



REPRESENTING UNIONS, WORKERS, AND BENEFIT PLANS

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**Corrected (January 18, 2016) as to Updated Section of ORS Defamation Statute**

January 17, 2016

VIA EMAIL ([mkatches@oregonian.com](mailto:mkatches@oregonian.com))  
And **Certified Mail (Return Receipt Requested)**

Mark Katches  
Editor/Vice President of Content  
The Oregonian  
1500 SW First Avenue  
Portland, OR 97201

**Re: ILWU Demand to Cease and Desist, and Retract and Correct Published Defamations Under ORS 31.215**

Mr. Katches:

This law firm represents the International Longshore and Warehouse Union (ILWU). On January 12, 2016 you published an article (attached) on Internet entitled, "Portland longshore workers paid \$1.2 million to not work at Port of Portland", which was written by Molly Harbarger. On January 13, 2016 you republished the same article (attached) in print under a different title, "ILWU workers paid without working." The articles contained numerous statements about the ILWU and its members that are untrue and defamatory. We believe that the statements are per se defamatory because they were made to maliciously injure the ILWU and its members in their trade, office, and profession. Indeed, a basic review of the relevant data in the Pacific Maritime Association (PMA) annual report (pertinent pages attached) referenced in the article demonstrates to any lay person, let alone a journalist and her editorial staff, that the information in the January 12, 2016 article is false.

Under **ORS 31.215 ("Publication of correction or retraction upon demand")**, this letter constitutes a demand for immediate, published correction and retraction of these false and defamatory statements. We demand that your retraction and correction (in print and on the Internet) be accompanied by an editorial (in print and on the Internet) in which you specifically repudiate your defamatory statements. Below, we have outlined the malicious and defamatory statements contained in the offending articles. If forced to file a lawsuit to stop your wrongful conduct, the ILWU will also seek an award of its attorney fees and litigation expenses.

### The Malicious Libelous Statements

1. In your January 12, 2016 article, you make the following statements (emphasis added):

“The longshore union has reaped the benefits for decades of **a port-supported fund that pays members whether or not they work.**”

“The Pacific Maritime Association, which represents 29 West Coast container port operators, maintains the pay guarantee fund and **each port contributes** based on the tons of cargo going in and out.”

“That means the **ports in the Puget Sound and in Los Angeles are heavily subsidizing** the lack of work in Portland.”

As is clear from the PMA 2014 Annual Report, which the articles use as a primary source, the Pay Guarantee Plan (PGP) is negotiated with and funded by member-companies of the PMA, which consists of private sector employers. Ports are not members of PMA and do not fund PGP in any way. See PMA 2014 Annual Report, pages 4 (PMA membership list), 37 (PGP description), and 57 (distribution of PGP).

2. In your January 12, 2016 article, you make the following statement (emphasis added):

“In 2014, the **fund paid out just over \$600,000 to Oregon longshore workers** in total, with Portland workers averaging less than one day of pay without work over the year, according to the Pacific Maritime Association’s annual report.”

The actual number is \$89,173, which is clearly shown in the PMA 2014 Annual Report on page 57 just five lines above the number falsely reported by The Oregonian in a row clearly marked, “Portland”. The Oregonian, in order to tell a purposely untrue and defamatory story, cited the number for all of the longshore workers in Oregon and the Columbia River, rather than just Portland longshore workers, and omitted any reference to other clearly visible data that would have provided clarity and context.

The five data points contained in this easily understood portion of the PMA 2014 Annual Report disprove the entire thrust of the January 12, 2016 article. Specifically, for Portland longshore workers, PGP was down by 87.8% in 2014; it was distributed to only 105 workers (out of 426); the average annual PGP payment to each worker was a mere \$849; the majority of Portland’s Longshore workers (321) did not receive any money from the PGP fund at all; and the PGP paid to Portland workers in 2014 was merely 3.8% of the total amount paid to longshore workers on the entire West Coast.

The Oregonian’s incomplete reference to 2015 PGP numbers is also deliberately misleading as it fails to make account of the number of workers receiving any distribution of PGP funds. For instance, even if the number in the first three quarters were \$1,203,011, that number divided

among 426 workers comes to an average payment of \$2,824. Is The Oregonian really asserting that the receipt of \$849 in 2014 and \$2,824 in 2015 somehow supports the untrue and defamatory byline, “You work, you get paid. You don’t work, you still get paid”?

3. In your January 12, 2016 article, you make the following statements (emphasis added):

“That means longshore workers are doing 1 percent of the work they were doing before.”

One percent of what? Terminal 6 does not make up the entire Port of Portland. In fact, it makes up only a minor part of the longshore work opportunity in the Port of Portland, and, even if work is down at Terminal 6, many other terminals continue hiring longshore workers every day.

4. In your January 12, 2016 article, you make the following statements (emphasis added):

“You work, you get paid. You don’t work, you still get paid”

“The longshore union has reaped the benefits for decades of a port-supported fund that pays members whether or not they work. During a lockout at the Port of Portland’s grain terminal in 2013, the fund paid \$1 million over the course of a year – while no work was going on at all.”

It is absolutely false to report that the longshore workers receive PGP pay “whether or not they work,” and that they were paid \$1 million during Portland’s grain terminal lockout in 2013 “while no work was going on at all.” The truth, as documented in the PMA Annual Reports and the written terms of the PGP Plan itself, set out in Section 20 of the Pacific Coast Longshore and Clerks’ Agreement, is that longshoremen must seek work five out of seven days a week and accept any work available to them in two broad categories (skilled and unskilled) in order to qualify for any PGP payments. Failure to take any available work means no PGP payments for that PGP pay period. During the 2013 grain lockout, longshoremen were required under the terms of the PGP Plan to work at all other working facilities, including ICTSI at Terminal 6, in order to be eligible for and receive any PGP payments during that time. This work requirement by design also reduces the actual amount of PGP payments an individual receives. It is absolutely false for the article to state that longshoremen have been paid for doing no work at all.

