NightHawk Radiology Holdings Inc
Form 10-K
February 25, 2010
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

(Mark One)

x **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 Number 000-51786

NightHawk Radiology Holdings, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**87-0722777**
(State or other jurisdiction of incorporation or organization)	**(IRS Employer Identification No.)**
4900 N. Scottsdale Road, 6th Floor, Scottsdale, Arizona	**85251**
(Address of principal executive offices)	**(Zip code)**

(480) 822-4000

(Registrant s telephone number, including area code)

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

Common Stock, par value $0.001 per share

NASDAQ Global Market

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

None

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

Indicate by check mark whether 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 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 pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) 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 to this Form 10-K. x

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

Large accelerated filer ¨	Accelerated filer x	Non-accelerated filer ¨ (do not check if a smaller reporting company)	Smaller reporting company ¨

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

As of June 30, 2009 (the last business day of the registrant s most recently completed second quarter), the aggregate market value of the voting stock held by non-affiliates of the Registrant was $97.8 million. Shares of voting stock beneficially held by each officer and director and by each person who owns 5% or more of the outstanding voting stock have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of February 5, 2010, 23,575,061 shares of the registrant s Common Stock were outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Listed hereunder are the documents, any portions of which are incorporated by reference and the Parts of this Form 10-K into which such portions are incorporated:

1. The Registrant s definitive proxy statement for use in connection with the Annual Meeting of Stockholders to be held on or about April 30, 2010 to be filed within 120 days after the Registrant s year ended December 31, 2009, portions of which are incorporated by reference into Part III of this Form 10-K.

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Cautionary Statement for Purposes of Safe Harbor Provisions of the Private Securities Litigation Reform Act of 1995

This Annual Report contains forward-looking statements that involve risks and uncertainties. The statements contained in this Annual Report that are not purely historical are 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. In some cases you can identify forward-looking statements by terms such as may, will, should, could, would, expect, plan, anticipate, believe, estimate, project, predict, and potential, and similar expressions intended to identify forward-looking statements. These forward-looking statements include, without limitation, statements relating to future economic conditions in general and statements about our future:

strategy and business prospects;

development and expansion of services, and the size, growth, and leadership of the potential markets for these services;

development of new customer relationships and products;

sales, earnings, income, expenses, operating results, tax rates, operating and gross profit and profit margins, valuations, receivables, reserves, liquidity, investment income, currency rates, employee stock option exercises, capital resource needs, customers, and competition;

ability to obtain and protect our intellectual property and proprietary rights; and

acquisitions and transaction costs and adjustments.

All of these forward-looking statements are based on information available to us on the date of this Annual Report. Our actual results could differ materially from those discussed in this Annual Report. The forward-looking statements contained in this Annual Report, and other written and oral forward-looking statements made by us from time to time, are subject to certain risks and uncertainties that could cause actual results to differ materially from those anticipated in the forward-looking statements. Factors that might cause such a difference include, but are not limited to, those discussed in Item 1A of this report entitled Risk Factors.

ITEM 1. Business

NightHawk Radiology Holdings, Inc. (NightHawk), headquartered in Scottsdale, Arizona, is leading the transformation of the practice of radiology by providing high-quality, cost-effective solutions to radiology groups and hospitals throughout the United States. Nighthawk Radiology Services, LLC, which is a wholly-owned subsidiary of NightHawk, was formed in Coeur d Alene, Idaho in 2001 as an Idaho limited liability company and is currently the entity through which we conduct our principal operations. In March 2004, NightHawk Radiology Holdings, Inc. was formed to facilitate a recapitalization of Nighthawk Radiology Services, LLC.

Industry Background

The practice of diagnostic radiology involves the interpretation of images of the human body to aid in the diagnosis and treatment of diseases, conditions and injuries. Diagnostic imaging procedures include computed tomography, or CT, magnetic resonance imaging, or MRI, ultrasound, nuclear medicine and X-ray technologies. Diagnostic radiologists correlate imaging findings with clinical information and other medical examinations, make diagnoses and may recommend further examinations or treatments.

Due to significant advances in imaging quality and technology, diagnostic imaging procedures are becoming increasingly essential components of the practice of medicine in most medical centers and hospitals. The non-invasive nature of most diagnostic imaging procedures, combined with faster digital processing capabilities and rapid broadband connectivity that allows for the transmission of images to radiology experts, has

made the performance of these procedures in the emergency room and in other treatment venues more appealing and practical. As a result, attending physicians are increasing their reliance on imaging procedures and radiological

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interpretations as a standard of care to aid in patient care management decisions, resulting in continuing growth in the volume of radiological procedures performed. This increase has also been driven by an aging population, advances in diagnostic imaging technologies, the growing availability and accessibility of imaging equipment in hospitals and clinics and more frequent physician referrals for diagnostic imaging procedures. Additionally, advances in digital technology now allow for the transmission of radiological images in a high quality, standardized, cost-effective and encrypted format, which permits radiologists to provide their professional services from locations other than where the imaging services are performed.

While the volume of diagnostic imaging procedures is expected to continue to grow, the number of practicing radiologists has historically been growing at a slower pace. The challenges associated with these trends are further compounded by the fact that radiology groups are required to provide their hospital customers with services 24 hours per day, seven days a week. Consequently, radiology practice groups and hospitals are seeking the assistance of outside providers to assist their own radiology staffs with both day and night coverage. Although the growth in the number of practicing radiologists has been slowing in recent years, some evidence suggests that this trend may be weakening. If the growth in the number of radiologists accelerates, we could face diminished demand for our services and increased competition.

Our Solution Suite

We are leading the transformation of the practice of radiology by providing high-quality, cost-effective solutions to radiology groups and hospitals throughout the United States. Our team of independent contractor, American Board of Radiology-certified, state-licensed and hospital-privileged physicians, provides professional services (interpretations , exams , scans or reads) 24 hours per day, seven days a week, for approximately 26% of all U.S. hospitals. The reads that we provide continue to consist primarily of off-hours preliminary reads, but increasingly include final and sub-specialty interpretations. In addition to these professional services, we also provide our customers with cardiac 3D reconstructions, radiology clinical workflow technology, and business services, all designed to enhance the care they provide to patients and improve the efficiency of their practices. For more information, visit our website at www.nighthawkrad.net. The information contained on, or accessible through, our website is not incorporated in this filing.

Professional Services

Preliminary Interpretations

Approximately eighty-six percent of the professional services we currently provide are preliminary reads from images generated from hospital emergency departments. These reads are used by the treating physician to determine whether any immediate action is required in response to symptoms being presented by a patient. Typically, the preliminary diagnosis is followed the next morning by a more exhaustive final read. Because third-party payors and patients pay only for the final reads and not the preliminary reads that we provide, our services related to these preliminary reads do not result in any incremental costs to third-party payors or patients nor are we currently dependent on payments by them for these reads. Recently we have seen an increase in interest for final emergent reads in lieu of a preliminary read. Like a preliminary read, these reads are typically generated from hospital emergency departments but our customers are requesting a final read instead of a preliminary. Our customers generally pay us on a per read basis.

Final and Sub-specialty Interpretations

In response to the growing needs of our radiology group customers, we also provide our customers with final and sub-specialty interpretations in addition to the preliminary reads we have historically provided. The growth in imaging, combined with the recruiting challenges of many radiology groups, continues to put increasing professional demands on radiologists, requiring radiologists to perform an increasing number of interpretations, and to work longer hours. Providing adequate staffing to hospitals, 24 hours per day, seven days a

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week, continues to be a challenge for many radiology groups. Hiring additional radiologists to address all the variables that exist with staffing, together with the management challenges associated with the increasing complexity of imaging modalities, is making our solution suite a valuable and affordable alternative for radiology groups. By offering final and sub-specialty read capabilities, including final emergent exams, we can reduce this burden as well as provide our customers with access to our highly-qualified, sub-specialty-trained radiologists which helps improve the quality of care for our customers patients. Our customers generally pay us on a per read basis and then these customers bill to and collect from the third-party payors.

Business Services

In addition to the professional radiology services we offer, we also offer our customers a complete suite of business services, including revenue cycle management, facilities and human resources management, transcription, information technology, quality control, radiologist support and other services required to effectively operate a radiology practice. Currently, almost all of our business services revenue is generated from our long-term administrative services agreement with St. Paul Radiology, P.A.

Operations

Affiliated radiologists. As of December 31, 2009, we had approximately 140 affiliated radiologists who were providing services for us. We structure our relationships with our affiliated radiologists as independent contractors and we have no control over the radiological services or interpretations rendered by the radiologists or their independent judgment concerning the practice of medicine. The contracts we have with our affiliated radiologists typically provide that we will make available a minimum number of hours that the radiologists can work per year. In each case, the contract is structured so that the radiologist has significant flexibility in determining, and control of, the radiologist s work schedule. We believe that our affiliated radiologists consider this flexibility an attractive and unique aspect of their relationship with us.

For each hospital from which an affiliated radiologist receives radiological images, the affiliated radiologist must hold a current license in good standing to practice medicine in the state in which the hospital is located and must have been granted privileges to practice at that particular hospital. As a result, and because we were providing services to more than 1,500 hospitals as of December 31, 2009, we have licensed each of our affiliated radiologists in an average of 36 states and have privileged each of our affiliated radiologists at an average of over 500 hospitals. By ensuring that our affiliated radiologists are licensed and privileged at many of our hospital sites, we design redundancy into our solution in order to minimize or eliminate the periods of time during which we do not have an affiliated radiologist available to provide services to a particular hospital.

Many of the hospital privileges held by our affiliated radiologists were issued pursuant to a standard promulgated by The Joint Commission that allows the local hospital to rely upon the credentialing and privileging processes performed by us with respect to our affiliated radiologists. Essentially, because we are a Joint Commission-accredited facility, other Joint Commission-accredited facilities can rely on our processes as opposed to duplicating work already performed in accordance with approved standards. However, over the past few years, the Centers for Medicare and Medicaid Services, or CMS, has increasingly expressed concerns regarding this ability for hospitals to rely on the processes of another institution. In response to the CMS position, The Joint Commission has recently announced that the standards allowing this practice will expire in July 2010.

In light of the planned changes adopted by The Joint Commission, we are working with our customers that have historically relied upon these standards to institute new credentialing processes to help them comply with the new standards once they take effect. We anticipate that, because of the additional workload that will be inherent in any new process that our customers may adopt, these customers will seek to credential and privilege fewer physicians than are currently privileged at those sites. This may require us to change how we schedule the services of our affiliated radiologists which could, in turn, negatively impact our financial condition and results of operations.

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The licensing procedures and requirements vary according to each state s laws and regulations governing the issuance of medical licenses. These procedures typically include an extensive application process that covers significant aspects of the applicant s professional and personal life. In addition, to maintain a license to practice medicine in a given state, the state will often require the physician to undergo continuing education and training and maintain minimum thresholds of medical liability insurance.

To facilitate compliance with the licensing requirements of the various states in which we provide services, we employ licensing specialists to manage the state medical license application processes for our affiliated radiologists. These state-licensing specialists perform a number of functions, including tracking expiration dates, implementing procedures to renew licenses, and tracking continuing medical education, medical liability insurance coverage and other ongoing licensing-related obligations.

Network and workflow. We deliver our professional services through a technology platform that utilizes public and private network infrastructures, multiple datacenters, and proprietary workflow and image management technologies. Our systems have been designed to be secure, scalable and redundant. We employ information technology professionals to maintain our systems and to provide customer technical support 24 hours per day, seven days a week. In addition, we continue to enhance our technology platform through the efforts of our internal software development personnel as well as by leveraging leading third-party software and hardware solutions.

Customers

As of December 31, 2009, we provided professional radiology services to nearly 800 radiology practices serving more than 1,500 hospitals. In 2009, we generated $16.9 million in revenue from one customer, St. Paul Radiology, P.A., representing 10.4% of our revenue, under a multiyear business services agreement. As described more fully in Item 3 Litigation and in Item 1A Risk Factors , we are currently involved in a dispute with St. Paul Radiology, P.A. regarding our services agreement with them, and the revenue generated under our agreement with St. Paul Radiology, P.A. may decline materially or cease if the dispute is not resolved in a manner favorable to us.

Our customer contracts typically have a one-year term and automatically renew for successive terms unless earlier terminated pursuant to the terms of the contract. Our customer contracts specify the agreed upon coverage periods and whether preliminary and/or final reads will be provided. We typically charge an agreed upon per-read fee that varies with the type and complexity of the interpretation being performed.

Sales and Marketing

Sales. We sell our services primarily through our direct sales force comprised of telesales and field sales personnel. Our sales professionals focus their efforts on radiology groups of all sizes and, in some cases, cardiology groups and hospitals.

Marketing. Our marketing objectives are to generate qualified sales leads, build our brand and raise awareness of NightHawk as the leading provider of radiology solutions to radiology groups across the United States.

Our principal marketing initiatives include:

- direct mail campaigns,
- participation in, and sponsorship of, radiology conferences and trade shows, and
- using our website to provide service and company information.

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Competition

The market for our services is highly competitive, rapidly evolving and fragmented, and subject to changing technology and market dynamics. Our primary competitors are Virtual Radiologic Corporation (VRC), as well as other large and small scale service providers, some of which have only a local or regional presence. We believe that the primary competitive factors in our market include:

- quality of the service provided,
- price of service,
- report accuracy and content,
- turnaround time required to complete and return interpretations,
- market acceptance by radiology groups and hospitals,
- quality and reliability of service-provider technology and workflow infrastructure,
- quality and availability of customer support,
- sales and marketing capabilities of the service provider, and
- financial stability of the service provider.

Government Regulation and Supervision

The healthcare industry is highly regulated and remains subject to significant political debate at all levels of our government. Our ability to operate profitably will depend in part upon the ability of us, our affiliated radiologists, and our customers and their radiologists to continue to operate effectively in whatever health care environment we might find ourselves in the future. At a minimum, we know that our business depends upon our ability to obtain and maintain all necessary licenses and other approvals and operate in compliance with current applicable healthcare regulations. Although it remains unclear what changes to our healthcare system may result from the healthcare reform packages that are currently being debated, we believe that healthcare regulations will continue to change in the future. Although we believe that we are operating in compliance with all applicable federal and state laws, many aspects of our business operations have not been the subject of judicial or regulatory interpretation. We cannot provide assurance that a review of our business by courts or regulatory authorities will not result in a determination that could adversely affect our operations or that the healthcare regulatory environment will not change in a way that restricts our operations. Some of the areas of healthcare regulation that affect our business are as follows:

Physician licensure laws. The practice of medicine, including the practice of radiology and teleradiology, is subject to state licensure laws, regulations and approvals. Physicians who provide professional medical services to a patient via a telemedicine system must, in most instances, hold a valid license to practice medicine in the state in which the patient is located. We have established a system for ensuring that our affiliated radiologists are appropriately licensed under applicable state law.

