

06-15-2001



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Tab settings

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): 6-11-01
American Pipe And Plastics, Inc.
 Individual(s) Association
 General Partnership Limited Partnership
 Corporation-State New York
 Other _____
Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)
Name: First New England Capital Limited Internal Partnership
Address: _____
Street Address: 100 Pearl Street
City: Hartford State: CT Zip: 06103
 Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership Connecticut
 Corporation-State _____
 Other _____
if assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:
 Assignment Merger
 Security Agreement Change of Name
 Other _____
Execution Date: May 30, 2001

4. Application number(s) or registration number(s):
A. Trademark Application No.(s)
NONE
Additional number(s) attached Yes No

B. Trademark Registration No.(s)
2,306,060
Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: James C. Schulwolf, Esq.
Internal Address: c/o Pepe & Hazard LLP
06/14/2001 LMUELLER 00000100 2306060
40.00 OP
Street Address: Goodwin Square
City: Hartford State: CT Zip: 06103

6. Total number of applications and registrations involved: 1
7. Total fee (37 CFR 3.41)..... \$ 40.00
 Enclosed
 Authorized to be charged to deposit account
8. Deposit account number:
(Attach duplicate copy of this page if paying by deposit account)

9. Statement and signature.
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.
James C. Schulwolf [Signature] 6/13/01
Name of Person Signing Signature Date
Total number of pages including cover sheet, attachments, and document: 14

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231

Trademark Recordation Form Cover Sheet

Item 2 continued:

First New England Capital 2, LP
a Connecticut Limited Partnership
100 Pearl Street
Hartford, CT 06103

Marathon Investment Partners, LP
a Delaware Limited Partnership
111 Devonshire Street
Boston, MA 02109

THIS AGREEMENT IS SUBJECT TO A SUBORDINATION AGREEMENT DATED AS OF THE DATE HEREOF AMONG THE INVESTORS (AS HEREIN DEFINED), ACQUISITION (AS HEREIN DEFINED) AND WEBSTER BANK (THE "SENIOR LENDER") THAT, AMONG OTHER THINGS, SUBORDINATES THE OBLIGOR'S OBLIGATIONS TO SAID INVESTOR TO THE OBLIGOR'S OBLIGATIONS TO THE SENIOR LENDER.

TRADEMARK COLLATERAL SECURITY AGREEMENT

THIS TRADEMARK COLLATERAL SECURITY AGREEMENT (the "Agreement") is made on the 30th day of May, 2001 between AMERICAN PIPE AND PLASTICS, INC., a New York corporation having a mailing address at 958 Route 11 South, Kirkwood, New York 13795 ("Obligor") and FIRST NEW ENGLAND CAPITAL LIMITED PARTNERSHIP, a limited partnership having a mailing address at 100 Pearl Street, Hartford, Connecticut 06103 ("FNEC"), FIRST NEW ENGLAND CAPITAL 2, LP, a limited partnership having a mailing address at 100 Pearl Street, Hartford, Connecticut 06103 ("FNEC2"), and MARATHON INVESTMENT PARTNERS, LP, a limited partnership having a mailing address at 111 Devonshire Street, Boston, Massachusetts 02109 ("Marathon") (FNEC, FNEC2 and Marathon collectively referred to as "Investors").

BACKGROUND. Prior to the execution of this Agreement, American Pipe & Plastics Acquisition Corp., a Delaware corporation ("Acquisition"), has executed and delivered a series of Notes identical in form, each a 14% Subordinated Note Due 2006, in the aggregate principal amount of \$3,000,000 (collectively the "Notes"), issued by Acquisition pursuant to a certain Securities Purchase Agreement of even date herewith among Acquisition, American Pipe & Plastics Holdings Group, Inc. and Investors (the "Purchase Agreement") (the Notes, the Purchase Agreement and any other documents executed in contemplation thereof, collectively referred to as the "Financing Documents"). In order to secure payment of the Notes, Acquisition has entered and delivered, as one of the Financing Documents, a Security Agreement, of even date herewith, by and among the Investors and Acquisition (the "Security Agreement"). The collateral under the Security Agreement includes a lien on and security interest in the Trademarks, as well as in, among other things, machinery, equipment formulations, manufacturing procedures, quality control procedures and product specifications of the Acquisition ("Other Assets") relating to products sold under the Trademarks, whereby Investors shall have the right to foreclose on the Trademarks and the Other Assets in the event and continuance of an Event of Default (as described in the Purchase Agreement). The Security Agreement also provides that Acquisition will execute and deliver certain documents that the Investor may request from time to time, including without limitation any separate trademark security agreements. Immediately after the execution of the Notes and Purchase Agreement, Acquisition merged with and into Obligor, and, pursuant to applicable law and a certain Assumption and Reaffirmation Agreement of even date herewith among Obligor, Acquisition and Investors, Obligor has assumed all of Acquisition's obligations under the Financing Documents, including without limitation, all security interests and other obligations under the Security Agreement so that (i) the security interest under the Security Agreement now applies to all trademarks and trademark applications of the Obligor, including without limitation the Trademarks (as hereinafter defined) and (ii) the duty to deliver separate trademark security

agreements is now the duty of the Obligor. The parties hereto reaffirm their respective duties and obligations pursuant to the Financing Documents, including without limitation the Security Agreement, and consistent with such duties and obligations file herewith Schedule A (as hereinafter described).

