

GREAT ATLANTIC & PACIFIC TEA CO INC
Form SC 13D/A
August 06, 2009

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

SCHEDULE 13D

Under the Securities Exchange Act of 1934

(Amendment No. 45)*

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.
(Name of Issuer)

COMMON STOCK, Par Value \$1 Per Share
(Title of Class of Securities)

390064 10 3

(CUSIP Number)

John D. Barline, Esq.
Williams, Kastner & Gibbs, LLP
1301 A Street, Suite 900
Tacoma, Washington 98402
(253) 552-4081
(Name, Address and Telephone Number of Person
Authorized to Receive Notices and Communications)

Copy to:
Sarkis Jebejian, Esq.
Cravath, Swaine & Moore LLP
Worldwide Plaza
825 Eighth Avenue

New York, NY 10019
(212) 474-1000

August 4, 2009

(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Sections 240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box [].

NOTE: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Section 240.13d-7 for other parties to whom copies are to be sent.

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

CUSIP No. 390064 10 3

- (1) NAME OF REPORTING PERSONS
I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)
Tengelmann Warenhandelsgesellschaft KG
51-0235841
- (2) CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)
(a) []
(b) []
- (3) SEC USE ONLY
- (4) SOURCE OF FUNDS (See Instructions)
WC
- (5) CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED
PURSUANT TO ITEMS 2(d) OR 2(e) []
- (6) CITIZENSHIP OR PLACE OF ORGANIZATION
Federal Republic of Germany
- | | |
|---------------------|-------------------------------|
| NUMBER OF | (7) SOLE VOTING POWER |
| SHARES BENEFICIALLY | |
| OWNED BY | (8) SHARED VOTING POWER |
| EACH | 23,785,764A, B |
| REPORTING | (9) SOLE DISPOSITIVE POWER |
| PERSON | |
| WITH | (10) SHARED DISPOSITIVE POWER |
| | 23,785,764A, B |
- (11) AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
23,785,764A, B
- (12) CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES
(See Instructions) [X]
- (13) PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
41.1%
- (14) TYPE OF REPORTING PERSON (See Instructions)
PN

A BENEFICIAL OWNERSHIP OF 1,290,393 SHARES OF COMMON STOCK HELD BY ECP (AS DEFINED BELOW) IS BEING REPORTED HEREUNDER BECAUSE TENGELMANN (AS DEFINED BELOW) MAY BE DEEMED TO HAVE BENEFICIAL OWNERSHIP OF ANY SHARES WHICH ECP BENEFICIALLY OWNS. PURSUANT TO RULE 13D-4, NEITHER THE FILING OF THIS AMENDMENT NOR ANY OF ITS CONTENT SHALL BE DEEMED TO CONSTITUTE AN ADMISSION BY TENGELMANN THAT IT IS THE BENEFICIAL OWNER OF ANY SUCH COMMON STOCK BENEFICIALLY OWNED BY ECP FOR PURPOSES OF SECTION 13(D) OF THE EXCHANGE ACT OR FOR ANY OTHER PURPOSE, AND SUCH BENEFICIAL OWNERSHIP IS EXPRESSLY DISCLAIMED.

B BENEFICIAL OWNERSHIP OF 60,000 SHARES OF SERIES A-T PREFERRED STOCK (AS DEFINED IN ITEM 3 BELOW AND DESCRIBED IN ITEM 6 BELOW) WHICH IS CONVERTIBLE INTO COMMON STOCK BEGINNING ON AUGUST 5, 2010, AND WHICH ENTITLES

TENGELMANN (AS DEFINED BELOW) TO VOTE WITH THE HOLDERS OF COMMON STOCK (AS DESCRIBED IN ITEM 6 BELOW), IS NOT BEING REPORTED HEREUNDER BECAUSE IT IS NOT CONVERTIBLE WITHIN 60 DAYS OF THIS STATEMENT. FOR A DESCRIPTION OF THE VOTING RIGHTS ASSOCIATED WITH THE SERIES A-T PREFERRED STOCK, SEE ITEM 5 BELOW.

CUSIP No. 390064 10 3

- (1) NAME OF REPORTING PERSONS
I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)
Tengelmann Verwaltungs-und Beteiligungs GmbH
- (2) CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)
(a) []
(b) []
- (3) SEC USE ONLY
- (4) SOURCE OF FUNDS (See Instructions)
AF
- (5) CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED
PURSUANT TO ITEMS 2(d) OR 2(e) []
- (6) CITIZENSHIP OR PLACE OF ORGANIZATION
Federal Republic of Germany
- | | |
|---------------------|-------------------------------|
| NUMBER OF | (7) SOLE VOTING POWER |
| SHARES BENEFICIALLY | |
| OWNED BY | (8) SHARED VOTING POWER |
| EACH | 23,785,764A, B |
| REPORTING | (9) SOLE DISPOSITIVE POWER |
| PERSON | |
| WITH | (10) SHARED DISPOSITIVE POWER |
| | 23,785,764A, B |
- (11) AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
23,785,764A, B
- (12) CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES
(See Instructions) [X]
- (13) PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
41.1%
- (14) TYPE OF REPORTING PERSON (See Instructions)
CO

A INCLUSIVE OF 22,495,371 SHARES OF THE COMPANY'S COMMON STOCK HELD BY TENGELMANN (AS DEFINED BELOW) AND 1,290,393 SHARES OF THE COMPANY'S COMMON STOCK HELD BY ECP (AS DEFINED BELOW). THE BENEFICIAL OWNERSHIP OF 1,290,393 SHARES OF COMMON STOCK HELD BY ECP IS BEING REPORTED HEREUNDER BECAUSE TVB (AS DEFINED BELOW) MAY BE DEEMED TO HAVE BENEFICIAL OWNERSHIP OF ANY SHARES WHICH ECP BENEFICIALLY OWNS. PURSUANT TO RULE 13D-4, NEITHER THE FILING OF THIS AMENDMENT NOR ANY OF ITS CONTENT SHALL BE DEEMED TO CONSTITUTE AN ADMISSION BY TVB THAT IT IS THE BENEFICIAL OWNER OF ANY SUCH COMMON STOCK BENEFICIALLY OWNED BY ECP FOR PURPOSES OF SECTION 13(D) OF THE EXCHANGE ACT OR FOR ANY OTHER PURPOSE, AND SUCH BENEFICIAL OWNERSHIP IS EXPRESSLY DISCLAIMED.

