

GENESEE & WYOMING INC  
Form 10-K  
February 26, 2010  
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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

## Form 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)

OF THE SECURITIES EXCHANGE ACT OF 1934

For the Fiscal Year Ended December 31, 2009

Or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d)

OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File No. 001-31456

# GENESEE & WYOMING INC.

*(Exact name of registrant as specified in its charter)*

Delaware  
*(State or other jurisdiction of incorporation or organization)*

66 Field Point Road, Greenwich, Connecticut  
*(Address of principal executive offices)*

(203) 629-3722

*(Telephone No.)*

06-0984624  
*(I.R.S. Employer Identification No.)*

06830  
*(Zip Code)*

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

<i>Title of Each Class</i>	<i>Name of Each Exchange on Which Registered</i>
Class A Common Stock, \$0.01 par value	NYSE

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

None.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.  Yes  No

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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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days.  Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).  Yes  No

Indicate by check mark if disclosure of delinquent filers to Item 405 of Regulations S-K (§229.405 of this chapter) is not contained herein and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company

(Do not check if a smaller reporting company)

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

Aggregate market value of Class A Common Stock held by non-affiliates based on the closing price as reported by the New York Stock Exchange on the last business day of Registrant's most recently completed second fiscal quarter: \$973,073,276. Shares of Class A Common Stock held by each executive officer and director have been excluded in that such persons may be deemed to be affiliates. The determination of affiliate status is not necessarily a conclusive determinant for other purposes.

Shares of common stock outstanding as of the close of business on February 18, 2010:

Class	Number of Shares Outstanding
Class A Common Stock	38,533,302
Class B Common Stock	2,493,540

### DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement to be filed pursuant to Regulation 14A not later than 120 days after the end of the fiscal year are incorporated by reference in Part III hereof and made a part hereof.

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**Genesee & Wyoming Inc.**

**FORM 10-K**

**For The Fiscal Year Ended December 31, 2009**

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*Unless the context otherwise requires, when used in this Annual Report on Form 10-K, the terms Genesee & Wyoming, the Company, we, our and us refer to Genesee & Wyoming Inc. and its subsidiaries. All references to currency amounts included in this Annual Report on Form 10-K, including the financial statements, are in United States dollars unless specifically noted otherwise.*

### **Cautionary Statement Regarding Forward-Looking Statements**

The information contained in this Annual Report on Form 10-K (Annual Report), including Management's Discussion and Analysis of Financial Condition and Results of Operations in Item 7, contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (Exchange Act), regarding future events and future performance of Genesee & Wyoming Inc. Words such as anticipates, intends, plans, believes, seeks, expects, estimates, variations of t words and similar expressions are intended to identify these forward-looking statements. These statements are not guarantees of future performance and are subject to certain risks, uncertainties and assumptions that are difficult to forecast. Actual results may differ materially from those expressed or forecast in these forward-looking statements. Examples of forward-looking statements include all statements that are not historical in nature, including statements regarding:

the effects of economic, political or social conditions;

our operations, competitive position, growth strategy and prospects;

industry conditions, including downturns in the general economy;

changes in foreign exchange policy or rates;

our ability to complete, integrate and benefit from acquisitions, investments, joint ventures and strategic alliances;

governmental policies affecting our railroad operations, including laws and regulations regarding health, safety, security, labor, environmental and other matters;

our funding needs and financing sources; and

the outcome of pending legal proceedings.

These statements are not guarantees of future performance and are subject to certain risks, uncertainties and assumptions that are difficult to forecast. Forward-looking statements may be influenced by risks which exist in the following areas, among others:

our susceptibility to downturns in the general economy;

our ability to fund, consummate and integrate acquisitions and investments;

the imposition of operational restrictions as a result of covenants in our credit facilities and in our note purchase agreements;

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legislative and regulatory developments, including the passage of new legislation, rulings by the Surface Transportation Board (STB) and the Railroad Retirement Board (RRB);

our relationships with Class I railroads and other connecting carriers for our operations;

our ability to obtain railcars and locomotives from other providers on which we are currently dependent;

competition from numerous sources, including those relating to geography, substitute products, other types of transportation and other rail operators;

the effects of economic, political or social conditions;

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changes in foreign exchange policy or rates;

strikes, work stoppages or unionization efforts by our employees;

our ability to attract and retain a sufficient number of skilled employees;

our obligation as a common carrier to transport hazardous materials by rail;

the occurrence of losses or other liabilities which are not covered by insurance or which exceed our insurance limits;

rising fuel costs or constraints in fuel supply;

customer retention and contract continuation, including as a result of economic downturns;

our susceptibility to severe weather conditions and other natural occurrences;

our ability to obtain funding for capital projects;

acts of terrorism and anti-terrorism measures;

the effects of market and regulatory responses to climate changes;

the effects of violations of, or liabilities under, environmental laws and regulations;

our susceptibility to various legal claims and lawsuits; and

our susceptibility to risks associated with doing business in foreign countries.

