

CHART INDUSTRIES INC
Form 10-K/A
April 30, 2003

Securities and Exchange Commission

Washington, D.C. 20549

Form 10-K/A

AMENDMENT NO. 1

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2002

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number 1-11442

Chart Industries, Inc.

(Exact name of registrant as specified in its charter)

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Delaware
(State or other jurisdiction of

34-1712937
(I.R.S. Employer

incorporation or organization)

Identification No.)

5885 Landerbrook Drive, Suite 150, Cleveland, Ohio
(Address of principal executive offices)

44124
(Zip Code)

(440) 753-1490

Registrant's telephone number, including area code

Securities registered pursuant to Section 12(b) of the Act:

Title of each class
Common Stock, par value \$.01 per share

Name of each exchange on which registered
New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: **None**

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark if the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act). Yes No

As of March 31, 2003, the registrant had 25,893,876 shares of Common Stock outstanding.

As of June 30, 2002, the aggregate market value of 17,350,240 shares of Common Stock of the registrant held by non-affiliates was \$33,485,963 (based upon the closing price of \$1.93 per share of Common Stock on the New York Stock Exchange on June 30, 2002). For purposes of this calculation, the registrant deems the 7,674,999 shares of Common Stock held by all of its Directors and executive officers as of such date to be the shares of Common Stock held by affiliates.

EXPLANATORY NOTE

The registrant is filing this Amendment No. 1 to its Annual Report on Form 10-K filed with the Securities and Exchange Commission on April 15, 2003 solely for the purpose of providing information required by Items 10, 11, 12 and 13 of Part III of Form 10-K. Unless otherwise expressly stated, this Amendment No. 1 does not reflect events occurring after the filing of the original Form 10-K, or modify or update in any way disclosures contained in the original Form 10-K.

Special Note Regarding Forward-Looking Statements

The Company is making this statement in order to satisfy the "safe harbor" provisions contained in the Private Securities Litigation Reform Act of 1995. This amendment to Annual Report on Form 10-K/A includes forward-looking statements relating to the business of the Company. In some cases, forward-looking statements may be identified by terminology such as "may," "will," "should," "expects," "anticipates," "believes," "projects," "continue" or the negative of such terms or comparable terminology. Forward-looking statements contained herein or in other statements made by the Company are made based on management's expectations and beliefs concerning future events impacting the Company and are subject to uncertainties and factors relating to the Company's operations and business environment, all of which are difficult to predict and many of which are beyond the control of the Company, that could cause actual results of the Company to differ materially from those matters expressed or implied by forward-looking statements. The Company believes that the following factors, among others (including those described in the Form 10-K under the caption "Certain Factors That May Affect Future Results and Financial Condition"), could affect its future performance and liquidity of the Company's common stock and cause actual results of the Company to differ materially from those expressed or implied by forward-looking statements made by or on behalf of the Company: (a) general economic, political, business and market conditions and foreign currency fluctuations; (b) competition; (c) decreases in spending by its industrial customers; (d) the loss of a major customer or customers; (e) the effectiveness of operational changes expected to increase efficiency and productivity; (f) the ability of the Company to manage its fixed-price contract exposure; (g) the ability of the Company to pass on increases in raw material prices, including as a result of tariffs; (h) the Company's relations with its employees; (i) the extent of product liability claims asserted against the Company; (j) variability in the Company's operating results; (k) the ability of the Company to attract and retain key personnel; (l) the costs of compliance with environmental matters; (m) the ability of the Company to protect its proprietary information; (n) the ability of the Company to sell certain assets and/or access additional sources of capital; (o) the ability of the Company to qualify its common stock for trading in a national trading venue; (p) the ability of the Company to satisfy debt covenants, pay down its debt and restructure its debt arrangements; (q) the insolvency of CHEL and the commencement of its administration proceedings in the United Kingdom, including the potential liability of the Company with respect to CHEL's obligations; and (r) the war in Iraq and the threat of terrorism and the impact of responses to that threat.

PART III**Item 10. Directors and Executive Officers of the Registrant.**

The following table contains information regarding our executive officers and directors as of March 31, 2003.

