FreightCar America, Inc.
Form 10-K
March 13, 2007
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

x ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended December 31, 2006

or

¨ 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 National Market**

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

None.

Indicate by check mark it the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. YES x NO ¨

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. YES ¨ NO x

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 x NO ¨

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant s knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment of this Form 10-K. ¨

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of accelerated filer and large accelerated filer in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ¨ Accelerated filer x Non-accelerated filer ¨

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

The aggregate market value of the registrant s common stock held by non-affiliates of the registrant as of June 30, 2006 was $697.3 million, based on the closing price of $55.51 per share on the Nasdaq National Market.

As of February 28, 2007, there were 12,733,511 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 2007 annual meeting of stockholders to be filed pursuant to Regulation 14A within 120 days of the end of the registrant s fiscal year ended December 31, 2006	Part III

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FREIGHTCAR AMERICA, INC.

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PART I

Item 1. Business.

OVERVIEW

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 coal-carrying railcars, which represented 96% of our deliveries of railcars in 2006 and 93% of our deliveries of railcars in 2005, 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 have currently chosen not to offer significant railcar leasing services, as we have made a strategic decision not to compete with our customers that provide railcar leasing services, which represent a significant portion of our revenue.

We are the leading North American manufacturer of coal-carrying railcars. We estimate that we have manufactured 81% of the coal-carrying railcars delivered over the three years ended December 31, 2006 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 manufacturing facilities are located in Danville, Illinois, Johnstown, Pennsylvania and Roanoke, Virginia. Each of our manufacturing facilities has 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.

Our primary customers are financial institutions, railroads and shippers, which represented 49%, 10%, and 41%, respectively, of our total sales attributable to each type of customer for the year ended December 31, 2006. In the year ended December 31, 2006, we delivered 18,764 new railcars, including 17,959 aluminum-bodied coal-carrying railcars. Our total backlog of firm orders for new railcars decreased from 20,729 railcars as of December 31, 2005 to 9,315 railcars as of December 31, 2006, representing estimated sales of $1.4 billion and $697 million, respectively, attributable to such backlog.

We and our predecessors have been manufacturing railcars since 1901. From 1923 to 1991, our business was owned and operated by Bethlehem Steel Corporation. In 1991, Transportation Technologies Industries, Inc., or TTII (then known as Johnstown America Industries, Inc.), purchased our business from Bethlehem Steel. In June 1999, TTII sold our railcar business to an investor group led by certain members of TTII s management who became our management. In December 2004, we changed our name from JAC Holdings International, Inc. to FreightCar America, Inc. to better reflect our business of manufacturing railcars.

Prior to April 1, 2005, our company was named FCA Acquisition Corp. On April 1, 2005, our former parent company, also named FreightCar America, Inc., merged with and into FCA Acquisition Corp., with FCA Acquisition Corp. being the surviving corporation. In connection with the merger, FCA Acquisition Corp. changed its name to FreightCar America, Inc. We refer to our former parent company s merger with FCA Acquisition Corp., the name change and related share exchanges as the merger. The surviving corporation of the merger is incorporated in Delaware.

On April 11, 2005, we completed an initial public offering of shares of our common stock. On September 27, 2005, we completed a secondary public offering of shares of our common stock by selling stockholders.

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 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.

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OUR PRODUCTS AND SERVICES

We design and manufacture aluminum-bodied and steel-bodied railcars that are used in various industries. In particular, we have expertise in the manufacture of aluminum-bodied coal-carrying railcars

The types of railcars listed below include the major types of railcars that we are capable of manufacturing; however, some of the types of railcars listed below have not been ordered by any of our customers or manufactured by us in a number of years.

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

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

BethGon Series. The BethGon is the leader in the aluminum-bodied coal-carrying gondola railcar segment. We believe the BethGon railcar can carry more coal than traditional gondola railcars. Since we introduced the steel BethGon railcar in the late 1970s and the aluminum BethGon railcar in 1986, the BethGon railcar has become the most widely used coal-carrying railcar in North America. The BethGon railcar represented 45%, 33% and 48% of all the railcars we delivered in 2006, 2005 and 2004, respectively, and 41%, 28% and 37% of total revenue in 2006, 2005 and 2004, respectively.