The areas in which there is risk and uncertainty are further described under the caption "Risk Factors" in Item 1A, as well as in documents that we file from time to time with the United States Securities and Exchange Commission (the SEC), which contain additional important factors that could cause actual results to differ from current expectations and from the forward-looking statements contained herein. Readers of this document are cautioned that our forward-looking statements are not guarantees of future performance and our actual results or developments may differ materially from the expectations expressed in the forward-looking statements.

In light of the risks, uncertainties and assumptions associated with forward-looking statements, you should not place undue reliance on any forward-looking statements. Additional risks that we may currently deem immaterial or that are not presently known to us could also cause the forward-looking events discussed or incorporated by reference in this Annual Report not to occur. Except as otherwise required by applicable securities laws, we undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events, changed circumstances or any other reason after the date of this Annual Report.

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The Private Securities Litigation Reform Act of 1995 provides a "safe harbor" for forward-looking statements to encourage companies to provide prospective information about their companies without fear of litigation. We are taking advantage of the "safe harbor" provisions of the Private Securities Litigation Reform Act in connection with the forward-looking statements included in this Annual Report.

Our forward-looking statements speak only as of the date of this Annual Report or as of the date they are made, and we undertake no obligation to update our forward-looking statements.

Information set forth in Item 1 as well as in Item 2 should be read in conjunction with Management's Discussion and Analysis of Financial Condition and Results of Operations in Item 7 and the discussion of risk factors in Item 1A.

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**PART I**

**Item 1. Business.**

**OVERVIEW**

We own and operate short line and regional freight railroads and provide railcar switching services in the United States, Australia, Canada and the Netherlands. The Company's corporate predecessor was founded in 1899 as a 14-mile rail line serving a single salt mine in upstate New York. As of December 31, 2009, we operated over approximately 6,000 miles of owned and leased track and approximately 3,400 additional miles under track access arrangements. We operated in 28 states in the United States, four Australian states, one Australian territory and two Canadian provinces and provided rail service at 16 ports in North America and Europe. Based on track miles, we believe that we are the second largest operator of short line and regional freight railroads in North America.

By focusing our corporate and regional management teams on improving our return on invested capital, we intend to continue to increase our earnings and cash flow. In addition, we expect that acquisitions will adhere to our return on capital targets and that existing operations will strive to improve year-over-year financial returns and safety performance.

**GROWTH STRATEGY**

The two main drivers of our growth strategy are the execution of our disciplined acquisition and investment strategy as well as our operating strategy.

***Acquisition and Investment Strategy***

Our acquisition strategy includes the acquisition of rail lines, entry into new long-term operational leases, as well as investment in new projects. Opportunities are generally of the following five types:

other regional railroads or short line railroads, such as Rail Management Corporation (RMC), Ohio Central Railroad System (OCR) and CAGY Industries, Inc. (CAGY);

new rail and infrastructure and/or equipment associated with new industrial and mineral development, such as potential new mining projects in Australia and North America;

international railroads, such as Rotterdam Rail Feeding (RRF);

rail lines of industrial companies, such as our acquisition of railroads owned by Georgia-Pacific Corporation (GP); and

branch lines of Class I railroads, such as Burlington Northern Santa Fe Corporation (BNSF) and CSX Transportation (CSX).

When acquiring or leasing railroads in our existing regions, we target contiguous or nearby rail properties where our local management teams are best able to identify opportunities to reduce operating costs and increase equipment utilization. In new regions, we target rail properties that have adequate size to establish a presence in the region, provide a platform for growth in the region and attract qualified management. To help ensure accountability for the projected financial results of our potential acquisitions, we typically include the regional manager who would operate the rail property after the acquisition as part of our due diligence team.

Since 1985, we have completed 34 acquisitions. We believe that additional acquisition opportunities in the United States exist among the more than 500 short line and regional railroads not already owned by us operating approximately 41,500 miles of track, as well as additional lines that might be sold or leased by industrial





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companies or Class I railroads. We also believe that there are additional acquisition candidates and investment opportunities in Australia, Europe, Canada and other markets outside the United States. Potential investment opportunities also exist as a result of the open access regimes in Australia and the Netherlands. Although we did not acquire any railroads in 2009, in 2008 we acquired 10 railroads known as the Ohio Central Railroad System (OCR), one railroad known as the Georgia Southwestern Railroad, Inc., (Georgia Southwestern) three railroads known as CAGY Industries, Inc. (CAGY) and one railroad known as Rotterdam Rail Feeding (RRF). In addition, we began operating one railroad known as Maryland Midland Railway (Maryland Midland) on January 1, 2008. We believe that we are well-positioned to capitalize on additional acquisitions and will continue to adhere to our disciplined approach when evaluating opportunities.

