

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

WAYRON, LLC

and

Case 19-CA-32983

INTERNATIONAL BROTHERHOOD OF  
BOILERMAKERS, IRON SHIP BUILDERS,  
BLACKSMITHS, FORGERS AND HELPERS  
OF AMERICA, LOCAL 104; THE  
INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE WORKERS,  
AFL-CIO, DISTRICT LODGE 160, LOCAL  
LODGE 1350; AND THE INTERNATIONAL  
UNION OF PAINTERS AND ALLIED  
TRADES, DISTRICT COUNCIL 5

**CHARGED PARTY/RESPONDENT  
WAYRON, LLC'S MOTION FOR  
RECONSIDERATION OF BOARD'S  
8/2/2016 ORDER**

Charged Party/Respondent Wayron, LLC, by and through its attorney, Kristin L. Bremer Moore, hereby submits its Motion for Reconsideration in this case, and states:

**I. INTRODUCTION**

Pursuant to Section 102.48(d)(1) of the Board's Rules and Regulations, Charged Party/Respondent Wayron, LLC ("Wayron" or "Company") moves for reconsideration by the Board of its August 2, 2016 Decision and Order in the above referenced matter (hereafter the "8/2/2016 Order"). As further explained below, intervening circumstances have rendered the Board's 8/2/2016 Order's remedies impossible to implement. While this Motion for Reconsideration focuses on the remedies ordered by the Board, Wayron expressly preserves its right to appeal the 8/2/2016 Order in its entirety to the United States Court of Appeals.

**II. PROCEDURAL HISTORY**

The procedural history of this case is set forth in the Board's 8/2/2016 Order, but certain points pertinent to Wayron's motion are worthy of additional note:

PAGE 1 – CHARGED PARTY/RESPONDENT WAYRON, LLC'S MOTION FOR  
RECONSIDERATION OF BOARD'S 8/2/2016 ORDER

Following the Boilermakers, Machinists and Painters Unions' ("the Unions") filing of the Unfair Labor Practice charges, the Unions and Wayron committed to continue negotiating a new contract and scheduled bargaining. (G.C. Exs. 14-15.) After three bargaining sessions, on February 6, 2012, the Boilermakers disclaimed interest in representing the Wayron employees. (Declaration of Kristin L. Bremer Moore in Support of Charged Party/Respondent Wayron, LLC's Motion for Reconsideration of Board's 8/2/2016 Order ("Bremer Moore Decl."), Exhibit 1.)

Thereafter, Wayron continued to bargain with the Painters and the Machinists (the Machinists were not present at bargaining and, instead, authorized the Painters to negotiate on their behalf). On January 29, 2013, the Machinists issued a notice disclaiming interest in representing the Wayron employees. (Bremer Moore Decl., Exhibit 2.)

Thereafter, Wayron and the Painters continued to bargain. However, on January 13, 2014, the Painters also issued a notice disclaiming interest in representing the Wayron employees. (Bremer Moore Decl., Exhibit 3.)

The three Unions disclaiming interest resulted in withdrawal liability for each Union's multi-employer pension fund. Over the past three years, Wayron entered into agreements and payment plans with each pension fund. On March 29, 2013, Wayron began payment to the Machinists' Western Metal Industry Pension Fund for withdrawal liability totaling \$393,711.20. (Bremer Moore Decl., Exhibit 4.) On April 15, 2014, Wayron began payments to the Boilermaker-Blacksmith National Pension Fund for withdrawal liability assessed at \$445,140.00. (Bremer Moore Decl., Exhibit 5.) Finally, in spring 2015, Wayron began making payment to the Oregon and SW Washington Painters Pension Plan for withdrawal liability assessed at \$45,590.60. (Bremer Moore Decl., Exhibit 6.)

The present Motion for Reconsideration is being filed within the 28-day time period specified in Section 102.48 of the Board's Rules.

PAGE 2 – CHARGED PARTY/RESPONDENT WAYRON, LLC'S MOTION FOR RECONSIDERATION OF BOARD'S 8/2/2016 ORDER

### **III. ARGUMENT**

#### **A. Legal Standard.**

Section 102.48(d)(1) of the Board's Rules and Regulations provides that “a party to a proceeding before the Board may, because of extraordinary circumstances, move for reconsideration, rehearing, or reopening of the record after the Board decision or order.” Further pursuant to this Rule, “A motion for reconsideration shall state with particularity the material error claimed and with respect to any finding of material fact shall specify the page of the record relied on.” 29 C.F.R. Section 102.48(d)(1).

Pursuant to 29 C.F.R. Section 102.49 of the Board's Rules and Regulations, “until a transcript of the record in a case shall have been filed in a court, within the meaning of Section 10 of the Act, the Board may at any time upon reasonable notice modify or set aside, in whole or in part, any finding of fact, conclusion of law, or order made or issued by it.” See also 29 U.S.C. Section 160.

#### **B. The Board’s Order Should Be Modified.**

The Board ordered several remedies that are impossible to implement due to a change in circumstances over the nearly six years since the hearing on this matter. First and foremost, all three Unions have disclaimed interest of their respective units and no longer represent any of the Wayron employees.<sup>1</sup> Therefore, any order to recognize or bargain with the Unions is impossible. *NLRB v. Thill, Inc.*, 980 F.2d 1137, 1142-43 (1992) (Court of Appeals refused to enforce Board’s order requiring employer to bargain with the union because of a change in circumstances); *Montgomery Ward and Co. v. NLRB*, 904 F.2d 1156, 1160 (7th Cir. 1990) (court refused to enforce order to bargain due to the passage of time and a change in circumstances). The Ninth Circuit has expressed value in the Board considering the change in circumstances before the court reviews the Board’s bargaining order. *See also L’Eggs Products*,

---

<sup>1</sup> The Board notes in Footnote 41 that Respondent’s brief indicates that the Boilermakers withdrew interest on February 6, 2012, but the record contained “no evidence regarding this assertion.” This Motion provides the evidence in support of “this assertion.”