Corporate practice of medicine; fee splitting. The laws of many states, including states in which our customers are located, prohibit us from exercising control over the medical judgments or decisions of our affiliated radiologists and from engaging in certain financial arrangements,

such as splitting professional fees with physicians. These laws and their interpretations vary from state to state and are enforced by state courts and regulatory authorities, each with broad discretion. We structure our relationships with our affiliated radiologists and our customers in a manner that we believe is in compliance with prohibitions against the corporate practice of medicine and fee splitting, and in a manner that requires that our affiliated radiologists exercise complete control over their own medical judgments and decisions.

Medicare and Medicaid reimbursement programs affecting professional services. Professional radiology interpretation services performed from a location outside of the United States are generally not reimbursable by

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the Medicare program and certain state Medicaid programs. Accordingly, we (or our customers) do not bill Medicare or Medicaid programs for professional services performed by our affiliated radiologists located outside of the United States. Instead, we ensure that all services that may be subject to reimbursement (i.e. final interpretations) are performed by our affiliated physicians located within the United States. Currently, over 100 of our affiliated radiologists are located in the United States.

As discussed above, our customers generally pay us directly on a per read basis. These customers then, in turn, typically bill and receive payments from Medicare and/or other third party payors for the professional services which were performed by our affiliated radiologists. This is done through a procedure called reassignment. Medicare and many of the other third party payors have established certain rules against such reassignment unless the procedures fall within specific exceptions. We believe that the services provided by our affiliated radiologists satisfy one or more of these exceptions and we believe our reassignment procedures are consistent with all applicable laws and regulations. However, complying with these regulations can prove burdensome to our customers and results in additional complexity in our final interpretation service offering.

For example, Medicare reimbursement rules currently provide that the proper Medicare carrier to pay physician claims is the Medicare carrier for the region in which the physician is located, rather than the Medicare carrier for the region in which the patient receiving the services is located. Many of our affiliated radiologists are located in a Medicare region that is different from the Medicare region in which the patient is located. Since it is incumbent on our customers to file with the proper Medicare carrier in order to receive payment, it may be necessary for our customers to enroll with additional Medicare carriers in order to properly submit claims for reimbursement. To the extent that our customers are unwilling or unable to do so, they may be unwilling to use our services unless we were to submit the claims. Should this occur, we would either be required to forgo business with such customers or be required to design, develop and implement an appropriate recordkeeping and billing system to bill Medicare and Medicaid. If we are unable to effectively address these challenges, our business, financial condition and results of operations could be adversely affected.

Federal and state anti-kickback prohibitions. Various federal and state laws govern financial arrangements among healthcare providers. The federal anti-kickback law prohibits the knowing and willful offer, payment, solicitation or receipt of any form of remuneration in return for, or with the purpose to induce, the referral of Medicare, Medicaid, or other federal healthcare program patients, or in return for, or with the purpose to induce, the purchase, lease or order of items or services that are covered by Medicare, Medicaid, or other federal healthcare programs. Similarly, many state laws prohibit the solicitation, payment or receipt of remuneration in return for, or to induce the referral of patients in private as well as government programs. Violation of these anti-kickback laws may result in substantial civil or criminal penalties for individuals or entities and/or exclusion from participating in federal or state healthcare programs. We believe that we are operating in compliance with applicable federal and state anti-kickback laws and that our contractual arrangements with our customers are structured in a manner that is compliant with such laws.

Health Insurance Portability and Accountability Act of 1996. The Health Insurance Portability and Accountability Act of 1996, or HIPAA authorizes the imposition of civil money penalties against entities that employ or enter into contracts with individuals or entities that have been excluded from participation in the Medicare or Medicaid programs. We perform background checks on our affiliated radiologists, and do not believe that we employ or contract with any excluded individuals or entities. However, a finding that we have violated this provision of HIPAA could have a material adverse effect on our business and financial condition.

HIPAA also established several separate criminal penalties for making false or fraudulent claims to insurance companies and other non-governmental payors of healthcare services. These provisions are intended to punish some of the same conduct in the submission of claims to private payors as the Federal False Claims Act covers in connection with governmental health programs. We believe that our services have not historically been provided in a way that would place either our clients or ourselves at risk of violating the HIPAA anti-fraud statutes. We could be vulnerable to prosecution under these statutes if any of our customers deliberately or recklessly submits claims that contain false, misleading or incomplete information.

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In addition, the Administrative Simplification provisions of HIPAA require the promulgation of regulations establishing national standards for, among other things, certain electronic healthcare transactions, the use and disclosure of certain individually identifiable patient health information, and the security of the electronic systems maintaining this information. These are commonly known as the HIPAA transaction and code set standards, privacy standards, and security standards, respectively.

The administrative provisions of HIPAA direct the federal government to adopt national electronic standards for automated transfer of certain healthcare data among healthcare payors, plans and providers. HIPAA is designed to enable the entire healthcare industry to communicate electronic data using a single set of standards. We are a covered entity under HIPAA and, as such, we must operate in compliance with the electronic transaction code standards, privacy standards and security standards. We have developed policies, procedures and systems for handling patient health information and data that we believe are in compliance with the requirements of HIPAA.

In addition to HIPAA, Australia and many U.S. states have adopted statutes and regulations that are similar to or, in some cases, more stringent than HIPAA. We believe that our operations are in compliance with these statutes and regulations.

Federal Deficit Reduction Act of 2005. The Federal Deficit Reduction Act of 2005, or the DRA, requires that medical providers receiving more than $5,000,000 in annual Medicaid payments from a specific state must establish certain written policies to be disseminated to that provider s employees, contractors and agents. The written policies required by the DRA include information about the Federal False Claims Act, administrative remedies under the Program Fraud Civil Remedies Act, state and local laws regarding false claims for those localities in which the practice operates, and the protections given to whistleblowers under such laws. We believe that we are not currently subject to the informational and educational mandates of the DRA because we do not now receive more than the requisite amount of Medicaid payments from any state.

For more information regarding how these and other healthcare regulations may impact our business, see Part I Item 1A Risk Factors.

Intellectual Property

Our principal intellectual property assets include our brand and our proprietary software technology. We rely primarily on trade secret and unfair competition laws in the United States and other jurisdictions as well as confidentiality procedures and contractual provisions to protect these assets. We believe that the name NightHawk cannot be afforded trademark protection as it is a generic term used to describe the provision of off-hours radiology services. However, we intend to pursue all protections available, including common law claims for unfair competition practices, for improper use of the NightHawk name.

In addition to our trade names, we have filed one patent application covering certain aspects of our proprietary workflow technology. This patent remains under review by the U.S. Patent and Trade Office.

We enter into confidentiality and proprietary rights agreements with our employees, affiliated radiologists, consultants and other third parties and control access to software, documentation and other proprietary information.

Employees and Independent Contractors

As of December 31, 2009, we had approximately 500 employees. None of our employees are represented by a labor union. We consider our relationships with our employees to be good.

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Also as of December 31, 2009, we had approximately 140 affiliated radiologists who provide services to our customers. Our affiliated radiologists are independent contractors of NightHawk. We consider our relationships with our independent contractors to be good.

Website

Our website address is *www.nighthawkrad.net* and can be used to access, free of charge, through the investor relations category, our Annual Report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and any amendments to those reports, as soon as reasonably practicable after we electronically file such material with or furnish it to the SEC. The information on our website is not incorporated as a part of this Annual Report. The public can also obtain copies of these reports by visiting the SEC s Public Reference Room at 100 F Street, NE, Washington DC 20549, or by calling the SEC at 1-800-SEC-0330, or by accessing the SEC s website at http://www.sec.gov.

ITEM 1A. Risk Factors

YOU SHOULD CAREFULLY CONSIDER THE RISKS DESCRIBED BELOW BEFORE MAKING AN INVESTMENT DECISION. OUR BUSINESS, PROSPECTS, FINANCIAL CONDITION OR OPERATING RESULTS COULD BE MATERIALLY ADVERSELY AFFECTED BY ANY OF THESE RISKS. THE TRADING PRICE OF OUR COMMON STOCK COULD DECLINE DUE TO ANY OF THESE RISKS AND YOU MAY LOSE ALL OR PART OF YOUR INVESTMENT. IN ASSESSING THE RISKS DESCRIBED BELOW, YOU SHOULD ALSO REFER TO THE OTHER INFORMATION CONTAINED IN THIS REPORT, INCLUDING OUR CONSOLIDATED FINANCIAL STATEMENTS AND THE RELATED NOTES, BEFORE DECIDING TO PURCHASE ANY SHARES OF OUR COMMON STOCK.

We operate in an emerging and rapidly evolving market, which makes it difficult to evaluate our business and prospects.

Our industry is relatively new and is rapidly evolving. As a result, our current business and future prospects are difficult to evaluate. You must consider our business and prospects in light of the risks and difficulties we encounter as an early leader in a rapidly evolving market. Some of these risks relate to our potential inability to:

- effectively manage our business and technology,
- continue to provide consistently high levels of service quality as we expand the scale of our business,
- develop new services that complement our existing business,
- acquire additional customers and maintain current customers in a highly competitive environment,
- market our services to our customers due to regulatory rules governing reassignment of payments, which could affect our customers ability to collect fees for services provided by our affiliated radiologists,
- effectively manage the integration of companies that we may acquire in the future,
- manage growth in personnel and operations,
- effectively manage our medical liability risk, and

recruit and retain radiologists and other key personnel.

We may not be able to successfully address these and the other risks described in this report. Failure to adequately do so would harm our business and cause our operating results to suffer. Furthermore, our early operating history resulted in historical revenue growth rates that we will likely not be able to repeat, and therefore will not be indicative of our future results of operations. As a result, the price of our common stock could decline.

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The market in which we participate is competitive and we expect competition to increase in the future, which will make it more difficult for us to sell our services and has resulted and may continue to result in pricing pressure, reduced revenue and reduced market share.

The market for professional radiology services and business process services is competitive and rapidly changing, barriers to entry are relatively low, and with the introduction of new technologies and market entrants, we expect competition to continue to intensify in the future. In fact, in recent periods we have experienced an increase in competition from regional providers of services similar to ours. If we fail to compete effectively, our operating results will be harmed. Some of our principal competitors, including our largest competitor, VRC, offer their services at a lower price, which has resulted and may continue to result in pricing pressure and lost customers. If we are unable to maintain our current pricing or effectively revise the way we compensate our affiliated radiologists, our operating results could be negatively impacted. In addition, pricing pressures and increased competition could result in reduced revenue and reduced profits.

In addition, if companies larger than we are enter the market through internal expansion or acquisition of one of our competitors, the change in the competitive landscape could adversely affect our ability to compete effectively. These competitors could have established customer relationships and greater financial, technical, sales, marketing and other resources than we do, and may be able to respond more quickly to new or emerging technologies or devote greater resources to the development, promotion and sale of their services. This competition could harm our ability to sell our services, which may lead to lower prices, reduced revenue and, ultimately, reduced market share.

We may be unable to successfully expand our services beyond the off-hours emergency radiology market.

A key part of our strategy to offset the moderation of growth in our provision of preliminary reads involves providing final reads and sub-specialty services; however, our efforts to provide these final reads and sub-specialty services, or any other services beyond our current services offerings and radiology solutions, may not result in significant revenue growth for us. The markets for final and sub-specialty reads are more complex than the market for preliminary reads. If we are to be successful in these markets, we will be required to develop, execute and maintain new sales and marketing efforts, as well as new information technology capabilities. In addition, our final and sub-specialty service offering requires our customers to navigate the billing and collecting rules related to the reads our affiliated physicians provide including the billing reassignment rules and the rules regarding where to bill for such services rules that are often cumbersome and difficult for our customers. As a result, our efforts to expand our services into these new markets may divert management resources from existing operations and require us to commit significant financial resources to an unproven business. If we are unable to effectively address the challenges that these new service offerings present, our business, financial condition and results of operations could be adversely affected.

If our customers perceive that we are offering services that are competitive to theirs, some of our customers may terminate their agreements with us, which could adversely affect our business, financial condition and results of operation.

Historically, some radiology groups have been concerned that teleradiology companies may potentially become competitive with them for their business. Our core mission has always been to work with and to support our radiology group customers and we are committed to acting consistently with our mission of supporting our radiology group customers and not competing with them. Despite this, as the largest teleradiology company in the industry, we are particularly vulnerable to the potential that there could be speculation or misperception by some radiology groups that we may become competitive with their business, which may result in some customers choosing to discontinue doing business with us. If this were to occur, our business, financial condition and results of operations could be adversely affected.

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If our arrangements with our affiliated radiologists or our customers are found to violate state laws prohibiting the corporate practice of medicine or fee splitting, our business, financial condition and our ability to operate in those states could be adversely impacted.

The laws of many states, including states in which our customers are located, prohibit us from exercising control over the medical judgments or decisions of physicians and from engaging in certain financial arrangements, such as splitting professional fees with physicians. These laws and their interpretations vary from state to state and are enforced by state courts and regulatory authorities, each with broad discretion. We enter into agreements with our affiliated radiologists pursuant to which the radiologists render professional medical services using their independent judgment and discretion with no influence by NightHawk. In addition, we enter into agreements with our customers to deliver professional radiology interpretation services in exchange for a service fee. We structure our relationships with our affiliated radiologists and our customers in a manner that we believe is in compliance with prohibitions against the corporate practice of medicine and fee splitting. If any state regulatory or similar authority determines that we are engaged in the corporate practice of medicine or that the payment of service fees to us by our customers constitutes fee splitting, we could be subject to civil and criminal penalties and could be required to restructure or terminate the applicable contractual arrangements. A determination that these arrangements violate state statutes, or our inability to successfully restructure our relationships with our affiliated radiologists to comply with these statutes, could eliminate customers located in certain states from the market for our services, which would have a materially adverse effect on our business, financial condition and operations.

Our growth strategy depends on our ability to recruit and retain qualified radiologists. If we are unable to do so, our future growth would be limited and our business and operating results would be harmed.

Our success is dependent upon our continuing ability to recruit and retain qualified radiologists. An inability to recruit and retain radiologists would have a material adverse effect on our ability to service our customers and grow our revenues and would adversely affect our results of operations. We face competition for radiologists from other healthcare providers, including radiology groups, teleradiology companies, research and academic institutions, government entities and other organizations. If we are unable to effectively recruit and retain qualified radiologists, our business, financial condition and results of operations could be adversely affected.

If our affiliated radiologists are characterized as employees, we would be subject to employment and withholding liabilities and may be subject to prohibitions against the corporate practice of medicine.