B

BENEFICIAL OWNERSHIP BY TENGELMANN (AS DEFINED BELOW) OF 60,000 SHARES OF SERIES A-T PREFERRED STOCK (AS DEFINED IN ITEM 3 BELOW AND DESCRIBED IN ITEM 6 BELOW) WHICH IS CONVERTIBLE INTO COMMON STOCK BEGINNING ON AUGUST 5, 2010, AND WHICH ENTITLES TENGELMANN TO VOTE WITH THE HOLDERS OF COMMON STOCK (AS DESCRIBED IN ITEM 6 BELOW) IS NOT BEING REPORTED HEREUNDER BECAUSE IT IS NOT CONVERTIBLE WITHIN 60 DAYS OF THIS STATEMENT. FOR A DESCRIPTION OF THE VOTING RIGHTS ASSOCIATED WITH THE SERIES A-T PREFERRED STOCK, SEE ITEM 5 BELOW.

CUSIP No. 390064 10 3

- (1) NAME OF REPORTING PERSONS
I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)
Emil Capital Partners, LLC
- (2) CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)
(a) []
(b) []
- (3) SEC USE ONLY
- (4) SOURCE OF FUNDS (See Instructions)
WC
- (5) CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED
PURSUANT TO ITEMS 2(d) OR 2(e) []
- (6) CITIZENSHIP OR PLACE OF ORGANIZATION
Delaware
- | | |
|---------------------|-------------------------------|
| NUMBER OF | (7) SOLE VOTING POWER |
| SHARES BENEFICIALLY | |
| OWNED BY | (8) SHARED VOTING POWER |
| EACH | 1,290,393 |
| REPORTING | (9) SOLE DISPOSITIVE POWER |
| PERSON | |
| WITH | (10) SHARED DISPOSITIVE POWER |
| | 1,290,393 |
- (11) AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
1,290,393
- (12) CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES
(See Instructions) []
- (13) PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
2.2%
- (14) TYPE OF REPORTING PERSON (See Instructions)
CO

CUSIP No. 390064 10 3

- (1) NAME OF REPORTING PERSONS
 I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)
 Christian Wilhelm Erich Haub
 ###-##-####
- (2) CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)
 (a) []
 (b) []
- (3) SEC USE ONLY
- (4) SOURCE OF FUNDS (See Instructions)
 AF and PF
- (5) CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED
 PURSUANT TO ITEMS 2(d) OR 2(e) []
- (6) CITIZENSHIP OR PLACE OF ORGANIZATION
 United States and Federal Republic of Germany
- | | |
|---------------------|-------------------------------|
| NUMBER OF | (7) SOLE VOTING POWER |
| SHARES BENEFICIALLY | 599,829A |
| OWNED BY | (8) SHARED VOTING POWER |
| EACH | 23,785,764B, C |
| REPORTING | (9) SOLE DISPOSITIVE POWER |
| PERSON | 599,829A |
| WITH | (10) SHARED DISPOSITIVE POWER |
| | 23,785,764B, C |
- (11) AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
 24,385,593A, B, C
- (12) CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES
 (See Instructions) [x]
- (13) PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
 42.1%
- (14) TYPE OF REPORTING PERSON (See Instructions)
 IN

- A INCLUSIVE OF OPTIONS TO PURCHASE 318,478 SHARES OF THE COMPANY'S COMMON STOCK.
- B INCLUSIVE OF 22,495,371 SHARES OF THE COMPANY'S COMMON STOCK HELD BY TENGELMANN (AS DEFINED BELOW) AND 1,290,393 SHARES OF THE COMPANY'S COMMON STOCK HELD BY ECP (AS DEFINED BELOW), BUT EXCLUSIVE OF 500 SHARES OF THE COMPANY'S COMMON STOCK HELD BY THE WIFE OF CH (AS DEFINED BELOW) IN RESPECT OF WHICH CH DISCLAIMS ANY POWER TO VOTE, OR TO DIRECT VOTING, AND ANY POWER TO DISPOSE, OR TO DIRECT DISPOSITION. THE BENEFICIAL OWNERSHIP OF 1,290,393 SHARES OF COMMON STOCK HELD BY ECP IS BEING REPORTED HEREUNDER BECAUSE CH MAY BE DEEMED TO HAVE BENEFICIAL OWNERSHIP OF ANY SHARES WHICH ECP BENEFICIALLY OWNS. PURSUANT TO RULE 13D-4, NEITHER THE FILING OF THIS AMENDMENT NOR ANY OF ITS CONTENT SHALL BE DEEMED TO CONSTITUTE AN

ADMISSION BY CH THAT HE IS THE BENEFICIAL OWNER OF ANY SUCH COMMON STOCK BENEFICIALLY OWNED BY ECP FOR PURPOSES OF SECTION 13(D) OF THE EXCHANGE ACT OR FOR ANY OTHER PURPOSE, AND SUCH BENEFICIAL OWNERSHIP IS EXPRESSLY DISCLAIMED.