*Inc. v. NLRB*, 619 F.2d 1337, 1352 (9th Cir. 1980) (court noting that the Board should consider subsequent event, up to the time of its decision, in rendering a bargaining order). Therefore, Wayron seeks to provide the Board the opportunity to reconsider and modify its 8/2/2016 Order in light of Wayron’s and Unions’ change in circumstance since the hearing in October 2011 and the ALJ’s Decision on March 29, 2012.

Because the Unions have disclaimed interest, the Board’s “Amended Remedy” and “Order” sections should be modified, as follows:

1. Omit the Amended Remedy that Wayron “recognize and, on request, bargain with Boilermakers Local 104, Machinists District Lodge 160, Local 1350, and Painters District Council 5 as bargaining representatives of the unit employees in their respective crafts with respect to wages, hours and other terms and conditions of employment and, if an agreement is reached, embody it in a signed agreement.”<sup>2</sup>
2. Omit section 2(b) of the Order that Wayron “[o]n request, meet and bargain with the Unions as the exclusive collective-bargaining representatives of the unit employees in their respective crafts, as described in paragraph 1(a), above, concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement or in signed agreements.”
3. Omit the Amended Remedy that Wayron “permit the Unions’ auditor to audit its financial records, as the Unions requested on November 9, 2010, to verify the Respondent’s claims in bargaining regarding its financial hardship.”
4. Omit Section 1(a) of the Order that Wayron “[c]ease and desist from (a) Refusing to bargain collectively with Boilermakers Local 104, Machinists

---

<sup>2</sup> In Footnote 44 of the 8/2/2016 Order, the Board indicates that if “one or more of the Unions has disclaimed any representational interest, there shall be no obligation to bargain with such Union(s).”

District Lodge 160, Local 1350, and Painters District Council 5, or their successors (the Unions) by failing and refusing to promptly furnish them with requested information that is relevant and necessary to the Unions' performance of their duties as the sole collective-bargaining representative of the Respondent's unit employees described in article 1 of the collective bargaining agreement that was terminated on February 4, 2011 . . ." and Section 2(a) of the Order that Wayron "[f]urnish the Unions' auditor the financial information that the Unions requested on November 9, 2010."

5. Omit the Amended Remedy that Wayron "rescind, on the Union's request, any or all of the unilateral changes to the unit employees' terms and conditions of employment made thereafter and to make the unit employees whole for any loss of earnings and other benefits attributable to its unlawful conduct."
6. Omit Section 2(c) Order that Wayron "[o]n request of the Unions, rescind any or all changes in the terms and conditions of employment for the unit employees made on and since February 8, 2011, and restore and maintain the terms and conditions of the contract that was terminated on February 4, 2011, unless and until the Respondent has bargained with the Unions in good faith to a new agreement or lawful impasse, or the Unions agree to changes."

In addition, as a result of the Unions disclaiming interest, Wayron became obligated to pay withdrawal liability to the various pension funds, which it has and continues to pay. Thus, the Amended Remedy section should also be modified with regard to ordering Wayron to "make all contractually required contributions to the Unions' benefit funds that it failed to make, including any additional amounts due the funds on behalf of the unit employees . . .," as well as the corresponding Section 2(e) of the Order, stating that Wayron must

"[m]ake all required pension fund and health and welfare fund contributions that have not been  
PAGE 5 – CHARGED PARTY/RESPONDENT WAYRON, LLC'S MOTION FOR  
RECONSIDERATION OF BOARD'S 8/2/2016 ORDER

made since February 8, 2011, including any additional amounts due to the funds as set forth in the amended remedy section of this decision.”

#### **IV. CONCLUSION**

For the foregoing reasons, Wayron respectfully requests the Board grants its Motion for Reconsideration and amends the 8/2/2016 Order as stated above.

DATED: August 29, 2016.

Respectfully submitted,

*s/ Kristin L. Bremer Moore*

---

Kristin L. Bremer, OSB No. 032744

Tonkon Torp LLP

1600 Pioneer Tower

888 SW Fifth Avenue

Portland, OR 97204

(503) 802-2154

kristin.bremer@tonkon.com

Attorney for Wayron, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **CHARGED PARTY/**

**RESPONDENT WAYRON, LLC'S MOTION FOR RECONSIDERATION OF BOARD'S**

**8/2/2016 ORDER** on:

Jeff Brooke  
Painters and Allied Trades Local 10  
Union/Charging Party  
11105 NE Sandy Blvd.  
Portland, OR 97220-2579

Greg Heidal  
Machinists District Lodge 160  
Union/Charging Party  
3516 S. 47th St., Ste. 105  
Tacoma, WA 98409-4427

Lance Hickey  
Boilermakers Local No. 104 Affiliated with  
International Brotherhood of Boilermakers,  
Iron Ship Builders, Blacksmiths, Forgers and  
Helpers, AFL-CIO  
Union/Charging Party  
2800 1st Ave. Ste. 220  
Seattle, WA 98121-1131

Ronald K. Hooks  
Regional Director, NLRB Region 19  
2948 Jackson Federal Building  
915 2nd Ave.  
Seattle, Washington 98174-1078

Sarah Pring Karpinen  
Counsel for the Acting General Counsel  
NLRB, Region 19  
Patrick V. McNamara Federal Building  
477 Michigan Ave., Rm 300  
Detroit, MI 48226

by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to each person's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below;

by causing a copy thereof to be filed electronically through the *nrlb.gov* e-filing system on the date set for the below;

DATED: August 29, 2016.

