

# SIROTE & PERMUTT

A PROFESSIONAL CORPORATION

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REPLY TO

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September 8, 1992

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**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Ronald D. Allen  
Chief, Division of Reporting Compliance  
U.S. Department of Labor  
Pension and Welfare Benefits Administration  
Washington, DC 20210


Re: Employer Identification No. 63-1006252  
Statement Dated: June 26, 1992  
Submitted Pursuant to Department of Labor  
Regulation 29 CFR Section 2520.104-23

Dear Mr. Allen:

Pursuant to the request made in your letter dated August 31, 1992 (a copy of which is attached), enclosed please find a copy of the Deferred Compensation Agreement for Ray Ellis. The date of the document was June 19, 1992, which is within the 120 day filing deadline.

If you have any questions or need any additional information, please let me know.

Very truly yours,

  
Joseph T. Ritchey  
FOR THE FIRM

JTR/jcl

Enclosures

cc: Mr. Charles W. Buettner

Ref: 290431tr.jtr

92 SEP 15 P6:15  
REPORTING COMPLIANCE

**U.S. Department of Labor**

Pension and Welfare Benefits Administration  
Washington, D.C. 20210



August 31, 1992

Buettner Bros. Lumber Co., Inc.  
700 7th Ave. SW-POB 1087  
Cullman, AL 35055

Re: Alternative Method of Compliance for Pension Plans for  
Selected Employees (DRC-TH# 92-0115)

Employer Identification Number: 63-1006252  
Date of Statement: June 26, 1992

Dear Sir or Madame:

This letter acknowledges receipt of your statement submitted on behalf of the subject pension plan(s) pursuant to the Department of Labor's (Department) Regulation 29 CFR Section 2520.104-23, "Alternative Method of Compliance for Pension Plans for Selected Employees" (commonly referred to as "top hat plans").

We are unable to determine if your statement was submitted timely --within 120 days after the plan(s) became subject to Part 1 of Title I of ERISA. Please submit the plan document or summary plan description showing the date that the referenced plan(s) became subject to Part 1 of Title I of ERISA within 30 days of the date of this letter. If you failed to file the statement timely you may not avail yourself of the relief afforded by the alternative method of compliance and, therefore, must comply with all applicable reporting and disclosure requirements under Part 1 of Title I of ERISA. You may, however, take advantage of the "grace period" program described below.

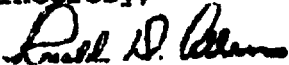
On April 20, 1992, the Department published a notice in the Federal Register (57 FR 14436) announcing an expanded program for assessing civil penalties under ERISA section 502(c)(2). In the same notice, the Department also announced that for a limited "grace period" period (March 23, 1992 until September 30, 1992) plan administrators who voluntarily file overdue annual reports in accordance with the conditions set forth in the notice will be assessed reduced penalties (copy of notice attached). On July 24, 1992, the Department published a notice in the Federal Register (57 FR 33019) clarifying its position with respect to unfunded/fully insured top hat pension plans (copy of notice attached).

If you failed to file a Top Hat Statement within the 120 period you may wish to take advantage of the grace period program. In order to apply for the reduced grace period penalty amounts, you must resubmit a statement that meets the alternative method of compliance along with a check for the appropriate penalty amount (\$1,000) to the Department before the end of the grace period. Please include the above DRC-TH# on your statement ensure proper identification of your case. Your check must be made Payable to the U.S. Department of Labor, and mailed along with your statement to the following address:

Pension and Welfare Benefits Administration  
P.O. Box 75212  
Washington, D.C. 20013-5212

For further information concerning the assessment of civil penalties under Section 502(c)(2) of ERISA, refer to Department regulations 29 CFR Sections 2560.502c-2 and 2570.60 and subsequent sections. If you have any questions, you may contact Ms. Karen Lynn Bell at (202) 523-4006. This is not a toll free number.

Sincerely,



Ronald D. Allen  
Chief, Division of Reporting Compliance

Attachments

STATE OF ALABAMA )

CULLMAN COUNTY )

DEFERRED COMPENSATION AGREEMENT

THIS AGREEMENT, made and entered into effective as of the 19<sup>th</sup> day of JUNE, 1992 by and between BUETTNER BROTHER'S LUMBER COMPANY, INC. (hereinafter for convenience referred to as the "Employer"), and RAY ELLIS (hereinafter for convenience referred to as the "Employee"), as follows:

W I T N E S S E T H:

WHEREAS, the Employer desires to further compensate the Employee for his past services and to secure his future services by providing the Employee with deferred compensation upon death, total and permanent disability or retirement, under certain terms and conditions; and

WHEREAS, the Employee is a trusted and valued employee whose contributions are important to the success of the Employer; and

WHEREAS, the Employee seeks compensation in addition to that to which he is currently receiving under the terms and conditions of his employment with the Employer;

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, faithfully to be kept by the parties hereto, it is agreed as follows:

1. Introduction. In addition to any and all other compensation which the Employee is currently being paid and any benefits paid on behalf of Employee, this Agreement provides the Employee with deferred compensation in the event of the Employee's continued employment with the Employer until the Employee's normal retirement date, as defined below, total and permanent disability or death.

2. Accumulation Account.

2.1 During the term of this Agreement, the Employer shall make monthly contributions to an account designated for and established on behalf of the Employee (the "Accumulation Account") in the amount of Two Hundred Fifty and no/100 Dollars (\$250.00).

