

## LEGAL CORNER

# The Pen is Mightier than the Sword

## *New law offers promise of protection against unequal pay*

By Harvey Mars, Esq.

They say the pen is mightier than the sword. President Obama has proven that this old adage is still true when he signed into law the Lilly Ledbetter Fair Pay Act at the end of January. This new law, the first signed by our new President, should be celebrated, this month, which is aptly named Women's History Month.

As readers may recall, my February 2008 column (available at [www.HarveyMarsAttorney.com](http://www.HarveyMarsAttorney.com) under "Articles and Publications") lamented a then recent United States Supreme Court decision, *Ledbetter v. Goodyear Tire Company*, 127 S.Ct. 2162 (May 29, 2007).

Ms. Ledbetter, a 19-year veteran supervisor in a Goodyear Tire Com-

pany factory, had discovered prior to her retirement that her male counterparts in the factory were being paid substantially more than she, a practice clearly in violation of the Equal Pay Act.

Though a jury determined that the Goodyear Tire Company was liable for pay discrimination, the Supreme Court, in a five to four decision, threw out the suit. They said Ms. Ledbetter's claim was made too late (or "time barred") because she should have sued as soon as the pay disparity occurred for the first time – over 19 years previously.

By ruling this way, the Supreme Court rejected applicability of the "continuing violation doctrine," a theory that serves to extend the statute of limitations so long as the employer's disparate pay practices

continue. In other words, even though it was 19 years ago when Ms. Ledbetter first started making less money than her male colleagues, this pay disparity was continuing every day.

The Supreme Court was wrong to overrule the trial court's finding of liability and give Goodyear a pass. At the time, Justice O'Connor issued a scathing dissent imploring the legislature to right this wrong.

While former President George W. Bush refused to sign legislation correcting this decision, in one small stroke of his pen, President Obama made it his very first priority.

The Lilly Ledbetter Fair Pay Act now loosens the strict time limitations for initiating an equal pay suit. A six-month clock starts to toll the statute of limitations each time a worker receives a disparate paycheck. If this were law when Ms. Ledbetter initiated suit, she would have prevailed.

The enactment of this bill was to a large extent a bipartisan effort, and members of both parties were present at the bill signing.

Also present was Lilly Ledbetter, who was an honoree during the bill signing ceremony.

While she will not see any money as a result of this new legislation, upon receiving one of the pens President Obama used to sign the law, Ms. Ledbetter beamed and said,

"With the president's signature today, I have an even richer reward."

May we all reap the rich rewards of President Obama's pen.

### PAYBACK

In the January issue, we placed a notice regarding Local 802's efforts to collect on a \$33,015 judgment entered against Marty Bell for wages and benefits owed to musicians who performed for his Off Broadway production of "Supper Club." Shortly after the article ran, Mr. Bell contacted the union and resumed paying installments towards the ultimate satisfaction of the judgment. These payments will be distributed to musicians through the union's payroll service. Mr. Bell has already made one payment under his new agreement with the union. ☐

Harvey Mars is one of Local 802's lawyers. Legal questions are welcome from 802 members. E-mail them to [JurMars566@aol.com](mailto:JurMars566@aol.com). For those who are interested in reading additional articles that Mars has authored, please check out his Web site at [www.HarveyMarsAttorney.com](http://www.HarveyMarsAttorney.com). Click on "Publications & Articles" from the top menu. All of his past Allegro articles can be found there as well. Nothing in these articles should be construed as formal legal advice given in the context of an attorney-client relationship.



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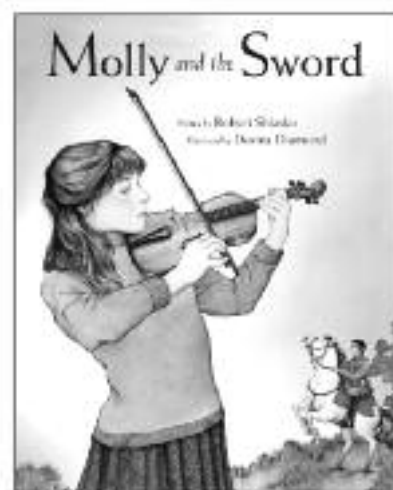
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