*s/ Kristin L. Bremer Moore*

Kristin L. Bremer Moore, OSB No. 032744  
Attorney for Wayron, LLC

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

WAYRON, LLC

and

Case 19-CA-32983

INTERNATIONAL BROTHERHOOD OF  
BOILERMAKERS, IRON SHIP BUILDERS,  
BLACKSMITHS, FORGERS AND  
HELPERS OF AMERICA, LOCAL 104;  
THE INTERNATIONAL ASSOCIATION  
OF MACHINISTS AND AEROSPACE  
WORKERS, AFL-CIO, DISTRICT LODGE  
160, LOCAL LODGE 1350; AND THE  
INTERNATIONAL UNION OF PAINTERS  
AND ALLIED TRADES, DISTRICT  
COUNCIL 5

**DECLARATION OF KRISTIN  
BREMER MOORE IN SUPPORT OF  
CHARGED PARTY/RESPONDENT  
WAYRON, LLC'S MOTION FOR  
RECONSIDERATION OF BOARD'S  
8/2/2016 ORDER**

I, Kristin L. Bremer Moore, declare under penalty of perjury:

1. I am the attorney representing Wayron, LLC ("Wayron") in this action. I make this Declaration based on my personal knowledge.
2. Attached as **Exhibit 1** is a true copy of the Boilermakers' February 6, 2012 letter to Wayron disclaiming interest in representing Wayron employees.
3. Attached as **Exhibit 2** is a true copy of the Machinists' January 29, 2013 letter to the undersigned disclaiming interest in representing Wayron employees.
4. Attached as **Exhibit 3** is a true copy of the Painters' January 13, 2014 letter to Wayron disclaiming interest in representing Wayron employees.
5. Attached as **Exhibit 4** is a true copy of the March 29, 2013 settlement agreement between Wayron and the Machinists' Western Metal Industry Pension Fund for withdrawal liability.

PAGE 1 – DECLARATION OF KRISTIN BREMER MOORE IN SUPPORT OF CHARGED PARTY/RESPONDENT WAYRON, LLC'S MOTION FOR RECONSIDERATION OF BOARD'S 8/2/2016 ORDER

6. Attached as **Exhibit 5** is a true copy of the April 15, 2014 settlement agreement between Wayron and the Boilermaker-Blacksmith National Pension Fund for withdrawal liability.

7. Attached as **Exhibit 6** is a true copy of the withdrawal liability payment plan between Wayron and the Oregon and SW Washington Painters Pension Plan.

**I hereby declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed on the 29th of August, 2016, in Portland, Oregon.**

*s/ Kristin L. Bremer Moore*

Kristin L. Bremer Moore

*International Brotherhood of*  
**BOILERMAKERS - IRON SHIP BUILDERS**

Local 104  
2800 1<sup>st</sup> Ave. Suite 220  
Seattle, WA 98121



**BLACKSMITHS - FORGERS & HELPERS**

Business Manager  
Dean Calhoun  
206-623-6473

February 6, 2012

Wayron  
1133 California Way  
Longview, WA 98632

Re: Disclaimer of Interest

Dear Mr. Spendlove;

Effective immediately Boilermakers Local 104 hereby disclaims interest in representing the bargaining unit of employees previously covered by the collective bargaining agreement between the company and the Local Union. By copy of this letter the Local hereby notifies the Trust funds listed below that the employees of this employer are no longer represented by Boilermakers Local 104.

Lance S Hickey  
Asst. Business Manager  
Boilermakers Local 104

cc: NLRB, Region 19  
Bargaining unit employees  
Boilermakers National Funds



**INTERNATIONAL ASSOCIATION of MACHINISTS**  
**and AEROSPACE WORKERS**  
**DISTRICT LODGE No. 160**

AFFILIATED LODGES: 79 - 130 - 282 - 289 - 297  
695 - 1350 - 1690 - 1735 - 2379

DANIEL R. MORGAN, DIRECTING BUSINESS REPRESENTATIVE  
ROBERT JAMES, PRESIDENT  
JOHN W. DECKER, SECRETARY-TREASURER

9135 15TH PLACE SOUTH  
SEATTLE, WASHINGTON 98108  
(206) 762-7990  
FAX (206) 764-0468

January 29, 2013

Kristin Bremer  
1600 Pioneer Tower  
888 SW Fifth Avenue  
Portland, OR 97204

VIA: Email and USPS

Dear Ms. Bremer:

I am in receipt of your letter dated January 24. I had previously passed on your information requests to the Trust and yesterday received a copy of the email response to you from trust attorney Frank J. Morales.

I also want to take this opportunity to inform you that the Machinists Union is by this letter officially disclaiming interest in representing any employees or any existing bargaining unit at Wayron. I hope for success for the Employer in its future endeavors.

Sincerely,

Daniel R. Morgan  
Directing Business Representative

DRM:pwopeiu23/aff-cio  
O:\Dan Morgan\Dan- ltr to Bremer re Wayron 012913.doc

CC: Greg Heidal, IAM BR  
Terry Jensen, Consultant  
Bud Bartunek, IUPAT District Council 5  
Richard Foil, NLRB

Exhibit 2  
1 of 1



International Union of Painters & Allied Trades, AFL-CIO, CLC

# DISTRICT COUNCIL #5

Washington  
Oregon & Idaho

11105 N.E. Sandy Blvd. • Portland, OR 97220 • 503 257-6644 • Fax 503 256-5271

January 13, 2014

**ENTERED**

**JAN 22 2014**

Jeff Spendlove  
Wayron, LLC  
PO Box 1059  
Longview, WA 98632-

Dear Jeff:

Please consider this letter as official notice that the International Union of Painters and Allied Trades District Council 5 will terminate all agreements with Wayron, LLC effective January 31, 2014. If for some reason you do not agree with this decision, please notify my office immediately and no later than 10 days from receipt of this letter.

Sincerely,

Bud Bartunek  
Area Director

Certified Mail  
7012 2920 0002 1685 2311

BB:vs  
Opeiu#11/afi-cio

Exhibit 3  
1 of 1

3/29/13

## SETTLEMENT AGREEMENT

### 1. PARTIES

This Settlement Agreement is by and between the Board of Trustees of the Western Metal Industry Pension Fund ("Trustees") and Wayron, LLC ("Wayron") (collectively the "Parties").

### 2. PURPOSE

The purpose of this Agreement is to forever settle and resolve all past, present, or future disputes, claims, cross-claims, and controversies, known or unknown, between the Parties arising out of or related to the Trustees' lawsuit filed in the United States District Court for the Western District of Washington denominated *Board of Trustees of the Western Metal Industry Pension Fund v. Wayron, LLC et al.*, 2:12-CV-01494-RSM ("Litigation"). The Litigation alleges that Wayron owes the Trustees \$392,560 in withdrawal liability, with a present value of approximately \$215,105.00 as of October 2011. Wayron has contested the Trustees assessment of withdrawal liability and deny the allegations in the Litigation.