NOW, THEREFORE, in consideration of the premises, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Obligor hereby agrees with Investors as follows:

1. To secure the complete and timely satisfaction of all Obligations (as defined in that certain Security Agreement by and between Investors and Obligor, of even date herewith), Obligor hereby grants to Investors a security interest in the entire right, title and interest in and to the trademarks, as well as all registrations thereof and applications therefor listed in Schedule A hereto (as the same may be amended from time to time), including, without limitation, all foreign counterparts thereto and renewals thereof, all proceeds of infringement suits, the right to sue for past, present and future infringements (subject to Paragraph 11 below) and all of the good will of the business which is appurtenant to, and symbolized by such trademarks, registrations thereof, and applications therefor, as well as all rights corresponding thereto throughout the world (all of the foregoing are collectively called the "Trademarks").

2. Obligor covenants and warrants that:

- (a) The Trademarks are subsisting and have not been adjudged invalid or unenforceable;
- (b) To the best of Obligor's knowledge, each of the Trademarks that is in use in a jurisdiction is valid and enforceable in that jurisdiction;
- (c) No claim has been made that the use of any of the Trademarks does or may violate the rights of any third person;
- (d) Obligor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, and the Trademarks, except as expressly permitted by the Purchase Agreement, are free and clear of any liens, charges and encumbrances, including, without limitation, pledges, assignments, licenses, registered user agreements and covenants by Obligor not to sue third persons;
- (e) Obligor has the unqualified right to enter into this Agreement and perform its terms;
- (f) Obligor has used, and will continue to use, where commercially practicable, for the duration of this Agreement, proper statutory notice in connection with its use of the Trademarks; and

- (g) Obligor has used, and will continue to use, for the duration of this Agreement, consistent standards of quality in its manufacture of products sold under the Trademarks, but reserves the right in its business judgment to modify product formulations and specifications to meet changing market conditions.

3. Obligor hereby grants to Investors and its employees and agents the right to visit Obligor's plants and facilities which manufacture, inspect or store products sold under any of the Trademarks, and to inspect the products and quality control records relating thereto with reasonable notice at reasonable times during regular business hours (unless a Default or Event of Default had occurred and is continuing in which case no prior notice shall be required). Obligor shall do any and all acts reasonably required by Investors to ensure Obligor's compliance with Paragraph 2(g).

4. Obligor agrees that, until all of the Obligations shall have been satisfied in full, it will not enter into any agreement, including, without limitation, a license agreement, which is inconsistent with Obligor's obligations under this Agreement, without the prior written consent of the Requisite Holders (as defined in the Purchase Agreement), which consent shall not be unreasonably withheld.

5. If, before the Obligations shall have been satisfied in full, Obligor shall obtain rights to any new trademarks, the provisions of Paragraph 1 shall automatically apply thereto and Obligor shall give Investors prompt written notice thereof.

6. Obligor authorizes Investors to modify this Agreement by amending Schedule A to include any future trademarks and trademark applications covered by Paragraphs 1 or 5 hereof.

7. If any Event of Default (as defined in the Purchase Agreement) shall have occurred and be continuing, the Investors shall have, in addition to all other rights and remedies given it by this Agreement, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Trademarks may be located and, without limiting the generality of the foregoing, the Investors may immediately, without demand of performance and without other notice (except as set forth below and except for any other notices expressly provided for in the Purchase Agreement, the Notes or other related document) or demand whatsoever to Obligor, all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon, all or from time to time any portion of the Trademarks, or any interest which the Obligor may have therein, and after deducting from the proceeds of sale or other disposition of the Trademarks all expenses (including all reasonable expenses for broker's fees and legal services), shall apply the residue of such proceeds toward the payment of the Obligations. Any remainder of the proceeds after payment in full of the Obligations shall be paid over to the Obligor. Notice of any sale or other disposition of the Trademarks shall be given to Obligor at least ten (10) days before the time of any intended public or private sale or other disposition of the Trademarks is to be made, which Obligor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, Investors or its successors and assigns may, to the extent permissible under applicable

law, purchase the whole or any part of the Trademarks sold, free, to the extent permitted by applicable law, from any right of redemption on the part of Obligor, which right is hereby waived and released.

