

RESOLUTION No. 37317

Authorize City Attorney to appear as *amicus curiae* on behalf of the City of Portland in the case of *Miller v. Ford*, seeking clarity from the Oregon Supreme Court regarding the application of Oregon's product liability statute of repose to defective products produced in a state without an applicable statute of repose. (Resolution)

WHEREAS, The City of Portland has filed a lawsuit against Monsanto Company (*City of Portland v. Monsanto Company*) to recover costs the City has incurred and will continue to incur to address the effects of contamination caused by polychlorinated biphenyls (PCBs), which are biological toxins that accumulate in fish tissue and are persistent in the environment for decades; and

WHEREAS, In *City of Portland v. Monsanto Company*, Monsanto has argued that the City's claims are time-barred by Oregon's product liability statute of repose; and

WHEREAS, Oregon's product liability statute of repose for claims accruing after December 31, 2009, has a "look-away" provision, requiring courts to apply the later of ten years or the expiration of the applicable statute of repose of the state where the product was manufactured (See ORS 30.905(2)); and

WHEREAS, Judge Mosman has not issued a final order on Monsanto Company's motion to dismiss the City's claims and has been notified of the Oregon Supreme Court's acceptance of the certified question in *Miller v. Ford*; and

WHEREAS, Aline Miller brought an action, in the United States District Court for the District of Oregon, *Miller v. Ford Motor Company*; and

WHEREAS, The Oregon District Court in *Miller v. Ford*, found that Oregon's statute of repose imposes no limitation because the claim arose out of defective products manufactured in a state without an applicable statute of repose (See *Miller v. Ford*, 2014 WL 5461858 (D. Or. Oct. 27, 2014)); and

WHEREAS, On appeal in *Miller v. Ford*, the Ninth Circuit certified the question of proper interpretation of the look-away provision in Oregon's product liability statute of repose for consideration by the Oregon Supreme Court, and the Oregon Supreme Court accepted the certified question; and

WHEREAS, The Oregon Supreme Court's decision on the certified question in *Miller v. Ford* will likely impact the City's claims in *City of Portland v. Monsanto Company*, and could impact or limit the City's ability to assert certain claims in the future to recover costs associated with public harms caused by defective products; and

WHEREAS, It is in the public interest of the City to appear as *amicus curiae* to communicate how public entities may be affected by the Oregon Supreme Court's interpretation of the product liability statute of repose.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Portland, that the City Attorney or her designee, on behalf of the City of Portland, may file an amicus brief in support of Aline Miller in *Aline Miller v. Ford Motor Company*, Supreme Court No. S065010.

Adopted by the Council: SEP 27 2017

Commissioner:

Prepared by: Naomi Sheffield

Date Prepared: September 6, 2017

Mary Hull Caballero

Auditor of the City of
Portland

By



Deputy

1057

Agenda No.

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Title

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INTRODUCED BY Commissioner/Auditor: <u>Mayor Wheeler</u>	CLERK USE: DATE FILED <u>SEP 19 2017</u>
COMMISSIONER APPROVAL Mayor—Finance & Administration – Wheeler <u>KC</u> Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Eudaly	Mary Hull Caballero Auditor of the City of Portland By: <u>[Signature]</u> Deputy
BUREAU APPROVAL Bureau: City Attorney Bureau Head: Tracy Reeve	ACTION TAKEN:
Prepared by: Naomi Sheffield Date Prepared: September 7, 2017	
Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
City Auditor Office Approval: required for Code Ordinances	
City Attorney Approval: required for contract, code, easement, franchise, charter, Comp Plan	
Council Meeting Date 09/27/17	

AGENDA
TIME CERTAIN <input type="checkbox"/> Start time: _____ Total amount of time needed: _____ (for presentation, testimony and discussion)
CONSENT <input checked="" type="checkbox"/>
REGULAR <input type="checkbox"/> Total amount of time needed: _____ (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	✓	
2. Fish	2. Fish	✓	
3. Saltzman	3. Saltzman	✓	
4. Eudaly	4. Eudaly	✓	
Wheeler	Wheeler	✓	