<u>Name</u>	<u>Age</u>	<u>Position</u>
Arthur S. Holmes	62	Chairman, Chief Executive Officer, President and a Director
Lazzaro G. Modigliani	70	Director
Robert G. Turner, Jr.	56	Director
Thomas F. McKee	54	Director
Michael F. Biehl	47	Chief Financial Officer, Chief Accounting Officer and Treasurer
Charles R. Lovett	59	Vice President Manufacturing

Arthur S. Holmes has been Chairman and Chief Executive Officer of the Company since its formation in June 1992, and reassumed the title of President in July 2002 upon elimination of the position of Chief Operating Officer. Mr. Holmes served as President of ALTEC International, Inc. from 1985 through 1989. From 1978 through 1985, he served in a variety of managerial capacities for Koch Process Systems, Inc., the predecessor of Process Systems International, Inc., an operating unit of the Company, most recently as Vice President-Manager of the Gas Processing Division. Mr. Holmes is the co-inventor of the Company's patented Ryan/Holmes technology. Mr. Holmes holds a BS and an MS in Chemical Engineering from the Pennsylvania State University and an MBA from Northeastern University. Mr. Holmes' term as a Director expires in 2005.

Lazzaro G. Modigliani retired in 2001 from Washington Group International, Inc., an international engineering and construction firm (Washington Group), after having served the company as Executive Vice President Industrial Process since July 2000. Mr. Modigliani served as Executive Vice President Industrial Products of Raytheon Engineers & Constructors, Inc. (Raytheon Engineers) from January 1998 until it was acquired by Washington Group in July 2000. Mr. Modigliani was a full time consultant to Raytheon Engineers from June 1994 until December 1997, and served as the President and Chief Operating Officer of Raytheon Engineers from March 1993 until June 1994. From 1989 to March 1993, Mr. Modigliani served as the President and Chief Executive Officer of The Badger Company, Inc. (Badger). He served in a variety of senior management positions with Badger since joining it in 1966. Mr. Modigliani holds a Ph.D. in Chemical Engineering from Milan Polytechnic Institute and has served as a Director of the Company since July 1992. Mr. Modigliani's term as a Director expires in 2003.

Robert G. Turner, Jr. is the founder and managing partner of Turner & Nemeth, LLC, a public accounting firm, where he specializes in business valuation, mergers and acquisitions and accounting and tax compliance matters. Previously, Mr. Turner was a national partner in the accounting firm of Pannell Kerr Forster, where his practice focused principally on feasibility studies, accounting and tax services. Mr. Turner received his B.B.A. in Accounting from Cleveland State University and is a Certified Public Accountant and Certified Valuation Analyst. Mr. Turner is a member of Valuation Analysts, a regional succession planning, litigation support and business valuation organization. Mr. Turner has served as a Director of the Company since August 1997. Mr. Turner's term as a Director expires in 2003.

Thomas F. McKee is a Partner in the law firm of Calfee, Halter & Griswold LLP and Vice Chairman of its Executive Committee. Mr. McKee principally practices in the corporate finance area. Mr. McKee has served as a member of and corporate secretary to a number of Boards of Directors, including McDonald & Company Investments Inc., Signature Brands, Inc., Mr. Coffee, Inc., DataTRAK International, Inc. and LogoAthletic, Inc. Mr. McKee received his J.D. from Case Western Reserve University School of Law and his bachelor's degree from the

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University of Michigan. Mr. McKee has served as a Director of the Company since May 1999. Mr. McKee's term as a Director expires in 2004.

Michael F. Biehl has been the Chief Financial Officer and Treasurer of the Company since July 2001. Prior to joining the Company, Mr. Biehl served as Vice President, Finance and Treasurer at Oglebay Norton Company, a publicly held company that provides industrial minerals to a broad range of industries. He joined Oglebay Norton in 1992 as Corporate Controller, was promoted to Treasurer and Director of Finance in 1994 and to Vice President, Finance in 1998. Prior to joining Oglebay Norton, he worked in the audit practice of Ernst & Young, LLP in Cleveland, Ohio from 1978 to 1992. Mr. Biehl, a Certified Public Accountant, holds a BBA in Accounting from Ohio University and an MBA from Northwestern University's Kellogg Graduate School of Management.