8. At such time as Obligor shall completely satisfy all of the Obligations, this Agreement shall terminate and Investors shall execute and deliver to Obligor all Uniform Commercial Code termination statements, deeds, assignments and other instruments as may be necessary or proper to vest in Obligor full title to the Trademarks, subject to any disposition thereof which may have been made by Investors pursuant hereto.

9. Any and all reasonable fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and legal expenses incurred by Investors in connection with the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances (other than those permitted by the Purchase Agreement) or otherwise protecting, maintaining or preserving the Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks (subject to the provisions of Paragraph 14 below), shall be borne and paid by Obligor on demand by Investors and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the highest rate prescribed in the Notes.

10. Obligor shall have the duty, through counsel acceptable to Investors, to (i) prosecute diligently any material trademark applications of the Trademarks pending as of the date of this Agreement or thereafter until the Obligations shall have been paid in full, and (ii) if in Obligor's reasonable business judgment it is prudent to do so, to make federal application on registrable but unregistered material Trademarks, to file and prosecute opposition and cancellation proceedings and to do any and all acts which are commercially practicable to preserve and maintain all rights in the material Trademarks. Any expenses incurred in connection with the Trademarks shall be borne by Obligor. The Obligor shall not abandon any material Trademark without the consent of the Investors, which consent shall not be unreasonably withheld.

11. Obligor shall have the right to bring any opposition proceedings, cancellation proceedings or lawsuit in its own name to enforce or protect the Trademarks, in which event Investors may, if necessary, be joined as a nominal party to such suit if Investors shall have been satisfied that it is not thereby incurring any risk of liability because of such joinder. Obligor shall promptly, upon demand, reimburse and indemnify Investors for all damages, costs and expenses, including attorneys' fees, incurred by Investors in the fulfillment of the provisions of this Paragraph 11.

12. If any Event of Default shall have occurred and be continuing, Obligor hereby authorizes and empowers Investors to make, constitute and appoint any officer or agent of Investors as Investors may select, in its exclusive discretion, as Obligor's true and lawful attorney-in-fact, with the power to endorse Obligor's name on all applications, documents, papers and instruments necessary for Investors to use the Trademarks, or to grant or issue any exclusive or nonexclusive license under the Trademarks to anyone else, or necessary for Investors to assign,

pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone else. Obligor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable for the life of this Agreement.

13. If Obligor falls to comply with any of its obligations hereunder, Investors may do so in Obligor's name or in Investors' name, but at Obligor's expense, and Obligor hereby agrees to reimburse Investors in full for all expenses, including reasonable attorneys' fees, incurred by Investors in protecting, defending and maintaining the Trademarks. Notwithstanding anything contained in this Agreement to the contrary, after an Event of Default shall have occurred and be continuing, the Investors shall notify Obligor ten (10) days prior to bringing any opposition proceedings, cancellation proceedings or lawsuit to enforce or protect the Trademarks. Provided, however, if Investors in its reasonable judgment brings such an action despite the Obligor's opposition, Obligor shall remain liable for all of Investors' reasonable attorneys' fees, incurred by Investors in protecting, defending and maintaining the Trademarks.

14. No course of dealing between Obligor and Investors, nor any failure to exercise, nor any delay in exercising, on the part of Investors, any right, power or privilege hereunder or under the Loan Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

15. All of Investors' rights and remedies with respect to the Trademarks, whether established hereby or by the Financing Documents, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently.

16. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

17. This Agreement is subject to modification only pursuant to Section 9 of the Purchase Agreement.

18. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

19. The validity and interpretation of this Agreement and the rights and obligations of the parties shall be governed by the internal laws of the State of Connecticut without regard to its conflict of laws provisions.

20. Nothing herein or in any other document shall be construed to release or terminate (except pursuant to documents executed pursuant to Paragraph 8) any lien, mortgage, pledge or other security interest in favor of Investors.

WITNESS the execution hereof as of the day and year first above written.

OBLIGOR

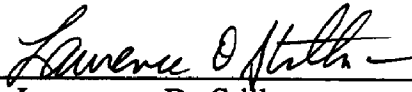
AMERICAN PIPE AND PLASTICS, INC.

