IN THE SUPREME COURT OF THE STATE OF OREGON

ALINE L. MILLER, an individual, Plaintiff, v. FORD MOTOR COMPANY, a Delaware corporation, Defendant.	United States Court of Appeals for the Ninth Circuit No. 1436001 Oregon Supreme Court No. S065010

AMICI CURIAE BRIEF OF NATIONAL ASSOCIATION OF MANUFACTURERS AND OREGON BUSINESS & INDUSTRY IN SUPPORT OF FORD MOTOR COMPANY

Upon Order of the Oregon Supreme Court Accepting Certified Question, entered August 3, 2017, by The Honorable Thomas A. Balmer, Chief Justice of the Oregon Supreme Court

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QUESTION PRESENTED AND PROPOSED RULE OF LAW

Question: The Ninth Circuit asked this Court to decide the following question of law: Under ORS 30.905(2), if the state of manufacture has no relevant statute of repose, is a plaintiff entitled to an unlimited period (subject to the statute of limitations) in which to bring suit in Oregon court?

Rule of Law: ORS 30.905(2) provides that a civil products liability action "must be commenced before the later of . . . ten years . . . or . . . the expiration of any statute of repose for an equivalent civil action in the state in which the product was manufactured, or . . . imported." Accordingly, a ten-year period of repose will apply unless the state of manufacture or import has a statute of repose and that statute provides a longer period. If the other state has no statute of repose for products liability actions, Oregon's ten-year repose period applies.

STATEMENTS OF INTEREST

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs more than 12 million men and women, contributes $2.17 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for more than three-quarters of all private-sector research and development in the nation. The NAM is the voice of the manufacturing

community and leading advocate for policies that help manufacturers compete in the global economy and create jobs across the United States.

Oregon Business & Industry (OBI) was created in 2017 through a merger of Associated Oregon Industries and Oregon Business Association. OBI is Oregon's largest and most influential comprehensive business association that advocates for a strong economy and a healthy, prosperous, and competitive Oregon. As an advocate for business, OBI represents its members before Oregon's legislature, courts of law, and rulemaking agencies on matters dealing with education, the environment, health care, employment and labor law, natural resources, taxation, transportation, workplace safety and workers' compensation, and other issues important to Oregon business.

STATEMENT OF THE CASE AND FACTS

Amici adopt Defendant's statement of the case and facts to the extent relevant to the arguments in this brief.

SUMMARY OF ARGUMENT

The Oregon Legislature established a statute of repose in 1977 to balance the expansive, new product liability doctrines in the 1960s and 1970s with the need for an outer time limit on litigation over old products. If a product was in use for many years and did not demonstrate a defect, the product would be non-defective as a matter of law. *See Sealey v. Hicks*, 309 Or 387, 788 P2d 435 (1990)

(The plaintiff is injured, but does not have a "legally cognizable injury."). In 1977, the Legislature enacted an eight-year repose period for all products.

In 2009, the Legislature refined this balance, making Oregon's products liability statute of repose ten years, including for the automobile at issue in the current litigation. *See* ORS 30.905(2). It also included a provision that allowed a longer repose period if the state where the product was manufactured provided a statute with such a longer repose period. *See id*. As detailed below, only a few states with statutes of repose had longer repose periods. All indications, based on the statute's language and the national and local history of statutes of repose, are that the Legislature's amendments relaxed, not gutted, Oregon law.

Plaintiff, though, is asking the Court to read the 2009 amendments in a way that would gut Oregon's statute of repose. She argues that, despite the plain meaning of ORS 30.905(2)(b), the Court should rule that if another state has no statute of repose, there should be no repose period at all for that product in Oregon. For these products, long-tail litigation would be unbounded and the balance achieved in the 1977 and 2009 legislation would be nullified. Because some thirty states have no statutes of repose, which the Legislature knew when it enacted these reforms, ruling for the Plaintiff would swallow the statute. Such an outcome would belie the intent of the Legislature, which made the public policy decision that a repose period benefits Oregon manufacturers, retailers, consumers, and others by protecting them from the impacts of long-tail litigation.