Charles R. Lovett has been Vice President of Manufacturing for the Company since October 2002. Mr. Lovett has served in various roles with the Company and its predecessors since 1978, including Vice President, Manufacturing, Koch Process Systems, Inc. until 1988, Vice President, Operations, AMW Industries until January 1991, President, Process Systems International, Inc. until 1994, President, Process Engineering, Inc. until 1999, and Vice President, Operations, Ferox a.s. in the Czech Republic. Mr. Lovett holds a Bachelors degree in Mechanical Engineering Technology from the University of Dayton.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Securities Exchange Act of 1934 (the Exchange Act) requires the Company s officers and Directors and persons who own 10% or more of a registered class of the Company s equity securities to file reports of ownership and changes in ownership on Forms 3, 4 and 5 with the Securities and Exchange Commission (the Commission) and the applicable securities exchanges. Officers, Directors and 10% or greater stockholders are required by Commission regulations to furnish the Company with copies of all Forms 3, 4 and 5 they file.

Based solely on the information provided to the Company during or with respect to fiscal 2002 by persons required to file such reports, the Company believes that its officers, Directors and owners of 10% or more of the Common Stock have complied with all applicable Section 16(a) filing requirements.

Item 11. Executive Compensation.

The following table shows compensation received by the Company's Chief Executive Officer and all other executive officers and other persons required to be included in the table for the fiscal year ended December 31, 2002 as well as their compensation for each of the fiscal years ended December 31, 2001 and 2000.

Summary Compensation Table

Name and Principal Position	Year	Annual Compensation			Long Term Compensation Awards	All Other Compensation (2)
		Salary	Bonus	Other Annual Compensation (1)	Number of Securities Underlying Options	
Arthur S. Holmes Chairman, Chief Executive Officer and President	2002	\$ 350,000				\$ 19,279
	2001	350,000				16,782
	2000	263,000	\$ 319,600		137,500(13)	16,786
Michael F. Biehl(3) Chief Financial Officer, Chief Accounting Officer and Treasurer	2002	\$ 192,462				\$ 13,522
	2001	82,577	\$ 60,000(8)		50,000(11)	
Charles R. Lovett(4) Vice President Manufacturing	2002	\$ 143,138			29,000(11)	\$ 4,743
John T. Romain(5) Controller, Chief Accounting Officer and Assistant Treasurer	2002	\$ 148,200	\$ 11,538(9)		20,000(11)	\$ 11,194
	2001	130,500				15,078
	2000	125,000	\$ 110,818(10)		73,334(13)	13,345
James R. Sadowski(6) President and Chief Operating Officer	2002	\$ 263,000				\$ 14,630
	2001	263,000				16,782
	2000	263,000	\$ 310,882(10)		50,000(13)	16,786
G. Jan F. van Glabbeek(7) Vice President Strategic Development	2002	\$ 144,231	\$ 50,000(8)		50,000(12)	

(1) No person listed in the table received personal benefits or perquisites in excess of the lesser of \$50,000 or 10% of his aggregate salary and bonus.

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- (2) Represents amounts contributed by the Company to the listed person's personal account under the Chart Industries, Inc. 401(k) Investment and Savings Plan.
- (3) Mr. Biehl joined the Company on July 25, 2001 as its Chief Financial Officer and Treasurer. His base salary was initially set at \$190,000 and was raised to \$200,000 in 2002.
- (4) Mr. Lovett was promoted to Vice President - Manufacturing on October 1, 2002 at which time his base salary was raised to \$165,000. Pursuant to Commission rules, the table shows compensation received by Mr. Lovett for the full fiscal year ended December 31, 2002.
- (5) Mr. Romain, who is presently the President of the Company's Energy and Chemicals Group, ceased to be an executive officer on October 1, 2002. Pursuant to Commission rules, the table shows compensation received by Mr. Romain for the full fiscal year ended December 31, 2002.
- (6) Mr. Sadowski ceased to be an executive officer and employee of the Company on July 1, 2002. Mr. Sadowski, however, continued to receive salary continuation payments for the remainder of 2002 in amounts equal to his base salary while employed with the Company pursuant to a severance agreement with the Company described below.