### 3. PAYMENT TERMS

In consideration of the mutual promises and obligations set forth herein, the Parties hereby agree that Wayron will pay the sum of \$393,711.20 to resolve the Trust's claim for withdrawal liability. Payments shall be made pursuant to the schedule attached as Exhibit A to this Agreement, with the initial installment payment due on or before April 1, 2013. Thereafter, Wayron LLC shall make seventy five (75) quarterly installment payments over a nineteen (19) year period with the final quarterly installment payment due on December 31, 2031. With the exception of the first installment payment, future installment payments shall be made no later than March 1<sup>st</sup>, June 1<sup>st</sup>, September 1<sup>st</sup> and December 1<sup>st</sup> of each year. Wayron LLC reserves the right at its sole discretion to pay the full amount of the remaining withdrawal liability amount in a single lump sum at any time during the 20-year payment plan, adjusted to the present value at that time, by requesting the Trustees to provide a lump sum present value payment estimate, which the Trustees shall provide to Wayron LLC within 30 calendar days of the request.

Payments shall be made to:

Western Metal Industry Pension Trust  
Attn: Brynn  
P.O. Box 94072  
Seattle, WA 98124

### 4. RELEASE AND DISMISSAL

The Parties to this Agreement hereby mutually release and forever discharge each other, as well as each other's present or former owners, officers, directors, shareholders, employees,

Exhibit 4  
1 of 5

agents, trustees, and attorneys, from any past, present, or future claim, demand, or cause of action, known or unknown, arising out of or in any way related to the Litigation, except to the extent of the obligations created by this Agreement itself or otherwise prohibited by law. Within two business days of execution of this Agreement, the Parties agree to file with the court a stipulated notice of dismissal of the Litigation with prejudice.

## 5. LIABILITY IN THE EVENT OF BREACH

In the event Wayron, LLC fails to makes the required payments set forth above, or in any other way breaches this Settlement Agreement, Wayron LLC shall be liable for the full amount of the assessed withdrawal liability of \$393,711.20, minus any interim payments that have been made, plus 7% annual interest from the date of the breach. Additionally, in the event of breach of this Settlement Agreement, Wayron LLC shall be liable for payment of reasonable attorney fees and costs incurred by the Trust in enforcement of this Settlement Agreement.

## 6. MISCELLANEOUS

a. The Parties to this Agreement understand, acknowledge and agree that the negotiation, execution and performance of this Agreement shall not constitute, or be construed as, an admission of any liability or infirmity of defense or claim whatsoever by any party.

b. The Parties to this Agreement understand, acknowledge and agree that this Agreement constitutes the entire agreement among the Parties relating to the matters specified herein, and that this Agreement may not be altered, amended, modified or otherwise changed in any respect whatsoever, except by a duly executed writing.

c. In the event a legal action is brought by a Party to enforce this Agreement the prevailing Party shall be entitled to recovery of reasonable attorney fees and costs.

d. The Parties to this Agreement understand, represent and warrant that each enters into this Agreement upon the legal advice of its attorneys, that said attorneys have explained the terms of this Agreement, and that each party has read, fully understands, and knowingly and voluntarily accepts the terms of this Agreement.

e. If any term, provision, covenant or condition of this Agreement shall be held by a court or arbitrator of competent jurisdiction to be invalid, it shall be severed from any remaining portion hereof, and the remainder shall stand in full force and effect and shall in no way be affected, impaired or invalidated, to the extent the original intent of the Parties remains.

f. This Agreement may be executed in one or more counterparts and all executed counterparts shall be deemed to be one and the same instrument. The Parties to this Agreement shall exchange original signed counterparts.

g. This Agreement, or any uncertainty or ambiguity herein, shall not be construed against any party, but shall be construed as if all Parties to this Agreement prepared the Agreement.

3/29/13

h. This Agreement, in all respects, shall be interpreted, enforced and governed under the laws of the State of Washington.

i. This Agreement shall be subject to the jurisdiction of the United States District Court for Western District of Washington in Seattle.

j. This Agreement is effective upon signing by all Parties hereto.

**WESTERN METAL INDUSTRY  
PENSION FUND**

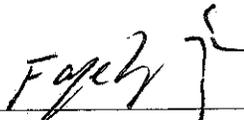
By: 

Print Name: FRANK J. MORALEZ

Title: ATTORNEY FOR FUND

Date: 4/4/13

**WAYRON, LLC**

By: 

Print Name: Faye Dietz

Title: CEO

Date: 3/29/13

035730/00002/4452393v1

<b>Wayron Payment Plan - Withdrawal Liability - 2012 Late Payment Interest Included</b>						
	Date of Payment	Amount Applied to Principle	Interest Rate In Effect	Amount Applied to Late Payment Interest	Amount Applied to Delinquent Contributions	Total Amount of Payment
1	1-Apr-13	\$9,814.00	3.25%	\$ 172.77	\$500.00	\$10,486.77
2	1-Jun-13	\$9,814.00	3.25%	\$ 159.48	\$ -	\$9,973.48
3	1-Sep-13	\$9,814.00	3.25%	\$ 159.48	\$ -	\$9,973.48
4	1-Dec-13	\$9,814.00	3.25%	\$ 159.48	\$ -	\$9,973.48
5	1-Mar-14					\$4,907.00
6	1-Jun-14					\$4,907.00
7	1-Sep-14					\$4,907.00
8	1-Dec-14					\$4,907.00
9	1-Mar-15					\$4,907.00
10	1-Jun-15					\$4,907.00
11	1-Sep-15					\$4,907.00
12	1-Dec-15					\$4,907.00
13	1-Mar-16					\$4,907.00
14	1-Jun-16					\$4,907.00
15	1-Sep-16					\$4,907.00
16	1-Dec-16					\$4,907.00
17	1-Mar-17					\$4,907.00
18	1-Jun-17					\$4,907.00
19	1-Sep-17					\$4,907.00
20	1-Dec-17					\$4,907.00
21	1-Mar-18					\$4,907.00
22	1-Jun-18					\$4,907.00
23	1-Sep-18					\$4,907.00
24	1-Dec-18					\$4,907.00
25	1-Mar-19					\$4,907.00
26	1-Jun-19					\$4,907.00
27	1-Sep-19					\$4,907.00
28	1-Dec-19					\$4,907.00
29	1-Mar-20					\$4,907.00
30	1-Jun-20					\$4,907.00
31	1-Sep-20					\$4,907.00
32	1-Dec-20					\$4,907.00
33	1-Mar-21					\$4,907.00
34	1-Jun-21					\$4,907.00
35	1-Sep-21					\$4,907.00
36	1-Dec-21					\$4,907.00
37	1-Mar-22					\$4,907.00
38	1-Jun-22					\$4,907.00
39	1-Sep-22					\$4,907.00
40	1-Dec-22					\$4,907.00
41	1-Mar-23					\$4,907.00
42	1-Jun-23					\$4,907.00

