknesses resulted in material errors recorded within inventories, cost of sales, leased assets held for sale, railcars on operating leases and unvouchered payables.

Deloitte & Touche LLP, the Company s independent registered public accounting firm, has issued an attestation report on the Company s internal control over financial reporting, included in Item 8 of this annual report on Form 10-K/A.

CHANGES IN INTERNAL CONTROL OVER FINANCIAL REPORTING

There has been no change in our internal control over financial reporting during the last fiscal quarter of 2008 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

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See Management s Report on Internal Control Over Financial Reporting above.

CHANGES IN INTERNAL CONTROL OVER FINANCIAL REPORTING SUBSEQUENT TO THE YEAR ENDED DECEMBER 31, 2008

During the quarter ended June 30, 2009, the Company began implementing the remediation measures described below, including policies and procedures covering the reconciliation of the unvouchered payables account and more accurate recording of credit memos and surcharges. This implementation process is continuing. Additionally, the new ERP system, described below, is designed to enhance internal control over the entire accounting and financial reporting process. Management believes that the remediation measures described below will remediate the identified control deficiencies. However, management continues to evaluate and work to improve its internal control over financial reporting. It may be determined that additional measures must be taken to address control deficiencies.

REMEDIATION STEPS TO ADDRESS MATERIAL WEAKNESSES

In response to the material weaknesses identified above, management, under the supervision of the Chief Executive Officer and Chief Financial Officer, proposed and began to implement the measures described below to address the material weaknesses, in addition to the implementation of the new ERP system that was already in progress. This remediation effort is intended both to address the identified material weaknesses and to enhance the Company s overall financial control environment.

<u>ERP System</u>

During the fiscal year ended December 31, 2008, management, after a thorough evaluation of its current information technology systems and its future needs, determined to upgrade its existing information technology system to a fully integrated ERP system to be provided by Oracle Corporation. Design, implementation and testing of the system has been completed as of August 1, 2009. Management believes that the integrated and standardized features of the new system will eliminate all of the system design and implementation limitations of the old software that contributed to the material weaknesses, including the proper processing of vendor credit memos and differences between estimated and actual surcharges on third-party inventory. Among these improvements is the elimination of non-integrated stand-alone operating and general ledger systems, as well as the creation of a complete and detailed listing, or subsidiary ledger, of balances and amounts in the unvouchered payables account. Management expects the ERP system to significantly improve the Company s internal control framework.

<u>Account Reconciliations</u>

Management is in the process of revising its policies and procedures for the reconciliation of significant balance sheet accounts to provide for a more robust and detailed reconciliation to support month-end and quarterly balances. In connection with the implementation of the new ERP system, management is preparing a procedure governing the reconciliation of the unvouchered payables account and other accounts, which will be distributed to the appropriate accounting and supervisory personnel prior to the end of the third quarter of 2009.

The material weaknesses identified by management are not fully remediated as of the date of the filing of this amended annual report on Form 10-K/A. The Company has performed substantive procedures in an effort to ensure that the financial information reflected in this report is supported and the financial statements are fairly presented as of the date of this report. The Audit Committee has directed management to develop a detailed plan and timetable for the implementation of the above-referenced remediation measures to the extent they are not already complete and will monitor their implementation. In addition, under the direction of the Audit Committee, management will continue to review and make necessary changes to the overall design of the system of internal controls and the control environment, as well as policies and procedures to improve the overall effectiveness of internal control over financial reporting.

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Item 9B. Other Information.

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

Information required to be disclosed by this item is hereby incorporated by reference to the information under the captions Board of Directors, Stock Ownership, Section 16(a) Beneficial Ownership Reporting Compliance and Executive Compensation in our definitive Proxy Statement filed with the Securities and Exchange Commission on April 8, 2009.

Item 11. Executive Compensation.

Information required to be disclosed by this item is hereby incorporated by reference to the information under the captions Executive Compensation , Board of Directors , Compensation Discussion and Analysis and Director Compensation for the Year Ended December 31, 2008 in our definitive Proxy Statement filed with the Securities and Exchange Commission on April 8, 2009.

As more fully described in Note 20 to the accompanying consolidated financial statements for the year ended December 31, 2008, the Company has restated its consolidated financial statements as of and for the years ended December 31, 2008 and 2007. The restated financial statements indicate that the Company achieved a higher Return on Net Assets (RONA) for the year ended December 31, 2008 than was reflected in the financial statements that were included in the Original Filing. As a result, certain of the Company s Named Executive Officers (NEOs) may have been eligible for an annual incentive program award pursuant to the Company s 2005 Long Term Incentive Plan that was higher than the amount that such NEO received under the program for 2008. However, as permitted under the plan, the compensation committee of the Board of the Directors of the Company has determined not to make any additional payments under the program for 2008.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

Information required to be disclosed by this item is hereby incorporated by reference to the information under the captions Stock Ownership and Equity Compensation Plan Information in our definitive Proxy Statement filed with the Securities and Exchange Commission on April 8, 2009.