- (7) Mr. van Glabbeek joined the Company on June 3, 2002 as its Vice President Strategic Development. Mr. van Glabbeek's annual base salary was set at \$250,000. Mr. van Glabbeek ceased to be an executive officer and employee of the Company on March 13, 2003.
- (8) Pursuant to their agreed upon terms of employment with the Company, (a) Mr. Biehl was awarded a cash signing bonus of \$20,000 and a guaranteed year-end cash bonus of \$40,000 for 2001, and (b) Mr. van Glabbeek was awarded a guaranteed year-end cash bonus of \$50,000 for 2002.
- (9) Mr. Romain was awarded a bonus at the end of 2002 to assist in his relocation to Texas in connection with his new position as President of the Company's Energy and Chemicals Group.
- (10) The following portions of these bonus amounts were paid in shares of Common Stock under the Company's 1997 Stock Bonus Plan: Mr. Sadowski, \$54,676 (12,706 shares); and Mr. Romain, \$14,664 (3,408 shares). In addition, Mr. Sadowski deferred \$76,862 of his bonus amount to subsequent periods pursuant to the Company's Voluntary Deferred Income Plan.
- (11) These options were granted pursuant to the Company's 1997 Stock Option and Incentive Plan. Twenty percent of the shares subject to these options become exercisable on each anniversary of the date of grant.
- (12) This option was granted in June 2002 pursuant to the Company's 1997 Stock Option and Incentive Plan. Mr. van Glabbeek left the Company prior to the first anniversary of the date of grant. As of the date of his departure, none of the options had vested and were cancelled.
- (13) These options were granted in May 2000 pursuant to the Company's 2000 Executive Incentive Stock Option Plan. These options become exercisable in annual installments over a period of five years from the date of grant, based in part on the executive officer's continued service during that period and in part on the Company's realization of certain financial targets on an annual basis over the period. Because the Company did not realize the financial targets for 2001 and 2002, the following number of shares subject to options granted under the plan were cancelled after the end of the 2001 and 2002 fiscal years and have been deducted from the number of options granted in 2000 reflected in the table as follows: Mr. Holmes, 50,000 shares; Mr. Sadowski, 50,000 shares; and Mr. Romain, 26,666 shares. Additionally, 87,500 shares subject to the options granted to Mr. Sadowski were cancelled upon his departure from the Company in 2002. Pursuant to Mr. Romain's employment agreement entered into in October 2002, all options granted to Mr. Romain under the Company's 2000 Executive Incentive Option Plan that have neither vested nor been forfeited previously, or approximately 46,668 shares, will be cancelled on May 1, 2003.

Option Grants in Fiscal Year 2002

The following table shows information about grants of stock options to purchase Common Stock made during fiscal year 2002 to the persons named in the summary compensation table above.

Option Grants in Last Fiscal Year

Name	Individual Grants				Potential	
	Number of Securities Underlying Options Granted	Percentage of Total Options Granted to Employees in Fiscal Year	Exercise or Base Price (per share (2))	Expiration Date	Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Terms(1)	
					5%	10%
Arthur S. Holmes Chairman, Chief Executive Officer and President						
Michael F. Biehl Chief Financial Officer, Chief Accounting Officer and Treasurer						
Charles R. Lovett Vice President Manufacturing	9,000(3)	2.54%	\$ 2.37	2/15/2012	\$ 13,414	\$ 33,995
John T. Romain Controller, Chief Accounting Officer and Assistant Treasurer	20,000(3)	5.63%	0.95	10/31/2012	11,949	30,281
James R. Sadowski President and Chief Operating Officer	20,000(3)	5.63%	\$ 0.95	10/31/2012	\$ 11,949	\$ 30,281
G. Jan F. van Glabbeek Vice President Strategic Development	50,000(4)	14.08%	\$ 2.65	6/03/2012	\$ 88,329	\$ 211,171

(1) Potential Realizable Value is based on assumed annual growth rates for the term of the option. The assumed rates of 5 percent and 10 percent are set by the Commission and are not intended to be a forecast of the Company's Common Stock price. There is no assurance that the value realized will be at or near the value estimated in the Potential Realizable Value applied to value the stock options. Actual gains, if

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any, on stock options exercised are dependent on the actual performance of the stock.