We structure our relationships with our affiliated radiologists in a manner that we believe results in an independent contractor relationship, not an employee relationship. An independent contractor is generally distinguished from an employee by his or her degree of autonomy and independence in providing services. A high degree of autonomy and independence is generally indicative of a contractor relationship, while a high degree of control is generally indicative of an employment relationship. Although we believe that our affiliated radiologists are properly characterized as independent contractors, tax or other regulatory authorities may in the future challenge our characterization of these relationships. If the Internal Revenue Service (IRS) (or other state, federal or foreign courts) were to determine that our affiliated radiologists are employees, and not independent contractors, we would be required to withhold income taxes, to withhold and pay social security, Medicare and similar taxes and to pay unemployment and other related payroll taxes, would be liable for unpaid past taxes by our affiliated radiologists and may be subject to penalties, all of which may materially harm our business and operating results. In connection with its audit of our tax filing for the 2006 tax year, the IRS reviewed our characterization of our affiliated radiologists as independent contractors. As a result of that review, we received a letter on August 27, 2009 stating that no changes to the tax as reported would be made and no further examination of this matter will be made by the IRS. However we cannot provide assurances that future audits would be consistent with this conclusion. If, in the future, the IRS were to reach a different conclusion, we believe we could successfully modify our relationships with our affiliated radiologists to address such an outcome. However, if we were unable to successfully implement this new relationship with our affiliated radiologists, our business and results of operations could be adversely affected.

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If our customers terminate their agreements with us or if our customers businesses materially decline, our financial condition and operating results could be adversely affected.

Our revenue is derived primarily from fee-for-service billings to our radiology group customers. Our agreements with our customers generally provide for one-year terms and automatically renew for successive one-year terms unless terminated by our customers or us upon 30 days prior notice. Our customers may elect not to renew their contracts with us, they may seek to renegotiate the terms of their contracts or they may choose to reduce or eliminate our services. For example, due to a number of competitive factors, we saw an 11% decrease in read volumes that resulted from the cumulative impact of customers that we lost over the preceding 12 months. If our arrangements with our customers are canceled, or are not renewed or replaced with other arrangements having at least as favorable terms, whether due to competitive factors or not, our business, financial condition and results of operations could be adversely affected. In addition, if our radiology group customers agreements with the hospitals that they serve are terminated, or if our radiology group customers businesses begin to decline for other reasons (such as a material increase in the rate of uninsured patients or uncollectible accounts), our business, financial condition and results of operations could be adversely affected.

Substantially all of our business services revenue is generated from St. Paul Radiology, P.A. under a multiyear business services agreement. In 2009, we generated $16.9 million in revenue from St. Paul Radiology, P.A., representing 10.4% of our revenue. If the business of St. Paul Radiology, P.A. were to decline significantly or if St. Paul Radiology, P.A. were to experience a material increase in uncollectible accounts, our business, financial condition and results of operations would be adversely affected.

St. Paul Radiology, P.A. has indicated that it believes that we are in breach of certain of our obligations under our agreements with it and that, as a result of such alleged breaches, it is entitled to terminate the agreements and it has incurred material damages which St. Paul Radiology claims could exceed $70 million. We believe such claims of breach and allegations of damages are without merit, that we have fulfilled all of our obligations under the agreements and that the agreements may not be terminated by St. Paul Radiology. However, there is always inherent uncertainty of any litigation or arbitration proceeding. If such claims of breach and related damages are proven to be true and the dispute resolution process does not achieve a result favorable to us, we may be required to remedy the alleged breach, pay damages, and/or the agreements may be terminated resulting in the loss of the associated future revenue and profit. Termination of our agreements with St. Paul Radiology, P.A. or a reduction in the revenue and related profits received under the agreements would have a material adverse impact on our business, financial condition and results of operations. In addition, termination of our agreements with St. Paul Radiology or a reduction in the revenue and related profits received under the agreements could cause our total leverage ratio under our credit agreement to exceed 2.5, which in turn would trigger a mandatory principal repayment by us equal to approximately 50% of our cash flow for such year, or 4.0, which could result in the acceleration of our obligation to repay all of our borrowings under our credit agreement. See Item 7 Management s Discussion and Analysis of Financial Condition and Results of Operations Liquidity and Capital Resources Financial condition and liquidity of this Annual Report for more information. As an example, if we did not have the revenue and related profits generated by our agreements with St. Paul Radiology, P.A. in 2009, our total leverage ratio would have exceeded 2.5 (but would have been less than 4.0) and we would have been required to repay a portion of the principal amount of the term loan. If we fail to meet either of our total leverage ratio tests in the future, whether as a result of a termination of our agreements with St. Paul Radiology, P.A. or otherwise, and we are required to make a mandatory repayment of a portion of the principal of our term loan, or if our obligations under our term loan are accelerated as a result of our default, our financial condition could be materially adversely impacted.

We have been subject to medical liability claims and may become subject to additional claims or other harmful lawsuits, which could cause us to incur significant expenses and may require us to pay significant damages if not covered by insurance.

Our business entails the risk of medical liability claims against our affiliated radiologists and us. We or our affiliated radiologists are subject to ongoing medical liability claims in the ordinary course of business. In addition, in some instances, these medical liability proceedings include allegations by plaintiffs that our business

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practices violate the appropriate standard of care and that, as a result, a court should institute punitive damages against us. Although we maintain medical liability insurance for ourselves and our affiliated radiologists with coverage that we believe is appropriate in light of the risks attendant to our business, successful medical liability claims could result in substantial damage awards which exceed the limits of our insurance coverage. In addition, medical liability insurance is expensive and insurance premiums may increase significantly in the future, particularly as we continue to grow our final and sub-specialty services. As a result, adequate medical liability insurance may not be available to our affiliated radiologists or us in the future at acceptable costs or at all.

Any claims made against us, including any claims that our business practices violate the standard of care, that are not fully covered by insurance could be costly to defend against, result in substantial damage awards against us and divert the attention of our management and our affiliated radiologists from our operations, which could adversely affect our operations and financial performance. In addition, any claims might adversely affect our business or reputation.

In addition to medical liability claims, we may also become subject to other litigation proceedings that, if not fully covered by insurance, could be costly to defend against, result in substantial damage awards against us and divert the attention of our management. For example, if our dispute with St. Paul Radiology, P.A. results in a litigation proceeding, we will incur significant legal costs and may be required to remedy the alleged breach, pay damages, or both. Although we believe the chances of such outcomes are remote, there is always inherent uncertainty of any litigation or arbitration proceeding.

We indemnify our radiology group customers and hospital customers against damages or liabilities that they may incur as a result of the actions of our affiliated radiologists or us. We also indemnify some of our affiliated radiologists against medical liability claims. Our indemnification obligations are typically payable only to the extent that damages incurred are not covered by insurance.

We have also assumed and succeeded to substantially all of the obligations of the businesses that we have acquired. Medical liability claims may be asserted against us for events that occurred prior to these acquisitions.

We are also dependent upon the financial health of our medical liability insurance provider. Currently our medical malpractice provider is Chartis, Inc., an insurance subsidiary of American International Group (AIG). Recently, AIG has received significant U.S. government financial support. We believe Chartis is adequately collateralized, however we cannot guarantee its financial health. Should AIG or Chartis not have the funds available to cover claims made against us or our radiologists, our business, the financial condition and results of operations could be adversely affected.

If our security measures are breached and unauthorized access is obtained to patient or customer data, we may face liabilities and our system may be perceived as not being secure, causing customers to curtail or stop using our services, which could lead to a decline in revenues.

We are required to implement administrative, physical and technological safeguards to ensure the security of the patient data that we create, process or store. These safeguards may fail to ensure the security of patient or customer data, thereby subjecting us to liability, including civil monetary penalties and possible criminal penalties. If our security measures are breached, whether as a result of third party action, employee error, malfeasance or otherwise, and, as a result, someone obtains unauthorized access to patient or customer data, our reputation will be damaged, our business may suffer and we could incur significant liability. Because techniques used to obtain unauthorized access to systems change frequently and generally are not recognized until launched against a target, we may be unable to anticipate these techniques or to implement adequate preventive measures.

Enforcement of federal and state laws regarding privacy and security of patient information may adversely affect our business, financial condition or operations.

The use and disclosure of certain healthcare information by healthcare providers and their business associates has come under increasing public scrutiny. Federal standards under the Health Insurance Portability and Accountability Act of 1996, or HIPAA, establish rules concerning how individually-identifiable health

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information may be used, disclosed and protected. Historically, state law has governed confidentiality issues and HIPAA preserves these laws to the extent they are more protective of a patient s privacy or provide the patient with more access to his or her health information. As a result of the implementation of the HIPAA regulations, many states have adopted or may adopt revisions to their existing laws and regulations that may be more stringent or burdensome than the federal HIPAA provisions. We must operate our business in a manner that complies with all applicable laws, both federal and state and that does not jeopardize the ability of our customers to comply with all applicable laws to which they are subject. We believe that our operations are consistent with these legal standards. Nevertheless, these laws and regulations present risks for healthcare providers and their business associates that provide services to patients in multiple states. Because few of the state laws and regulations have been interpreted by government regulators or courts, our interpretations and activities may be challenged. If a challenge to our activities is successful, it could have an adverse effect on our operations, may require us to forgo relationships with customers in certain states, and may restrict the territory available to us to expand our business. In addition, even if our interpretations of HIPAA and other federal and state laws and regulations are correct, we could be held liable for unauthorized uses or disclosures of patient information as a result of inadequate systems and controls to protect this information or due to the theft of information by unauthorized computer programmers who penetrate our network security.

Future changes in healthcare regulation are difficult to predict and may constrain or require us to restructure our operations, which could negatively impact our business and operating results.

The healthcare industry is heavily regulated and subject to frequent changes in governing laws and regulations as well as to evolving administrative interpretations. Our ability to operate profitably will depend in part upon the ability of us, our affiliated radiologists, and our customers and their radiologists to continue to operate effectively in whatever health care environment we might find ourselves in the future. Although it remains unclear what changes to our healthcare system may come under the healthcare reform packages currently being debated in the U.S. Congress, the proposed reforms could adversely affect the overall imaging market and our customers by, among other things, reducing the growth in, or overall number of, diagnostic imaging procedures performed, and the payments to radiology groups and facilities for such procedures. Although we believe our direct exposure to potential reforms will be limited due to the nature of our services being principally contracting with radiology groups for outsourced interpretations, any reduction in demand for diagnostic imaging, as well as reduced reimbursement to groups and facilities that utilize our services could in turn adversely affect our business.

Our business could also be adversely affected by regulatory changes at the federal or state level that impose new requirements for licensing, new restrictions on reimbursement for medical services by government programs, new pretreatment certification requirements for patients seeking radiology procedures, or new limitations on services that can be performed by us. In addition, federal, state and local legislative bodies have adopted and continue to consider medical cost containment legislation and regulations that have restricted or may restrict reimbursement to entities providing services in the healthcare industry and referrals by physicians to entities in which the physicians have a direct or indirect financial interest or other relationship. For example, Medicare has adopted a regulation that limits reimbursement for the technical component when multiple diagnostic tests are performed during a single session at medical facilities other than hospitals. Any of these or future reimbursement regulations or policies could limit the number of diagnostic tests our customers order and could have a material adverse effect on our business.

Although we monitor legal and regulatory developments and modify our operations from time to time as the regulatory environment changes, we may not be able to adapt our operations to address every new regulation, and such regulations may adversely affect our business. In addition, although we believe that we are operating in compliance with applicable federal and state laws, our business operations have not been scrutinized or assessed by judicial or regulatory agencies. We cannot assure you that a review of our business by courts or regulatory authorities would not result in a determination that adversely affects our operations or that the healthcare regulatory environment will not change in a way that will restrict our operations.

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Our operating results are subject to seasonal fluctuation, which makes our results difficult to predict and could cause our performance to fall short of quarterly expectations.

Historically, we have experienced increased demand for and revenues from our services during the second and third fiscal quarters of each year. We believe that these increases are a result of increased outdoor and transportation activities and a greater utilization of service hours during the summer months. During the first and fourth quarters of each fiscal year, when weather conditions are colder for a large portion of the United States, we have historically experienced relatively lower revenues than those experienced during the second and third quarters. We may or may not continue to experience this or other seasonality in the future. These seasonal factors may lead to unpredictable variations in our quarterly operating results and cause the trading price of our common stock to decline. Additionally, our ability to schedule adequate radiologist coverage during the seasonal period of increased demand for our services may affect our ability to provide appropriate turnaround times in our services to clients.

Interruptions or delays in our information systems or in network or related services provided by third-party suppliers could impair the delivery of our services and harm our business.

Our operations depend on the uninterrupted performance of our information systems, which are substantially dependent on systems we have developed internally since our inception as well as systems provided by third parties over which we have little control. Failure to maintain reliable information systems, or disruptions in our information systems could cause disruptions and delays in our business operations which could have a material adverse effect on our business, financial condition and results of operations.

We rely on broadband connections provided by third party suppliers to route digital images from hospitals in the United States to our facilities in Australia, Switzerland and the United States. Any interruption in the functioning of our internal systems or in the availability of the network connections between the hospitals and our affiliated physicians (regardless of location) would reduce our revenue and profits. Frequent or persistent interruptions in our services could cause permanent harm to our reputation and brand and could cause current or potential customers to believe that our systems are unreliable, leading them to switch to our competitors. Because our customers may use our services for critical healthcare services, any system failures could result in damage to our customers businesses and reputation. These customers could seek significant compensation from us for their losses, and our agreements with our customers do not limit the amount of compensation that they may receive. Any claim for compensation, even if unsuccessful, would likely be time consuming and costly for us to resolve.

Our systems are vulnerable to damage or interruption, including damage and/or interruption due to earthquakes, floods, fires, power loss, telecommunication failures, terrorist attacks, computer viruses, break-ins, sabotage, and acts of vandalism. We do not carry business interruption insurance to protect us against losses that may result from interruptions in our service as a result of system failures.

Finally, from time to time, we upgrade, replace or expand our information systems. If we fail to successfully manage these activities, we could experience disruptions and delays in our operations, which could have a material adverse effect on our business.

Hospital privileging requirements or physician licensure laws may limit our market, and the loss of hospital privileges or state medical licenses held by our affiliated radiologists could have a material adverse affect on our business, financial condition and results of operations.