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

Information required to be disclosed by this item is hereby incorporated by reference to the information under the captions Certain Transactions and Board of Directors in our definitive Proxy Statement filed with the Securities and Exchange Commission on April 8, 2009.

Item 14. Principal Accounting Fees and Services.

Information required to be disclosed by this item is hereby incorporated by reference to the information under the caption Fees of Independent Registered Public Accounting Firm and Audit Committee Report in our definitive Proxy Statement filed with the Securities and Exchange Commission on April 8, 2009.

PART IV

Item 15. Exhibits, Financial Statement Schedules.

Exhibits

(a) Documents filed as part of this report:

The following financial statements are included in this Form10-K:

1. Consolidated Financial Statements of FreightCar America, Inc.

Management s Report on Internal Control Over Financial Reporting.

Report of Independent Registered Public Accounting Firm.

Consolidated Balance Sheets as of December 31, 2008 and 2007 (as restated).

Consolidated Statements of Income for the years ended December 31, 2008, 2007 (as restated) and 2006.

Consolidated Statements of Stockholders Equity for the years ended December 31, 2008, 2007 (as restated) and 2006.

Consolidated Statements of Cash Flows for the years ended December 31, 2008, 2007 (as restated) and 2006.

Notes to Consolidated Financial Statements.

2. Financial Statement Schedule

The following financial statement schedule is a part of this Form 10-K/A and should be read in conjunction with our audited consolidated financial statements.

Schedule II Valuation and Qualifying Accounts

All other financial statement schedules are omitted because such schedules are not required or the information required has been presented in the aforementioned financial statements.

3. The exhibits listed on the Exhibit Index to this Form 10-K/A are filed with this Form 10-K/A or incorporated by reference as set forth below.

(b) The exhibits listed on the Exhibit Index to this Form 10-K/A are filed with this Form 10-K/A or incorporated by reference as set forth below.

(c) Additional Financial Statement Schedules

None.

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

FREIGHTCAR AMERICA, INC.

Date: September 16, 2009

By: /s/ Christian B. Ragot
Christian B. Ragot, President and
Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Christian B. Ragot **Christian B. Ragot**	President and Chief Executive Officer (principal executive officer) and Director	September 16, 2009
/s/ Christopher L. Nagel **Christopher L. Nagel**	Vice President, Finance and Chief Financial Officer (principal financial officer and principal accounting officer)	September 16, 2009
/s/ Thomas M. Fitzpatrick **Thomas M. Fitzpatrick**	Chairman of the Board and Director	September 16, 2009
/s/ James D. Cirar **James D. Cirar**	Director	September 16, 2009
/s/ William D. Gehl **William D. Gehl**	Director	September 16, 2009
/s/ Thomas A. Madden **Thomas A. Madden**	Director	September 16, 2009
/s/ S. Carl Soderstrom **S. Carl Soderstrom**	Director	September 16, 2009
/s/ Robert N. Tidball **Robert N. Tidball**	Director	September 16, 2009

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FreightCar America, Inc. and Subsidiaries
Schedule II Valuation and Qualifying Accounts
For the Years Ended December 31, 2008, 2007 and 2006
(in thousands)

	Balance at Beginning of Period	Additions Charged to Costs and Expenses	Accounts Charged Off and Recoveries of Amounts Previously Written Off	Balance at End of Period
Year Ended December 31, 2008				
Allowance for doubtful accounts	$ 223	$ 107	$	$ 330
Deferred tax assets valuation allowance	3,585	3,452		7,037
Inventory reserve	1,177		$ (1,027)	150
Year Ended December 31, 2007				
Allowance for doubtful accounts	$ 191	$ 47	$ (15)	$ 223
Deferred tax assets valuation allowance	2,921	664		3,585
Inventory reserve		1,951	$ (774)	1,177
Year Ended December 31, 2006				
Allowance for doubtful accounts	$ 115	$ 79	$ (3)	$ 191
Deferred tax assets valuation allowance	3,691		(770)	2,921

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EXHIBIT INDEX

3.1 Certificate of Ownership and Merger of FreightCar America, Inc. into FCA Acquisition Corp., as amended (incorporated by reference to Exhibit 3.1 to the Company s Current Report on Form 8-K filed with the Commission on September 7, 2006).