- (2) The exercise price is equal to the closing price of the Common Stock on the New York Stock Exchange on the date of grant.
- (3) These options were granted pursuant to the Company's 1997 Stock Option and Incentive Plan. Twenty percent of the shares subject to these options become exercisable on each anniversary of the date of grant.
- (4) This option was granted on June 3, 2002 pursuant to the Company's 1997 Stock Option and Incentive Plan. Mr. van Glabbeek left the Company prior to the first anniversary of the date of grant. As of the date of his departure, none of the options had vested and were cancelled.

Each of the options issued under the Company's 1997 Stock Option and Incentive Plan includes a provision which provides that the option shall become immediately exercisable (notwithstanding any vesting schedule otherwise contained in the option) upon the occurrence of a change in control event.

Option Exercises and Fiscal Year End Values

The following table shows for the persons named in the summary compensation table above information about their exercises of stock options to purchase Common Stock during fiscal year 2002 and their unexercised stock options to purchase Common Stock at December 31, 2002.

Aggregated Option Exercises in Last Fiscal Year**and December 31, 2002 Option Value**

Name	Number of Shares Acquired on Exercise	Value Realized	Number of Securities Underlying Unexercised Options at December 31, 2002		Value of Unexercised In the Money Options At December 31, 2002(1)	
			Exercisable	Unexercisable	Exercisable	Unexercisable
Arthur S. Holmes Chairman, Chief Executive Officer and President			50,000	87,500(2)		
Michael F. Biehl Chief Financial Officer, Chief Accounting Officer and Treasurer			10,000	40,000		
Charles R. Lovett Vice President Manufacturing			54,000	35,000		
John T. Romain Controller, Chief Accounting Officer and Assistant Treasurer			48,916	70,918(2)(3)		
James R. Sadowski President and Chief Operating Officer			270,500			
G. Jan F. van Glabbeek Vice President Strategic Development				50,000(4)		

(1) Based on the closing price of the Common Stock of \$0.66 on the New York Stock Exchange on December 31, 2002.

(2) Certain of these options were granted in May 2000 pursuant to the Company's 2000 Executive Incentive Stock Option Plan, and vest in part on the Company's realization of certain financial targets on an annual basis over the five-year vesting period. Because the financial goals were not achieved for fiscal years 2001 and 2002, a portion of these options were cancelled after the end of each of those fiscal years and have been deducted from the option numbers presented in this table.

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- (3) Pursuant to Mr. Romain's employment agreement entered into in October 2002, all options granted to Mr. Romain under the Company's 2000 Executive Incentive Option Plan that have neither vested nor been forfeited previously, or approximately 46,668 shares, will be cancelled on May 1, 2003.
- (4) Mr. van Glabbeek left the Company prior to the first anniversary of the date of grant. As of the date of his departure, none of the options had vested and were cancelled.

Director Compensation

Each non-employee Director receives a retainer fee in the amount of \$3,750 per quarter and \$2,500 for each Board of Directors meeting attended, along with reimbursement of out-of-pocket expenses incurred in connection with attending such meetings. Non-employee Directors also receive \$500 per telephonic conference meeting. In addition, each non-employee Director receives a minimum of \$500 and a maximum of \$1,200 per meeting (based on the length of the meeting) for any meeting of a committee of the Board of Directors or any other requested in-person meeting that is held on a day other than the day of a Board meeting and \$500 for committee meetings held on the same day as a Board meeting. Arthur S. Holmes receives no compensation for serving as a Director. Under the Company's 1996 Stock Option Plan for Outside Directors, each Director who is not an employee of the Company also receives an option to purchase 11,250 shares of Common Stock when such person first becomes a non-employee Director, and receives an additional option to purchase 11,250 shares of Common Stock immediately after each annual meeting thereafter for so long as such person continues to be a non-employee Director.