### ***Operating Strategy***

In each of our regions, we seek to encourage the entrepreneurial drive, local knowledge and customer service that we view as prerequisites to achieving our financial goals. Our railroads operate under strong local management, with centralized administrative support and oversight. Our regional managers are continually focused on increasing our return on invested capital, earnings and cash flow through the disciplined execution of our operating strategy. At the regional level, our operating strategy consists of the following four principal elements:

*Continuous Safety Improvement.* We believe that a safe work environment is essential for our employees, our customers and the communities in which we conduct business. Each year we establish stringent safety targets as part of our safety program. Through the execution of our safety program, we have reduced our injury frequency rate from 5.89 injuries per 200,000 man-hours worked in 1998 to 0.74 in 2009.

*Focused Regional Marketing.* We build each regional rail system on a base of large industrial customers, seek to grow that business through marketing efforts and pursue additional sources of revenue by attracting new customers and providing ancillary rail services. These ancillary rail services include railcar switching, repair, storage, cleaning, weighing and blocking and bulk transfer, which enable shippers and Class I carriers to move freight more easily and cost-effectively. Our capacity to compete for new customers and provide ancillary rail services is enhanced by the open access environments in both Australia and Europe.

*Lower Operating Costs.* We focus on lowering operating costs and historically have been able to operate acquired rail lines more efficiently than the companies from which we acquired these properties. We typically achieve efficiencies by lowering administrative overhead, consolidating equipment and track maintenance contracts, reducing transportation costs and selling surplus assets.

*Efficient Use of Capital.* We invest in track and rolling stock to ensure that we operate safe railroads that meet the needs of customers. At the same time, we seek to maximize our return on invested capital by focusing on cost effective capital programs. For example, we usually rebuild older locomotives rather than purchase new ones and invest in track at levels appropriate for traffic type and density. In addition, because of the importance of certain customers and railroads to the regional economies, we are able, in some instances, to obtain state and/or federal grants to upgrade track. Typically, we seek government funds to support investments that would not otherwise be economically viable for us to fund on a stand-alone basis.

As of December 31, 2009, our continuing operations were organized as nine businesses, which we refer to as regions. In the United States, we have six regions: Illinois, New York/Ohio/Pennsylvania, Oregon, Rail Link (which includes industrial switching and port operations in various geographic locations), Rocky Mountain and Southern (principally consisting of railroads in the Southern part of the United States). Outside the United States, we have three regions: Australia, Canada (which includes certain contiguous railroads located in the United States) and the Netherlands.

**Table of Contents****INDUSTRY**

According to the Association of American Railroads (AAR), there are 565 railroads in the United States operating over 139,300 miles of track. The AAR classifies railroads operating in the United States into one of three categories based on the amount of revenues and track miles. Class I railroads, those with over \$401.4 million in revenues, represent approximately 94% of total rail revenues. Regional and local railroads operate approximately 45,200 miles of track in the United States. The primary function of these smaller railroads is to provide feeder traffic to the Class I carriers. Regional and local railroads combined account for approximately 6% of total rail revenues. We operate one regional and 56 local (short line) railroads in the United States.

The following table shows the breakdown of railroads in the United States by classification:

Classification of Railroads	Number	Aggregate	Revenues and Miles Operated
		Miles Operated	
Class I (1)	7	94,082	Over \$401.4 million
Regional	33	16,690	\$40.0 to \$401.4 million and /or 350 or more miles operated
Local	525	28,554	Less than \$40.0 million and less than 350 miles operated
Total	565	139,326	

(1) Includes CSX, BNSF Railway Co. (BNSF), Norfolk Southern Corporation (NS), Kansas City Southern Railway Company (KCS), Union Pacific (UP), Canadian National Railway (CN) and Canadian Pacific Railroad Co. (CP)

Source: AAR, *Railroad Facts, 2009 Edition*.