Each of our affiliated radiologists must be granted privileges to practice at each hospital from which the radiologist receives radiological images and must hold a license in good standing to practice medicine in the state in which the hospital is located. The requirements for obtaining and maintaining hospital privileges and state medical licenses vary significantly among hospitals and states. If a hospital or state restricts or impedes the ability of physicians located outside of the United States to obtain privileges or a license to practice medicine at that hospital or in that state, the market for our services could be reduced. In addition, any loss of existing

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privileges or medical licenses held by our affiliated radiologists could impair our ability to serve our existing customers and have a material adverse effect on our business, financial condition and results of operations.

Many of the hospital privileges held by our affiliated radiologists were issued pursuant to a standard promulgated by The Joint Commission that allows the local hospital to rely upon the credentialing and privileging processes performed by us with respect to our affiliated radiologists, a process called privileging by proxy . Essentially, because we are a Joint Commission-accredited facility, other Joint Commission-accredited facilities can rely on our processes as opposed to duplicating work already performed in accordance with approved standards. However, over the past few years, the Centers for Medicare and Medicaid Services, or CMS, has increasingly expressed concerns regarding this ability for hospitals to rely on the processes of another institution. In response to the CMS position, The Joint Commission has recently announced that the standards allowing this practice will expire in July 2010.

In light of the planned changes adopted by The Joint Commission, we are working with our customers that have historically relied upon these standards to institute new credentialing processes that will help them comply with the new standards once they become effective. We anticipate that, because of the additional workload that will be inherent in any new process that our customers may adopt, these customers will seek to credential and privilege fewer physicians than are currently privileged at those sites. This may require us to change how we schedule the services of our affiliated radiologists which could, in turn, negatively impact our financial condition and results of operations.

Medicare and Medicaid rules governing reassignment of payments could affect our customers ability to collect fees for services provided by our affiliated radiologists and our ability to market our services to our customers.

The majority of our customers are radiology practices. These customers, and not us, typically bill and receive payments from Medicare and/or Medicaid for professional services which were either performed by our affiliated radiologists that are U.S.-based or performed by the customer s radiologist after submission of the preliminary reads provided by our affiliated radiologists. Medicare and Medicaid generally prohibit a physician who performs a covered medical service from reassigning to anyone else (including to other physicians) the performing physician s right to receive payment directly from Medicare or Medicaid, except in certain circumstances. We believe that the services provided by our affiliated radiologists satisfy one or more of the exceptions to this prohibition, but the various Medicare carriers and state Medicaid authorities may interpret these exceptions differently than we do. Because Medicare and Medicaid payments may comprise a significant portion of the total payments received by our customers for the services of our U.S.-based affiliated radiologists, if it were determined that we do not qualify for an exception, our customers could be prohibited from billing Medicare and/or Medicaid for the services of our U.S.-based affiliated radiologists and this would cause a material adverse effect on our ability to market our services and on our business and results of operations. Future laws or regulations, moreover, may require that we bill Medicare or Medicaid directly for new services we provide to our customers. Should this occur, we would either be required to forgo business with such customers or be required to design, develop and implement an appropriate recordkeeping and billing system to bill Medicare and Medicaid.

Medicare reimbursement rules currently provide that the proper Medicare carrier to pay physician claims is the Medicare carrier for the region in which the physician or practice providing the service is located, rather than the Medicare carrier for the region in which the patient receiving the services is located. Many of our affiliated radiologists are located in a Medicare region that is different from the Medicare region in which the patient and treating hospital are located. Since it is incumbent on our customers to file with the proper Medicare carrier in order to receive payment, it may be necessary for our customers to enroll with additional Medicare carriers in order to properly submit claims for reimbursement. To the extent that our customers are unwilling or unable to do so, they may be unwilling to use our services unless we were to submit the claims. Should this occur, we would either be required to forgo business with such customers or be required to design, develop and implement

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an appropriate recordkeeping and billing system to bill Medicare and Medicaid. If we are unable to effectively address these challenges, our business, financial condition and results of operations could be adversely affected.

Changes in the rules and regulations governing Medicare s and Medicaid s payment for medical services could affect our revenues, particularly with respect to final reads.

Although most reads we provide are preliminary reads rather than final reads, we are providing an increasing number of final and sub-specialty reads. Cost containment pressures on Medicare and Medicaid could result in a reduction in the amount that the government will pay for these reads, which could cause pricing pressure on our services. Should that occur, we could be required to lower our prices, or our customers could elect to provide the reads themselves or obtain such services from one of our competitors, and not utilize the services of our affiliated radiologists, which would have a material adverse effect on our business, results of operations and financial condition.

We may be subject to less favorable levels of payment based upon third party payor fee schedules.

Many patients are covered by some form of private or government health insurance or other third party payment program. Third party payors generally establish fee schedules or other payment authorization methods for various procedures that govern which procedures will be reimbursed by the third party payors and the amount of reimbursement. To the extent that such schedules impact the rates at which third party payors are willing to pay the healthcare providers with whom we contract to provide imaging services, we are indirectly impacted by such fee schedules. However, if we were to negotiate direct payment arrangements with third party payors in the future, we would be directly impacted by such schedules. In addition, there is no guarantee that Medicare, state Medicaid programs, or commercial third party payors will continue to cover professional radiology services. For example, in some states, the Medicaid program budgets have been either cut or funds diverted to other programs, which have resulted in limiting the enrollment of participants. This has resulted in an increasing number of bankruptcies and difficulty in collecting accounts receivable at hospitals in certain states. Any reduction or elimination in coverage for our services could adversely impact our business.

Our business could be materially affected if a U.S. Department of Health & Human Services Office of Inspector General study results in a recommendation that Medicare only pay for reads performed contemporaneously in an emergency room setting.

In its Fiscal Year 2009 Work Plan, the U.S. Department of Health & Human Services Office of Inspector General, or HHS-OIG, indicated that it would conduct a study and issue a report assessing the appropriateness of Medicare billings for diagnostic tests performed in hospital emergency rooms. Part of the assessment may include a determination as to whether the tests were read contemporaneously with the patient s treatment. It is possible that, in the final report, the HHS-OIG could recommend to CMS that it change its reimbursement rules to clearly indicate that CMS will only pay for reads performed contemporaneously with a patient s treatment by a physician located within the United States. If CMS were to adopt this recommendation, final reads may no longer be eligible for reimbursement if performed by a physician other than the one who performed the preliminary read. In turn, if our customers were no longer able to be reimbursed for certain final reads, our customers may seek alternative arrangements for the performance of their preliminary reads, which could adversely impact our business.

Changes in the healthcare industry or litigation reform could reduce the number of diagnostic radiology procedures ordered by physicians, which could result in a decline in the demand for our services, pricing pressure and decreased revenue.

Changes in the healthcare industry directed at controlling healthcare costs and perceived over-utilization of diagnostic radiology procedures could reduce the volume of radiological procedures performed. For example, in an effort to contain increasing imaging costs, as part of the overall healthcare reform efforts, the U.S. government

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is considering what some managed care organizations and private insurers have already adopted namely, instituting pre-authorization policies which require physicians to pre-clear orders for diagnostic radiology procedures before those procedures can be performed. If pre-clearance protocols are broadly instituted by Medicare and/or throughout the healthcare industry, the volume of radiological procedures could decrease, resulting in pricing pressure and declining demand for our services. In addition, it is often alleged that many physicians order diagnostic procedures even when the procedures may have limited clinical utility in large part to establish a record for defense in the event of a medical liability claim. Changes in tort law could reduce the number of radiological procedures ordered for this purpose and therefore reduce the total number of radiological procedures performed each year, which could harm our operating results.

We may not have adequate intellectual property rights in our brand, which could limit our ability to enforce such rights.

Our success depends in part upon our ability to market our services under the NightHawk brand. However, we believe that the term NightHawk cannot be afforded trademark protection as it is a generic term used to describe the provision of off-hours radiology services. Other businesses may have prior rights in the brand names that we market under or in similar names, which could limit or prevent our ability to use these marks, or to prevent others from using similar marks. If we are unable to prevent others from using our brand names, or if others prohibit us from using them, our revenue could be adversely affected. Even if we are able to protect our intellectual property rights in such brands, we could incur significant costs in doing so.

Any failure to protect our intellectual property rights in our workflow technology could impair its value and our competitive advantage.

We rely heavily on our proprietary workflow technology to distribute radiological images to the appropriately licensed and privileged radiologist best able to provide the necessary clinical insight in the least amount of turnaround time. If we fail to protect our intellectual property rights adequately, our competitors may gain access to our technology, and our business may be harmed. We currently do not hold any patents with respect to our technology. Although we have filed an application for a patent covering our workflow technology, we may be unable to obtain patent protection for this technology. In addition, any patents we may obtain may be challenged by third parties. Accordingly, despite our efforts, we may be unable to prevent third parties from using or misappropriating our intellectual property.

We may in the future become subject to intellectual property rights claims, which could harm our business and operating results.

The information technology industry is characterized by the existence of a large number of patents, trademarks and copyrights and by frequent litigation based on allegations of infringement or other violations of intellectual property rights. As an example, we are aware that on July 31, 2007, Merge eMed, Inc., or Merge, filed a complaint against another teleradiology provider, VRC, alleging that VRC has infringed on certain of Merge s patents relating to teleradiology. In connection with that litigation, VRC filed a Request for Reexamination with the U.S. Patent and Trademark Office, or US PTO, which asks the US PTO to re-examine the validity of the patents at issue. Based solely upon publicly available information from VRC, we understand that, in August 2008, the US PTO ruled invalid all of the claims in the patents upon which Merge had sued VRC. While we are not currently a party to any intellectual property litigation, if Merge or another third party asserts that our technology violates that third-party s proprietary rights, or if a court holds that our technology violates such rights, we may be required to re-engineer our technology, obtain licenses from third parties to continue using our technology without substantial re-engineering or remove the infringing functionality or feature. In addition, we may incur substantial costs defending any such claim. We may also become subject to damage awards, which could cause us to incur additional losses and harm our financial position.

Monitoring potential infringement of and defending or asserting our intellectual property rights may entail significant expense. We may initiate claims or litigation against third parties for infringement of our proprietary

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rights or to establish the validity of our proprietary rights. Any litigation, whether or not it is resolved in our favor, could result in significant expense to us and divert the efforts of our technical and management personnel.

We are dependent on our management team, and the loss of any key member of this team may prevent us from implementing our business plan in a timely manner.

Our success depends largely upon the continued services of our executive officers, particularly David Engert, our President & Chief Executive Officer, Tim Murnane, our Chief Operating Officer, and David Sankaran, our Chief Financial Officer. The loss of any of these executive officers could have a material adverse effect on our business, financial condition, results of operations and the trading price of our common stock. The search for replacements for any of our executives could be time consuming and could distract our management team from the day-to-day operations of our business.

If we fail to implement and maintain an effective system of internal controls, we may not be able to report our financial results in an accurate or timely manner, prevent fraud or comply with Section 404 of the Sarbanes-Oxley Act of 2002, which may harm our business and affect the trading price of our stock.

Effective internal controls are necessary for us to provide reliable financial reports in a timely manner and to prevent fraud. We cannot assure you that we will maintain an effective system of internal controls in the future. If we fail to adequately staff and train our accounting and finance personnel to meet the demands of operating as a public company, including the requirements of the Sarbanes-Oxley Act of 2002, or fail to maintain adequate internal controls, any resulting material weakness in internal controls could prevent our management from concluding the internal controls are effective and impair our ability to prevent material misstatements in our financial statements, which could cause our business to suffer. In addition, investors perceptions that our internal controls are inadequate or that we are unable to produce accurate financial statements in a timely manner or prevent fraud may negatively affect the trading price of our stock or result in stockholder litigation.

We may be unable to enforce non-compete agreements with our affiliated radiologists.

Our independent contractor agreements with our affiliated radiologists typically provide that the radiologists may not compete with us for a period of time, typically ranging from 180 days to one year, after the agreements terminate. These covenants not to compete are enforceable to varying degrees from jurisdiction to jurisdiction. In most jurisdictions, a covenant not to compete will be enforced only to the extent that it is necessary to protect the legitimate business interest of the party seeking enforcement, that it does not unreasonably restrain the party against whom enforcement is sought and that it is not contrary to the public interest. This determination is made based upon all the facts and circumstances of the specific case at the time enforcement is sought. It is unclear whether our interests will be viewed by courts as the type of protected business interest that would permit us to enforce a non-competition covenant against the radiologists. A determination that these provisions are not enforceable could have a material adverse effect on us.

If we acquire any companies or technologies in the future, they could prove difficult to integrate, disrupt our business, dilute stockholder value and adversely affect our operating results.

An element of our strategy is to pursue strategic acquisitions that are complementary to our business or offer us other strategic benefits. Acquisitions in which we may engage involve numerous risks, including:

- difficulties or delays in integrating physician compensation models,
- difficulties in integrating operations, technologies, services and personnel,
- diversion of financial and management resources from existing operations,
- risk of entering new markets,

potential write-offs of acquired assets,

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potential loss of key employees, and

inability to generate sufficient revenue to offset acquisition costs.

We have in the past experienced, and may experience in the future, these difficulties as we integrate the operations of companies we acquire.

In addition, if we finance acquisitions by issuing convertible debt or equity securities, our existing stockholders may be diluted which could affect the market price of our stock. We have made six acquisitions to date, and our management has experienced challenges in completing acquisitions and integrating acquired businesses with our operations. If we fail to properly evaluate and execute acquisitions, our business and prospects may be harmed.

Enforcement of state and federal anti-kickback laws may adversely affect our business, financial condition or operations.

Various federal and state laws govern financial arrangements among healthcare providers. The federal anti-kickback law prohibits the knowing and willful offer, payment, solicitation or receipt of any form of remuneration in return for, or with the purpose to induce, the referral of Medicare, Medicaid, or other federal healthcare program patients, or in return for, or with the purpose to induce, the purchase, lease or order of items or services that are covered by Medicare, Medicaid, or other federal healthcare programs. Similarly, many state laws prohibit the solicitation, payment or receipt of remuneration in return for, or to induce the referral of patients in private as well as government programs. Violation of these anti-kickback laws may result in substantial civil or criminal penalties for individuals or entities and/or exclusion from participating in federal or state healthcare programs. If we are excluded from federal or state healthcare programs, our customers who participate in those programs would not be permitted to continue doing business with us. We believe that we are operating in compliance with applicable law and believe that our arrangements with providers would not be found to violate the anti-kickback laws. However, these laws could be interpreted in a manner inconsistent with our operations.

Because our customers submit claims to the Medicare program based on the services we provide, it is possible that a lawsuit could be brought against us or our customers under the federal False Claims Act, and the outcome of any such lawsuit could have a material adverse effect on our business, financial condition and operations.