- c BENEFICIAL OWNERSHIP BY TENGELMANN (AS DEFINED BELOW) OF 60,000 SHARES OF SERIES A-T PREFERRED STOCK (AS DEFINED IN ITEM 3 BELOW AND DESCRIBED IN ITEM 6 BELOW) WHICH IS CONVERTIBLE INTO COMMON STOCK BEGINNING ON AUGUST 5, 2010, AND WHICH ENTITLES TENGELMANN TO VOTE WITH THE HOLDERS OF COMMON STOCK (AS DESCRIBED IN ITEM 6 BELOW) IS NOT BEING REPORTED HEREUNDER BECAUSE IT IS NOT CONVERTIBLE WITHIN 60 DAYS OF THIS STATEMENT. FOR A DESCRIPTION OF THE VOTING RIGHTS ASSOCIATED WITH THE SERIES A-T PREFERRED STOCK, SEE ITEM 5 BELOW.

CUSIP No. 390064 10 3

- (1) NAME OF REPORTING PERSONS
 I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)
 Karl-Erivan Warder Haub
 ###-##-####
- (2) CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)
 (a) []
 (b) []
- (3) SEC USE ONLY
- (4) SOURCE OF FUNDS (See Instructions)
 AF
- (5) CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED
 PURSUANT TO ITEMS 2(d) OR 2(e) []
- (6) CITIZENSHIP OR PLACE OF ORGANIZATION
 United States and Federal Republic of Germany
- | | |
|---------------------|-------------------------------|
| NUMBER OF | (7) SOLE VOTING POWER |
| SHARES BENEFICIALLY | 13,000 |
| OWNED BY | (8) SHARED VOTING POWER |
| EACH | 23,785,764A, B |
| REPORTING | (9) SOLE DISPOSITIVE POWER |
| PERSON | 13,000 |
| WITH | (10) SHARED DISPOSITIVE POWER |
| | 23,785,764A, B |
- (11) AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
 23,798,764A, B
- (12) CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES
 (See Instructions) [X]
- (13) PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
 41.1%
- (14) TYPE OF REPORTING PERSON (See Instructions)
 IN

A INCLUSIVE OF 22,495,371 SHARES OF THE COMPANY'S COMMON STOCK HELD BY TENGELMANN (AS DEFINED BELOW) AND 1,290,393 SHARES OF THE COMPANY'S COMMON STOCK HELD BY ECP (AS DEFINED BELOW). THE BENEFICIAL OWNERSHIP OF 1,290,393 SHARES OF COMMON STOCK HELD BY ECP IS BEING REPORTED HEREUNDER BECAUSE KEH (AS DEFINED BELOW) MAY BE DEEMED TO HAVE BENEFICIAL OWNERSHIP OF ANY SHARES WHICH ECP BENEFICIALLY OWNS. PURSUANT TO RULE 13D-4, NEITHER THE FILING OF THIS AMENDMENT NOR ANY OF ITS CONTENT SHALL BE DEEMED TO CONSTITUTE AN ADMISSION BY KEH THAT HE IS THE BENEFICIAL OWNER OF ANY SUCH COMMON STOCK BENEFICIALLY OWNED BY ECP FOR PURPOSES OF SECTION 13(D) OF THE EXCHANGE ACT OR FOR ANY OTHER PURPOSE, AND SUCH BENEFICIAL OWNERSHIP IS EXPRESSLY DISCLAIMED.

B

BENEFICIAL OWNERSHIP BY TENGELMANN (AS DEFINED BELOW) OF 60,000 SHARES OF SERIES A-T PREFERRED STOCK (AS DEFINED IN ITEM 3 BELOW AND DESCRIBED IN ITEM 6 BELOW) WHICH IS CONVERTIBLE INTO COMMON STOCK BEGINNING ON AUGUST 5, 2010, AND WHICH ENTITLES TENGELMANN TO VOTE WITH THE HOLDERS OF COMMON STOCK (AS DESCRIBED IN ITEM 6 BELOW) IS NOT BEING REPORTED HEREUNDER BECAUSE IT IS NOT CONVERTIBLE WITHIN 60 DAYS OF THIS STATEMENT. FOR A DESCRIPTION OF THE VOTING RIGHTS ASSOCIATED WITH THE SERIES A-T PREFERRED STOCK, SEE ITEM 5 BELOW.

CUSIP No. 390064 10 3

- (1) NAME OF REPORTING PERSONS
I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)
Erivan Karl Haub
###-##-####
- (2) CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)
(a) []
(b) []
- (3) SEC USE ONLY
- (4) SOURCE OF FUNDS (See Instructions)
AF and PF
- (5) CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED
PURSUANT TO ITEMS 2(d) OR 2(e) []
- (6) CITIZENSHIP OR PLACE OF ORGANIZATION
Federal Republic of Germany
- | | |
|---------------------|-------------------------------|
| NUMBER OF | (7) SOLE VOTING POWER |
| SHARES BENEFICIALLY | 305,100 |
| OWNED BY | (8) SHARED VOTING POWER |
| EACH | 23,785,764A |
| REPORTING | (9) SOLE DISPOSITIVE POWER |
| PERSON | 305,100 |
| WITH | (10) SHARED DISPOSITIVE POWER |
| | 23,785,764A |
- (11) AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
24,090,864 A
- (12) CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES
(See Instructions) [x]
- (13) PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
41.6%
- (14) TYPE OF REPORTING PERSON (See Instructions)
IN

