

Roadrunner Transportation Systems, Inc.

Form S-3/A

August 25, 2011

As filed with the Securities and Exchange Commission on August 25, 2011

Registration No. 333-176225

# **SECURITIES AND EXCHANGE COMMISSION**

**WASHINGTON, D.C. 20549**

## **Amendment No. 1**

**To**

**FORM S-3**

**REGISTRATION STATEMENT**

*UNDER*

*THE SECURITIES ACT OF 1933*

**Roadrunner Transportation Systems, Inc.**

(Exact name of registrant as specified in its charter)

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(State or other jurisdiction of

(I.R.S. Employer

incorporation or organization)

**4900 S. Pennsylvania Ave.**

Identification Number)

**Cudahy, Wisconsin 53110**

**(414) 615-1500**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Mark A. DiBlasi**

**President and Chief Executive Officer**

**Roadrunner Transportation Systems, Inc.**

**4900 S. Pennsylvania Ave.**

**Cudahy, Wisconsin 53110**

**(414) 615-1500**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

*Copies to:*

**Brandon Lombardi, Esq.**

**Derek Mirza, Esq.**

**Greenberg Traurig, LLP**

**2375 East Camelback Road, Suite 700**

**Phoenix, Arizona 85016**

**(602) 445-8000**

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**Approximate date of commencement of proposed sale to the public:** From time to time after the effective date of the Registration Statement.

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. ☐

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. ☒

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box. ☐

If this form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box. ☐

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

Large accelerated filer ☐

Accelerated filer ☐

Non-accelerated filer ☒ (Do not check if a smaller reporting company)

Smaller reporting company ☐

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**

**EXPLANATORY NOTE**

The sole purpose of this Amendment No. 1 is to file revised Exhibit Nos. 5.1 and 23.2 to the Registration Statement. Accordingly, this Amendment No. 1 consists only of the facing page, this explanatory note, and Part II of the Registration Statement. The Prospectus is unchanged and has therefore been omitted.

**PART II****INFORMATION NOT REQUIRED IN PROSPECTUS****Item 14. Other Expenses of Issuance and Distribution.**

The following table sets forth the fees and expenses payable by the registrant in connection with the offering described in the registration statement. All of the amounts shown are estimates, except for the SEC registration fee:

	Amount to be Paid
SEC Registration Fee	\$ 30,836
Accountants Fees and Expenses	25,000
Legal Fees and Expenses	35,000
Printing and Engraving Expenses	25,000
Transfer Agent Fees	5,000
Trust Fees and Expenses	10,000
Miscellaneous Fees	10,000
Total	\$ 140,836

**Item 15. Indemnification of Directors and Officers.**

Our certificate of incorporation and bylaws limit the liability of directors to the fullest extent permitted by the Delaware General Corporation Law. In addition, our certificate of incorporation and bylaws provide that we will indemnify our directors and officers to the fullest extent permitted by law. In connection with this offering, we are entering into indemnification agreements with our current directors and executive officers and expect to enter into a similar agreement with any new directors or executive officers.

Section 145 of the Delaware General Corporation Law empowers a Delaware corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of such corporation) by reason of the fact that such person is or was a director, officer, employee, or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee, or agent of another corporation or enterprise. In accordance with Delaware law, the restated certificate of incorporation, as amended, and the amended and restated bylaws of the registrant provide that the registrant will indemnify and advance expenses, to the fullest extent permitted by Delaware law, to each person who is or was a director or officer of the registrant, or who serves or served any other enterprise or organization at the request of the registrant (an Indemnitee ).

Under Delaware law, to the extent that an Indemnitee is successful on the merits in defense of a suit or proceeding brought against him or her by reason of the fact that he or she is or was a director, officer, or agent of the registrant, or serves or served any other enterprise or organization at the request of the registrant, the registrant shall indemnify him or her against expenses (including attorneys fees) actually and reasonably incurred in connection with such action.

If unsuccessful in defense of a third-party civil suit or a criminal suit, or if such a suit is settled, an Indemnitee may be indemnified under Delaware law against both (i) expenses, including attorneys fees, and (ii) judgments, fines, and amounts paid in settlement if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the registrant, and, with respect to any criminal action, had no reasonable cause to believe his or her conduct was unlawful.

If unsuccessful in defense of a suit brought by or in the right of the registrant, where the suit is settled, an Indemnitee may be indemnified under Delaware law only against expenses (including attorneys fees) actually and reasonably incurred in the defense or settlement of the suit if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the registrant except that if the Indemnitee is



adjudged to be liable for negligence or misconduct in the performance of his or her duty to the registrant, he or she cannot be made whole even for expenses unless a court determines that he or she is fully and reasonably entitled to indemnification for such expenses.

Also under Delaware law, expenses incurred by an officer or director in defending a civil or criminal action, suit, or proceeding may be paid by the registrant in advance of the final disposition of the suit, action, or proceeding upon receipt of an undertaking by or on behalf of the officer or director to repay such amount if it is ultimately determined that he or she is not entitled to be indemnified by the registrant. The registrant may also advance expenses incurred by other employees and agents of the registrant upon such terms and conditions, if any, that the board of directors of the registrant deems appropriate.