The Federal False Claims Act provides, in part, that the federal government may bring a lawsuit against any person whom it believes has knowingly presented, or caused to be presented, a false or fraudulent request for payment from the federal government, or who has made a false statement or used a false record to get a claim approved. The government has taken the position that claims presented in violation of the federal anti-kickback law may be considered a violation of the Federal False Claims Act. The Federal False Claims Act further provides that a lawsuit brought under that act may be initiated in the name of the United States by an individual who was the original source of the allegations, known as the relator. Actions brought under the Federal False Claims Act are sealed by the court at the time of filing. The only parties privy to the information contained in the complaint are the relator, the federal government and the court. Therefore, it is possible that lawsuits have been filed against us that we are unaware of or which we have been ordered by the court not to discuss until the court lifts the seal from the case. Penalties include fines ranging from $5,500 to $11,000 for each false claim, plus three times the amount of damages that the federal government sustained because of the act of that person. We believe that we are operating in compliance with the Medicare rules and regulations, and thus, the Federal False Claims Act. However, if we were found to have violated certain rules and regulations and, as a result, submitted or caused our customers to submit allegedly false claims, any sanctions imposed under the Federal False Claims Act could result in substantial fines and penalties or exclusion from participation in federal and state healthcare programs which could have a material adverse effect on our business and financial condition.

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Federal regulatory and law enforcement authorities have recently increased enforcement activities with respect to Medicare and Medicaid fraud and abuse regulations and other reimbursement laws and regulations, including laws and regulations that govern our activities and the activities of teleradiologists. These increased enforcement activities may have a direct or indirect adverse affect on our business, financial condition and results of operations.

Additionally, some state statutes contain prohibitions similar to and possibly even more restrictive than the Federal False Claims Act. These state laws may also empower state administrators to adopt regulations restricting financial relationships or payment arrangements involving healthcare providers under which a person benefits financially by referring a patient to another person. We believe that we are operating in compliance with these laws. However, if we are found to have violated such laws, our business, results of operations and financial condition would be harmed.

Changes in the governmental interpretation or enforcement of the federal prohibition on physician self-referral may adversely affect our business, financial conditions or operations.

The federal Stark Law prohibits a physician from referring Medicare or Medicaid patients for the provision of designated health services by an entity in which the physician has an investment interest or with which the physician has entered into a compensation arrangement. Designated health services include both the professional and technical components of diagnostic tests using X-rays, ultrasound or other imaging services, CT, MRI, radiation therapy and diagnostic mammography services. Violation of the Stark Law may result in substantial civil penalties and/or exclusion from participation in federal health care programs for both the referring physicians and any entities that submit technical and/or professional component claims for any diagnostic tests ordered by those referring physicians. We believe that we have structured our arrangements between our affiliated radiologists and our customers in a manner that complies with applicable law. However, this law could be interpreted in a manner inconsistent with our arrangements.

The trading price of our common stock has been volatile and will likely remain volatile.

The trading prices of many publicly-traded companies are highly volatile, particularly companies such as ours that have relatively limited operating histories and are operating in an evolving industry. Since our initial public offering in February 2006, the trading price of our common stock has been subject to wide fluctuations. Factors that will continue to affect the trading price of our common stock include:

- variations in our operating results,
- announcements of new services, strategic alliances or significant agreements by us or by our competitors,
- recruitment or departure of key personnel,
- changes in the estimates of our operating results or changes in recommendations by any securities analysts that follow our common stock, and
- market conditions in our industry, the industries of our customers and the economy as a whole.

In addition, if the market for healthcare stocks or healthcare services or the stock market in general experiences loss of investor confidence, the trading price of our common stock could decline for reasons unrelated to our business, operating results or financial condition. The trading price of our common stock might also decline in reaction to events that affect other companies in our industry even if these events do not directly affect us.

We may need additional capital, which may not be available to us.

We currently anticipate that our existing capital resources and cash generated from future operations will be sufficient to meet our liquidity needs for at least the next 12 months. However, we may need to raise additional

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funds if our estimates of revenues, working capital and/or capital expenditure requirements change or prove inaccurate or in order for us to respond to unforeseen technological or marketing hurdles or to take advantage of unanticipated opportunities. There can be no assurance that any such funds will be available at the time or times needed or available on terms acceptable to us. Furthermore, if our agreement with St. Paul Radiology, P.A. is terminated, we may be required to repay all or a portion of our term loan. See If our customers terminate their agreements with us or if our customers businesses materially decline, our financial condition and operating results could be adversely affected. If we are required to make such mandatory repayments, our business, financial condition and results of operations could be materially adversely affected.

If securities analysts do not publish research or reports about our business, or if they downgrade our stock, the price of our stock could decline.

The trading market for our common stock will rely in part on the availability of research and reports that third-party industry or financial analysts publish about us. There are many large, publicly-traded companies active in the healthcare services industry, which may mean it will be less likely that we receive widespread analyst coverage. Furthermore, if one or more of the analysts who do cover us downgrade our stock, our stock price would likely decline. If one or more of these analysts cease coverage of our company, we could lose visibility in the market, which in turn could cause our stock price to decline.

Adverse changes in general economic conditions could adversely affect our operating results.

Our success depends upon our ability to continue to provide our services to our customers and the willingness of our customers to engage us for these services. The willingness and ability of our customers to engage us for our services depends upon a number of factors, including broader economic conditions and perceptions of such conditions by our customers. Adverse changes in the broader U.S. economy may have an adverse impact on the behavior of our customers and the extent to which they are willing to engage us for our services. In addition, we may experience difficulty collecting accounts receivable in a timely manner, or at all, if our customers are adversely affected by prevailing economic conditions. Any of these factors could, in turn, have a material adverse effect on our business, financial condition, results of operations and cash flows.

A change in our customer composition may impact our collection rates.

An increasing number of our customers are hospitals or hospital groups. As changes occur in general economic conditions, hospitals may be required to modify their budgets and/or move funds to other programs as directed by their management or changes in government funding. Recently, we have noticed an increasing number of hospitals becoming insolvent as government funds decrease to hospitals in certain states. If this trend continues and impacts our customers, our collection rates may decrease and our bad debt expense increase which, in turn, could have a material adverse effect on our business, financial condition, results of operations and cash flows.

We are exposed to foreign currency exchange risks, which could harm our business and operating results.

We maintain significant operations in Australia and Switzerland, and are exposed to adverse changes in exchange rates associated with the expenses of our operations in these countries. However, we do not currently engage in any hedging transactions to mitigate these risks. Although from time to time we review our foreign currency exposure and evaluate whether we should enter into hedging transactions, we may not adequately hedge against any future volatility in currency exchange rates and, if we engage in hedging transactions, the transactions will be based on forecasts which later may prove to be inaccurate. Any failure to hedge successfully or anticipate currency risks properly could adversely affect our operating results.

In addition, a third of our affiliated radiologists live in Australia and Switzerland, but receive compensation from us in U.S. dollars. Any relative weakness in the U.S. dollar compared to the Australian dollar or Swiss franc may increase the cost of living for our affiliated radiologists and make it less attractive for our affiliated radiologists to sign or renew their service contracts with us.

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Provisions in our certificate of incorporation and bylaws and Delaware law might discourage, delay or prevent a change of control of our company or changes in our management and, therefore, depress the trading price of our common stock.

Our certificate of incorporation and bylaws contain provisions that could depress the trading price of our common stock by acting to discourage, delay or prevent a change in control of our company or changes in our management that the stockholders of our company may deem advantageous. These provisions:

- establish a classified Board of directors so that not all members of our board are elected at one time,
- provide that directors may only be removed for cause ,
- authorize the issuance of blank check preferred stock that our board could issue to increase the number of outstanding shares and to discourage a takeover attempt,
- eliminate the ability of our stockholders to call special meetings of stockholders,
- prohibit stockholder action by written consent, which has the effect of requiring all stockholder actions to be taken at a meeting of stockholders,
- provide that the Board of directors is expressly authorized to make, alter or repeal our bylaws, and
- establish advance notice requirements for nominations for election to our board or for proposing matters that can be acted upon by stockholders at stockholder meetings.

In addition, Section 203 of the Delaware General Corporation Law may discourage, delay or prevent a change in control of our company.

ITEM 1B. Unresolved Staff Comments

None.

ITEM 2. Properties

The table below provides a summary of our principal facilities as of December 31, 2009:

Location	Total Square Feet(1)	Leased or Owned	Principal Function
St Paul, Minnesota	58,000	Leased	Staff operations
Scottsdale, Arizona	25,000	Leased	Corporate offices
Coeur d Alene, Idaho	23,000	Leased	Staff operations
Sydney, Australia	9,000	Leased	Reading facility and staff operations

Milwaukee, Wisconsin	9,000	Leased	Staff operations
Zurich, Switzerland	8,000	Leased	Reading facility and staff operations
Austin, Texas	5,000	Leased	Reading facility
San Francisco, California	3,000	Leased	Reading facility

(1) Rounded to the nearest thousand square feet.

ITEM 3. Legal Proceedings

From time to time, we are involved in various legal proceedings, primarily medical liability proceedings, arising in the ordinary course of our business activities. In some instances, these proceedings include allegations by plaintiffs that our business practices violate the appropriate standard of care and that, as a result, a court should institute punitive damages against us. We defend each of our medical liability proceedings vigorously and

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are confident that our business practices will withstand scrutiny that may arise in connection with these proceedings. In addition, we maintain insurance policies with policy limits that we believe are appropriate in light of the risks attendant to our business, and believe that the resolution of the current claims will not have a material adverse impact on our consolidated results of operations, cash flows or our financial position. However, depending on the amount of damages resulting from a current or future claim, an unfavorable resolution of a claim could materially affect our future results of operations, cash flows or financial position.

In addition to the litigation matters in which we are involved in the ordinary course of business, during the third quarter of 2009, we received a notice from St. Paul Radiology, P.A. in which St. Paul Radiology, P.A. indicated that it believes that we are in breach of certain of our obligations under our agreements with it and that, as a result, it is entitled to terminate the agreements and it has incurred material damages which they claim could exceed $70 million. We believe such claims of breach and allegations of damages are without merit, that we have fulfilled all of our obligations under the agreements and that the agreements may not be terminated by St. Paul Radiology. The parties are currently pursuing the dispute resolution processes prescribed by the agreements between the parties. However, there is always inherent uncertainty of any litigation or arbitration proceeding. If such claims of breach and related damages are proven to be true and the dispute resolution process does not achieve a result favorable to us, we may be required to remedy the alleged breach, pay damages, and/or the agreements may be terminated resulting in the loss of the associated future revenue and profit. Termination of our agreements with St. Paul Radiology, P.A. or a reduction in the revenue and related profits received under the agreements would have a material adverse impact on our business, financial condition and results of operations and could also trigger a mandatory principal repayment under our term loan or result in the acceleration of our obligation to pay all of our borrowings under our credit agreement. See Item 1A Risk Factors If our customers terminate their agreements with us or if our customers businesses materially decline, our financial condition and operating results could be adversely affected of this Annual Report for more information. If we are required to make a mandatory repayment of a portion of the principal of our term loan, or if our repayment obligations under our credit agreement are accelerated, our financial condition could be materially adversely impacted.

On December 17, 2009, a putative shareholder class action lawsuit was filed against us and certain of our former officers in the United States District Court for the District of Idaho. The case is captioned *City of Marysville General Employees Retirement System v. NightHawk Radiology Holdings, Inc.*, *et al.,* Case No. CIV 09-659-N-CWD. The complaint purports to be brought on behalf of a class of persons who purchased or otherwise acquired our stock during the period April 10, 2007 to February 13, 2008, and asserts claims under Section 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended, and Rule 10b-5 promulgated thereunder. Plaintiffs contend that we and the individual defendants violated the federal securities laws by issuing false and misleading statements concerning our operations, business, and prospects during the purported class period, and thereby artificially increased the price of our stock. Plaintiffs seek unspecified compensatory damages, interest, and attorneys fees and costs. Management intends to vigorously defend against these claims.

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

None.

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PART II

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

Market for Our Common Stock

Our common stock is traded on the NASDAQ Global Market under the symbol NHWK . The following table sets forth, for the period indicated, the high and low sales prices of our common stock for our two most recent years.

	Common Stock Price	
	High	Low
Year Ended December 31, 2009		
First Quarter	$ 5.16	$ 2.22
Second Quarter	$ 4.44	$ 2.64
Third Quarter	$ 7.68	$ 3.65
Fourth Quarter	$ 7.21	$ 4.20
Year Ended December 31, 2008		
First Quarter	$ 20.61	$ 8.87
Second Quarter	$ 9.49	$ 7.08
Third Quarter	$ 9.41	$ 6.69
Fourth Quarter	$ 6.99	$ 2.33

Holders

On February 5, 2010, the last reported sale price for our common stock on the NASDAQ Global Market was $4.01 per share. As of February 5, 2010, there were approximately 8,065 holders of our common stock.

Dividends

We have not declared any cash dividends on our common stock since our initial public offering. We currently intend to retain future earnings and do not expect to pay any dividends in the foreseeable future and certain covenants in our debt agreement restrict our ability to pay dividends or make other distributions with respect to our equity securities. See Note 10 to our consolidated financial statements included in Item 8 of this Annual Report on Form 10-K.

Securities Authorized for Issuance Under Equity Compensation Plans

Please see Part III, Item 12 of this report for disclosure relating to our equity compensation plans.

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Performance Graph

The performance graph below illustrates a comparison of cumulative total stockholder return data based on an initial investment of $100 in our common stock, as compared with the Russell 2000 Index and the Dow Jones US Healthcare Index from February 6, 2006 through December 31, 2009.

Dates	NightHawk Radiology	Russell 2000	Dow Jones US Healthcare
February 6, 2006	$ 100.00	$ 100.00	$ 100.00
March 31, 2006	$ 115.69	$ 106.75	$ 100.30
June 30, 2006	$ 86.88	$ 100.95	$ 95.35
September 30, 2006	$ 92.64	$ 101.65	$ 103.34
December 31, 2006	$ 123.49	$ 110.17	$ 104.61
March 31, 2007	$ 88.09	$ 111.69	$ 104.95
June 30, 2007	$ 87.41	$ 116.76	$ 109.40
September 30, 2007	$ 118.69	$ 113.00	$ 111.66
December 31, 2007	$ 101.94	$ 107.19	$ 111.47
March 31, 2008	$ 45.33	$ 96.22	$ 98.11
June 30, 2008	$ 34.29	$ 97.28	$ 96.91
September 30, 2008	$ 34.96	$ 96.00	$ 97.82
December 31, 2008	$ 23.54	$ 69.52	$ 84.68
March 31, 2009	$ 13.08	$ 59.37	$ 77.92
June 30, 2009	$ 17.92	$ 72.12	$ 85.36
September 30, 2009	$ 35.01	$ 85.05	$ 92.98
December 31, 2009	$ 21.94	$ 88.15	$ 100.66

Recent Sales of Unregistered Securities

There were no sales of unregistered equity securities during 2009.