43	1-Sep-23					\$4,907.00
44	1-Dec-23					\$4,907.00
45	1-Mar-24					\$4,907.00
46	1-Jun-24					\$4,907.00
47	1-Sep-24					\$4,907.00
48	1-Dec-24					\$4,907.00
49	1-Mar-25					\$4,907.00
50	1-Jun-25					\$4,907.00
51	1-Sep-25					\$4,907.00
52	1-Dec-25					\$4,907.00
53	1-Mar-26					\$4,907.00
54	1-Jun-26					\$4,907.00
55	1-Sep-26					\$4,907.00
56	1-Dec-26					\$4,907.00
57	1-Mar-27					\$4,907.00
58	1-Jun-27					\$4,907.00
59	1-Sep-27					\$4,907.00
60	1-Dec-27					\$4,907.00
61	1-Mar-28					\$4,907.00
62	1-Jun-28					\$4,907.00
63	1-Sep-28					\$4,907.00
64	1-Dec-28					\$4,907.00
65	1-Mar-29					\$4,907.00
66	1-Jun-29					\$4,907.00
67	1-Sep-29					\$4,907.00
68	1-Dec-29					\$4,907.00
69	1-Mar-30					\$4,907.00
70	1-Jun-30					\$4,907.00
71	1-Sep-30					\$4,907.00
72	1-Dec-30					\$4,907.00
73	1-Mar-31					\$4,907.00
74	1-Jun-31					\$4,907.00
75	1-Sep-31					\$4,907.00
76	1-Dec-31					\$4,907.00
	TOTAL					\$393,711.20

## SETTLEMENT AGREEMENT

**WHEREAS** Wayron, LLC (hereinafter “Wayron”) was a party to one or more collective bargaining agreements with the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, and/or its affiliate local lodges, under which agreement(s) Wayron was obligated to make employee fringe benefit contributions to the Boilermaker-Blacksmith National Pension Fund (hereinafter “the Fund” or “the Plan”); and

**WHEREAS**, the obligation of Wayron to make employee fringe benefit contributions to the Fund has terminated; and

**WHEREAS**, by letter dated June 1, 2012, the Fund notified Wayron that the Fund had assessed withdrawal liability against Wayron, pursuant to Section 4219(b) of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1399(b) (hereinafter “Withdrawal Liability”); and

**WHEREAS**, Wayron has challenged the amount of the Withdrawal Liability assessed against it by the Fund and has requested arbitration to assert its challenges; and

**WHEREAS**, the Fund has filed an action in the United States District Court for the District of Kansas against Wayron, captioned as *Boilermaker-Blacksmith National Pension Fund, et al. v. Wayron, Inc.*, Case No. 13-cv-2236 (“the Withdrawal Liability Lawsuit”), lawsuit seeking to collect interim withdrawal liability payments from Wayron; and

**WHEREAS**, the Parties desire to avoid arbitration and/or other proceedings, and the necessary risks, costs, and expenses associated therewith, by settling and compromising all claims associated with the Withdrawal Liability assessed by the Fund against Wayron; and

**WHEREAS**, the Fund has also filed an action in the United States District Court for the District of Kansas against Wayron, captioned as *Boilermaker-Blacksmith National Pension Fund, et al. v. Wayron, Inc.*, Case No. 13-cv-2214 (“the Delinquency Lawsuit”), for the collection of allegedly delinquent contributions, liquidated damages, and interest; and

**WHEREAS**, the Fund and Wayron desire to settle and compromise the Withdrawal Liability, the Withdrawal Liability Lawsuit, and the Delinquency Lawsuit;

**NOW THEREFORE**, in consideration of their mutual promises and covenants, the undersigned parties hereby enter into the following settlement agreement (AGREEMENT):

1. The above statements are incorporated as a material part of the AGREEMENT and are not mere recitations.

2. **Payment for Withdrawal Liability.** The parties agree that Wayron's debt for Withdrawal Liability toward the Fund totals \$445,140.00. The Fund agrees that Wayron may satisfy its Withdrawal Liability to the Fund by making quarterly payments in the amount of Four Thousand Five Hundred and No/100 Dollars (\$4,500.00) per quarter over a period of 120 quarters. The first quarterly payment shall be due by September 1, 2014, and each successive quarterly payment shall be postmarked via first Class Mail no later than the 10th day of the months of December, March, and June, and September. If the due date for postmarking and mailing the payment falls on a weekend or holiday, it is agreed that payment shall be considered timely if postmarked and mailed on the next business day following the weekend or holiday.

3. **No Penalty for Early Payment.** Wayron may make, without penalty, payments in amounts greater than \$4,500/quarter. In no event, however, shall any early payments made by Wayron reduce Wayron's obligation hereunder to make payment of at least \$4,500.00/quarter for 120 quarters. In the event of the receipt of any early payments, the outstanding balance due under this AGREEMENT shall be computed based upon all payments received, with interest accruing at the rate of 1.33% per annum. Wayron, LLC reserves the right at its sole discretion to pay the full amount of the remaining withdrawal liability amount in a single lump sum at any time during the 30-year payment plan, adjusted to the present value at that time, by requesting the Trustees to provide a lump sum present value payment estimate, which the Trustees shall provide to Wayron LLC within 30 calendar days of the request.