3.2 Third Amended and Restated By-laws of FreightCar America, Inc. (incorporated by reference to Exhibit 3.1 to the Company s Current Report filed on Form 8-K filed with the Commission on September 28, 2007).

4.1 Form of Registration Rights Agreement, by and among FreightCar America, Inc., Hancock Mezzanine Partners, L.P., John Hancock Life Insurance Company, Caravelle Investment Fund, L.L.C., Trimaran Investments II, L.L.C., Camillo M. Santomero, III, and the investors listed on Exhibit A attached thereto (incorporated by reference to Exhibit 4.3 to Registration Statement Nos. 333-123384 and 333-123875 filed with the Commission on April 4, 2005).

10.1 Employment Agreement, dated as of January 14, 2009, by and between FreightCar America, Inc. and Christopher L. Nagel (incorporated by reference to Exhibit 10.1 to the Company s Current Report on Form 8-K filed with the Commission on December 17, 2008).

10.2 Employment Agreement, dated as of January 10, 2008, by and between FreightCar America, Inc. and Nicholas J. Matthews (incorporated by reference to Exhibit 10.2 to the Company s Annual Report on Form 10-K for the year ended December 31, 2008 filed with the Commission on March 13, 2009).

10.3 Employment Agreement, dated as of January 3, 2007, between FreightCar America, Inc. and Christian Ragot (incorporated by reference to Exhibit 10.9 to the Company s Annual Report on Form 10-K for the year ended December 31, 2006 filed with the Commission on March 13, 2007).

10.4 Amendment to employment agreement of Christian Ragot dated as of December 29, 2008 (incorporated by reference to Exhibit 10.4 to the Company s Annual Report on Form 10-K for the year ended December 31, 2008 filed with the Commission on March 13, 2009).

10.5 Amendment to employment agreement of Laurence M. Trusdell dated as of December 29, 2008 (incorporated by reference to Exhibit 10.5 to the Company s Annual Report on Form 10-K for the year ended December 31, 2008 filed with the Commission on March 13, 2009).

10.6 Employment Agreement, dated as of May 1, 2007, between FreightCar America, Inc. and Charles Magolske (incorporated by reference to Exhibit 10.6 to the Company s Annual Report on Form 10-K for the year ended December 31, 2008 filed with the Commission on March 13, 2009).

10.7 Amendment to employment agreement of Charles J. Magolske dated as of December 29, 2008 (incorporated by reference to Exhibit 10.7 to the Company s Annual Report on Form 10-K for the year ended December 31, 2008 filed with the Commission on March 13, 2009).

10.8 Amendment to employment agreement of Nicholas J. Matthews dated as of December 29, 2008 (incorporated by reference to Exhibit 10.8 to the Company s Annual Report on Form 10-K for the year ended December 31, 2008 filed with the Commission on March 13, 2009).

10.9 FreightCar America, Inc. 2005 Long Term Incentive Plan (Restated to incorporate all Amendments) (incorporated by reference to Appendix I to the Company s Proxy Statement for the annual meeting of stockholders held on May 14, 2008 filed with the Commission on April 8, 2008).

10.10 Form of Restricted Share Award Agreement for the Company s employees (incorporated by reference to Exhibit 10.1 to the Company s Current Report on Form 8-K filed with the Commission on December 12, 2005).

10.11 Form of Restricted Share Award Agreement for the Company s independent directors (incorporated by reference to Exhibit 10.1 to the Company s Current Report on Form 8-K filed with the Commission on January 27, 2006).

10.12 Form of Restricted Share Award Agreement for the Company s employees (incorporated by reference to Exhibit 10.1 to the Company s Current Report on Form 8-K filed with the Commission on January 15, 2008).

10.13 Form of Stock Option Award Agreement for the Company s employees (incorporated by reference to Exhibit 10.1 to the Company s Current Report on Form 8-K filed with the Commission on January 15, 2008).

10.14 Lease Agreement, dated as of December 20, 2004, by and between Norfolk Southern Railway Company and Johnstown America Corporation (the Lease Agreement) (incorporated by reference to Exhibit 10.27 to Registration Statement Nos. 333-123384 and 333-123875 filed with the Commission on April 4, 2005).*

10.15 Amendment to the Lease Agreement, dated as of December 1, 2005 (incorporated by reference to Exhibit 10.11 to the Company s Annual Report on Form 10-K for the year ended December 31, 2005).*

10.16 Second Amendment to the Lease Agreement, dated as of February 1, 2008, by and between Norfolk Southern Railway Company and Johnstown America Corporation (incorporated by reference to Exhibit 10.1 to the Company s Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2008 filed with the Commission on May 12, 2008).