A INCLUSIVE OF 22,495,371 SHARES OF THE COMPANY'S COMMON STOCK HELD BY TENGELMANN (AS DEFINED BELOW) AND 1,290,393 SHARES OF THE COMPANY'S COMMON STOCK HELD BY ECP (AS DEFINED BELOW), BUT EXCLUSIVE OF 15,550 SHARES OF THE COMPANY'S COMMON STOCK HELD BY THE WIFE OF EKH (AS DEFINED BELOW) IN RESPECT OF WHICH EKH DISCLAIMS ANY POWER TO VOTE, OR TO DIRECT VOTING, AND ANY POWER TO DISPOSE, OR TO DIRECT DISPOSITION. THE BENEFICIAL OWNERSHIP OF 22,495,371 SHARES OF COMMON STOCK HELD BY TENGELMANN AND 1,290,393 SHARES OF COMMON STOCK HELD BY ECP IS BEING REPORTED HEREUNDER BECAUSE EKH MAY BE DEEMED TO HAVE BENEFICIAL OWNERSHIP OF ANY SHARES WHICH TENGELMANN AND ECP BENEFICIALLY OWN. PURSUANT TO RULE 13D-4, NEITHER THE FILING OF THIS AMENDMENT NOR ANY OF ITS CONTENT SHALL BE DEEMED TO CONSTITUTE AN ADMISSION BY EKH THAT HE IS THE BENEFICIAL OWNER OF ANY SUCH COMMON STOCK BENEFICIALLY OWNED BY TENGELMANN OR ECP FOR

PURPOSES OF SECTION 13(D) OF THE EXCHANGE ACT OR FOR ANY OTHER PURPOSE,
AND SUCH BENEFICIAL OWNERSHIP IS EXPRESSLY DISCLAIMED.

ECP is engaged primarily as an investment, management and consulting entity of the Tengelmann group, currently focused on business activities in the United States of America and Canada. Tengelmann holds 100% of the outstanding membership interests of ECP.

CH is and has been a member of the Board of Directors of the Company (the "Board") since December 3, 1991. CH has served as Chairman of the Board since May 1, 2001 and Chair of the Executive Committee of the Company since August 15, 2005. CH served as Chief Executive Officer of the Company from May 1, 1998 through August 15, 2005. In addition, CH served as President of the Company from December 7, 1993 through February 24, 2002, and from November 4, 2002 through November 15, 2004.

(d) - (e)

None of the Reporting Parties nor, to the best knowledge of the Reporting Parties, any director of TVB, any partner of Tengelmann or any manager of ECP, during the last five years, has been convicted in a criminal proceeding (excluding traffic violations and similar misdemeanors) or been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was, or is subject to, a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

Item 3. Source and Amount of Funds or Other Consideration

The shares of Common Stock referred to in Item 5(a) hereof as being beneficially owned by the Reporting Parties were acquired by the Reporting Parties in transactions which have been previously described in filings pursuant to Rule 13d-1 and Rule 13d-2 under the Act on Schedule 13D.

In addition, on August 4, 2009, Tengelmann acquired 60,000 shares of the Series A-T Preferred Stock. Tengelmann acquired all such shares pursuant to a contribution from CH, KEH, EKH and GH (collectively, the "Investors"). The Investors purchased the Series A-T Preferred Stock in exchange for \$60,000,000, the source of which was the personal funds of the respective Investors. For further information, see Item 6, which is incorporated herein in its entirety.

Item 4. Purpose of Transaction

Tengelmann and ECP hold the shares of Common Stock they own as an investment. Except for CH serving as Executive Chairman of the Board of the Company, and Dr. Andreas Guldin (who was from July 2005 until April 2007 Senior Executive Vice President (Corporate Finance) and Co-chief financial officer of Tengelmann, and since May 2007 has been Managing Director of US Corporate Development of Tengelmann and serves as Chief Executive Officer of ECP), serving as Executive Managing Director, Strategy & Corporate Development, and as a member of the Board of Directors of the Company (the "Board"), Tengelmann does not participate in the day-to-day management of the Company, and it does not have any present intention to increase its participation in the day-to-day management. Tengelmann reserves the right, however, to increase its participation in the day-to-day management of the Company, to the extent it deems such participation appropriate, and the size of its holdings of Common Stock and Series A-T Preferred Stock gives it power to do so.

On August 4, 2009, the Investors acquired (the “Acquisition”) 60,000 shares of Series A-T Preferred Stock, which were contributed to Tengelmann immediately upon the consummation of the Acquisition. Tengelmann intends to hold the shares of Series A-T Preferred Stock contributed to it by the Investors as an investment. For further information, see Item 6, which is incorporated herein by reference in its entirety and is qualified in its entirety by reference to the full text of the Investment Agreement dated as of July 23, 2009 (the “Investment Agreement”) among the Investors, ECP and the Company, a copy of which was filed as Exhibit 7.1 to Amendment 44 to the Statement and is incorporated herein by reference in its entirety.

In connection with the Acquisition, the Company filed with the Maryland State Department of Assessments and Taxation the articles supplementary of the Series A-T Preferred Stock setting forth the voting powers, preferences, conversion and other rights, qualifications, limitations as to dividends, terms and conditions of redemption and restrictions of the Series A-T Preferred Stock (the “Convertible Preferred Articles Supplementary”). For further information, see Item 6, which is incorporated herein by reference in its entirety and is qualified in its entirety by reference to the full text of the Convertible Preferred Articles Supplementary, a copy of which is filed herewith as Exhibit 7.1 and is incorporated herein by reference in its entirety.

In connection with the Acquisition, Tengelmann and the Company entered into an Amended and Restated Stockholder Agreement dated as of August 4, 2009 (the “Stockholder Agreement”). Among other things, the Stockholder Agreement sets forth certain corporate governance rights, as well as certain registration rights, preemptive rights and consent rights. For further information, see Item 6, which is incorporated herein by reference in its entirety and is qualified in its entirety by reference to the full text of the Stockholder Agreement, a copy of which is filed herewith as Exhibit 7.2 and is incorporated herein by reference in its entirety.

