

FULLER MORTIMER B III

Form 4

December 30, 2008

FORM 4

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

OMB APPROVAL

OMB Number: 3235-0287
Expires: January 31, 2005
Estimated average burden hours per response... 0.5

Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person *
FULLER MORTIMER B III

2. Issuer Name and Ticker or Trading Symbol
GENESEE & WYOMING INC
[GWR]

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

(Last) (First) (Middle)
66 FIELD POINT ROAD
(Street)

3. Date of Earliest Transaction (Month/Day/Year)
12/24/2008

Director 10% Owner
 Officer (give title below) Other (specify below)
Exec.Chmn. & Chrmn.of the Bd.

GREENWICH, CT 06830

(City) (State) (Zip)

4. If Amendment, Date Original Filed(Month/Day/Year)

6. Individual or Joint/Group Filing(Check Applicable Line)
 Form filed by One Reporting Person
 Form filed by More than One Reporting Person

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Ownership (Instr. 4)
			Code	V	Amount	(D)	Price
Class A Common Stock, \$.01 par value					225.5	I ⁽¹⁾	By Wife ⁽¹⁾
Class A Common Stock, \$.01 par value	12/30/2008		C		87,526	A ⁽²⁾	822,712
Class A Common Stock, \$.01 par value	12/24/2008		J/K ⁽³⁾⁽⁴⁾⁽⁵⁾		310,026	D	\$ 0 ⁽³⁾

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Stock, \$.01 par value					(4) <u>(5)</u>		
Class A Common Stock, \$.01 par value	12/24/2008		J/K ⁽⁶⁾⁽⁷⁾⁽⁸⁾	480,000	D	\$ 0 <u>(6)</u> <u>(7)</u> <u>(8)</u>	32,686 D
Class B Common Stock, \$.01 par value							1,137,641.5 <u>(9)</u> D
Class B Common Stock, \$.01 par value							500,000 <u>(9)</u> I <u>(10)</u> By Grantor Retained Annuity Trust <u>(10)</u>

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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SEC 1474
(9-02)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	6. Date Exercisable and Expiration Date (Month/Day/Year)	7. Title and Underlying (Instr. 3 and 4)	
				Code	V (A) (D)	Date Exercisable	Expiration Date	Title
Class B Common Stock, \$.01 par value	<u>(9)</u>	12/30/2008		C	V 87,526	<u>(9)</u>	<u>(9)</u>	Class A Common Stock, \$.01 par value
Forward Sale Contract (Obligation to Sell)	<u>(3)</u>	12/24/2008		J/K ⁽³⁾⁽⁴⁾⁽⁵⁾	337,500	12/24/2008	12/24/2008	Class A Common Stock, \$.01 par value

Forward Sale Contract (Obligation to Sell)	(6)	12/24/2008	J/K(6)(7)(8)	480,000	12/24/2008	12/24/2008	Class A Common Stock, \$.01 par value
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Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
FULLER MORTIMER B III 66 FIELD POINT ROAD GREENWICH, CT 06830	X		Exec.Chmn. & Chrmn.of the Bd.	

Signatures

Allison M. Fergus, Attorney-in-Fact for Mortimer B. Fuller
 12/30/2008
 **Signature of Reporting Person Date

Explanation of Responses:

- * If the form is filed by more than one reporting person, see Instruction 4(b)(v).
- ** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).
- (1) These shares are held by Mr. Fuller's wife. Mr. Fuller disclaims beneficial ownership of these shares.
- (2) These shares were received upon conversion of Class B Common Stock held by Mr. Fuller. Each share of Class B Common Stock is convertible into one share of Class A Common Stock.
 On December 24, 2008, Mr. Fuller settled a variable prepaid forward contract that was entered into on December 1, 2004 with Credit Suisse Capital LLC and Credit Suisse Securities (USA) LLC, as agent (collectively, "CSFB") relating to 337,500 shares of Class B Common Stock of Genesee & Wyoming Inc. (the "Company"), which contract was extended on December 3, 2007 until December 24, 2008. Mr. Fuller received net proceeds of \$5,355,405 under the initial contract and \$623,142 in connection with the extension. Under the terms of the extended contract, Mr. Fuller agreed to deliver shares of Class B Common Stock (which would immediately convert into shares of Class A Common Stock on a one-for-one basis) or shares of Class A Common Stock on the expiration date of the contract as follows: (Continued in Footnotes 4 and 5 below.)
 - (a) if the final price was less than or equal to the floor price (\$26.3449 per share) (the "December Floor Price), 337,500 shares; (b) if the final price was less than or equal to the cap price (\$31.6139 per share) (the "December Cap Price"), but greater than the December Floor Price, then a number of shares equal to 337,500 times the December Floor Price divided by the final price; and (c) if the final price was greater than the December Cap Price, then a number of shares equal to 337,500 shares multiplied by a fraction, the numerator of which was the sum of the December Floor Price and the difference between the final price and the December Cap Price, and the denominator of which was the final price. (Continued in Footnote 5 below.)
- (5) On December 24, 2008 (the "Settlement Date"), the final price under the extended contract was \$28.6795. Accordingly, on the Settlement Date Mr. Fuller transferred to CSFB 310,026 shares of Class A Common Stock. Mr. Fuller has agreed to disgorge an amount that may be deemed to constitute profit under Section 16(b) of the Securities Exchange Act of 1934 (the "Act") in conjunction with any deemed reacquisition of shares upon the settlement of this transaction.
- (6) On December 24, 2008, Mr. Fuller settled a variable prepaid forward contract that was entered into on March 15, 2006 with CSFB, relating to 480,000 shares of Class B Common Stock of the Company, which contract expired December 24, 2008. Mr. Fuller received net proceeds of \$12,511,968 under the contract. Under the terms of the contract, Mr. Fuller agreed to deliver shares of Class B Common Stock (which would immediately convert into shares of Class A Common Stock on a one-for-one basis) or shares of Class A Common Stock on the expiration date of the contract as follows: (continued in Footnotes 7 and 8 below.)
 - (7) (a) if the final price was less than or equal to the floor price (\$30.10 per share) (the "March Floor Price"), 480,000 shares; (b) if the final price was less than or equal to the cap price (\$37.625 per share) (the "March Cap Price"), but greater than the March Floor Price, then a number of shares equal to 480,000 times the March Floor Price divided by the final price; and (c) if the final price was greater than the

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March Cap Price, then a number of shares equal to 480,000 shares multiplied by a fraction, the numerator of which was the sum of the March Floor Price and the difference between the final price and the March Cap Price, and the denominator of which was the final price. (Continued in Footnote 8 below.)

- (8) On the Settlement Date, the final price under the March contract was \$28.5709. Accordingly, on the Settlement Date Mr. Fuller transferred to CSFB 480,000 shares of Class A Common Stock.
- (9) This Class B Common Stock is not registered pursuant to Section 12 of the Act. However, each share of Class B Common Stock is convertible into one share of Class A Common Stock.
- (10) These shares were contributed on July 21, 2008 to a Grantor Retained Annuity Trust, of which Mr. Fuller is the Trustee.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure. Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number.