From time to time individual Directors may, either on behalf of the full Board of Directors or any committee thereof, be requested to dedicate additional time and effort to various business, financial or strategic issues facing the Company. It is expected that the additional services will assist the Board of Directors and its committees in evaluating appropriate courses of action with respect to such issues, and that such additional Board service will exceed the time and effort a Director generally needs to prepare for and attend regular meetings of the Board of Directors and its committees. Each Director receives additional compensation, in the form of additional Director's fees, for such service, in the amount of \$2,500 per full day of such additional service, or such other amount as the Compensation Committee approves upon recommendation of the Chairman, plus reimbursement of reasonable out-of-pocket expenses incurred in connection with such service.

Employment and Severance Agreements

In November 2001, Arthur S. Holmes entered into an employment agreement with the Company pursuant to which Mr. Holmes is employed as Chairman, Chief Executive Officer and President of the Company. The agreement, which terminates in January 2006, provides for an annual base salary of not less than \$350,000 per year and for Mr. Holmes' participation in incentive compensation and option programs and other customary employee benefits. The agreement also provides for severance benefits if Mr. Holmes (i) is discharged without cause, (ii) resigns as a result of certain material changes relating to his employment, including a significant reduction in the nature or scope of his title, authority or responsibilities, a reduction in his base salary below \$350,000, a relocation of the Company's principal executive office beyond 60 miles from his residence, material changes in his incentive compensation targets or receiving incentive compensation for any year less than the incentive compensation amount paid to any other executive officer for that year, or (iii) resigns during the 60-day period commencing on the first anniversary of a change in control of the Company. In these cases, the agreement entitles Mr. Holmes to a severance payment equal to the amount of base salary and bonus payments he would have received had he remained employed with the Company until the latest of January 2006, the first anniversary of termination of employment or the second anniversary of a change in control if his employment terminates or is deemed to terminate on or after such change in control, and is based on his base salary then in effect and annual bonuses equivalent to 50% of his base salary. In these cases, Mr. Holmes is also entitled to continued participation in health and life insurance benefits through the latest of the dates referenced in the preceding sentence. A portion of the severance payments made to Mr. Holmes may be deemed to be subject to the 20% excise tax imposed on certain payments that are contingent on a change in control under Section 280G of the Code. If the amount to be received by Mr. Holmes would be greater if the severance payments were reduced so that the 20% excise tax would not be applicable, then the severance payments would be reduced to the extent necessary so that no payment is subject to the excise tax. In general, Section 280G provides that severance payments that equal or exceed three times certain individuals' base amounts and are conditioned upon a change in control are subject to a 20% excise tax on the amount of the excess payments, which is imposed on the individual receiving the payments, and the Company is not entitled to deduct the amount of the excess payments for federal income tax purposes. Mr. Holmes' agreement also contains certain customary non-competition, non-solicitation and confidentiality provisions that are operative during Mr. Holmes' employment with the Company and for one year after termination of employment.

In October 2002, Michael F. Biehl entered into an employment agreement in connection with his employment with the Company as Chief Financial Officer and Treasurer of the Company. The agreement, which automatically extends on each subsequent anniversary of its execution

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date, provides for an annual base salary of not less than \$200,000 per year and for Mr. Biehl's participation in incentive compensation and option programs and other customary employee benefits established by the Company for its corporate officers. The agreement also provides for severance benefits if Mr. Biehl is discharged without cause. If Mr. Biehl is discharged without cause, the agreement entitles Mr. Biehl to a severance payment equal to one year's base salary and generally to continue participation in medical, dental and vision benefits for one year. In addition, if Mr. Biehl's employment is terminated without cause (i) within six months after a change in control of the Company, or (ii) after or immediately before the Company enters into a definitive agreement with a third party that results in a change in control, Mr. Biehl will be entitled to continued payment of his then current base salary until the second