Pursuant to the Convertible Preferred Articles Supplementary, Tengelmann’s current ownership of Common Stock and the Series A-T Preferred Stock gives it the right to elect four directors. In addition, Tengelmann intends to seek to influence the composition of the Board (including by nominating, voting for and soliciting votes in favor of candidates for the Board) and the corporate governance and strategy of the Company in general, subject to the corporate governance provisions of the Stockholder Agreement.

Of the eleven current directors of the Company, the following four were elected by Tengelmann:

John D. Barline (“JDB”)
Dr. Jens-Juergen Boeckel (“JJB”)
Christian Wilhelm Erich Haub
Dr. Andreas Guldin (“AG”)

Tengelmann and ECP regularly review their respective investments in the Company and, depending on the results of any such review, Tengelmann may decide to alter its strategy in respect of its investment in the Company in light of the investment objectives and policies of the Reporting Persons, the Company's business, financial condition and operating results, the price level and availability of the Company's securities, opportunities to acquire or dispose of the Company's securities, trading profit maximization and loss minimization opportunities, general market and industry conditions or other factors. Subject to the corporate governance provisions of the Stockholder Agreement, the Reporting Parties may in the future exercise any and all of their respective rights as shareholders of the Company, including to cause or facilitate one or more of the events referred to in paragraphs (a) through (j), inclusive, of Item 4 of Schedule 13D. For example, the Reporting Parties may purchase or sell shares of Common Stock or purchase or sell the Company's 5.125% Convertible Senior Notes or the Company's 6.75% Convertible Senior Notes (collectively, the "Senior Notes", and together with any other convertible debt securities of the Company, "Convertible Debt") in the open market or in private transactions or launch a tender offer for shares of Common Stock or Convertible Debt. Subject to the corporate governance provisions of the Stockholder Agreement, the Reporting Parties may also encourage, solicit or vote shares of Common Stock to approve:

an extraordinary transaction;

a material change in the capitalization or dividend policy of the Company;

a change to the composition or size of the Board or the terms to be served by directors or a nomination to fill an existing vacancy on the Board or a change to the Company's management;

a change to the Company's business or corporate structure;

a change to the Company's charter or bylaws, including a change which may impede or facilitate the acquisition of control of the Company by any person; or

causing the Common Stock, or any other securities of the Company that may be listed on the New York Stock Exchange or any other national securities exchange or quoted on any inter-dealer quotation system, to be delisted from such exchange or no longer be authorized to be quoted on such system, or the registration of any such securities under federal securities laws to be terminated.

Based on the current trading price of the Common Stock and the Senior Notes, Tengelmann and ECP may in the future acquire additional shares of Common Stock or may acquire Convertible Debt, either on the open market, in negotiated transactions or otherwise. The actual number of shares of Common Stock or principal amount of Convertible Debt acquired by Tengelmann and ECP, if any, will depend on a variety of factors, including, without limitation, current and anticipated future trading prices of Common Stock or Convertible Debt, as applicable, and the availability of Common Stock or Convertible Debt, as applicable, including any blocks of Common Stock or Convertible Debt, opportunities to acquire or dispose of the Common Stock or Convertible Debt, trading profit maximization and loss minimization opportunities, general market and industry conditions or other factors, and Tengelmann's evaluation of the benefits to it of gaining additional representation on the Board.

Other than as described above, as of the date of this Amendment, none of the Reporting Parties nor, to the best knowledge of the Reporting Parties, any of the members of the Board nominated by Tengelmann, has any present plan or intention which would result in or relate to any of the actions described in subparagraphs (a) through (j) of Item 4 of Schedule 13D.

Item 5.

Interest in Securities of the Issuer

(a) - (c)

As of the close of business on August 4, 2009, TVB, CH, KEH and EKH were, or could be deemed to be, the beneficial owners (through Tengelmann and ECP) of 23,785,764 shares of Common Stock, constituting approximately 41.2% of the outstanding shares of Common Stock and share the power to vote, or direct the vote of, and the power to dispose and direct the disposition of, such shares of Common Stock. As of July 17, 2009, the Company had a total of 57,899,318 shares of Common Stock outstanding according to the Form 10-Q filed by the Company on July 23, 2009 (the "Form 10-Q").

In addition, as of August 4, 2009, (i) CH was the direct beneficial owner of 281,351 shares of Common Stock in addition to options to purchase 318,478 shares of Common Stock, constituting approximately 1.0% of the outstanding shares of Common Stock and has the sole power to vote and dispose of such shares and options, (ii) KEH was the direct beneficial owner of 13,000 shares of Common Stock, constituting less than 0.1% of the outstanding shares of Common Stock and has the sole power to vote and dispose of such shares and (iii) EKH was the direct beneficial owner of 305,100 shares of Common Stock, constituting approximately 0.5% of the outstanding shares of Common Stock and has the sole power to vote and dispose of such shares.

On August 4, 2009, Tengelmann acquired 60,000 shares of the Series A-T Preferred Stock, for which TVB, CH, KEH and EKH were, or could be deemed to be, the beneficial owners (through Tengelmann), and the Company also issued 115,000 shares of 8% Cumulative Convertible Preferred Stock, Series A-Y, without par value, (the "Series A-Y Preferred Stock", and together with the Series A-T Preferred Stock, the "Preferred Stock") to funds affiliated with The Yucaipa Companies LLC (together with its affiliates, "Yucaipa"). For further information, see Item 6, which is incorporated herein by reference in its entirety and is qualified in its entirety by reference to the full text of the Convertible Preferred Articles Supplementary, a copy of which is filed herewith as Exhibit 7.1 and is incorporated herein by reference in its entirety.