2.2 Such Accumulation Account shall be and remain solely an asset of the Employer. Employer reserves the absolute right at its sole and exclusive direction to invest and reinvest the assets held in the Accumulation Account for the purpose of funding the obligations undertaken by this Agreement or to refrain from investing the same, and to determine the extent, nature and method of such investment, and this Agreement shall not be construed as giving the Employee or his beneficiary any greater rights than those of any other unsecured creditor of Employer.

### 3. Benefits.

#### 3.1 Normal Retirement Benefits:

(a) Subject to the terms and conditions of this Agreement, and provided Employee remains in the full time employment with Employer until his Normal Retirement Date, the Employer agrees to pay to the Employee the full amount in the Accumulation Account in one lump sum on his Normal Retirement Date.

(b) Normal Retirement Date shall be defined in this Agreement as the first day of the month immediately following the Employee's 62nd birthday.

#### 3.2 Pre-Retirement Death Benefits.

(a) In the event of the Employee's death, while employed by the Employer and prior to his Normal Retirement Date, the Employer agrees pay to the surviving spouse of the Employee the full amount in the Accumulation Account in one lump sum on the first day of the month immediately following Employee's death.

(b) Should Employee's spouse predecease him, or should the Employee be unmarried at the time of his death, then the lump sum payment provided for in Section 3.2(a) hereinabove shall be made to the deceased Employee's estate.

#### 3.3 Disability Benefits.

(a) In the event Employee becomes totally and permanently disabled prior to his Normal Retirement Date,

while employed by the Employer, the Employer agrees to pay to the Employee the full amount in the Accumulation Account in one lump sum on the effective date of his total and permanent disability.

(b) For purposes of this Agreement, Employee shall be deemed to be totally and permanently disabled if he is unable, due to a physical or mental condition, supported by medical evidence, ever to discharge or to resume full duties of the same general nature as those which he performed immediately prior to such disability provided that: (a) such disability did not arise while engaged in or as a result of having engaged in a wrongful, illegal or criminal act, or an act contrary to the best interest of Employer; or (b) such disability did not result from habitual drunkenness or addiction to narcotics or self-inflicted injury while sane or insane. If there is any disagreement between the Employer and the Employee as to the disability or nondisability of the Employee, as to the date any such disability began or whether it is expected to continue, the same shall be determined by a physician, to be selected by the Employer, after an examination of the Employee. Employee shall make himself available for such an examination at any reasonable time. The determination of such physician as to the condition of the Employee, the date his disability began and whether such disability can be expected to continue shall be conclusive and binding upon the parties.

If the Employee does not cooperate in the examination by such physician, then, for purposes hereof, then the Employer shall, in its sole discretion, make a determination on the basis of the facts and information which are available to it.

3.4 Exclusive Benefits. The Employee shall not be entitled to any other benefits under this Agreement except as expressly provided hereinabove in this Section 3.

4. Insurance. The Employer may insure the life of the Employee and name itself as the beneficiary of such policies. The net insurance proceeds of such policies, on the death of the insured Employee, may be used to fund the obligations of the Employer under this Agreement. The Employer shall be the sole owner of such policies of insurance and shall be responsible for and shall pay all premiums on such insurance policies, and may apply to the payment of premiums any dividends declared and paid on such policies. The Employee shall have no rights whatsoever in the proceeds of such policies, and the Employer may use the proceeds as it deems appropriate.

5. Amendments and Termination. This Agreement shall not be modified, amended or terminated except in the sole discretion of the Employer through written amendment properly executed by the Employer.

6. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of any successor to the Employer and such successor shall be deemed substituted for

the Employer under the terms of this Agreement. As used in this Agreement, the term "successor" shall include any person, firm, corporation or other business entity which at any time, whether by merger, purchase or otherwise, acquires all or substantially all the assets of the business of the Employer. This Agreement shall also be binding upon and inure to the benefit of the Employee, his heirs, executors and administrators.

7. Applicable Law. This Agreement shall be subject to and construed under the laws of the State of Alabama.

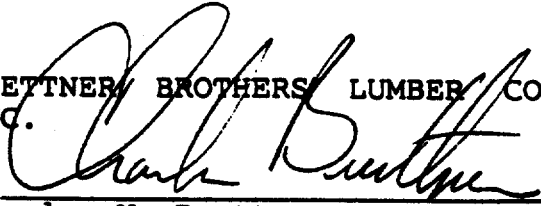
8. Invalidity. If any term or provision of this Agreement shall be invalid or unenforceable to any extent or application, then the remainder of this Agreement shall be valid and enforceable to the fullest extent and the broadest application permitted by law.

9. Interpretation of Agreement. All parties have participated fully in the negotiation and drafting of this Agreement. The Agreement has been prepared by all parties equally, and is to be interpreted according to its terms. No inference shall be drawn that the Agreement was prepared by or is the product of any particular party or parties.

10. Captions. The captions or headings in this Agreement are made for convenience and general reference only and shall not be construed to describe, define or limit the scope or intent of the provisions of this Agreement.

IN WITNESS WHEREOF, Employer by and through its duly authorized officers and the Employee have caused this instrument to be executed under seal this 19<sup>th</sup> day of JUNE, 1992.

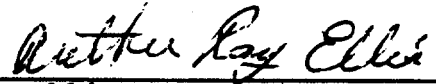
BUETTNER BROTHERS LUMBER CO.,  
INC.

By   
Charles W. Buettner  
Its President

ATTEST:

  
JOHN McPhillips  
Its Secretary

(EMPLOYER)

 (SEAL)  
Ray Ellis

(EMPLOYEE)

Ref: acw/2609311