The railroad industry in the United States has undergone significant change since the passage of the Staggers Rail Act of 1980 (Staggers Act), which effectively deregulated certain pricing and types of services provided by railroads. Following the passage of the Staggers Act, Class I railroads in the United States took steps to improve profitability and recapture market share lost to other modes of transportation, primarily trucks. In furtherance of that goal, Class I railroads focused their management and capital resources on their core long-haul systems, and some of them sold branch lines to smaller and more cost-efficient rail operators willing to commit the resources necessary to meet the needs of the customers located on these lines. Divestiture of branch lines enabled Class I carriers to minimize incremental capital expenditures, concentrate traffic density, improve operating efficiency and avoid traffic losses associated with rail line abandonment.

Although the acquisition market is competitive in the railroad industry, we believe we will continue to find opportunities to acquire rail properties in the United States and Canada from independent local and regional railroads, industrial companies and Class I railroads. We also believe we will continue to find additional acquisition opportunities in markets outside of North America. For additional information, see the discussion under Item 1A. Risk Factors.

**OPERATIONS**

As of December 31, 2009, through our subsidiaries, we owned, leased or operated 62 short line and regional freight railroads with approximately 6,000 miles of track in the United States, Australia, Canada and the Netherlands.

**Freight Revenues**

We generate revenues primarily from the haulage of freight by rail over relatively short distances. Freight revenues represented 61.2%, 61.5% and 63.8% of our total revenues in 2009, 2008 and 2007, respectively.

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### ***Non-Freight Revenues***

We generate non-freight revenues primarily through the following activities:

Railcar switching revenues from industrial switching (the movement of railcars within industrial plants and their related facilities), port terminal switching (the movement of customer railcars from one track to another track on the same railroad, primarily at United States ports), contract coal loading and dedicated movement of railcars on a largely fixed fee basis;

Fuel sales to third parties revenues earned by Genesee & Wyoming Australia Pty Ltd (GWA) in South Australia from the sale of diesel fuel to other rail operators;

Car hire and rental services charges paid by other railroads for the use of our railcars;

Demurrage and storage charges to customers for holding or storing their railcars; and

Car repair services charges for repairing freight cars owned by others, either under contract or in accordance with AAR rules. Non-freight revenues represented 38.8%, 38.5% and 36.2% of our total operating revenues in 2009, 2008 and 2007, respectively. Railcar switching represented 46.6%, 42.4% and 40.3% of our total non-freight revenues in 2009, 2008 and 2007, respectively.

### ***Customers***

As of December 31, 2009, our operations served more than 950 freight customers. Freight revenues from our 10 largest freight customers accounted for approximately 21%, 20% and 22% of our total revenues in 2009, 2008 and 2007, respectively. We typically handle freight pursuant to transportation contracts between us, our connecting carriers and the customer. These contracts are in accordance with industry norms and vary in duration, with terms ranging from less than one year to 20 years. These contracts establish a price or, in the case of longer term contracts, a methodology for determining price, but do not typically obligate the customer to move any particular volume. Freight rates and volumes are not directly linked to the prices of the commodities being shipped.

### ***Commodities***

Our railroads transport a wide variety of commodities. Some of our railroads have a diversified commodity mix while others transport one or two principal commodities. Our coal, coke and ores commodity revenues accounted for 13%, 12% and 12% of our total revenues in 2009, 2008 and 2007, respectively. Our pulp and paper commodity freight revenues accounted for 9%, 12% and 13% of our total revenues in 2009, 2008 and 2007, respectively. For a comparison of freight revenues, carloads and average freight revenues per carload by commodity group for the years ended December 31, 2009, 2008 and 2007, see the discussion under Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

#### ***Commodity Group Descriptions***

The Coal, Coke and Ores commodity group consists primarily of shipments of coal to power plants and industrial customers.

The Pulp and Paper commodity group consists primarily of outbound shipments of container board and finished papers and inbound shipments of wood pulp.

The Metals commodity group consists primarily of finished steel products such as coils, slabs and ingots, and pipe and scrap metal.

The Minerals and Stone commodity group consists primarily of gypsum, salt used in highway ice control, cement, limestone and sand.



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The Lumber and Forest Products commodity group consists primarily of export logs, finished lumber, plywood, oriented strand board and particle board used in construction and furniture manufacturing, and wood chips and pulpwood used in paper manufacturing.

The Farm and Food Products commodity group consists primarily of wheat, barley, corn and other grains.

The Chemicals-Plastics commodity group consists primarily of chemicals used in manufacturing, particularly in the paper industry.

The Petroleum Products commodity group consists primarily of liquefied petroleum gases, asphalt and crude oil.

The Autos and Auto Parts commodity group consists primarily of finished automobiles and stamped auto parts.

The Other commodity group consists of all freight not included in the commodity groups set forth above, such as municipal waste and haulage traffic.