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Issuer Purchases of Equity Securities

In December 2008, we initiated a program to repurchase up to $10.0 million in shares of our common stock. As of December 31, 2008, we had purchased and retired 1.1 million shares at a cost of $4.5 million pursuant to such program. The remaining $5.5 million authorized to be repurchased under the program was purchased in January 2009 and resulted in the retirement of an additional 1.1 million shares. All shares were repurchased in the open market pursuant to a SEC Rule 10b5-1 repurchase plan established by us.

On August 12, 2009, we entered into a share repurchase agreement with our founder and former chief executive officer, Dr. Paul E. Berger, pursuant to which we purchased and retired shares of our common stock from Dr. Berger.

The following table sets forth details regarding all shares repurchased in 2009:

Period	(a) Total Number of Shares Purchased	(b) Average Price Paid per Share	(c) Total Number of Shares Purchased as Part of Publicly Announced Program	(d) Maximum Approximate Dollar Value of Shares that May Yet Be Purchased Under the Program
January 2, 2009 January 29, 2009	1,134,058	$ 4.87	1,134,058	$ 0
August 12, 2009 (1)	3,000,000	4.63	0	0
Total	4,134,058	$ 4.70	1,134,058	$ 0

(1) The August 12, 2009 share repurchase was effected through a private transaction and was not part of a pre-announced open market repurchase program.

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ITEM 6. SELECTED CONSOLIDATED FINANCIAL DATA

The following selected consolidated financial data should be read in conjunction with Management s Discussion and Analysis of Financial Condition and Results of Operations and our consolidated financial statements included elsewhere in this report. All references to number of shares outstanding and per share amounts have been restated to reflect the 1 for 1.25 reverse stock split that occurred January 23, 2006. Company results include the results from Midwest Physicians Services, LLC (MPS), Emergency Radiology Services, LLC (ERS), The Radlinx Group, Ltd. (Radlinx) and Teleradiology Diagnostic Service, Inc. (TDS) from their respective acquisition dates in 2007, and American Teleradiology Nighthawks, Inc. (ATN) purchased on September 30, 2005. The historical results presented below are not necessarily indicative of financial results to be achieved in future periods.

	For the Years Ended December 31, (In thousands, except per share amounts)				
	2009	2008	2007	2006	2005
Service Revenue	$ 162,536	$ 167,607	$ 151,662	$ 92,168	$ 64,062
Operating Income (Loss)	(50,404)	21,630	26,127	23,399	17,322
Net Income (Loss) (1)	(48,144)	9,442	14,694	(28,401)	(29,960)
Net Income (Loss) Applicable to Common Stockholders	$ (48,144)	$ 9,442	$ 14,694	$ (28,519)	$ (36,509)
Earnings (Loss) Per Common Share:					
Basic	$ (1.89)	$ 0.32	$ 0.49	$ (1.00)	$ (2.11)
Diluted	$ (1.89)	$ 0.31	$ 0.47	$ (1.00)	$ (2.11)
Cash Flow Data					
Net cash provided by operating activities	28,377	29,087	23,637	19,131	11,529
Net cash provided by (used in) investing activities	(12,687)	18,261	(123,425)	(40,049)	(3,305)
Net cash provided by (used in) financing activities	(36,557)	(32,144)	85,243	54,808	(1,427)
Total Assets	165,674	245,149	263,466	116,066	35,536
Total Long-Term Debt (including current portion)	78,206	94,100	99,500		24,003
Total Liabilities	96,944	115,382	128,777	13,437	85,184
Common Stock Data					
Market price at year end	$ 4.53	$ 4.86	$ 21.05	$ 25.50	N/A
Average number of common shares outstanding	25,443	29,483	30,083	28,528	17,274
Dividends declared per common share					$ 0.844
Preferred Stock Data					
Redeemable convertible preferred shares outstanding					6,500
Dividends declared per convertible preferred share				$ 0.844	$ 0.295

(1) The year ended December 31, 2009 includes a $68.7 goodwill impairment charge ($54.3 million after taxes). The years ended December 31, 2006 and 2005 include $44.2 million and $39.7 million, net of tax, respectively, of non-cash charges associated with the change in the fair value of the redeemable preferred stock conversion feature.

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ITEM 7. MANAGEMENT S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis should be read in conjunction with our audited consolidated financial statements and notes thereto that appear elsewhere in this report. This discussion contains forward-looking statements reflecting our current expectations that involve risks and uncertainties. Actual results may differ materially from those discussed in these forward-looking statements due to a number of factors, including those set forth in the section entitled Risk Factors and elsewhere in this report.

Overview

We are leading the transformation of the practice of radiology by providing high-quality, cost-effective solutions to radiology groups and hospitals throughout the United States. Our team of independent contractor, American Board of Radiology-certified, state-licensed and hospital-privileged physicians, provides professional services (interpretations , exams , scans or reads) 24 hours per day, seven days a week, for approximately 26% of all U.S. hospitals. The reads that we provide continue to consist primarily of off-hours preliminary reads, but increasingly include final and sub-specialty interpretations. In addition to these professional services, we also provide our customers with cardiac 3D reconstructions, radiology clinical workflow technology, and business services, all designed to enhance the care they provide to patients and improve the efficiency of their practices. For more information, visit our website at *www.nighthawkrad.net.*

2009 Highlights

Evolving market for teleradiology service. The market for our services is relatively new and is evolving rapidly. The past several years have seen a substantial increase in the number of competitors in the market for our services. As a result, we have experienced declining prices for our services and increasing levels of customer attrition. To improve our customer retention, we have focused our efforts on setting and maintaining high quality service levels and we have lowered our prices where appropriate to retain customers. We did see modest improvement in customer retention during 2009 compared with 2008; however, we also experienced an increase in the rate of price decline. On the other hand, our expenses have remained flat or increased, resulting in reduced margins and profit. We expect these trends to continue in the future.

Capital structure. During 2009, we used a total of $36.2 million in cash to reduce our outstanding debt and to repurchase shares of our common stock. We believe that these transactions were prudent uses of our cash given our history of strong free cash flow generation and our then-current levels of available cash and investments. Specifically, in the first quarter of 2009, we repurchased 1.1 million shares of our common stock under an open market share repurchase program that we began in December 2008 for approximately $5.5 million. We also settled certain December 2008 repurchases in January 2009 for approximately $0.9 million. In addition, in the third quarter of 2009, we repurchased 3.0 million shares of common stock held by our founder and former chief executive officer for approximately $13.9 million. Finally, in addition to making $0.9 million in required debt principal payments in 2009, we made two voluntary principal payments on our outstanding debt for a total of $15.0 million, reducing the outstanding balance to $78.2 million at year end.

Goodwill impairment. The difficult macroeconomic environment and decline in the market price of our common stock as of March 31, 2009, indicated that our goodwill could be impaired. As a result, we performed an impairment test as of March 31, 2009 as required by the *Intangibles-Goodwill and Other* Topic of the FASB Accounting Standards Codification (ASC Topic 350), and determined that the entire goodwill balance of $68.7 million was impaired. As a result, we recorded a non-cash goodwill impairment charge of $68.7 million ($54.3 million after-taxes) for the three months ended March 31, 2009.

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Trends in our Business and Results of Operations

Service Revenue.

We generate revenue from a number of sources, including off-hours preliminary exams, business services offerings and final and subspecialty interpretations. The revenue growth that we experienced in the past was due in large part to the growth in scan volume in our off-hours preliminary business, which continues to make up the bulk of our revenue. Recently, however, our volume growth in the off-hours preliminary business has slowed as the market for these services has matured and become more competitive. As a result of these factors, we have seen the average price for our preliminary reads decline significantly and have also experienced customer losses which, combined, have caused our revenues and margins from our off-hours preliminary business to decline in recent periods. We expect these challenges to continue in the foreseeable future which will affect our ability to grow revenue and profits organically in our off-hours preliminary business. In response to such trends, our strategy is to sell new services, principally final interpretations, to our existing customers by communicating their value and demonstrating the advantages we offer over our competitors. Our future growth depends primarily upon our ability to successfully execute that strategy while also effectively responding to competitive pressures in the market for off-hours preliminary exams.

In 2009, we generated $16.9 million in revenue from our agreements with St. Paul Radiology, P.A., representing 10.4% of our revenue. St. Paul Radiology has indicated that it believes that we are in breach of certain of our obligations under our agreements with it. If such claims of breach are proven to be true and the dispute resolution process does not achieve a result favorable to us, or if St. Paul Radiology s business declines for other reasons, the amount of revenue we generate from our relationship with St. Paul Radiology may be materially reduced. See Item 1A Risk Factors If our customers terminate their agreements with us or if our customers businesses materially decline, our financial condition and operating results could be adversely affected of this Annual Report for more information.

Professional Service Expenses.

Professional service expenses consist primarily of the fees we pay to our affiliated radiologists, any physician stock-based compensation, the premiums for medical liability insurance, and any medical liability claims loss expenses. Since inception, our professional service fees have increased in absolute dollars each year, primarily due to the increased number of reads performed as our volumes have increased and the addition of new affiliated radiologists to perform the increased workload. We expect that our professional service fees will continue to fluctuate in absolute dollars as volumes and modality mix vary. We also expect our professional services expenses to increase as a percentage of revenue due to the shift in our business towards more final reads and due to the price declines we are experiencing.

Our medical liability expense has also increased in absolute dollars each year since inception, primarily due to the increasing number of scans as our business has grown. We expect our medical liability premiums and our IBNR expense to continue to fluctuate as our claims experience and volumes change over time.

We record physician stock-based compensation expense in connection with any equity-based grants to our affiliated radiologists in accordance with the *Compensation-Stock Compensation* Topic of the FASB Accounting Standards Codification (ASC Topic 718) and the *Equity* Topic of the FASB Accounting Standards Codification (ASC Topic 505), and present this expense in our consolidated statements of operations as part of our professional services expense. The amount of physician stock-based compensation expense we record in a given period depends primarily on the number of shares subject to equity-based grants held by our affiliated radiologists, the number of hours worked, and the change in the value of our common stock in that period. Our expense in future periods for physician stock-based compensation will be driven primarily by changes in our stock price, new equity-based grants we make to our affiliated radiologists, and the rate at which those equity-based grants are earned over such periods. We anticipate increased physician stock-based compensation expense in 2010 and 2011 resulting primarily from equity grants of our common stock to be issued to our affiliated physicians in connection with the adoption of a new form of physician contract in December 2009.

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Sales, General and Administrative Expenses.

Our sales, general and administrative expenses consist primarily of salaries and related expenses for our employees, employee stock-based compensation, information technology and telecommunications expenses, costs associated with licensing and privileging our affiliated radiologists, facilities and office-related expenses, sales and marketing expenses and other general and administrative expenses. Our sales, general and administrative expenses have increased in absolute dollars since inception primarily as a result of increased payroll expenses in connection with higher headcount in support of the growth in our business. In the coming quarters, we expect our sales, general and administrative expenses to grow as we invest in our information technology platform and our sales and marketing capabilities.

The amount of employee stock-based compensation expense we record in a given period depends primarily on the number of shares subject to outstanding shared-based awards and the valuation criteria used at the time of the grant. The amount of expense is also impacted by the accelerated method we use to expense these awards and by forfeitures of non-vested awards.

Interest Expense.

Interest on our outstanding debt is at a variable rate. Since 2007, we have hedged the risk associated with fluctuations in interest rates by entering into interest rate swap contracts. In December 2008, in response to interest rates falling to historically low levels, we settled our original interest rate swap contracts and entered into new interest rate swap contracts that have a term roughly equal to the remaining term on our loan. Our new effective interest rate under these hedges is 4.95%. Our new effective interest rate and actual cash payments for interest under these hedges will be 4.95% for the remaining life of the loan. The swap contracts expire in June 2014. Over the next four quarters our reported interest rate will be higher than our stated effective rate due to the amortization of losses from our original swap contracts and amortization of loan closing costs. In addition, interest expense will be impacted by the mark-to-market adjustment of two interest rate swap contracts which have been deemed to be ineffective hedges.

Critical Accounting Policies

The discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America, or U.S. GAAP. The preparation of these financial statements in accordance with U.S. GAAP requires us to utilize accounting policies and make certain estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingencies as of the date of the financial statements and the reported amounts of revenue and expenses during a fiscal period. The SEC considers an accounting policy to be critical if it is important to a company s financial condition and results of operations, and if it requires the exercise of significant judgment and the use of estimates on the part of management in its application. Management evaluates its estimates on an ongoing basis. Although we believe that our judgments and estimates are appropriate, actual results may differ from those estimates. We have reviewed our critical accounting policies with the Audit Committee of our Board of Directors, and the Audit Committee has reviewed our related disclosures in this report.

Our critical accounting policies arise in conjunction with the following:

- contingencies;
- purchase accounting and long-lived assets including goodwill and other acquired intangible assets;
- stock-based compensation;
- income taxes; and
- derivative accounting

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If actual results or events differ materially from those contemplated by us in making these estimates, our reported financial condition and results of operations for future periods could be materially affected. See Risk Factors for certain matters that may affect our financial condition or future results of operations.

Contingencies

Loss contingency for legal claims. We record a loss contingency for a legal claim at the time we deem such liability to be probable. Our determination of the probability of the liability is based upon a review of the claim by our internal legal counsel, external legal counsel and, in the case of medical liability claims, our medical liability insurance carrier. Upon the determination that a liability is probable, we record a loss contingency for the estimated potential claim. Actual future losses from a legal claim may differ from our estimate to the extent that we suffer an adverse determination for a claim that we did not deem the liability probable, did not record a sufficient loss contingency, the loss was in excess of applicable insurance limits, or in the event that we do not have insurance coverage or indemnification rights covering the specific claim.

Loss contingency for medical liability claims. We record a loss contingency for a medical liability claim at the time we deem such liability to be probable. Our determination of the probability of the liability is based upon a review of the claim by our internal legal counsel, external legal counsel and medical liability insurance carrier. Upon the determination that a liability is probable, we record a loss contingency for the potential claim up to the amount of the deductible specified in our medical liability insurance policy. Actual future losses from medical liability claims may differ from our estimates to the extent that we suffer an adverse determination for a claim that we did not deem the liability probable, did not record a loss contingency up to the maximum amount of our insurance deductible, the loss was in excess of our coverage limits, or do not have insurance coverage or indemnification rights.

Incurred But Not Reported Claims (IBNR). We use actuarial assumptions to estimate and record a liability for IBNR professional liability claims. Our estimated IBNR liability is based on long-term industry trends and averages, and considers a number of factors, including changes in claim reporting patterns, claim settlement patterns, judicial and legislative decisions, and economic conditions. Our estimated IBNR liability will fluctuate as claims experience and volumes change over time.