We have continuously improved the BethGon s design since we began making this railcar. The improvements have been aimed at increasing carrying capacity and reducing weight while maintaining structural integrity. In 1986, we introduced the use of aluminum construction. The use of aluminum lowered each railcar s weight from approximately 60,000 pounds to approximately 42,000 pounds. We believe the new design increased hauling capacity by approximately nine tons per railcar over traditional flat-bottomed gondolas and lowered the railcar s center of gravity, providing a smoother ride with less wear on the railcar. In 1994, we introduced a higher payload aluminum gondola coal-carrying railcar, called the AeroFlo BethGon, which had redesigned sides for improved aerodynamics and greater fuel efficiency. In 2001, we introduced a new gondola coal-carrying railcar, the BethGon II, which has a 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 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, in 1996, we introduced the AutoFlood II . The AutoFlood II has smooth exterior sides that we believe maximize loading capacity and increase efficiency by reducing wind drag. The AutoFlood II s automatic rapid discharge system, the MegaFlo door system, incorporates a patented mechanism that uses an over-center locking design enabling the cargo door to close with tension rather than compression. The MegaFlo door system, which opens to its full width in only two seconds, provides a door opening which we believe is approximately 68% wider than any competing door system and does not require periodic door adjustments. In addition, the MegaFlo door system design reduces wear on the railcar. In 2002, we introduced the AutoFlood III , which has a smooth interior side that maintains the features of the MegaFlo door system while improving the railcar s flow characteristics for coal types that are difficult to unload. AutoFlood railcars can be equipped with rotary couplers to also permit rotary unloading. In 2006, our production of the AutoFlood III represented 34% of the total deliveries in the coal-carrying railcar market and 53% of the coal-carrying railcars we produced. The AutoFlood series represented 51%, 57% and 30% of all the railcars we delivered in 2006, 2005 and 2004, respectively, and 54%, 58% and 30% of total revenue in 2006, 2005 and 2004, respectively.

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.

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Our portfolio of other railcar types that we offer includes:

Aluminum Vehicle Carrier. In 2000, we designed and introduced our aluminum vehicle-carrying railcar, combining our expertise with aluminum-bodied railcars and our experience in building flat railcars. Our first aluminum vehicle carrier railcar design, the AVC , has a lightweight, integrated design and is used to transport automobiles, commercial and conversion vans, pickup trucks and sport utility vehicles from assembly plants and ports to rail distribution centers. An aluminum body eliminates the need to paint the railcar during its expected lifetime. Our design helps to ensure that vehicles are delivered damage-free. AVCs are purchased by financial institutions, shippers and railroads. We had our first sale of the AVC in 2003. The AVC series represented 15% of total revenue in 2004.

Articulated Bulk Container Railcar. Our articulated bulk container railcar has high strength and capacity and is designed to carry dense bulk products up to 59,000 pounds in 20 foot containers. We sell our articulated bulk container railcars primarily to shippers of high-density waste.

Intermodal Double Stack Railcar. Our intermodal double stack railcar is used to transport containers that may also be transported by truck or ship, allowing cargo to be transported through different modes without loading and unloading the containers.

Small Covered Hopper Railcar. Our small covered hopper railcar is used to transport high-density products such as roofing granules, fly ash, sand and cement. This railcar features our patented cold-rolled center sill, 30-inch diameter hatch covers and bottom-unloading outlets.

Mill Gondola Railcar. Our mill gondola railcar is used to transport steel products and scrap and features our one-piece cold-rolled center sill, cast draft sills, pinned side-to-end connections and a choice of welded or riveted sides.

Slab Railcar. We believe that our slab railcar is the first railcar manufactured specifically to transport steel slabs. The slab railcar is a spine-type flat railcar that is approximately 20,000 pounds lighter than a standard mill gondola railcar that is also used to transport steel slabs, allowing customers to haul more steel slabs per railcar and more railcars in a train.

Coil Steel Railcar. Our coil steel railcar has a transverse trough design that allows easy loading or unloading using overhead cranes or fork lifts. This feature allows railroads to compete with truck haulage for the transportation of steel coils.

Flat Railcar. We produce a variety of standard and heavy-duty flat railcars that can carry a variety of products, including machinery and equipment, steel and other bulky industrial products. Our high capacity flat railcar is used to transport, among other things, electrical transformers and generators.