4. **Payment for the Delinquency Lawsuit.** Wayron agrees to pay the total amount of \$7,132.87 in settlement of the amounts alleged to be due and owing in the Delinquency Lawsuit. The first payment of no less than \$1,500.00 (One Thousand Five Hundred and No/100 Dollars) shall be due within ten (10) days of the Effective Date of this AGREEMENT, and thereafter shall be paid by making monthly payments, on or by the 10th day of the month, in an amount that is no less than \$1,500.00, until the full sum has been paid. Upon receipt of this sum, the Fund agrees that it shall promptly take steps to effect the dismissal of the Delinquency Lawsuit without prejudice. Upon receipt of the full of sum of \$7,132.87, the Fund agrees that Wayron shall be released and fully discharged from all liability for all amounts claimed in the Delinquency Lawsuit.

5. **Default and Acceleration of Liability.** It is understood and agreed that Wayron shall be considered to have breached the terms of this AGREEMENT and to be in Default in the event that Wayron fails to make full and timely payments of \$4,500/quarter as set forth in Paragraph 2 above. In the event of such a Default, it is agreed that Wayron's liability for the Withdrawal Liability acknowledged in Paragraph 2 shall again become immediately due and owing; and it is further agreed that the Fund may proceed to enforce its rights to collect the outstanding balance on the Withdrawal Liability, less amounts paid.

6. **Right to Cure Default.** In the event that Wayron becomes in Default as stated in Paragraph 5 herein, upon being provided with notice of such Default by the Funds in writing, Wayron shall have the right to cure the Default by making the required delinquent payment within thirty (30) days of receiving the notice.

7. **Dismissal of the Pending Withdrawal Liability Lawsuit.** Upon the execution of this AGREEMENT, the Fund agrees to dismiss the Withdrawal Liability Lawsuit pending in the United States District Court for the District of Kansas against Wayron. The parties agree that the dismissal of the Withdrawal Liability Lawsuit referenced herein shall be without prejudice to refileing.

8. **Waiver of Total Liability.** In the event that Wayron makes full and timely payments required under Paragraph 2 herein, then, upon the successful completion of all such obligations assumed herein by Wayron, the total Withdrawal Liability acknowledged in Paragraph 2 above shall be deemed satisfied.

9. **Waiver of Defenses in the Event of Default.** In the event of a Default as set forth in Paragraph 5 herein, Wayron agrees to waive, and hereby does waive, any defenses it would otherwise have in any legal action by the Funds and/or their fiduciaries to enforce their rights herein, including, but not limited to, the defenses of statute of limitations, laches, res judicata, collateral estoppel, the 20-year cap of ERISA § 4219(c)(1)(B) or successor provision, and/or any other defense that would prevent the Funds from enforcing their rights preserved herein under any federal or state law.

10. **Integration Clause.** The signatory parties adopt this AGREEMENT as a complete and exclusive statement of the terms of their AGREEMENT and understanding with regard to the above-referenced matters.

11. **Modifications.** This AGREEMENT, and any provisions herein, may not be changed, waived, discharged or terminated unless by a written instrument, signed by the parties hereto.

12. **Acknowledgment of AGREEMENT.** The parties acknowledge they have been given ample time to review this AGREEMENT. It is expressly understood that the AGREEMENT has been freely and voluntarily entered into by the parties hereto. The parties further acknowledge that neither has relied on any statements or representations of the other, except as set out in this AGREEMENT.

The Parties hereby enter into this AGREEMENT this 15 day of APR, 2014 ("Effective Date").

WAYRON LLC

Faye Dietz, CEO

Printed Name and Title:

Date: 4/15/14

BOILERMAKER-BLACKSMITH  
NATIONAL PENSION FUND

John T. Fultz  
Printed Name and Title: Joint Committee Rep

Date: 4/17/2014

035730/00005/5443425v1

The  
**WILLIAM C. EARHART**

Company, Inc.

**ADMINISTRATORS OF EMPLOYEE BENEFIT PLANS**

P.O. BOX 4148. PORTLAND, OREGON 97208. PHONE (503) 282-5581. NORTH AMERICAN WATS (800) 547-1314. FAX (503) 460-2975

MAIN OFFICE: 3140 N.E. BROADWAY

**FAX**

**DATE:** 12/11/2014  
**TO:** Kristen Bremer Moore  
**COMPANY:** Topkon Torp  
**FAX:** 503-972-3854  
**FROM:** Ryan Stephens  
**RE:** Wayron LLC

**Number of pages transmitted including this page:** \_\_\_\_\_ 8

**NOTES/INSTRUCTIONS:** Ms. Bremer Moore - Included is the correspondence from the Oregon and SW Washington  
Painters Pension Trust regarding the Withdrawal Liability Assessment and Wayron LLC.

The letter included in this FAX was also mailed on 12/10/14 from our office but did not include the supplemental  
information from the Plan actuary, nor did it reflect the date of that correspondence. This letter dated 12/11/14 should replace  
the letter dated 12/10/14.

Please let me know if you have any questions.

# ***Oregon and Southwest Washington Painters Pension Plan***

*c/o The William C. Earhart Company, Inc.  
P. O. Box 4148 Portland, Oregon 97208  
Phone (503) 460-5239 Fax (503) 460-2975*

December 11, 2014

## **VIA FACSIMILE AND U. S. MAIL**

Ms. Kristen L. Bremer Moore  
Tonkon Torp LLP  
1600 Pioneer Tower  
888 S.W. Fifth Avenue  
Portland, Oregon 97204

Subject: Oregon and Southwest Washington Painters Pension Trust  
Wayron LLC Request For Review of Withdrawal Liability Assessment

Dear Ms. Bremer Moore:

By October 27, 2014, correspondence you requested review on Wayron LLC's ("LLC") behalf of two matters regarding the August 27, 2014, assessment of withdrawal liability on LLC, by the Board of Trustees ("Trustees") of the Oregon and Southwest Washington Painters Pension Trust Fund ("Trust").