Purchase Accounting and Long-Lived Assets Including Goodwill and Other Acquired Intangible Assets

All of our acquisitions were accounted for using the purchase method of accounting as prescribed in the *Business Combinations* Topic of the FASB Accounting Standards Codification (ASC Topic 805). Accordingly, purchase accounting adjustments have been reflected in our financial statements for all periods subsequent to the respective purchase dates. The purchase accounting entries are reflected on our financial statements as of the purchase date. In accordance with ASC Topic 805, we revalued the assets and liabilities acquired at their respective fair values on the acquisition date.

As required by the *Intangibles-Goodwill and Other* Topic of the FASB Accounting Standards Codification (ASC Topic 350), an interim test for impairment must be performed whenever impairment indicators are present. As a result of the difficult macroeconomic environment and significant decline in the market price of the Company s common stock as of March 31, 2009, the Company determined that an impairment indicator was present related to its goodwill. The Company performed this interim impairment testing as of March 31, 2009 and determined that the fair value of its recorded goodwill, estimated using discounted cash flow analyses and reconciled to its market capitalization, was less than the carrying value. Based on this testing, the Company concluded that its goodwill balance of $68.7 million was fully impaired. As a result, the Company recorded a non-cash goodwill impairment charge of $68.7 million ($54.3 million after-tax) in the three months ended March 31, 2009.

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In accordance with the *Property, Plant, and Equipment* Topic of the FASB Accounting Standards Codification (ASC Topic 360), we periodically review long-lived assets for impairment whenever events or changes in business circumstances indicate that the carrying amount of the assets may not be fully recoverable or that the useful lives of those assets are no longer appropriate. We perform impairment tests using discounted cash flows, valuation analyses or comparisons to recent sales or purchase transactions to determine estimated fair value. If impairment is indicated, the asset is written down to its estimated fair value based on a discounted cash flow analysis.

Stock-Based Compensation

Physician Stock-Based Compensation. We record physician stock-based compensation expense in connection with any equity-based grants to our affiliated radiologists in accordance with the *Compensation-Stock Compensation* Topic of the FASB Accounting Standards Codification (ASC Topic 718) and the *Equity* Topic of the FASB Accounting Standards Codification (ASC Topic 505), by determining the fair value using the Black-Scholes option pricing model at the date of grant and at the end of each subsequent financial reporting period thereafter when service is delivered. Physician stock-based compensation expense is included in professional services expense.

Non-Physician Stock-Based Compensation. We also record stock-based compensation expense in connection with any grant of stock options, restricted stock units (RSUs), warrants or other issuance of shares of common stock to employees and directors. We calculate the stock-based compensation expense associated with the issuance of stock options and warrants to our employees and directors in accordance with the *Compensation-Stock Compensation* Topic of the FASB Accounting Standards Codification (ASC Topic 718) by determining the fair value using a Black-Scholes model. We calculate the stock-based compensation expense related to the issuance of RSUs or shares of our common stock to our employees and directors based on the fair value of our common stock on the date the RSUs or shares are issued. Options and RSUs granted to employees and directors are valued using the Black-Scholes model, and the resulting expense is recognized using the accelerated method over the service period for the entire award. Stock-based compensation to employees and non-physician contractors is included in sales, general and administrative expense.

Determination of Fair Value of our Stock Options. To determine the fair value of our stock options, we use a Black-Scholes model which takes into account the exercise price of the stock option, the fair value of the common stock underlying the stock option, as measured on the date of grant (or at each reporting date for grants to non-employees that require future service), expected dividends, risk free interest rates, expected term and an estimation of the volatility of the common stock underlying the stock option.

Income Taxes

We account for income taxes in accordance with the *Income Taxes* Topic of the FASB Accounting Standards Codification (ASC Topic 740). This standard requires, among other things, the separate recognition of deferred tax assets and deferred tax liabilities. Such deferred tax assets and deferred tax liabilities represent the tax effect of temporary differences between financial reporting and tax reporting measured at enacted tax rates in effect for the year in which the differences are expected to reverse. ASC Topic 740 Subtopic 10 Section 05 requires that we recognize only the impact of tax positions that, based on their technical merits, are more likely than not to be sustained upon an audit by the taxing authority. ASC Topic 740 Subtopic 10 Section 05 also specifies standards for estimating and recognizing interest income and expense associated with the tax positions.

Developing our provision for income taxes, including our effective tax rate and analysis of potential tax exposure items, if any, requires significant judgment and expertise in federal and state income tax laws, regulations and strategies, including the determination of deferred tax assets and liabilities and any estimated valuation allowances we deem necessary to value deferred tax assets. Our judgments and tax strategies are subject to audit by various taxing authorities. While we believe we have provided adequately for our uncertain

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income tax positions in our consolidated financial statements, adverse determinations by these taxing authorities could have a material adverse effect on our consolidated financial condition, results of operations or cash flows.

Derivative Accounting

In accordance with U.S. GAAP, we recognize all derivatives on the consolidated balance sheet at fair value. We designate at inception whether the derivative contract is considered hedging or non-hedging in accordance with the *Derivatives and Hedging* Topic of the FASB Accounting Standards Codification (ASC Topic 815). If the derivative qualifies and is designated as a hedge, depending on the nature of the hedge, changes in its fair value will either be offset against the change in fair value of the hedged item through earnings or recognized in other comprehensive income (loss) until the hedged item is recognized in earnings. The ineffective portion of a derivative s change in fair value will be immediately recognized in earnings.

Since 2007, we have utilized interest rate swap contracts to maintain compliance with debt requirements and to protect us against changes in the interest payments associated with our variable-rate long-term debt. The contracts are considered cash flow hedges. As a result, as long as the swaps are deemed highly effective, changes in the fair value of the swaps are recorded as either an asset (a gain position), or a liability (a loss position) on the balance sheet, with the offset recorded in accumulated other comprehensive income, a separate component of stockholders equity.

In December 2008, we settled the two interest rate swap contracts entered into during 2007 resulting in a cash payment by us. The pre-tax net unrealized loss within accumulated other comprehensive income associated with the cancelled interest rate swap contracts is being amortized to interest expense over the original lives of the contracts. The cancelled swaps were replaced with five interest rate swap contracts. As principal is repaid on the debt, the combined notional amounts of the five interest rate swap contracts will be different than the principal balance of the outstanding debt. If this difference is material, it can cause certain of the five interest rate swap contracts to be deemed ineffective. Due to voluntary principal payments made by us, two of the interest rate swap contracts have been deemed ineffective. As a result, changes in the fair values of these ineffective contracts are recorded as a component of interest expense in our statement of operations.

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Results of Operations

The following table sets forth selected consolidated statements of operations data for each of the periods indicated as a percentage of service revenue.

	Year Ended December 31,		
	2009	2008	2007
Service revenue	100%	100%	100%
Operating costs and expenses:			
Professional services	45	41	42
Sales, general and administrative	37	39	36
Depreciation and amortization	7	7	5
Goodwill impairment	42		
Total operating costs and expenses	131	87	83
Operating income	(31)	13	17
Other income (expense):			
Interest expense	(5)	(5)	(4)
Interest income		1	2
Other, net			
Total other income (expense)	(5)	(4)	(2)
Income (loss) before income taxes	(36)	9	15
Income tax expense (benefit)	(6)	3	6
Net income (loss) applicable to common stockholders	(30)%	6%	9%

Comparison of Years Ended December 31, 2009 and December 31, 2008

Service Revenue

	Year Ended December 31,		Change	
	(Dollars in thousands)			
	2009	2008	In Dollars	Percentage
Service revenue	$ 162,536	$ 167,607	$ (5,071)	(3%)

The decrease in service revenue for the year ended December 31, 2009 relative to the year ended December 31, 2008 primarily consists of a decrease of $10.2 million in preliminary read revenue partially offset by an increase of $4.1 million in final read revenue and an increase of $0.9 million in business service revenue.

The preliminary read revenue decrease was predominantly due to a 9% decline in our average price from 2008. Offsetting this price decline, over this same period, we saw a 2% net increase in preliminary read volume, consisting of same site volume growth of 6% and new customer volumes of 6%, partially offset by an 11% decrease in volumes from the cumulative impact of customers lost over the past 12 months.

The final read revenue increase was predominantly due to a 28% increase in volume. Final read volume growth consisted of new customer growth of 52% offset by a 5% decrease in same site volume and a 19% decrease in volumes from the impact of customers lost over the past 12 months. Final read pricing was down 6% compared to the same period one year ago.

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Operating Costs and Expenses

Professional Services

	Year Ended December 31,		Change	
	(Dollars in thousands)			
	2009	2008	In Dollars	Percentage
Professional services	$ 72,368	$ 68,932	$ 3,436	5%
Percentage of service revenue	*45%*	*41%*		

The increase in professional services expense for the year ended December 31, 2009 compared to the year ended December 31, 2008 is primarily attributable to an increase in professional service fees and medical liability expenses related to higher read volumes partially offset by a $1.0 million decrease in physician stock-based compensation expense due to our lower common stock prices during 2009. The increase in professional services expense as a percentage of revenue resulted from a combination of an increase in professional services fees coupled with an 8% decline in our average price per study.

Sales, General and Administrative

	Year Ended December 31,		Change	
	(Dollars in thousands)			
	2009	2008	In Dollars	Percentage
Sales, general and administrative	$ 60,845	$ 65,683	$ (4,838)	(7%)
Percentage of service revenue	*37%*	*39%*		

The sales, general and administrative expense for the year ended December 31, 2009 was approximately $4.8 million lower than in the comparable period of 2008. During 2009, stock compensation and severance expenses were lower compared to 2008, and were partially offset by higher information technology spending.

Goodwill Impairment

We recorded a $68.7 million goodwill impairment charge during the quarter ended March 31, 2009 due to our determination that the fair value of goodwill was less than the carrying value. The goodwill impairment charge was non-cash and does not affect our operations, cash flow or cash position.

Other Income (Expense)

Interest Expense

	Year Ended December 31,		Change	
	(Dollars in thousands)			
	2009	2008	In Dollars	Percentage
Interest expense	$ 8,466	$ 8,508	$ (42)	(0%)
Percentage of service revenue	*5%*	*5%*		

Interest expense for 2009 was relatively flat compared with our interest expense in 2008. The impact of a lower effective interest rate on our debt in 2009 was offset by $3.1 million in net expense relating to the amortization of losses from our original swap contracts that were cancelled in December 2008 and the mark-to-market adjustment of our two ineffective interest rate hedges.

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Income Tax Expense

	Year Ended December 31,		Change	
	(Dollars in thousands)			
	2009	2008	In Dollars	Percentage
Income tax expense (benefit)	$ (10,578)	$ 5,257	$ (15,835)	(301)%

The change in our income tax expense was due primarily to the tax benefit resulting from the goodwill impairment charge recorded during 2009. The Company recorded a non-cash goodwill impairment charge of $68.7 million in the three months ended March 31, 2009. $30.9 million of that impairment is not deductible for tax purposes, resulting in an effective tax rate different than the statutory rate.

Comparison of Years Ended December 31, 2008 and December 31, 2007

Service Revenue

	Year Ended December 31,		Change	
	(Dollars in thousands)			
	2008	2007	In Dollars	Percentage
Service revenue	$ 167,607	$ 151,662	$ 15,945	11%

The increase in service revenue for the year ended December 31, 2008 relative to the year ended December 31, 2007 consists of a $17.5 million increase from the full-year effect of acquisitions completed during 2007, a $2.2 million increase in organic final read revenue driven largely by an increase in the average price due to a modality shift towards higher-priced, more complex exams, partially offset by a $4.0 million decrease in organic preliminary read revenue. The net decrease in organic preliminary read revenue resulted from 3% higher volumes, which were more than offset by the impact of declines in average selling prices of 6%.

Operating Costs and Expenses

Professional Services

	Year Ended December 31,		Change	
	(Dollars in thousands)			
	2008	2007	In Dollars	Percentage
Professional services	$ 68,932	$ 63,618	$ 5,314	8%
Percentage of service revenue	*41%*	*42%*		

The increase in professional services expense for the year ended December 31, 2008 compared to the year ended December 31, 2007 is primarily attributable to an increase in professional service fees and medical liability expenses related to higher read volumes partially offset by a decrease in physician stock-based compensation expense due to our lower common stock prices during 2008.

Sales, General and Administrative

	Year Ended December 31,		Change	
	(Dollars in thousands)			
	2008	2007	In Dollars	Percentage
Sales, general and administrative	$ 65,683	$ 54,018	$ 11,665	22%
Percentage of service revenue	*39%*	*36%*		

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The increase in sales, general and administrative expense for the year ended December 31, 2008 compared to the year ended December 31, 2007 resulted primarily from a $9.6 million increase in payroll expense resulting from costs associated with the employees added from the acquisitions and also from $2.0 million of severance costs related to the departure of certain former executive officers. We also experienced a $1.2 million increase in licensing and credentialing expenses, a $1.0 million increase in facility expenses and a $1.4 million increase in telecommunications expenses due primarily from the impact of prior year acquisitions. These increases were partially offset by a decrease in employee stock compensation expense and cost reductions resulting from restructurings which optimized office space utilization and streamlined operations.

Other Income (Expense)

Interest Expense

	Year Ended December 31,		Change	
	(Dollars in thousands)			
	2008	2007	In Dollars	Percentage
Interest expense	$ 8,508	$ 5,885	$ 2,622	46%
Percentage of service revenue	*5%*	*4%*		

Our interest expense for the 2007 consists of the interest expense incurred on our fully syndicated term loan (the Term Loan). On April 5, 2007 we borrowed $53.0 million in connection with the Radlinx acquisition and an additional $47.0 million on July 10, 2007 in connection with the MPS and ERS acquisitions. Also included in interest expense is $0.4 million of amortized deferred loan fees. Our interest expense for 2008 consists of a full year impact of the above debt.

Income Tax Expense

	Year Ended December 31,		Change	
	(Dollars in thousands)			
	2008	2007	In Dollars	Percentage
Income tax expense	$ 5,257	$ 8,615	$ (3,358)	(39)%

We recorded income tax expense of $5.3 million for 2008 and $8.6 million for 2007. The change in income tax expense is due primarily to a corresponding change in pre-tax income.

Liquidity and Capital Resources

The discussion below highlights significant aspects of our capital resources and cash flow activities (in millions).