Amici appreciate that the trial bar, along with any plaintiff, would prefer not to have any statute of repose, but such an outcome does not express Oregon law or the balance the Legislature established. Lines, which may seem arbitrary to some, are common in liability law. The Court has long recognized that when a repose period ends and all claims are extinguished, it could very well lead to "unfairness" against a given plaintiff. *DeLay v. Marathon LeTourneau Sales*, 291 Or 310, 315, 630 P2d 836 (1981). Even still, Oregon courts have supported statutes of repose because long-tail liability can undermine judicial fairness. *See, e.g.*, *Beals v. Breeden Bros, Inc.*, 113 Or App 566, 833 P2d 348 (1992) (setting forth benefits of Oregon's statute of repose).

The Court's legal task of construing the statute of repose does not depend on the facts of this or any particular case, though this case is certainly emblematic of the situations the Legislature sought to address when enacting the statute of repose. The car was first sold in 2001 and bought by Plaintiff on the secondary market. She alleges that an electrical issue occurred more than 11 years after the original sale date, and that this issue made the car defective when sold in 2001. No product, and certainly no car, lasts forever. At some point, all products fail.

The Legislature understood the finite life of products when enacting the statute of repose in 1977 and modifying it in 2009. *Amici* respectfully urge the Court not to undo these important legislative determinations. Any major change to this long-standing statutory doctrine should be made only through clear,

legislative enactments, not expansive judicial interpretations. Therefore, the Court should answer "no" to the certified question: if the state of manufacture has no relevant statute of repose, a plaintiff should not be entitled to an unlimited period in which to bring a suit in Oregon court. As Oregon's statute of repose clearly provides, Oregon's ten-year statute of repose applies to these products.

ARGUMENT

I. Oregon's Statute of Repose Reflects a Legislative Balancing of Interests that Should Not Be Undone by the Court

When Oregon enacted its statute of repose in 1977, the Legislature was at the forefront of a national movement to provide commonsense boundaries to the creation of strict products liability laws of the 1960s and 1970s. *See* David G. Owen, Products Liability Law §§1.2-1.4 (2005) (examining U.S. products liability law and reforms, including the statute of repose, adopted to address this liability expansion). In 1963, the California Supreme Court led by Chief Justice Roger Traynor cast aside the doctrinal mix of tort and contract law and endorsed a new pure tort law theory of strict liability for defective products. *See Greenman v. Yuba Power Products, Inc.*, 377 P2d 897 (Cal. 1963). The Restatement (Second) of Torts § 402A (1965) closely paralleled the *Greenman* rule.

States adopted the new products liability laws quickly, and product litigation increased dramatically – by forty percent per year during the 1970s. *See* W. Kip Viscusi, *The Dimensions of the Product Liability Crisis*, 20 J Legal

Stud 147, 150 (1991). This escalation continued into the 1980s; products cases represented 2.04 percent of all civil cases in 1975, but 5.92 percent in 1985. *Id.* Also, the median verdict went from $225,000 in 1980 to $430,000 in 1987. *Id.* at 152. This increase in litigation, in turn, created a liability insurance crisis. *See* Joanna Shepherd, *Products Liability and Economic Activity: An Empirical Analysis of Tort Reform's Impact on Businesses, Employment, and Production*, 66 Vand L Rev 257, 266 (2013); Michael J. Moore & W. Kip Viscusi, *Product Liability Entering the Twenty-First Century: The U.S. Perspective* 11-12 (2001) (providing statistics on product insurance premium increases). The impact on businesses, both large and small, was severe and unsustainable.

In response to this emergent situation, the Federal Interagency Task Force on Product Liability was formed from 1976 to 1980 under Presidents Ford and Carter to study the pros and cons of products liability doctrines, their impact on the economy including from having different state laws, and solutions for mitigating unwise liability expansions. *See* Interagency Task Force on Prod. Liab., U.S. Dep't of Commerce, Final Report V-19 to V-21 (1976). The Task Force was concerned about the "growing uncertainties caused by individual, ever-changing, state product liability laws." Victor E. Schwartz & Mark Behrens, *A Proposal for Federal Product Liability Reform in the New Millennium*, 4 Tex Rev L & Pol 261 (2000). Among the Task Force's recommendations was that states should adopt uniform product liability laws.