10.17 Second Amended and Restated Credit Agreement, dated as of August 24, 2007, by and among Johnstown America Corporation, Freight Car Services, Inc., JAC Operations, Inc., JAIX Leasing Company and FreightCar Roanoke, Inc. as the Co-Borrowers, the lenders party thereto, LaSalle Bank National Association, as Administrative Agent and Arranger, and National City Business Credit, Inc., as Collateral Agent (incorporated by reference to Exhibit 10.1 to the Company s Current Report on Form 8-K filed with the Commission on August 28, 2007).

10.18 First Amendment to Second Amended and Restated Credit Agreement, dated as of September 30, 2008, by and among Johnstown America Corporation, Freight Car Services, Inc., JAC Operations, Inc., JAIX Leasing Company and FreightCar Roanoke, Inc., as the Co-Borrowers, the lenders party thereto and LaSalle Bank National Association, as Administrative Agent (incorporated by reference to Exhibit 10.1 to the Company s Current Report on Form 8-K filed with the Commission on October 6, 2008).

10.19 Second Amendment to Second Amended and Restated Credit Agreement, dated as of March 11, 2009, by and among Johnstown America Corporation, Freight Car Services, Inc., JAC Operations, Inc., JAIX Leasing Company and FreightCar Roanoke, Inc., as the Co-Borrowers, the lenders party thereto and Bank of America, N.A., as successor by merger to LaSalle Bank National Association, as Administrative Agent (incorporated by reference to Exhibit 10.19 to the Company s Annual Report on Form 10-K for the year ended December 31, 2008 filed with the Commission on March 13, 2009).

10.20 Guarantee Agreement, dated as of September 30, 2008, by JAIX Leasing Company in favor of LaSalle Bank National Association, as Administrative Agent, for the benefit of the lenders party thereto (incorporated by reference to Exhibit 10.2 to the Company s Current Report on Form 8-K filed with the Commission on October 6, 2008).

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10.21 Credit Agreement, dated as of September 30, 2008, by and among JAIX Leasing Company, as Borrower, Bank of America, N.A., as Administrative Agent, the lenders party thereto and Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager (incorporated by reference to Exhibit 10.3 to the Company s Current Report on Form 8-K filed with the Commission on October 6, 2008).

10.22 First Amendment to Credit Agreement, dated as of March 11, 2009, by and among JAIX Leasing Company, as Borrower, Bank of America, N.A., as Administrative Agent, the lenders party thereto and Banc of America Securities LLC, as Sole Lead Arranger and Sole Book Manager (incorporated by reference to Exhibit 10.22 to the Company s Annual Report on Form 10-K for the year ended December 31, 2008 filed with the Commission on March 13, 2009).

10.23 Guarantee Agreement, dated as of September 30, 2008, by FreightCar America, Inc. in favor of Bank of America, N.A., as Administrative Agent, for the benefit of the lenders party thereto (incorporated by reference to Exhibit 10.4 to the Company s Current Report on Form 8-K filed with the Commission on October 6, 2008)

10.24 Management Incentive Plan of Johnstown America Corporation (incorporated by reference to Exhibit 10.29 to Registration Statement Nos. 333-123384 and 333-123875 filed with the Commission on March 17, 2005).

10.25 Consulting Agreement, dated as of June 3, 1999, between Rabbit Hill Holdings, Inc., Johnstown America Corporation, Freight Car Services, Inc., JAIX Leasing Company and JAC Patent Company and James D. Cirar (incorporated by reference to Exhibit 10.10 to Registration Statement Nos. 333-123384 and 333-123875 filed with the Commission on March 17, 2005).

10.26 Amendment to Consulting Agreement, dated March 7, 2005, between FreightCar America, Inc. and James D. Cirar (incorporated by reference to Exhibit 10.10.1 to Registration Statement Nos. 333-123384 and 333-123875 filed with the Commission on March 17, 2005).

10.27 Form of Letter of Resignation (incorporated by reference to Exhibit 10.1 to the Company s Current Report on Form 8-K filed with the Commission on December 19, 2006).

10.28 Letter of Resignation (incorporated by reference to Exhibit 10.1 to the Company s Current Report on Form 8-K filed with the Commission on January 29, 2007).

21 Subsidiaries of FreightCar America, Inc. (incorporated by reference to Exhibit 21 to the Company s Annual Report on Form 10-K for the year ended December 31, 2008 filed with the Commission on March 13, 2009).

31.1 Certification of Chief Executive Officer pursuant to Rule 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

31.2 Certification of Chief Financial Officer pursuant to Rule 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

32 Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

* Confidential treatment has been granted for the redacted

portions of this exhibit. A complete copy of the exhibit, including the redacted portions, has been filed separately with the Securities and Exchange Commission.

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