Bulkhead Flat Railcar. Our bulkhead flat railcar has end bulkheads designed to retain the load, which can include forest products, steel and structural components.

Hybrid Center Beam Flat Railcar. Our FleXibeam center beam flat railcar is used to haul forest products, such as plywood, oriented strand board, dimensional lumber and steel products, such as structural steel and pipe. The FleXibeam hauls approximately 14,000 pounds of additional product than a conventional center beam flat railcar, and its short high-strength center beam partition allows easy loading of steel and other products with overhead cranes.

Woodchip Gondola Railcar. Our woodchip gondola railcar is used to haul woodchips and municipal waste or other high volume, low-density commodities. It has rotary couplers and incorporates our one-piece cold-rolled center sill and tub design.

Other Open-Top Hopper Railcars. We offer a variety of open-top hopper railcar designs to carry aggregates, iron ore, taconite pellets, petroleum coke and other bulk commodities. These railcars represented 4% of our railcar deliveries and total revenue in 2006.

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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 Colombia and have manufactured intermodal railcars for export to Saudi Arabia. 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. We are also exploring opportunities in other international markets.

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

We have added 18 new or redesigned products to our portfolio in the last five years, including the AutoFlood III, AVC, slab railcar, coil steel railcars, 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, Johnstown, Pennsylvania, and Roanoke, Virginia. Our Danville, Johnstown 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.

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 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 railcar, inspect all railcars for adherence to specifications.

We have focused on making our manufacturing facilities more flexible and cost-efficient while at the same time reducing product change-over times and improving product quality. We developed many of these improvements with the participation of our manufacturing employees, management and customers. We have implemented manufacturing concepts, whereby various manufacturing steps are accomplished in one location within the facility to eliminate unnecessary movement of parts within the facility, improve production rates and reduce inventories. These improvements are intended to provide us with increased flexibility in scheduling the production of orders and to minimize down time resulting from railcar type change-overs, thereby increasing the efficiency and lowering costs of our manufacturing operations.

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 competitive pricing of our railcars have helped us maintain our long standing relationships with our customers.

In 2006, revenue from two customers, The CIT Group/Equipment Financing, Inc. and General Electric Capital Rail Services Corporation, accounted for approximately 12% and 11% of total revenue, respectively. In 2006, sales to our top ten customers accounted for approximately 77% of total revenue. Our sales to customers outside the United States were $43.5 million in 2006. 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.

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SALES AND MARKETING

Our direct sales group is organized geographically and consists of regional sales managers and product line managers, a manager of customer service and support staff. The regional sales managers are responsible for managing customer relationships. Our product line managers are responsible for product planning and contract administration. 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. We believe that we are a leader in introducing new and improved railcar designs that respond to the needs of our customers. Railcar designs have been historically slow to change in our industry. We have introduced 18 new railcar designs or product-line extensions in the last five years. Our research and development team, working within our engineering group, is dedicated to the design of new products. In addition, the team continuously identifies design upgrades for our existing railcars, which we implement as part of our effort to reduce costs and improve quality. We introduce new railcar designs as a result of a combination of customer feedback and close observation of market demand trends. Our engineers use current modeling software and three-dimensional modeling technology to assist with product design. New product designs are tested for compliance with AAR standards prior to introduction. Costs associated with research and development are expensed as incurred and totaled $0.9 million, $0.4 million and $0.3 million for the years ended December 31, 2006, 2005 and 2004, respectively.

BACKLOG

We define backlog as the value of products or services to which our customers have committed in writing to purchase from us, 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,		
	2006	2005	2004
Railcar backlog at start of period	20,729	11,397	6,444
New railcars delivered	(18,764)	(13,031)	(7,484)
New railcar orders	7,350	22,363	12,437
Railcar backlog at end of period	9,315	20,729	11,397
Estimated backlog at end of period (in thousands) [1]	$ 697,054	$ 1,412,424	$ 747,842

(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.

We expect that all of our reported backlog as of December 31, 2006 will be converted to sales by the end of 2007. However, 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

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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. We currently do not have any backlog for rebuilt railcars.

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. As our products are made to order, we do not purchase materials or components until we receive an order and we time deliveries to minimize in-process inventory. We enjoy strong relationships with our suppliers, which helps to ensure access to supplies when railcar demand is high.

