

NONQUALIFIED DEFERRED COMP. - DOL NOTICE

LABOR DEPARTMENT STATEMENT

To: Office of Pension and Welfare Benefit Programs  
Labor Management-Services Administration  
U.S. Department of Labor  
Washington, D.C. 20216

From: Employer: BURTON R. APPEL, P.A.  
Employer Identification Number: 22-2228648  
Address: 2444 Morris Avenue - 2nd Floor  
Union, New Jersey 07083  
April 11, 1994

This document constitutes the statement required by 29 C.F.R. §2520.104.23(a)(1) to be filed with the Secretary of Labor in respect to Nonqualified Deferred Compensation Plans maintained by the above employer.

The employer currently maintains 1 Plan(s) for executives who are members of a select group of management or who are highly compensated.

The number of participants in each plan is as follows:

Plan 1 1  
Plan 2 \_\_\_\_\_  
Plan 3 \_\_\_\_\_

WITMAN, STADTMAUER, & MICHAELS, P.A.

Signed By: \_\_\_\_\_  
ROBIN S. LAZAROW

**DEFERRED COMPENSATION AGREEMENT**

THIS DEFERRED COMPENSATION AGREEMENT made as of the *23* day of *December* 19*93*, between BURTON R. APPEL, P.A., having its principal office at 2444 Morris Avenue, Union, New Jersey 07083, (hereinafter referred to as the "Company") and BURTON APPEL, residing at *50 EDGE MOUNT RD West Orange* (hereinafter referred to as the "Employee").

**W I T N E S S E T H :**

WHEREAS, the Employee has rendered valuable services to the Company in the past; and

WHEREAS, in recognition of the Employee's past services to the Company, the Company has agreed to pay the Employee certain deferred compensation benefits which have accrued to date.

NOW, THEREFORE, in consideration of these premises and the covenants and agreements herein set forth, the parties hereto covenant and agree as follows:

**1. DEFINITIONS**

A. "Designated Beneficiary" shall mean the beneficiary designated by the Employee in writing, delivered to the President of the Company. The Employee may change an existing designation of a beneficiary at any time by delivering in writing a change of an existing designation of a beneficiary to the President of the Company. If the Employee fails to exercise his right to designate a beneficiary, or should no named beneficiary survive the Employee, the designated beneficiary shall be the Employee's issue, per stirpes, and if there be none, then his estate.

B. "Effective Date" of this Agreement shall mean \_\_\_\_\_,  
19 \_\_\_\_.

C. "Full-Time Employment with the Company". For purposes of this Agreement, the Employee will be deemed to be in the "Full-Time Employment with the Company" during a fiscal year so long as the Employee performs more than 1000 Hours of Service during such fiscal year, or so long as his absence from employment during such fiscal

year is the result of his being "Totally Disabled". All years of Full-Time Employment with the Company shall be credited for purposes of this Agreement.

D. "Hours of Service" shall mean (a) each hour for which the Employee is directly or indirectly paid, or entitled to payment, by the Company for the performance of duties, (b) each hour for which the Employee is directly or indirectly paid, or entitled to payment by the Company for reasons other than for the performance of duties, such as vacations, holidays, illness, and (c) each hour for which the Employee is directly or indirectly paid for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Company. In determining the Hours of Service to be credited to the Employee in the event of an ambiguity, the provisions of Section 2530.200b-2 of the regulations issued by the Department of Labor shall govern.

E. "Retirement Date" shall mean December 31, 1993.

F. "Totally Disabled" shall mean the incapacity of the Employee to perform any employment which would be appropriate for a person of his prior physical status, intellectual ability and experience, due to mental or physical disability which shall have been certified to by an independent physician.

## 2. RETIREMENT BENEFIT

A. If the Employee continues to be in the Full-Time Employment with the Company during each calendar year until the calendar year in which occurs his Retirement Date, then the Company shall pay to the Employee a certain benefit upon his retirement (the "Retirement Benefit"). The Retirement Benefit shall be equal to Two Hundred and Fifty Thousand Dollars (\$250,000).

B. The Retirement Benefit shall be paid to the Employee in sixty (60) equal monthly payments commencing on the first day of the calendar month following the Employee's reaching his Retirement Date and on the first day of each month following the payment commence-

ment date thereafter for a total of sixty (60) monthly payments guaranteed.

C. If the Employee dies after his retirement benefit payments have begun but before all payments have been completed, then the Company shall continue making equal monthly payments to the Designated Beneficiary.