By: Roberta Zurn
ROBERTA ZURN
Its *President*
Duly Authorized

INVESTORS

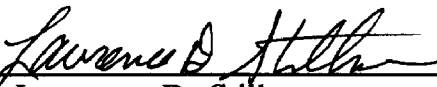
**FIRST NEW ENGLAND CAPITAL
LIMITED PARTNERSHIP**

By: FINEC Corp., Its General Partner

By: 
Lawrence D. Stillman
Its Vice President
Duly Authorized

FIRST NEW ENGLAND CAPITAL 2, LP

By: FINEC Corp., Its General Partner

By: 
Lawrence D. Stillman
Its Vice President
Duly Authorized

MARATHON INVESTMENT PARTNERS, LP

**By: Marathon Investment Partners, GP, LLC
Its General Partner**

By: _____
Clifford Lusso
Its Director
Duly Authorized

INVESTORS

**FIRST NEW ENGLAND CAPITAL
LIMITED PARTNERSHIP**

By: **FINEC Corp., Its General Partner**

By: _____
Lawrence D. Stillman
Its Vice President
Duly Authorized

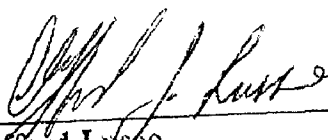
FIRST NEW ENGLAND CAPITAL 2, LP

By: **FINEC Corp., Its General Partner**

By: _____
Lawrence D. Stillman
Its Vice President
Duly Authorized

MARATHON INVESTMENT PARTNERS, LP

By: **Marathon Investment Partners, GP, LLC
Its General Partner**

By: _____

Clifford Lusso
Its Director
Duly Authorized

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CONNECTICUT)
) ss: Hartford
COUNTY OF HARTFORD)

On this 30th day of May, 2001, before me, the undersigned officer, personally appeared ROBERTA ZURN, PRESIDENT of American Pipe And Plastics, Inc., signer and sealer of the foregoing instrument and acknowledged the same to be his free act and deed and the free act and deed of said corporation.

Susan D. Hora
~~Commissioner of the Superior Court~~
Notary Public **SUSAN D. HORA**
My Commission Expires ~~NOTARY PUBLIC~~
MY COMMISSION EXPIRES OCT. 31, 2002

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF *CONNECTICUT*)
) ss: *Hartford*
COUNTY OF *HARTFORD*)

On this *29th* day of May, 2001, before me, the undersigned officer, personally appeared Lawrence D. Stillman, Vice President of FINEC Corp. the general partner of First New England Capital Limited Partnership and First New England Capital 2, LP, signer and sealer of the foregoing instrument and acknowledged the same to be his free act and deed and the free act and deed of said corporation and said limited partnerships.

Susan D. Hora

~~Commissioner of the Superior Court~~
Notary Public

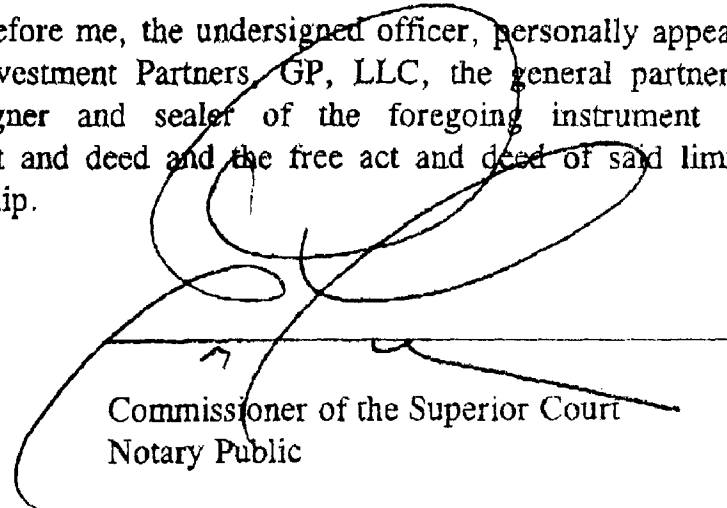
My Commission Expires: SUSAN D. HORA

NOTARY PUBLIC
MY COMMISSION EXPIRES OCT. 31, 2002

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF Massachusetts)
) ss:
COUNTY OF Suffolk)

On this 30 day of May, 2001, before me, the undersigned officer, personally appeared Clifford Lusso, Director of Marathon Investment Partners, GP, LLC, the general partner of Marathon Investment Partners, LP, signer and sealer of the foregoing instrument and acknowledged the same to be his free act and deed and the free act and deed of said limited liability company and said limited partnership.



Commissioner of the Superior Court
Notary Public

My Commission Expires _____

EMILY LUCE
Notary Public
Commonwealth of Massachusetts
My Commission Expires
February 3, 2006

Schedule A

1. Registered Trademark No. 2,306,060 for a snap clip for fiber optic PVC device for holding and spacing conduits dated January 4, 2000.
2. New York State Trademark Registration Application for use of the words "AM-LINER" dated June 10, 1992.
3. Unregistered marks for the following products: AM-TEL; AM-COM; AM-FO; AM-DUCT; AM-LINER II; AM-FLO; AM-PIPE; and AM-CEL.

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