## ***Geographic Information***

For financial information with respect to each of our geographic areas, see Note 18 to our Consolidated Financial Statements set forth in Part IV, Item 15 of this Annual Report.

## ***Traffic***

Rail traffic shipped on our rail lines can be categorized as interline, local or overhead traffic. Interline traffic either originates or terminates with customers located along a rail line and is interchanged with other rail carriers. Local traffic both originates and terminates on the same rail line and does not involve other carriers. Overhead traffic passes over the line from one connecting rail carrier to another without the carload originating or terminating on the line. Unlike overhead traffic, interline and local traffic provide us with a more stable source of revenues, because this traffic represents shipments to and/or from customers located along our rail lines and is less susceptible to competition from other rail routes or other modes of transportation. In 2009, revenues generated from interline and local traffic constituted approximately 96% of our freight revenues.

## ***Seasonality of Operations***

Typically, we experience relatively lower revenues in the first and fourth quarters of each year as the winter season and colder weather in North America tend to reduce shipments of certain products such as construction materials. In addition, due to adverse winter weather conditions, we also tend to incur higher operating costs during the first and fourth quarters. We typically initiate capital projects in North America in the second and third quarters when weather conditions are more favorable.

## ***Employees***

As of December 31, 2009, our railroads and industrial switching locations had 2,481 full time employees. Of this total, 998 railroad employees are members of national labor organizations and an additional 52 railroad employees are represented by a national labor organization. Our railroads have 37 contracts with these national labor organizations, 10 of which are currently in negotiation. We are also a party to employee association agreements with an additional 135 employees who are not represented by a national labor organization. The Railway Labor Act (RLA) governs the labor relations of employers and employees engaged in the railroad industry in the United States. The RLA establishes the right of railroad employees to organize and bargain collectively along craft or class lines and imposes a duty upon carriers and their employees to exert every reasonable effort to make and maintain collective bargaining agreements. Le Code Canadian du Travail and the

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Federal Workplace Relations Act govern the labor relations of employers and employees engaged in the railroad industry in Canada and Australia, respectively. The RLA and foreign labor regulations contain detailed procedures that must be exhausted before a lawful work stoppage may occur. In the Netherlands, RRF is not party to any collective bargaining agreements. We believe our relationship with our employees is good.

### **SAFETY**

Our safety program involves all employees and focuses on the prevention of accidents and injuries. Operating personnel are trained and certified in train operations, the transportation of hazardous materials, safety and operating rules and governmental rules and regulations. We also participate in safety committees of the AAR, governmental and industry sponsored safety programs and the American Short Line and Regional Railroad Association Safety Committee. Our reportable injury frequency ratio, which is defined by the Federal Railroad Administration (FRA) as reportable injuries per 200,000 man-hours worked, was 0.74 and 1.33 in 2009 and 2008, respectively.

### **INSURANCE**

We maintain liability and property insurance coverage. Our primary liability policies have self-insured retentions of up to \$0.5 million per occurrence. In addition, we maintain excess liability policies that provide supplemental coverage for losses in excess of our primary policy limits. With respect to the transportation of hazardous commodities, our liability policy covers sudden releases of hazardous materials, including expenses related to evacuation, as a result of a railroad accident. Personal injuries associated with grade crossing accidents are also covered under our liability policies. Our property damage policies have self-insured retentions generally up to \$0.8 million, depending on the category of incident.

Employees of our United States railroads are covered by the Federal Employers' Liability Act (FELA), a fault-based system under which claims resulting from injuries and deaths of railroad employees are settled by negotiation or litigation. FELA-related claims are covered under our liability insurance policies. Employees of our industrial switching business are covered under workers' compensation policies.

Employees of our Canadian railroads are covered by the applicable provincial workers' compensation policy. Employees of GWA are covered by the respective state-based workers' compensation legislation in Australia. Employees of RRF are covered by the workers' compensation legislation of the Netherlands.

We believe our insurance coverage is adequate given our experience and the experience of the rail industry within the geographies we operate.

### **COMPETITION**

Each of our railroads is typically the only rail carrier directly serving our customers. However, in certain circumstances, including under open access regimes in Australia and the Netherlands, our customers have access to other rail carriers. In addition, our railroads compete directly with other modes of transportation, principally highway competition from motor carriers and, on some routes, ship, barge and pipeline operators. Competition is based primarily upon the rate charged and the transit time required, as well as the quality and reliability of the service provided. Most of the freight we handle is interchanged with other railroads prior to reaching its final destination. As a result, to the extent other rail carriers are involved in transporting a shipment, we cannot necessarily control the cost and quality of such service. To the extent highway competition is involved, the effectiveness of that competition is affected by government policy with respect to fuel and other taxes, highway tolls and permissible truck sizes and weights.