**3. FORFEITABILITY**

The provisions of Paragraph 2 of this Agreement are subject to the condition that the Employee was in the Full-Time Employment with the Company until the his Retirement Date. In the event the Employee has not been in the Full-Time Employment with the Company through his Retirement Date, the Company shall be under no obligation to the Employee regarding the benefits provided by Paragraph 2 hereof.

**4. UNFUNDED AGREEMENT**

Benefits to be provided under this Agreement are unfunded obligations of the Company, but shall constitute liabilities by the Company payable when due. Nothing contained in this Agreement shall require the Company to segregate any monies from its general funds, to create any trust, to make any special deposits, or to purchase any policies of insurance with respect to such obligations. If the Company elects to purchase individual policies of insurance on the Employee to help finance its obligations under this Agreement, such individual policies and the proceeds therefrom shall, at all times, remain the sole property of the Company, and neither the Employee nor his beneficiaries shall have any ownership rights in such policies of insurance. Such insurance policies shall be subject to the claims of the Company's general creditors. Any reference in this Agreement to amounts payable with references to said policies, which are to be purchased solely for the purpose of aiding the Company in meeting its obligation under this Agreement and assisting the Company in determining the amount of payments the Company is required to make to the Employee, shall not be deemed to constitute

an assignment, conveyance or other transfer of any interest in said policies to the Employee. Notwithstanding the above, the Company shall accumulate the dividends on any such policies and shall be forbidden to incur any indebtedness against such policies.

**5. BINDING EFFECT**

This Agreement shall inure to the benefit of and shall be binding upon and enforceable against the beneficiaries, heirs, executors, administrators and legal representatives of the Employee, and the successors and assigns of the Company.

**6. SEVERABILITY**

If a court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable, then the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement and all other provisions shall remain in full force and effect.

**7. ASSIGNABILITY**

The Employee shall not have any power or right to transfer, assign, hypothecate, mortgage or otherwise encumber, or advance any benefits payable hereunder nor shall the benefits hereunder be subject to seizure or payment of any debt or judgment or be transferable by operation of law in the event of bankruptcy, insolvency or otherwise. In the event that the Employee or Designated Beneficiary hereunder attempts to assign such right, the Company, at its own discretion, may suspend, reduce or terminate any or all rights created by this Agreement as to the Employee or to the person attempting such assignment.

**8. GOVERNING LAW**

This Agreement is made under and shall be subject to and governed by the laws of the State of New Jersey.

9. MISCELLANEOUS

A. The Company shall withhold from benefits paid under this Agreement any taxes or other amounts required to be withheld by law.

B. Nothing contained in this Agreement shall be construed as a contract of employment between the Employee and the Company or to suggest or create a right in the Employee to be continued as an employee of the Company.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date and year first above written.

ATTEST:

Shirley Appel  
Secretary

BURTON R. APPEL, P.A.

BY: Lawrence M. Appel Vice President

WITNESS:

Jean Pruzzetti

Burton R. Appel  
BURTON R. APPEL, Employee

**BURTON R. APPEL  
DEFERRED COMPENSATION AGREEMENT  
BENEFICIARY DESIGNATION FORM**

(Pursuant to Paragraph 1(a) of the Deferred Compensation Agreement dated by and between BURTON R. APPEL, P.A. and the undersigned)

Participant's Name BURTON R APPEL Social Security No. \_\_\_\_\_  
Address 50 EDGE MONT RD WEST ORANGE Date of Birth \_\_\_\_\_

**DESIGNATION OF BENEFICIARY:** My death benefits under the foregoing Agreement are to be paid to the following Designated Beneficiary(ies):

Primary Beneficiary SHIRLY APPEL Relationship WIFE  
Address 50 EDGE MONT RD WEST ORANGE Date of Birth \_\_\_\_\_  
Social Security No. \_\_\_\_\_

Contingent Beneficiary \_\_\_\_\_ Relationship \_\_\_\_\_  
Address \_\_\_\_\_ Date of Birth \_\_\_\_\_  
Social Security \_\_\_\_\_

I understand that the Beneficiary(ies) named above may be changed or revoked by me at any time by notifying the President in writing of such action or by filing a new designation form. The Beneficiary designation will not be effective until it is filed with and received by the President.

12/23/1993  
(Date)

Burton Appel  
(Employee's Signature)

Jean Fruzzetti  
(Notary Public)

JEAN FRUZZETTI  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Sept. 18, 1994