	December 31, 2009	December 31, 2008
Capital resources		
Cash and cash equivalents	$ 26.3	$ 47.2
Marketable securities	6.0	
Total	$ 32.3	$ 47.2

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	December 31, 2009	December 31, 2008
Cash flow activities		
Net cash provided (used) by:		
Operating activities	$ 28.4	$ 29.1
Investing activities	(12.7)	18.2
Financing activities	(36.6)	(32.1)
Increase (decrease) in cash and cash equivalents	$ (20.9)	$ 15.2

Operating Activities

We fund our operations primarily from cash flows generated by our operating activities and the incurrence of debt. Net cash provided by operating activities in 2009, 2008 and 2007 was $28.4 million, $29.1 million and $23.6 million, respectively. The decrease in net cash from operations from 2008 to 2009 primarily resulted from lower earnings, partially offset by better working capital management.

Investing Activities

Net cash used in investing activities was $12.7 million for the year ended December 31, 2009 compared to $18.2 million provided by investing activities for the year ended December 31, 2008. The decrease from 2008 to 2009 primarily reflects $6.0 million in net purchases of marketable securities in 2009, compared to $30.1 million in net proceeds from sales, maturities and purchases of marketable securities in 2008. During 2008, net proceeds from sales and maturities of marketable securities were used primarily to enhance our capital structure by paying down outstanding debt and repurchasing shares of our common stock.

Financing Activities

Net cash used in financing activities was $36.6 million for the year ended December 31, 2009, compared with $32.1 million for the year ended December 31, 2008. The increase in net cash used in financing activities in 2009 compared to 2008 primarily reflects higher voluntary debt principal payments in 2009 as part of the enhancement of our capital structure. This was partially offset by the early settlement of our interest rate swap contracts of $5.3 million in 2008, as compared to no such activity in 2009. During 2009, we used our existing cash and cash equivalents to repurchase of shares of our common stock for $20.3 million, whereas in 2008 we used net proceeds from marketable securities to repurchase $22.2 million of such shares.

Financial condition and liquidity

We expect our short and long-term liquidity needs to consist primarily of working capital, capital expenditures related to information technology and any future acquisitions. We may also have liquidity needs arising from any repurchases of shares of our common stock and if we elect or are required to make principal payments under our Term Loan agreement. We intend to fund future liquidity needs from current capital resources and cash generated from operations. We believe our capital resources are invested in appropriate investments and will be sufficient to meet our anticipated cash needs for at least the next 12 months.

Our Term Loan contains customary affirmative, negative and financial covenants, including, among other requirements, negative covenants that restrict our ability to create liens, enter into mergers and acquisitions, pay dividends, repurchase stock, incur indebtedness, make investments and make capital expenditures, and financial covenants that limit the maximum leverage we can maintain at any one time. As of December 31, 2009, we were in compliance with all covenants contained in our Term Loan agreement and expect to remain in compliance with these covenants in 2010.

Our Term Loan is subject to mandatory repayment under certain circumstances, including in connection with our receipt of proceeds from certain issuances of equity or debt, sales of assets and casualty events. In

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addition, our Term Loan requires a principal payment in the amount of our Excess Cash Flow (as defined in our credit agreement) if the Total Leverage Ratio (as defined in our credit agreement) is at or above 2.5 at year end. Furthermore, if our Total Leverage Ratio exceeds 4.0 on any trailing four quarter basis, our obligation to repay all borrowings could be accelerated. As of December 31, 2009, our Total Leverage Ratio was 2.35, so no additional principal payment was required.

We generate a substantial portion of our revenue and profits from our customer relationship with St. Paul Radiology, P.A. St. Paul Radiology has indicated that it believes that we are in breach of certain of our obligations under our agreements with it. If such claims of breach are proven to be true and the dispute resolution process does not achieve a result favorable to us, or if St. Paul Radiology s business declines for other reasons, the amount of revenue we generate from our relationship with St. Paul Radiology may be materially reduced which could cause us to fail either of our Total Leverage Ratio tests described above. For example, if our agreement with St. Paul Radiology (under which we generated $16.9 million, or 10.4% of total revenue, in 2009) had been terminated prior to 2009, the resulting loss of revenue and related profits would have caused the Total Leverage Ratio to exceed 2.5 at year end, which in turn would have triggered a mandatory principal repayment. Any future loss in revenue, under the agreement with St. Paul Radiology, P.A. or otherwise, could cause us to fail the Total Leverage Ratio test and trigger a mandatory principal repayment or result in the acceleration of our obligation to repay all of our borrowings under the credit agreement. Finally, we may elect from time to time to make additional principal payments on our debt in order to enhance our capital structure as we did in 2008 and 2009. We anticipate funding any such elective or required principal payments out of our available cash and cash equivalents. However, if our estimates of revenues, working capital and/or capital expenditure requests change or prove inaccurate, we may need to raise additional funds to satisfy any required principal repayment. There can be no assurance that any such funds will be available at the time or times needed or available on terms acceptable to us.

Off-Balance Sheet Arrangements and Contractual Obligations

Off-Balance Sheet Arrangements

The Company had no material off-balance sheet arrangements as of December 31, 2009.

Contractual Obligations

The following table presents a summary of our contractual obligations as of December 31, 2009:

(in millions)	**Payments Due Within**				
	Less than 1 Year	**1-3 Years**	**3-5 Years**	**More than 5 Years**	**Total**
Long-term debt obligations (a)	$ 0.8	$ 1.6	$ 75.8	$ 0.0	$ 78.2
Interest on long-term borrowings (b)	3.9	7.6	5.5	0.0	17.0
Operating lease commitments	2.7	4.1	3.4	2.9	13.1
Total contractual obligations	$ 7.4	$ 13.3	$ 84.7	$ 2.9	$ 108.3

(a) See Note 5 of the Notes to Consolidated Financial Statements in Item 8.

(b) Actual interest paid in future years may differ from amounts shown in this table due to any future refinancing or repayment of our debt. Interest on our floating rate debt was calculated for all years using the effective rate as of December 31, 2009 including the impact of our interest rate swap contracts. The amounts given above do not include the unamortized $2.0 million spent to settle the interest rate swap contracts held within Accumulated Other Comprehensive Income which will be amortized to interest expense through September 2010. See Note 11 of the Notes to Consolidated Financial Statements in Item 8.

Total contractual obligations exclude our liability for uncertain tax positions of $2.3 million as of December 31, 2009, because we were unable to make reasonable estimates as to the period of settlement with the respective taxing authorities.

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New Accounting Pronouncements

See Note 1 to our consolidated financial statements included in Item 8 of this Annual Report on Form 10-K for a discussion of recently issued accounting standards.

ITEM 7A. Quantitative and Qualitative Disclosures about Market Risk

Foreign Currency Exchange Risk

During the periods covered by this annual report, substantially all of our customers are in the United States and thus revenue is denominated in U.S. dollars. Although some of our affiliated radiologists work from our centralized reading facilities in Australia and Switzerland, the professional service fees we pay to our affiliated radiologists are denominated primarily in U.S. dollars. As a result, only our support personnel and facility costs in those countries present foreign currency exchange risks. Because we are not currently subject to material foreign currency exchange risk, we have not, to date, entered into any hedging contracts. If a weakening U.S. dollar requires us to increase the amounts we pay to our affiliated radiologists in the future in order to maintain a constant level of compensation, our results of operations and cash flows could be affected. Currently, any foreign exchange risks are related to the foreign currency exchange rates between the U.S. dollar and the Australian dollar and between the U.S. dollar and the Swiss franc.

Interest Rate Sensitivity

We had cash and cash equivalents totaling $26.3 million at December 31, 2009. These amounts were invested primarily in interest-bearing money market accounts and are held for working capital purposes. In addition, we had investments in marketable securities of $6.0 million as of December 31, 2009. The marketable securities are U.S. Treasury notes. We do not enter into investments for trading or speculative purposes. We believe that we do not have any material exposure to changes in the fair value of our investment portfolio as a result of changes in interest rates. However, any declines in interest rates will reduce future investment income.

As of December 31, 2009, we had $78.2 million in variable interest rate debt. Because of the interest rate swap contracts in place at December 31, 2009 such debt will not be subject to risks associated with fluctuations in interest rates until such contracts expire on June 30, 2014.

Since 2007, we have utilized interest rate swap contracts to maintain compliance with debt requirements and to protect us against changes in the interest payments associated with our variable-rate long-term debt. The contracts are considered cash flow hedges. As a result, as long as the swap contracts are deemed highly effective, changes in the fair value of the swap contracts are recorded as either an asset (a gain position), or a liability (a loss position) on the balance sheet, with the offset recorded in accumulated other comprehensive income, a separate component of stockholders equity.

In December 2008, the Company settled the two interest rate swap contracts entered into during 2007 resulting in a cash payment by the Company. The pre-tax net unrealized loss within accumulated other comprehensive income associated with the cancelled interest rate swap contracts is being amortized to interest expense over the original lives of the contracts. The cancelled swap contracts were replaced with five interest rate swap contracts. As principal is repaid on the debt, the combined notional amounts of the five interest rate swap contracts will be different than the principal balance of the outstanding debt. If this difference is material, it can cause certain of the five interest rate swap contracts to be deemed ineffective. Due to voluntary principal payments made by the Company, two of the interest rate swap contracts have been deemed ineffective. As a result, changes in the fair values of these ineffective contracts are recorded as a component of interest expense in the Company s statement of operations.

For more information on our hedging activities, see Notes 5 and 11 of the Notes to Consolidated Financial Statements in Item 8.

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ITEM 8. Financial Statements and Supplementary Data

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of

NightHawk Radiology Holdings, Inc.

Scottsdale, Arizona

We have audited the accompanying consolidated balance sheets of NightHawk Radiology Holdings, Inc. and subsidiaries (the Company) as of December 31, 2009 and 2008, and the related consolidated statements of operations, stockholders equity, cash flows, and comprehensive income (loss) for each of the three years in the period ended December 31, 2009. Our audits also included the financial statement schedule listed in the Index at Item 15. These financial statements and financial statement schedule are the responsibility of the Company s management. Our responsibility is to express an opinion on the financial statements and the financial statement schedule based on our audits.

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

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of NightHawk Radiology Holdings, Inc. and subsidiaries as of December 31, 2009 and 2008, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2009, in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, such financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company s internal control over financial reporting as of December 31, 2009, based on the criteria established in *Internal Control Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 22, 2010 expressed an unqualified opinion on the Company s internal control over financial reporting.

/s/ DELOITTE & TOUCHE LLP

Boise, Idaho

February 22, 2010

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NIGHTHAWK RADIOLOGY HOLDINGS, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS

(In thousands, except share and per share data)

	For the Years Ended December 31,		
	2009	**2008**	**2007**
Service revenue	$ 162,536	$ 167,607	$ 151,662
Operating costs and expenses:			
Professional services	72,368	68,932	63,618
Sales, general and administrative	60,845	65,683	54,018
Depreciation and amortization	11,009	11,362	7,899
Goodwill impairment	68,718		
Total operating costs and expenses	212,940	145,977	125,535
Operating income (loss)	(50,404)	21,630	26,127
Other income (expense):			
Interest expense	(8,466)	(8,508)	(5,885)
Interest income	164	1,380	3,130
Other, net	(16)	197	(63)
Total other income (expense)	(8,318)	(6,931)	(2,818)
Income (loss) before income taxes	(58,722)	14,699	23,309
Income tax expense (benefit)	(10,578)	5,257	8,615
Net income (loss)	$ (48,144)	$ 9,442	$ 14,694
Earnings (loss) per common share:			
Basic	$ (1.89)	$ 0.32	$ 0.49
Diluted	$ (1.89)	$ 0.31	$ 0.47
Weighted average of common shares outstanding:			
Basic	25,443,493	29,482,536	30,083,080
Diluted	25,443,493	30,561,942	31,083,971

The accompanying notes are an integral part of the consolidated financial statements.

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NIGHTHAWK RADIOLOGY HOLDINGS, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

(In thousands, except share data)

	December 31, 2009	December 31, 2008
ASSETS		
Current assets:		
Cash and cash equivalents	$ 26,293	$ 47,160
Marketable securities	6,000	
Trade accounts receivable, net	21,359	24,393
Deferred income taxes	910	855
Prepaid expenses and other current assets	4,702	6,231
Total current assets	59,264	78,639
Property and equipment, net	13,507	10,528
Goodwill		68,718
Intangible assets, net	72,550	79,616
Deferred income taxes	15,707	4,082
Other assets, net	4,646	3,566
Total assets	$ 165,674	$ 245,149
LIABILITIES		
Current liabilities:		
Accounts payable	$ 6,130	$ 6,327
Accrued expenses and other liabilities	3,473	3,617
Accrued payroll and related benefits	3,769	3,783
Long-term debt, due within one year	802	955
Total current liabilities	14,174	14,682
Insurance reserve	4,018	3,705
Long-term debt	77,404	93,145
Other liabilities	1,348	3,850
Total liabilities	96,944	115,382
Commitments and contingencies		
STOCKHOLDERS EQUITY:		
Common stock 150,000,000 shares authorized; $.001 par value; 23,558,890 and 27,590,774 shares issued and outstanding, respectively	24	28
Additional paid-in capital	221,106	237,429
Retained earnings (deficit)	(151,660)	(103,516)
Accumulated other comprehensive income (deficit)	(740)	(4,174)
Total stockholders equity	68,730	129,767
Total liabilities and stockholders equity	$ 165,674	$ 245,149

The accompanying notes are an integral part of the consolidated financial statements.

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NIGHTHAWK RADIOLOGY HOLDINGS, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF STOCKHOLDERS EQUITY

(In thousands, except share data)

	Common Stock		Additional Paid-in Capital	Other Comprehensive Income (Loss)	Retained Earnings (Deficit)	Total
	Shares	Amount				
Balance December 31, 2006	29,944,069	$ 30	$ 230,117	$	$ (127,517)	$ 102,631
Cumulative impact of change in accounting for in income taxes					(135)	(135)
Net income					14,694	14,694
Shares issued upon exercise of stock options and vesting of restricted stock units (RSU)	368,253		1,163			1,163
Issuance of stock options and RSUs employees			8,330			8,330
Issuance of stock options and RSUs non-employees			4,705			4,705
Excess tax benefit (deficit) from stock options exercised and RSU vesting			1,625			1,625
Issuance of warrants in acquisitions			3,334			3,334
Change in fair value of derivatives, net of tax				(1,658)		(1,658)
Balance December 31, 2007	30,312,322	$ 30	$ 249,274	$ (1,658)	$ (112,957)	$ 134,689
Net income					9,442	9,442
Shares issued upon exercise of stock options and vesting of RSUs, net of shares withheld for taxes	370,999		477			477
Shares issued for acquisition earnout	181,971		2,078			2,078
Shares issued for accrued bonus	30,214		1,751			