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To a lesser degree, we also face competition with similar products made in other areas, a kind of competition commonly known as geographic competition. For example, a paper producer may choose to increase or decrease production at a specific plant served by one of our railroads depending on the relative competitiveness of that plant versus paper plants in other locations. In some instances, we face product competition, where commodities we transport are exposed to competition from substitutes.

In acquiring rail properties, we generally compete with other short line and regional railroad operators, and with various financial institutions, including private equity firms, operating in conjunction with short line rail operators. Competition for rail properties is based primarily upon price and the seller's assessment of the buyer's railroad operating expertise and financing capability. We believe our established reputation as a successful acquirer and operator of short line rail properties, combined with our managerial and financial resources, effectively positions us to take advantage of acquisition opportunities.

## REGULATION

### *United States*

In addition to environmental laws, securities laws, state and local laws and regulations generally applicable to many businesses, our United States railroads are subject to regulation by:

the STB;

the FRA;

federal agencies, including the United States Department of Transportation (DOT), Occupational Safety and Health Administration (OSHA) and Transportation Security Administration (TSA), which operates under the Department of Homeland Security (DHS);

state departments of transportation; and

some state and local regulatory agencies.

The STB is the successor to certain regulatory functions previously administered by the Interstate Commerce Commission (ICC). Established by the ICC Termination Act of 1995, the STB has jurisdiction over, among other things, certain freight rates (where there is no effective competition), extension or abandonment of rail lines, the acquisition of rail lines and consolidation, merger or acquisition of control of rail common carriers. In limited circumstances, the STB may condition its approval of an acquisition upon the acquirer of a railroad agreeing to provide severance benefits to certain subsequently terminated employees. The FRA, DOT and OSHA have jurisdiction over safety, which includes the regulation of equipment standards, track maintenance, handling of hazardous shipments, locomotive and rail car inspection, repair requirements, operating practices and crew qualifications. The TSA has broad authority over railroad operating practices that have implications for homeland security. In some cases, state and local laws and regulations may be preempted in their application to railroads by the operation of these and other federal authorities.

On January 12, 2010, the FRA issued final rules governing installation of positive train control (PTC) by the end of 2015. Although still under development, PTC is a collision avoidance technology intended to override locomotive controls and stop a train before an accident. Certain of our railroads may be required to install PTC or PTC-related equipment by the end of 2015.

In addition, in 2010 we expect the United States Senate will consider a bill proposed in 2009 that would expand the regulatory authority of the STB. We are closely monitoring this proposed legislation. If adopted, the legislation could expand regulation of railroad operations and prices for our rail services, which could reduce or eliminate the economic viability of our railroads, and threaten the service we are able to provide to our customers. On October 16, 2008, President Bush signed the Rail Safety Improvement Act of 2008 into law, which, among other things, revised hours of service rules for train and certain other railroad employees, mandated implementation of PTC, imposed passenger service requirements, addressed safety at rail crossings, increased the number of safety related employees of the FRA, and increased fines that may be levied against railroads for safety violations.





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### ***Canada***

St. Lawrence & Atlantic Railroad (Quebec) is a federally regulated railroad and falls under the jurisdiction of the Canada Transportation Agency (CTA) and Transport Canada (TC) and is subject to the Railway Safety Act. The CTA regulates construction and operation of federally regulated railways, financial transactions of federally regulated railway companies, all aspects of rates, tariffs and services and the transferring and discontinuing of the operation of railway lines. TC administers the Railway Safety Act, which ensures that federally regulated railway companies abide by all regulations with respect to engineering standards governing the construction or alteration of railway works and the operation and maintenance standards of railway works and equipment.

Quebec Gatineau Railway and Huron Central Railway are subject to the jurisdiction of the provincial governments of Quebec and Ontario, respectively. Provincially regulated railways operate only within one province and hold a Certificate of Fitness delivered by a provincial authority. In the Province of Quebec, the Fitness Certificate is delivered by the Ministère des Transports du Québec, while in Ontario, under the Shortline Railways Act, 1995, a license must be obtained from the Registrar of Shortline Railways. Construction, operation and discontinuance of operation are regulated, as are railway services.

Acquisitions of additional railroad operations in Canada, whether federally or provincially regulated, may be subject to review under the Investment Canada Act (ICA), a federal statute that applies to the acquisition of a Canadian business or establishment of a new Canadian business by a non-Canadian. In the case of an acquisition that is subject to review, a non-Canadian investor must observe a statutory waiting period prior to completion and satisfy the minister responsible for the administration of the ICA that the investment will be of net benefit to Canada, considering certain evaluative factors set out in the legislation.