Assuming that stockholder approval required by the New York Stock Exchange in connection with the Acquisition is received (such stockholder approval is referred to herein as the "NYSE Stockholder Approval"), Yucaipa and Tengelmann will become entitled to cast the full number of votes represented by each share of Preferred Stock, on an as-converted basis. Taking into account the Common Stock currently held by Tengelmann and the number of shares of Common Stock issuable to Tengelmann and Yucaipa based on the initial conversion rate of the Preferred Stock, Tengelmann and ECP together would be entitled to cast approximately 38.5% of the total number of votes entitled to be cast by all outstanding shares of Common Stock of the Company (based on the number of outstanding shares of Common Stock reported in the Form 10-Q). Taking into account all of the same assumptions with the exception of excluding the number of shares of Common Stock issuable to Yucaipa upon conversion of the Series A-Y Preferred Stock, Tengelmann and ECP together would be entitled to cast approximately 51.2% of the total number of votes of Common Stock holders of the Company.

As of the close of business on August 4, 2009, to the best knowledge of the Reporting Parties, the directors of the Company suggested for nomination by Tengelmann (other than CH, who is a Reporting Party) were the beneficial owners of shares of Common Stock as set forth in Appendix A hereto. JDB, a citizen of the United States whose business address is Williams, Kastner & Gibbs, LLP, 1301 A Street, Suite 900, Tacoma, Washington 98402, is an attorney of counsel at Williams, Kastner & Gibbs, LLP, a director and corporate secretary of Sun Mountain Resorts, Inc. and a director of Sun Mountain Lodge, Inc., Wissoll Trading Company, Inc., the Le May Automobile Museum and the Company. JJB, a citizen of the Federal Republic of Germany whose business address is Wissollstrasse 5-43, 45478 Muelheim an der Ruhr, Federal Republic of Germany, is the chief financial officer of Tengelmann, a member

of the Supervisory Board of Kaiser's Tengelmann AG, chairman of the supervisory board of Feige Holding Stiftung & Co. KG, Greven, member of supervisory board of Putsch GmbH & Co. KG, Kaiserslautern and a member of the Board. AG, a citizen of the Federal Republic of Germany, whose business address is 2 Paragon Drive, Montvale, New Jersey 07645, is an Executive Managing Director, Strategy & Corporate Development of the Company, a member of the Board and the Chief Executive Officer of ECP. AG was previously a Senior Executive Vice President (Corporate Finance) and co-chief financial officer of Tengelmann, a role which he held from July 2005 until April 2007, and from May 2007 has served as Tengelmann's Managing Director of US Corporate Development.

Except as described in the preceding paragraphs, neither the Reporting Parties nor, to the best knowledge of the Reporting Parties, any other person named in Item 2 of the Statement or any person who, together with any Reporting Party or any other persons named in Item 2 of the Statement, comprise a group within the meaning of Section 13(d)(3) of the Act, beneficially owns any shares of Common Stock. Except as described in the preceding paragraphs, each of the Reporting Parties disclaim any power to vote, or to direct the voting of, or any power to dispose, or to direct the disposition of, the shares owned by the other Reporting Parties, JDB, JJB, AG or the wives of EKH or CH. Each of the Reporting Parties expressly declares that the filing of this statement shall not be construed as an admission that such Reporting Party is, for purposes of Section 13 of the Act, a beneficial owner of the shares of Common Stock owned by JDB, JJB or AG.

None of JDB, JJB or AG, during the last five years, have been convicted in a criminal proceeding (excluding traffic violations and similar misdemeanors) or been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

(d) - (e)

Not applicable.

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer

Series A-T Preferred Stock

In connection with the Acquisition, the Company filed with Maryland State Department of Assessments and Taxation the Convertible Preferred Articles Supplementary which set forth voting powers, preferences, conversion and other rights, qualifications, limitations as to dividends, terms and conditions of redemption and restrictions of the Series A-T Preferred Stock. Each share of Series A-T Preferred Stock (i) has an initial liquidation preference of \$1,000, subject to adjustment, (ii) is convertible, at the election of the holders beginning on August 5, 2010, at an initial conversion rate of \$5.00 per share of Common Stock (subject to certain adjustments) and subject to the limitation on conversion of more than 1.00% of the outstanding Common Stock until the NYSE Stockholder Approval is obtained, (iii) entitles holders to an 8.0% annual dividend, payable quarterly in arrears in cash or in additional shares of Series A-T Preferred Stock if the Company is not able to pay the dividends in cash in full; provided, however, that if the Company makes a dividend payment in additional shares of Series A-T Preferred Stock, the Series A-T Preferred Stock will be valued at the liquidation preference of the Series A-T Preferred Stock and the dividend rate will be 9.5% per annum with respect to any dividend period in which dividends are paid in additional shares of Series A-T Preferred Stock; provided further, to the extent the Company fails to pay dividends on the Series A-T Preferred Stock, the dividend rate payable shall be increased by 2.0% per annum for such dividend period, and if the Company fails to obtain the NYSE Stockholder Approval prior to or on the six-month anniversary of the issuance, the dividend rate shall be increased by an additional 2.0% per annum from such six month anniversary and shall increase by an additional 1.0% per annum at the end of each six-month period thereafter until such NYSE Stockholder Approval has been obtained, (iv) entitles Tengelmänn to vote together with the holders of Common Stock on all matters upon which the holders of Common Stock are entitled to vote, on an as-converted basis, subject to the applicable limitations prior to obtaining the NYSE Stockholder Approval, (v) requires the Company to redeem in cash all outstanding shares of the Series A-T Preferred Stock on August 1, 2016 (the "Maturity Date"), at 100.0% of the liquidation preference, plus accrued and unpaid dividends and (vi) is not redeemable prior to the Maturity Date. Additionally, Tengelmänn may require the Company to redeem the Series A-T Preferred Stock, in whole or in part, at 101% of the liquidation preference upon the occurrence of certain fundamental changes to the Company, including a change of control and certain bankruptcy events.