Our primary aluminum suppliers are Alcoa Inc. and Alcan Inc. Aluminum prices generally are fixed at the time a railcar order is accepted, mitigating the effect of future fluctuations in prices. We purchase steel primarily from U.S. sources, except for our cold-rolled center sills, which we purchase from a single Canadian supplier. A center sill is the primary structural component of a railcar. Our 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 100% and 98% of our railcars produced in 2006 and 2005, 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 25% and 20% of our total purchases in 2006 and 2005, respectively. Our top ten suppliers accounted for 65% and 58% of our total purchases in 2006 and 2005, 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 compete with the four other principal manufacturers in the North American railcar market, which are Trinity Industries, Inc., National Steel Car Limited, The Greenbrier Companies, Inc. and American Railcar Industries, Inc. Trinity Industries is our only current competitor in the North American aluminum-bodied coal-carrying railcar market.

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.

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EMPLOYEES

As of December 31, 2006, we had 1,429 employees, of whom 200 were salaried and 1,229 were hourly wage earners. As of December 31, 2006, approximately 841, or 59%, of our employees were members of unions.

While we consider our relations with our employees to be good at each of our facilities, they may not remain that way. 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 which 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 conditions 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 certain hazardous commodities being shipped, strict liability concepts may apply.

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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. 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 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. In 2005 and 2006, industry-wide railcar deliveries grew to 68,612 and 74,729, respectively, and our railcar production increased to 13,031 and 18,764 railcars, respectively. 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 high cost 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 2004 and have continued to increase in 2005 and 2006 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. 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.

Substantially all of our customer contracts as of December 31, 2006 allow for variable pricing to protect us against future changes in the cost of raw materials. However, when material prices increase rapidly or to levels significantly higher than normal, we may not be able to pass price increases through to our customers in future contracts, which could adversely affect our operating margins and cash flows. Even if we are able to increase prices, any such price increases may reduce demand for our railcars. In addition, in the future, our customers may not be willing to accept contractual terms that provide for variable pricing and our competitors, in an effort to gain market share or otherwise, may agree to railcar supply arrangements that do not provide for variable pricing. As a result, we may lose railcar orders or we may be required to agree to supply railcars without variable pricing provisions or be subject to less favorable contract terms.

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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 52% of our total sales for the five-year period. In 2006, sales to our top three customers accounted for approximately 12%, 11% and 9%, respectively, of our total sales. In 2005, sales to our top three customers accounted for approximately 16%, 14% and 8%, respectively, of our total sales. Although we have long-standing relationships with many of our major customers, the loss of any significant portion of our sales to any major customer, the loss of a single major customer or a material adverse change in the financial condition of any one of our major customers could have a material adverse effect on our business and financial results.

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

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

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. In particular, we purchase, and we believe most of our competitors purchase, a substantial percentage of wheels and other railcar components from subsidiaries of Amsted Industries Inc. For the year ended December 31, 2004, due to a shortage of wheels and other railcar components from Amsted Industries, 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 and 2006. While the availability of railcar components has continued to improve during 2006, 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. Amsted Industries and other suppliers of railcar components may be unable to meet the short-term or longer-term wheel and other railcar components supply demand of our industry. In the event that Amsted Industries or our other 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. 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, we may incur substantial delays and significant expense in doing so, the quality and reliability of these alternative sources for these components 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 which 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, Amsted Industries, 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.

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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

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 95% of our sales in 2006 and 96% of the total railcars that we delivered in 2006. 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 2006 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

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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 manufacture our railcars at production facilities in Danville, Illinois, Johnstown, Pennsylvania 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, 2006, our postretirement benefit obligation, primarily governed by the Johnstown settlement (as described elsewhere in this Item 1A.), was $52.9 million, all of which is unfunded. Although the Johnstown settlement 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, 2006, our accumulated benefit obligation under our defined benefit pension plans exceeded the fair value of plan assets by $3.9 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 on November 15, 2004 as a result of the Johnstown settlement (as described elsewhere in this Item 1A.) and the reduction in our discount rate. We made contributions to our pension plans of $18.6 million during the year ended December 31, 2006. 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.