### **Overview of the Malicious Libel and its Harm to ILWU and ILWU Members**

The four itemized groups of libelous statements quoted above are repeated in the January 13, 2016 print article. Since the actual data does not tell the story that The Oregonian wants to portray, that “the plan is why union members aren’t working with the port operator to bring shipping lines back to Terminal 6”, which itself is also not true, the reasonable inference is that The Oregonian just made it up in order to defame the ILWU and its members.

The offending articles are clearly designed to convince the public of the libelous falsehood that Portland longshore workers are sitting at home, dis-incentivized from work by the receipt of large sums of money from a “port-supported fund,” and the reason they are resisting any return of the carriers. For proof that The Oregonian achieved its libelous goal, one need only look to the comments posted below the January 12, 2016 article. Here is a sample:

“Collective bargaining doesn’t work under these conditions. There is no incentive to settle disputes when thee [sic] is nothing to lose by not doing so.”

“Hard to say the words that describe the caliber every single member that belongs to this filthy operation called the Longshorman’s Union. They are thugs.”

“And nobody has gone to prison for corruption?”

“The longshoremen do not care if they work or not! Union contracts guarantee that they get paid every week whether they work or not.”

“So, either the pay guarantee will not be negotiated into future contracts or the other ports subsidizing Portland will continue to shoulder it as a cost of doing business. Either way, this arrangement is unfair in the short term and isn’t sustainable in the long term - kind of like everything else in life.”

“Molly: If I read the PMA Annual Report correctly, the PMA has set aside \$20 million for the Pay Guarantee Plan in this year alone (page 37). At those rates, it looks as if these guys could get paid permanently for not working. Is that correct?”

“Is there any real surprise that the union had no incentive to actively negotiate with the management group to keep the business in Portland?”

“Unions, only good for those in them. This just makes no sense. Who gets paid for not working in the real world? Unions can care less about how this affects the rest of Oregon/businesses, and they have shown it! Time to just close the Port of Portland.. besides, I am tired of paying property taxes for it!!.”

“No work No pay, They are just running the port and have been for years. Now all sorts of companies have to suffer because of these guys. One would hope that there was some way to get another group of union workers to fill this void, These guys are costing everyone else.”

“I am a liberal to a degree, but this so wrong. The Longshoremen Union is the strongest in the country. I use to work for a stevedore [sic] company in Portland. These people are goldbricks, criminals and thieves.”

“So of course this Pay Guarantee Fund is virtually unlimited and will keep paying people not to work for infinity right?”

“What a load of crap. What other successful company pays its employees when they aren’t working? Especially when it was their union demands that drove the shipping companies away. How long are we going to put up with these Union thugs?”

“What do I get from the ILWU for supporting their fully funded non working members? Nothing? Yes. Nothing!”

“Every time you fly out of PDX, you help pay for this, through the fees the Port of Portland charges to the airlines.”

“The port needs to close down and reopen with a different (Less militant) union, other than The Longshoreman’s Union.”

“I see that organized crime still exist. Long shore workers getting paid for not showing up for work is like the shell person who watch the construction site in sopranos.”

“What a great gig and what a shame. All the more reason to get rid of the longshore labor unions.”

“Are the ILWU members really “working” people? Or are they just fat lazy ticks feeding off the public with no discernible benefit to anyone but themselves?”

“That’s more money than I’ll every pay out in taxes. I’d kinda like to see it go to something worthwhile, versus that of a non-working union member....bro.”

“In the end though, the taxpayer is fitting the bill for union members to sit at home on their rears and you think that’s okay. That just goes to show how biased you are towards the liberal agenda.”

“One might ask what is the big difference between now and when ships where coming in to the port? The ILWU thugs used to get paid to show up everyday but now they simply don’t have to show up. In both cases the ILWU thugs get paid for either not working, or working at such a slow speed that marks were drawn on the docks to determine if the ILWU thug was actually moving or not. The ILWU is a big, and major, and draw back to business coming to Oregon and has long outlived its need.”

On Friday, January 15, 2016, the ILWU repeatedly urged The Oregonian to issue a correction to its article and to permit the ILWU to respond in a published editorial. To date, the article is still on the Internet, was republished in print by The Oregonian, and has been picked up and republished by over 30 other media outlets. Among other things, your failure to correct immediately your patently false statements, given how clearly false the articles are, confirms the underlying malicious intent.

If you do not immediately and adequately publish the requested retraction and correction with an accompanying editorial, and cease and desist from making false and malicious comments about the ILWU and its members, we will file suit against you. Please notify us by close of business Monday January 18, 2016 what you intend to do to remedy this serious libel.

Should you have any questions, please let me know.

Sincerely,

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Robert Remar  
LEONARD, CARDER, LLP  
Attorneys for ILWU

cc: Erik Lukens, Editorial and Commentary Editor (elukens@oregonian.com)  
Therese Bottomly, Director of News (tbottomly@oregonian.com)  
Scott Nelson, Managing Producer (snelson@oregonian.com)

Attachments

- Excerpts of 2014 PMA Annual Report (cover, pages 4, 37 & 57)
- The Oregonian website article of Jan 12, 2016
- The Oregonian print article of Jan 13, 2016