### **Calculation of Total Withdrawal Liability Amount and Payment Schedule.**

The first matter raised is whether the withdrawal liability worksheets provided to you were in error because they were based in part on the contributions history of Wayron, Inc. ("Inc.") before the sale of its assets to LLC that closed November 30, 2014.

At their November 18, 2014, meeting the Trustees considered that matter and decided that the \$45,590.60 of withdrawal liability was not in error and is correct. As shown on the Exhibit I withdrawal liability calculation sheet provided to you with the Trust Office's August 27, 2014, correspondence, Inc.'s contributions before December 1, 2002, were not used in determining that withdrawal liability amount. Only LLC's contributions from the beginning of the five-year period ending December 31, 2008 (namely January 1, 2004), and later through December 31, 2010, were used in calculating LLC's withdrawal liability.

In item number 1 of Wayron LLC's request you also say on LLC's behalf that its withdrawal liability should be calculated as of December 1, 2002 and be based only on contributions paid by LLC as of that date. (The Trustees suspect what you meant is that Wayron LLC's contributions from that date forward are what withdrawal liability is to be based on. That literal request by LLC is denied and the Trustees determined that calculating Wayron LLC's withdrawal liability as of December 31, 2010 based on its contributions from January 1, 2004 forward is correct. The Plan is a calendar year plan and Wayron in Jeff Spendlove's January 28, 2011 letter to Painters District Council #5 and in his completion of the Trust's withdrawal information form admitted a mid-January 2011 cessation of the collective bargaining agreement obligation to contribute to the Trust. That resulted in the December 31, 2010 withdrawal liability calculation date based on the contributions by Wayron LLC for covered work from January 1, 2004 through December 31, 2010. Exhibit 6

The initial payment schedule for paying that withdrawal liability amount did include covered hours worked with Inc. in 2002 and 2001 as shown on Exhibit III of the August 5, 2014, letter from Peter R. Sturdivan of Milliman, Inc., the Plan actuary, but not the contribution rate for those hours. At the Trustees meeting, they referred to the Trustee officers whether Inc.'s covered hours before December 1, 2002, and the contribution rate for those hours should or should not be used in determining the payment schedule. That was to be determined after receiving from you the requested information about the relationship between Inc. and LLC. You provided information by November 19, 2014, correspondence and December 9, 2014 e-mail to Donald A. Burns of Miller Nash LLP, the Trustees legal counsel. Based on that information the Trustee officers have concluded that there was not sufficient evidence on which to include Inc.'s covered hours history or the contribution rate on those hours in calculating Inc.'s withdrawal liability payment schedule. Enclosed is a copy of the December 10, 2014, correspondence from Mr. Sturdivan with the revised payment schedule. Under that schedule the quarterly payments are \$6,853.81, rather than the \$8,946.55 in the prior schedule. Inc. paid that higher amount that was due October 1, 2014, such that it has overpaid \$2,092.74. That amount can be taken as a credit against the next quarterly payment that is due January 1, 2015, such that \$4,761.07 is the amount due then, with the following monthly payments to be \$6,853.81 per the enclosed Exhibit III payment schedule.

**Request For Delayed Payment Schedule.** The second matter LLC raised is that the payment schedule is financially impossible and would cause undue burden on LLC. LLC asks for a 20-year payment plan. Presumably the enclosed reduced payment schedule would not change that request. An employer's ability to pay is not a legal basis for a review of the assessment of its withdrawal liability. The Trustees at their November 18, 2014, meeting determined to not approve a 20-year payment schedule or any schedule other than the enclosed reduced schedule.

**Notice of Arbitration.** LLC may initiate arbitration by notice to the Trustees at the above address within 60 days after the earlier of the date of this correspondence or 120 days after Inc.'s October 27, 2014, request for review. The 60-day period after the date of this correspondence will be the earlier of the two periods.

As the Trustees or Trustee officers approved the request that covered hours by Inc. and the contribution rate on those hours not be included in the calculation of the schedule for paying the withdrawal liability, those contributions were not used in the first place in calculating the amount of the withdrawal liability, and Inc.'s inability to pay the reduced schedule of withdrawal liability payments not a legal basis to challenge the assessment of withdrawal liability, there does not appear to be any basis for Inc. to arbitrate the Trust's assessment of withdrawal liability. The losing party in any arbitration or subsequent litigation may be liable for the prevailing party and reasonable costs, including attorney and paralegal fees.

Very truly yours,

Chairman, Board of Trustees



111 SW Fifth Avenue  
Suite 3700  
Portland, OR 97204  
USA

Tel +1 503 227 0634  
Fax +1 503 227 7956

milliman.com

December 10, 2014

Mr. Ryan Stephens  
The William C. Earhart Co., Inc.  
3140 N.E. Broadway  
Portland, Oregon 97208

**Re: Oregon and Southwest Washington Painters Pension Plan  
Withdrawal Liability Calculation for Wayron, LLC**

Dear Ryan:

As requested, we have calculated the withdrawal liability for Wayron, LLC based on a withdrawal from the Oregon and Southwest Washington Painters Pension Plan during the 2011 plan year. The data and methods used and the results of our calculations are summarized below.

**Withdrawal Liability Amount**

The withdrawal liability for Wayron, LLC is **\$45,590.60**. The calculation of this amount is shown on Exhibit I, which can be provided to the company with the demand letter.

**Revised Amortization Schedule**

The revised amortization schedule has been prepared with approval by the Trustees to exclude all hours attributable to Wayron Inc. prior to December 1, 2002 because Wayron LLC purchased assets from Wayron Inc. on that date and in the sale agreement did not assume Wayron's Inc. covered hours history.

We assumed that Wayron, LLC will make quarterly installments. The payment schedule consists of six quarterly installments of **\$6,853.81** beginning October 1, 2014, followed by a final payment of **\$5,830.89**. Wayron, LLC may elect to pay their withdrawal liability in a single lump sum payment.