Pursuant to the Convertible Preferred Articles Supplementary, Tengelmänn's current ownership of the Series A-T Preferred Stock gives it the right to elect four directors. Generally, the Convertible Preferred Articles Supplementary provide that Tengelmänn is entitled to elect a certain number of directors to the Board based in proportion on the Tengelmänn Percentage Interest (as defined below). So long as the Tengelmänn Percentage Interest is at least 10%, Tengelmänn shall have the right to elect the percentage of Company directorships (including vacancies) equal to the Tengelmänn Percentage Interest (rounded upward); provided, however, that so long as the percentage of all outstanding shares of voting stock of the Company held by Yucaipa (the "Yucaipa Percentage") continuously equals 20% or more (assuming for purposes of calculation that the NYSE Stockholder Approval has been obtained), if based on the Tengelmänn Percentage Interest, Tengelmänn would have the right to elect five directors pursuant to the Convertible Articles Supplementary, then Tengelmänn shall only have the right to elect four.

“Tengelmann Percentage Interest” is defined in the Stockholder Agreement and the Convertible Preferred Articles Supplementary, and generally refers to the percentage of the total outstanding securities of the Company having the right to vote in any election of members of the Board that is beneficially owned by Tengelmann and its affiliates, assuming (i) for purposes of calculating the ownership percentage that the NYSE Stockholder Approval has been obtained and (ii) without giving effect to decreases attributable to issuances of new equity securities by the Company from March 4, 2007 (except shares of Common Stock issued as merger consideration in the Company’s December 3, 2007 acquisition of Pathmark Stores, Inc.) up to but not including August 4, 2009. As a result, the approximately 8.1 million shares of Common Stock issued by the Company in connection with the Share Lending Agreements of the Company with Bank of America, N.A. and Lehman Brothers International (Europe) Limited (filed as Exhibits 10.9 and 10.10 to Form 8-K filed by the Company on December 12, 2007, as amended by amendments to those agreements filed as Exhibits No. 10.1 and 10.2 to the Form 8-K filed December 17, 2007) are ignored in determining the Tengelmann Percentage Interest.

The preceding description of the Convertible Preferred Articles Supplementary is qualified by reference to the full text of the Convertible Preferred Articles Supplementary, a copy of which is filed as Exhibit 7.1 herewith and is incorporated herein by reference in its entirety.

Stockholder Agreement

In connection with the Acquisition, Tengelmann entered into the Stockholder Agreement.

In accordance with and pursuant to the Stockholder Agreement, the Board was expanded to eleven members, including four directors elected by Tengelmann, and the number of directors may not be (i) increased without the consent of Tengelmann and that number of directors that is at least 66.67% of the total number of directorships (including vacancies) or (ii) decreased without the consent of 66.67% of the total number of directorships (including vacancies); provided, however, that any decrease in the number of directorships that has the effect of reducing the number of directors that Tengelmann is entitled to nominate under the Stockholder Agreement requires the consent of Tengelmann.

Directors elected in accordance with the Convertible Preferred Articles Supplementary or nominated and elected or appointed by Tengelmann pursuant to the Stockholder Agreement (the “Tengelmann Directors”) have the right (at Tengelmann’s election) to serve on each committee of the Board and the number of such directors serving on each such committee of the Board cannot be less than the proportionate number of Tengelmann Directors to the total number of seats on the Board at such time (rounded to the nearest whole number). So long as there are any Tengelmann Directors serving on the Board, at least one Tengelmann Director has the right to serve on each committee of the Board. Tengelmann has the right to select the Tengelmann Directors that will serve on each committee of the Board of Directors. Notwithstanding the foregoing, a Tengelmann Director shall not serve on any committee if such service would violate any law or listing exchange rule. As soon as practicable upon Tengelmann request, Tengelmann is also entitled have one Tengelmann Director be appointed to the board of directors and committees thereof of each subsidiary of the Company.

Tengelmann has agreed to vote for all other director nominees, other than in contested elections, in a manner identical to the manner in which the holder of voting securities of the Company, other than Tengelmann and its affiliates of Yucaipa, vote. Tengelmann has also agreed not to take any action to remove or oppose any Board member not nominated by Tengelmann or to seek to change the size of the Board or otherwise seek to expand Tengelmann’s Board representation in a manner inconsistent with this voting obligation.

The Stockholder Agreement provides that for so long as the Tengelmänn Percentage Interest is at least 25%, Tengelmänn's approval will be required for specified Company actions including specified extraordinary corporate transactions, specified issuances of equity securities, changes to the Company's organizational documents and specified governance policies, the issuance and delivery to Yucaipa of any Common Stock upon the exercise by Yucaipa of the Series B Warrants (as defined in the Stockholder Agreement), amendments or refinancing of the Company's ABL Credit Agreement (as defined in the Stockholder Agreement) before the Maturity Date and any action that could limit, restrict, prohibit or prevent the Company's ability to pay dividends in full in cash on the Series A-T Preferred Stock. Tengelmänn's approval will also be required for takeover defenses and specified transactions with affiliates after such time that the Yucaipa Percentage is less than 17.8% so long as the Tengelmänn Percentage Interest is at least 25%. The approval of a majority of the Tengelmänn nominated directors will be required for other specified Company actions, including specified acquisition or disposition transactions, specified issuances of equity securities, settlements or repurchases of certain equity securities, debt incurrence, dividends and the appointment or removal of the Company Chairman. The approval of a majority of the Tengelmänn nominated directors will also be required for the adoption and amendment of strategic and business plans, appointment of the Company Chief Executive Officer, dissolution of the Company and specified capital expenditures after such time that the Yucaipa Percentage is less than 17.8% so long as the Tengelmänn Percentage Interest is at least 25%. Prior to entering into the Stockholder Agreement, the Board adopted amended and restated Bylaws of the Company, which became effective upon the consummation of the Acquisition to reflect the foregoing rights, a copy of which is filed herewith as Exhibit 7.3 and is incorporated herein by reference in its entirety.