**Item 16. Exhibits.**

Exhibit Number	Exhibit
1.1	Form of Underwriting Agreement**
3.1	Amended and Restated Certificate of Incorporation (1)
3.2	Second Amended and Restated Bylaws (1)
4	Second Amended and Restated Stockholders Agreement, dated as of March 14, 2007, by and among the Registrant and the stockholders named therein (2)
4.17	Form of Warrant Agreement and Certificate**
4.18	Form of Debt Security**
4.19	Form of Indenture*
4.23	Form of Unit Agreement and Unit Certificate**
5.1	Opinion of Greenberg Traurig, LLP
10.1	Employment Letter Agreement, by and between the Registrant and Mark A. DiBlasi (3)
10.2	Employment Letter Agreement, by and between the Registrant and Peter R. Armbruster (3)
10.3	Employment Letter Agreement, by and between the Registrant and Brian J. van Helden (4)
10.4	Employment Letter Agreement, by and between the Registrant and Scott L. Dobak (4)
10.5	2010 Incentive Compensation Plan (1)
10.6	Form of Indemnification Agreement (1)
10.7	Agreement and Plan of Merger, dated as of May 7, 2010, by and among the Registrant; GTS Transportation Logistics, Inc.; and Group Transportation Services Holdings, Inc. (1)
10.8	Advisory Agreement, by and between the Registrant and Thayer I Hidden Creek Management, L.P. (1)
10.9	Commitment letter, dated April 19, 2010, from U.S. Bank National Association to the Registrant (5)
10.10	Credit Agreement, dated May 18, 2010, among the Registrant, the Lenders (as defined therein), and U.S. Bank National Association, a national banking association, as LC Issuer, Swing Line Lender, and Administrative Agent (6)
10.10(a)	Amended and Restated Credit Agreement, dated May 31, 2011, among the Registrant, the Lenders (as defined therein), and U.S. Bank National Association, a national banking association (7)
12.1	Statement of Computation of Ratio of Earnings to Fixed Charges and Preferred Stock Dividends**
23.1	Consent of Greenberg Traurig, LLP (contained in Exhibit 5.1)
23.2	Consent of Deloitte & Touche LLP
24.1	Power of Attorney of Directors and Executive Officers (included on the signature page of the Registration Statement)*
25.1	Statement of Eligibility on Form T-1 under the Trust Indenture Act of 1939 of the Trustee under the Indenture*

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- \* Previously filed.
- \*\* To be filed by amendment to this registration statement or by a report filed under the Securities Exchange Act of 1934, as amended, and incorporated herein by reference.
- (1) Incorporated by reference to the registrant's registration statement on Form S-1 (Registration No. 333-152504) as filed with the SEC on May 7, 2010.
- (2) Incorporated by reference to the registrant's registration statement on Form S-1 (Registration No. 333-152504) as filed with the SEC on September 11, 2008.

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- (3) Incorporated by reference to the registrant's registration statement on Form S-1 (Registration No. 333-152504) as filed with the SEC on March 4, 2010.
- (4) Incorporated by reference to the registrant's registration statement on Form S-1 (Registration No. 333-152504) as filed with the SEC on April 5, 2010.
- (5) Incorporated by reference to the registrant's registration statement on Form S-1 (Registration No. 333-152504) as filed with the SEC on April 30, 2010.
- (6) Incorporated by reference to the registrant's Current Report on Form 8-K as filed with the SEC on May 20, 2010.
- (7) Incorporated by reference to the registrant's Current Report on Form 8-K as filed with the SEC on June 1, 2011.

**Item 17. Undertakings.**

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement.

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference into the registration statement or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(i) If the registrant is relying on Rule 430B:

(A) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of this registration statement or in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

(d) The undersigned registrant hereby undertakes to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Commission under section 305(b)(2) of the Trust Indenture Act.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Cudahy, Wisconsin, on the 25th day of August, 2011.

ROADRUNNER TRANSPORTATION SYSTEMS, INC.

By: */s/ Mark A. DiBlasi*  
Mark A. DiBlasi  
President and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated:

Signature	Title	Date
<i>/s/ Mark A. DiBlasi</i> Mark A. DiBlasi	President, Chief Executive Officer, and Director (Principal Executive Officer)	August 25, 2011
<i>/s/ Peter R. Armbruster*</i> Peter R. Armbruster	Vice President Finance, Chief Financial Officer, Treasurer, and Secretary (Principal Financial and Accounting Officer)	August 25, 2011
<i>/s/ Scott D. Rued*</i> Scott D. Rued	Chairman of the Board	August 25, 2011
<i>/s/ Victoria Jackson Bridges*</i> Victoria Jackson Bridges	Director	August 25, 2011
<i>/s/ Christopher L. Doerr*</i> Christopher L. Doerr	Director	August 25, 2011
<i>/s/ Ivor J. Evans*</i> Ivor J. Evans	Director	August 25, 2011
<i>/s/ James D. Staley*</i> James D. Staley	Director	August 25, 2011
<i>/s/ William S. Urkiel*</i> William S. Urkiel	Director	August 25, 2011
<i>/s/ Chad M. Utrup*</i> Chad M. Utrup	Director	August 25, 2011
<i>/s/ Judith A. Vijums*</i> Judith A. Vijums	Director	August 25, 2011

\*By: */s/ Mark A. DiBlasi*  
Mark A. DiBlasi

Attorney-in-Fact