**Calculation Information**

Exhibit III displays the annual contribution base units and the highest contribution rate information used in calculating the withdrawal liability payment. This information was provided by the William C. Earhart Co., Inc. and was accepted without audit. If any of these figures are inaccurate, the calculation will need to be revised.

**Assumptions and Methods**

The following assumptions and methods were used in this determination:

Mr. Ryan Stephens  
December 10, 2014  
Page 2

- The actuarial assumptions used for the determination of liabilities are the actuarial assumptions used for the ERISA funding requirements for the 2011 Plan Year. These assumptions are detailed in the 2011 actuarial valuation.
- The statutory (presumptive) method described in ERISA Section 4211(b) and Article 17 of the plan document in effect on December 31, 2010 was used to determine withdrawal liability.
- The market value of assets is the basis approved by the Trustees for valuing the Plan's assets for purposes of determining unfunded vested benefit liability.
- Total employer contributions shown on the worksheet were taken from the Schedule B and Schedule MB Form 5500 for each year shown. We are not aware of any withdrawn employers and have therefore made no adjustments to the employer contributions.
- Any changes to the data listed on the enclosed exhibits may change the amount of withdrawal liability, and the withdrawal liability payment for Wayron, LLC.

### **Third Party Restriction**

This letter was prepared at the request of and only for the benefit of the Trustees, the Plan's professionals, and Wayron, LLC. We do not intend to benefit any other party, and no other party should draw any conclusion regarding withdrawal liability from this letter. This correspondence may not be distributed to other parties without Milliman's consent.

The consultants who worked on this assignment are pension actuaries. Milliman's advice is not intended to be a substitute for qualified legal counsel.

### **Certification**

On the basis of the foregoing, we hereby certify that, to the best of our knowledge and belief, this report is complete and accurate and has been prepared in accordance with generally recognized and accepted actuarial principles and practices. We are members of the American Academy of Actuaries and meet the Qualification Standards to render the actuarial opinion contained herein.

Sincerely,



Peter R. Sturdivan, FSA, EA, MAAA  
Principal and Consulting Actuary

PRS:brg  
encl.

cc: Mr. Don Burns

**Oregon and Southwest Washington Painters Pension Plan**

**Withdrawal Liability Calculation for Wayron, LLC.**

**Calculation of Withdrawal Liability**

Year Ended December 31:	Unamortized Balance of Withdrawal Liability Pools		Reallocated Pools (3)	Contributions During 5-Year Period Ending on the Date Pool Established		Liability Allocated (5) divided by (4), times the sum of (2) and (3) (6)
	Basic Pools (2)			Total Plan Contributions (4)	Employer Contributions (5)	
2008	20,263,711		0	19,837,431	97,341.66	\$ 99,433.40
2009	(371,759)		0	20,610,755	97,561.94	(1,759.74)
2010	(526,492)		0	20,521,103	81,191.36	(2,083.06)

A. Gross Liability (Sum of Column 6), but not less than zero

B. De Minimis

C. Deductible, (B), but not greater than [\$100,000 + (B) - (A)], nor less than \$0

D. Withdrawal Liability: (A) - (C), but not less than zero

\$ 95,590.60  
\$ 50,000.00  
\$ 50,000.00  
\$ 45,590.60

**Oregon and Southwest Washington Painters Pension Plan**

**Withdrawal Liability Amortization Schedule for Wayron, LLC.**

(for withdrawals occurring from January 1, 2011 through December 31, 2011)

Original Balance:	\$45,590.60
Annual Payment:	\$27,415.24
Withdrawal Liability Interest Rate:	7.50%

<u>Payment Due Date</u>	<u>Payment Due</u>	<u>Remaining Amount after Payment</u>
October 1, 2014	\$ 6,853.81	\$ 38,736.79
January 1, 2015	6,853.81	31,882.98
April 1, 2015	6,853.81	25,029.17
July 1, 2015	6,853.81	18,175.36
July 1, 2015 with interest		19,538.51
October 1, 2015	6,853.81	12,684.70
January 1, 2016	6,853.81	5,830.89
April 1, 2016	5,830.89	0.00

**Oregon and Southwest Washington Painters Pension Plan**  
**Withdrawal Liability Calculation for Wayron, LLC.**  
**Information Used in Calculation of Withdrawal Liability Payment**

<u>Plan Year Ending December 31,</u>	<u>Contribution Base Units</u>
2010	2,002.75
2009	9,778.00
2008	13,066.75
2007	11,772.25
2006	13,124.50
2005	13,168.25
2004	11,374.00
2003	14,809.76

Highest Contribution Rate during the ten year period ending December 31, 2011: \$2.09

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **DECLARATION OF KRISTIN BREMER MOORE IN SUPPORT OF CHARGED PARTY/RESPONDENT WAYRON, LLC'S MOTION FOR RECONSIDERATION OF BOARD'S 8/2/2016 ORDER** on:

Jeff Brooke  
Painters and Allied Trades Local 10  
Union/Charging Party  
11105 NE Sandy Blvd.  
Portland, OR 97220-2579

Greg Heidal  
Machinists District Lodge 160  
Union/Charging Party  
3516 S. 47th St., Ste. 105  
Tacoma, WA 98409-4427

Lance Hickey  
Boilermakers Local No. 104 Affiliated with  
International Brotherhood of Boilermakers,  
Iron Ship Builders, Blacksmiths, Forgers and  
Helpers, AFL-CIO  
Union/Charging Party  
2800 1st Ave. Ste. 220  
Seattle, WA 98121-1131

Ronald K. Hooks  
Regional Director, NLRB Region 19  
2948 Jackson Federal Building  
915 2nd Ave.  
Seattle, Washington 98174-1078

Sarah Pring Karpinen  
Counsel for the Acting General Counsel  
NLRB, Region 19  
Patrick V. McNamara Federal Building  
477 Michigan Ave., Rm 300  
Detroit, MI 48226

by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to each person's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below;

by causing a copy thereof to be filed electronically through the *nlr.gov* e-filing system on the date set for the below;

DATED: August 29, 2016.

s/ Kristin L. Bremer Moore  
Kristin L. Bremer Moore, OSB No. 032744  
Attorney for Wayron, LLC