Any contemplated acquisitions may also be subject to Canada's Competition Act, which contains provisions relating to pre-merger notification as well as substantive merger provisions.

### ***Australia***

In Australia, regulation of rail safety is generally governed by state legislation and administered by state regulatory agencies. GWA's assets are subject to the regulatory regimes governing safety in each of the states in which it operates. Regulation of track access is governed by overriding federal legislation with state-based regimes operating in compliance with the federal legislation. As a result, with respect to rail infrastructure access, GWA's Australian assets are also subject to state-based access regimes and Part IIIA of the Trade Practices Act 1974.

GWA's interstate access includes the standard gauge tracks in South Australia which are part of the standard gauge network connecting the state capital cities of Perth, Adelaide, Melbourne, Sydney and Brisbane. The majority of interstate network access is controlled by the Australian Rail Track Corporation, owned by the Commonwealth of Australia. Freightlink Pty Ltd. provides network access for the standard gauge tracks operating between Tarcoola, South Australia to Darwin, Northern Territory.

### ***Netherlands***

In the Netherlands, we are subject to regulation by the Ministry of Transport, Public Works and Water Management, the Transport, Public Works and Water Management Inspectorate and the Dutch railways manager, Pro Rail.

In addition, at the European Level, several directives have been issued concerning the transportation of goods by railway. These directives generally cover the development of the railways, allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and the licensing of railway undertakings. The European Union (EU) legislation also sets a framework for a harmonized approach to railway safety. Every railway company must obtain a safety certification before it can run trains on the European

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network and EU Member States must set up national railway safety authorities and independent accident investigation bodies. These directives have been implemented in Dutch railway legislation such as the Railways Act.

The Dutch Competition Authority (DCA) is charged with the supervision of compliance with the European Community's directives on the development of the railways, the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure.

### **ENVIRONMENTAL MATTERS**

Our operations are subject to various federal, state, provincial and local laws and regulations relating to the protection of the environment. In the United States, these environmental laws and regulations, which are implemented principally by the Environmental Protection Agency and comparable state agencies, govern the management of hazardous wastes, the discharge of pollutants into the air and into surface and underground waters and the manufacture and disposal of certain substances. The primary laws affecting our operations are the Resource Conservation and Recovery Act, regulating the management and disposal of solid and hazardous wastes, the Clean Air Act, regulating air emissions and the Clean Water Act, regulating water discharges. In Canada, environmental laws and regulations are administered at the federal level by Environment Canada and the Ministry of Transport and comparable agencies at the provincial level. In Australia, these functions are administered primarily by the Department of Transport at the federal level and by environmental protection agencies at the state level. In the Netherlands, national laws regulating the protection of the environment are administered by the Ministry of Housing, Spatial Planning and the Environment and authorities at the provincial and municipal level, while laws regulating the transportation of hazardous substances are primarily administered by the Ministry of Transport, Public Works and Water Management.

The Commonwealth of Australia has acknowledged that certain portions of the leasehold and freehold land acquired from them and used by our Australian operations contain contamination arising from activities associated with previous operators. The Commonwealth has carried out certain remediation work to meet existing South Australia environmental standards.

There are no material environmental claims currently pending or, to our knowledge, threatened against us or any of our railroads. In addition, we believe our railroads operate in material compliance with current environmental laws and regulations. We estimate any expenses incurred in maintaining compliance with current environmental laws and regulations will not have a material effect on our earnings or capital expenditures.

### **DISCONTINUED OPERATIONS**

In August of 2009, we completed the sale of 100% of the share of capital of Ferrocarriles Chiapas-Mayab, S.A. de C.V. (FCCM) to Viablis, S.A. de C.V. (Viablis) for a sale price of \$2.2 million, including a deposit of \$0.5 million received in November 2008. Accordingly, we recorded a net gain of \$2.2 million on the sale within discontinued operations. As of December 31, 2009, there were net assets of \$0.3 million remaining on our balance sheet related to discontinued operations. We do not expect any material adverse financial impact from our remaining Mexican subsidiary, GW Servicios S.A. (Servicios).

Results of our Mexican operations are included in results from discontinued operations.

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**AVAILABLE INFORMATION**

We were incorporated in Delaware on September 1, 1977. We completed our initial public offering in June 1996, and since September 27, 2002, our Class A common stock has been listed on the New York Stock Exchange (NYSE). Our principal executive offices and corporate headquarters are located at 66 Field Point Road, Greenwich, Connecticut, 06830, and our telephone number is (203) 629-3722.