If Yucaipa purchases any of the Senior Notes, they must provide Tengelmänn an opportunity to purchase at the same price a portion of the Senior Notes in an amount calculated by dividing the aggregate number of shares of Series A-T Preferred Stock owned by Tengelmänn by the aggregate number of shares of Preferred Stock outstanding at such time. If Tengelmänn purchases any Senior Notes, it must provide Yucaipa an opportunity to purchase 50% of the aggregate principal amount of such Senior Notes at the same price.

Pursuant to the Stockholder Agreement, the Company has agreed to register under the Securities Act of 1933, as amended, certain sales by Tengelmänn and its affiliates of Company securities. Tengelmänn may make up to two demand registrations in any 12-month period, and not more than five in the aggregate, with respect to Company securities acquired on date on or after the date of the Acquisition subject to specified limitations, including limitations on the value of securities to be registered and the timing of such registrations. Tengelmänn may make up to two demand registrations in any 12-month period, and not more than three in the aggregate, with respect to Company Securities acquired prior to the Acquisition, subject to specified limitations, including limitations on the value of securities to be registered and the timing of such registrations. Tengelmänn and its affiliates may also sell their shares pursuant to registered sales by other Company stockholders or the Company, subject to similar limitations. In addition, the Stockholder Agreement grants Tengelmänn preemptive rights in respect of specified equity issuances by the Company and the right to cause the Company to settle certain warrants to acquire Company securities with Company stock purchased from Tengelmänn.

Further, the Company has agreed, as promptly as practicable after the consummation of the Acquisition, to duly call, establish a record date for, give notice of, convene and hold an annual or special meeting of the holders of Common Stock for the purposes of considering and taking action to obtain the NYSE Stockholder Approval.

The preceding description of the Stockholder Agreement is qualified by reference to the full text of the Stockholder Agreement, a copy of which is filed as Exhibit 7.2 herewith and is incorporated herein by reference in its entirety.

Item 7. Material to Be Filed as Exhibits

- 7.1 Convertible Preferred Articles Supplementary, dated as of August 3, 2009 (incorporated by reference to Exhibit 4.1 to the Company's Form 8-K, filed with the Securities and Exchange Commission on August 5, 2009).
- 7.2 Amended and Restated Tengelmann Stockholder Agreement, dated as of August 4, 2009, by and between the Company and Tengelmann (incorporated by reference to Exhibit 10.1 to the Company's Form 8-K, filed with the Securities and Exchange Commission on August 5, 2009).
- 7.3 By-Laws of the Company, as amended and restated August 4, 2009 (incorporated by reference to Exhibit 3.1 to the Company's Form 8-K, filed with the Securities and Exchange Commission on August 5, 2009).
- 7.4 Power of Attorney, granted by Erivan Karl Haub, in favor of the parties named therein, dated July 3, 2009.
- 7.5 Power of Attorney, granted by Georg Rudolph Otto Haub, in favor of the parties named therein, dated July 3, 2009.
- 7.6 Power of Attorney, granted by Karl-Erivan Warder Haub, in favor of the parties named therein, dated July 14, 2009.

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

TENGELMANN WARENHANDELSGESELLSCHAFT KG,

by Tengelmann Verwaltungs-und Beteiligungs GmbH, as
Managing Partner

by /s/ Christian Wilhelm Erich Haub
Name: Christian Wilhelm Erich
Haub
Title: Co-CEO

By: Andreas Guldin
Attorney-in-Fact

TENGELMANN VERWALTUNGS-UND BETEILIGUNGS
GMBH,

by /s/ Christian Wilhelm Erich Haub
Name: Christian Wilhelm Erich
Haub
Title: Co-CEO

By: Andreas Guldin
Attorney-in-Fact

EMIL CAPITAL PARTNERS, LLC,

by /s/ Andreas Guldin
Name: Dr. Andreas Guldin
Title: CEO

/s/ Karl-Erivan Warder Haub
Name: Karl-Erivan Warder Haub

By: Andreas Guldin
Attorney-in-Fact

/s/ Christian Wilhelm Erich Haub
Name: Christian Wilhelm Erich Haub

By: Andreas Guldin
Name: Attorney-in-Fact

/s/ Erivan Karl Haub
Name: Erivan Karl Haub

By: Andreas Guldin
Attorney-in-Fact

Dated: August 5, 2009

Persons Named in Item 5(a) (other than the Reporting Parties)*	Number of Shares**	Percentage of Outstanding Shares***
JDB	30,379	****
JJB	24,812	****
AG	23,331	****

* To the best knowledge of the Reporting Parties, each such person has the sole power to vote and dispose of his or her shares of Common Stock, other than 500 shares of Common Stock owned by JDB's mother.

** The amounts shown include all options and deferred compensation awards granted under Company plans regardless of whether exercisable within 60 days. The number of options included in the total number of owned shares are 212 for JDB and 2,529 for JJB and 12,905 for AG. The number of shares granted under deferred compensation plans included in the total number of owned shares are 24,812 for JDB and 9,169 for JJB.

*** According to the Form 10-Q filed by the Company on July 23, 2009, there were outstanding 57,899,318 shares of Common Stock as of July 17, 2009.

**** Less than 0.1%.