We have unrecognized costs related to our defined benefit pension plans and postretirement plan. Significant changes in future employment levels may cause a plan curtailment, which may negatively impact our results from operations.

We have qualified defined benefit pension plans and a postretirement plan covering substantially all of the employees of our subsidiaries JAC Operations, Inc., Johnstown America Corporation and JAIX Leasing Company. As of December 31, 2006, $42.5 million related to net actuarial loss and prior service cost for our defined benefit

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pension plans and postretirement plan was recorded on our consolidated balance sheet in accumulated other comprehensive loss, but not yet recognized in earnings. A significant change in future employment levels could result in a decrease in the estimated remaining future service years for the employees covered by the plans. Such decrease in the estimated remaining future service years could result in a plan curtailment, which would cause us to immediately recognize a substantial portion of the net actuarial loss and prior service cost relating to these plans that have not yet been recognized in earnings. Such a plan curtailment could negatively impact our results from operations.

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 which have not been recognized as sales. In this report on Form 10-K, we have disclosed our backlog, or the number of railcars for which we have purchase orders, in various periods and the estimated sales value (in dollars) that would be attributable to this backlog once the backlog is converted to actual sales. We consider backlog to be an indicator of future sales of railcars. However, our reported backlog may not be converted into sales in any particular period, if at all, and the actual sales (including any compensation for lost profits and reimbursement for costs) from such contracts may not equal our reported estimates of backlog value. For example, we rely on third-party suppliers for heavy castings, wheels and components for our railcars and if these third parties were to stop or reduce their supply of heavy castings, wheels and other components, our actual sales 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.

Our exclusive supplier agreement with TXU Generation Development Company may not result in additional backlog or future sales.

In October 2006, we announced an exclusive supplier agreement with TXU Generation Development Company LLC to provide up to 7,650 aluminum coal-carrying railcars to be delivered in the second half of 2008 through 2009. TXU s actual requirements for aluminum coal-carrying railcars may change at TXU s discretion. In February 2007, TXU s parent company, TXU Corp., announced a definitive merger agreement pursuant to which TXU will be acquired by a private investor group. Published reports have indicated that, if the transaction is consummated, TXU may not proceed with the construction of all of the coal-fired power plants that it was previously planning to build. As a result, TXU s demand for coal-carrying railcars may decline significantly.

As of December 31, 2006, no railcar orders from TXU have been entered into our backlog pursuant to this supplier agreement. We will enter specific railcar orders into our backlog as notice to proceed with production is received from TXU. However, there can be no assurance that we will enter any specific railcar orders into our backlog pursuant to this supplier agreement. Moreover, even if such railcar orders are entered into our backlog, this backlog may not be converted into sales in the expected period, if at all.

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 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. During the course of our evaluation, we may identify areas requiring improvement and may be required to design enhanced processes and controls to address issues identified through this review. This could result in significant delays and costs to us and require us to divert substantial resources, including management time, from other activities.

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If we fail to maintain the adequacy of our internal controls, 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.

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 with our company and within the railcar industry and other manufacturing 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, 2006, we had collective bargaining agreements with unions representing approximately 59% of our total active labor force as of December 31, 2006. We have previously been involved in labor disputes with The United Steelworkers of America, or the USWA, the union that represents approximately 76% of our employees at the Johnstown facility. In January 2002, the USWA filed charges against our subsidiary alleging unfair labor practices in violation of the National Labor Relations Act, or the NLRA, in connection with our practices during our negotiation of a new collective bargaining agreement. In addition, our subsidiary was a defendant in two class action lawsuits filed by the USWA on behalf of individual plaintiffs alleging violations of the NLRA and ERISA in connection with certain medical and life insurance benefits and pension supplements that were discontinued with respect to certain retirees. On November 15, 2004, our subsidiary entered into a settlement agreement setting forth the terms of a new collective bargaining agreement with the USWA and resolving the NLRB charges filed against our subsidiary relating to the collective bargaining agreement, the class action lawsuits and certain other outstanding workplace grievances matters. Although the disputes involving the USWA did not result in strikes or other labor protests, any future labor 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 our 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 business, financial condition or results of operations.

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

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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 2004 and 2005, we had losses of $8.9 million and $1.5 million, respectively, 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

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historic contamination. However, there can be no assura