Our Internet website address is [www.gwrr.com](http://www.gwrr.com). We make available free of charge, on or through our Internet website, our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and all amendments to those reports as soon as reasonably practicable after those materials are electronically filed with or furnished to the SEC. Also, filings made pursuant to Section 16 of the Exchange Act with the SEC by our executive officers, directors and other reporting persons with respect to our common shares are made available, free of charge, through our Internet website. Our Internet website also contains charters for each of the committees of our Board of Directors, our corporate governance guidelines and our Code of Ethics. Our Code of Ethics applies to all directors, officers and employees, including our chief executive officer, our chief financial officer, and our chief accounting officer and global controller. We will post any amendments to the Code of Ethics and any waivers that are required to be disclosed by the rules of either the SEC or the NYSE on our Internet website within the required time period.

In addition, you may read and copy any materials we file with the SEC at the SEC's Public Reference Room at 100 F Street, NE, Washington, D.C. 20549 and may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet website that contains reports, proxy and information statements and other information regarding issuers that file electronically. The SEC Internet website address is [www.sec.gov](http://www.sec.gov).

The information regarding our Internet website and its content is for your convenience only. From time to time we may use our website as a channel of distribution of material company information. Financial and other material information regarding the Company is routinely posted on and accessible at [www.gwrr.com/investors](http://www.gwrr.com/investors). In addition, you may automatically receive email alerts and other information about us by enrolling your email by visiting the E-mail Alerts section at [www.gwrr.com/investors](http://www.gwrr.com/investors).

The information contained on or connected to our Internet website is not deemed to be incorporated by reference in this Annual Report or filed with the SEC.

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**Item 1A. Risk Factors.**

Our operations and financial condition are subject to certain risks that could cause actual operating and financial results to differ materially from those expressed or forecast in our forward-looking statements, including the risks described below and the risks that may be identified in future documents that are filed or furnished with the SEC.

**GENERAL RISKS ASSOCIATED WITH OUR BUSINESS**

***Adverse macroeconomic and business conditions could negatively impact our business.***

Economic activity in the United States and throughout the world continues to experience the effect of the recent recession. Global financial markets have incurred and could continue to incur significant volatility and disruption. Certain of our customers and suppliers have been directly affected by the economic downturn and are facing credit issues and have experienced cash flow problems that have given and could continue to give rise to payment delays, increased credit risk, bankruptcies and other financial hardships that have decreased and could continue to decrease the demand for our rail services. Changes in governmental banking, monetary and fiscal policies to stimulate the economy, restore liquidity and increase credit availability may not be effective. It is difficult to determine the depth and duration of the economic and financial market problems and the many ways in which they may impact our customers, our suppliers and our business in general. We are required to assess for potential impairment of non-current assets whenever events or changes in circumstances, including economic circumstances, indicate that the respective assets carrying amount may not be recoverable. Given the asset intensive nature of our business, the economic downturn increases the risk of significant asset impairment charges. Continuation or further worsening of current macroeconomic and financial conditions could have a material adverse effect on our operating results, financial condition and liquidity.

***If we are unable to consummate additional acquisitions or investments, then we may not be able to implement our growth strategy successfully.***

Our growth strategy is based to a large extent on the selective acquisition and development of, and investment in, rail operations, both in new regions and in regions in which we currently operate. The success of this strategy will depend on, among other things:

the availability of suitable opportunities;

the level of competition from other companies that may have greater financial resources;

our ability to value acquisition and investment opportunities accurately and negotiate acceptable terms for those acquisitions and investments;

our ability to identify and enter into mutually beneficial relationships with partners; and

the availability of management resources to oversee the integration and operation of the new businesses effectively.

If we are not successful in implementing our growth strategy, the market price of our Class A common stock may be adversely affected.

***We may need additional capital to fund our acquisitions. If we are unable to obtain additional capital at a reasonable cost, then we may forego potential acquisitions, which would impair the execution of our growth strategy.***

Since January 1, 1996, we have acquired interests in 54 railroads, all of which were purchased for cash. As of December 31, 2009, we had \$105.7 million of cash and cash equivalents and undrawn revolver capacity of \$299.9 million available for acquisitions or other activities, subject to maintaining compliance with the covenants under our credit facilities. We intend to continue to review acquisition and investment opportunities and potential



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purchases of railroad assets and to attempt to acquire companies and assets that meet our investment criteria. As in the past, we expect that we will pay cash for some or all of the purchase price of any acquisitions or purchases that we make. Depending on the number of acquisitions or purchases and the prices thereof, we may need to raise substantial additional capital to fund our acquisitions and investments. To the extent that we raise additional capital through the sale of equity or convertible debt securities, the issuance of such securiti