In 1979, the Department of Commerce issued the Model Uniform Product Liability Act (UPLA), which included a statute of repose. *See* UPLA § 110(A) (1979); 44 Fed. Reg. 62,714, 62,732 (1979). UPLA suggested that a seller should not be subject to liability for a product beyond its "useful safe life." *Id.* As products age and reach their useful lives, the responsibility to maintain their utility shifts to those who exercise control over the products. These individuals, not the manufacturer, can assess their products' long-term wear and tear, natural deterioration, and need for repair. Ultimately, the Department settled on a ten-year repose period. *See* Michael M. Martin, *A Statute of Repose for Product Liability Claims*, 50 Fordham L Rev 745, 750-51 (1982).

Overall, 19 states enacted statutes of repose for products during the 1970s and 1980s. *See* Am. L. Prod. Liab. 3d § 47:70. Most statutes provided a 10-year repose period from the date on which the product was first purchased for use or consumption. North Carolina initially had the shortest at 6 years, and Texas and Iowa had the longest at 15 years. *See* N.C. Gen. State § 1-46.1(a)(1) (extending the statute to 12 years for certain actions); Tex. Civ. Prac. & Rem. Code § 16.012; Iowa Code § 614.1(2A). By comparison, America's international competitors, Japan and the European Union, have ten-year statutes of repose covering all goods. *See* Mark A. Behrens & Daniel H. Raddock, *Japan's New Product Liability Law: The Citadel of Strict Liability Falls, But Access to Recovery is Limited by Formidable Barriers*, 16 U Pa J Int'l Bus L 669, 702 (1995).

In 1977, the Oregon Legislature adopted an eight-year statute of repose. ORS 30.905(1) (1977). The statute's purpose, as in these other states, was to create a "stabilizing effect" on insurance rates so that most businesses could access affordable insurance. *Davis v. Whiting Corp*., 66 Or App 541, 544, 674 P2d 1194 (1984); *Erickson Air–Crane Co. v. United Tech. Corp.*, 303 Or 281, 286, 735 P2d 614 (1987) (stating the statute of repose was a response to concerns about "the high cost of liability insurance"). The Portland Chamber of Commerce had formed its own "Liability Task Force" that included members along the entire chain of commerce, including manufacturers, wholesalers, distributors, and insurers. Dominick Vetri, *Legislative Codification of Strict Products Liability Law in Oregon*, 59 Or L Rev 363, 377 (1981) (recounting the history of Oregon's statute of repose as a response to hikes in product liability litigation and insurance rates). The group advocated for this statute of repose.

Since then, this Court has repeatedly approved of the Legislature's "authority to decide . . . that increases in insurance rates or other costs associated with litigation warrant legislation to limit the liability of manufacturers in order to ensure the continued availability of manufactured goods at a reasonable cost." *Sealey v. Hicks*, 309 Or at 397-398; *Shasta View Irrigation Dist. v. Amoco Chems. Corp.*, 329 Or 151, 986 P2d 536 (1999) ("[A] limited and predictable time period in which a manufacturer, distributor, seller or lessor would be exposed to a product liability civil action . . . reflects a legislative judgment that an injury

occurring eight years after a defective product first enters the stream of commerce is not legally cognizable because, after that time, all claims are extinguished."). The Court also has long appreciated the importance of a statute of repose to judicial fairness. *See, e.g.*, *Johnson v. Star Mach. Co.*, 270 Or 694, 700-701, 530 P2d 53 (1974) (Defendants "would necessarily find it extremely difficult, if not impossible, to mount a defense" years after a product is sold.); *Wilder v. Haworth*, 187 Or 688, 695-96, 213 P2d 797 (1950) ("[B]road considerations of justice require that there should be statutes of repose to prevent the presentation of stale claims and discourage the assertion of fraudulent ones.").

The Oregon statute largely remained in effect as enacted in 1977 for more than thirty years. In 2007, a legislator introduced a bill to repeal the State's statute of repose altogether, but this effort did not receive much support as the bill was never reported out of the legislative committee to which it was assigned. *See* 2007 Reg. Sess. S.B. 444 (2007). In 2009, when the Legislature adopted the current version of Oregon's statute, it first considered whether to copy Nebraska's law. Nebraska's statute of repose had the exact type of "look-away" provision Plaintiff is asking this Court to adopt here. It provided that "[i]f the state or country where the product was manufactured does not have an applicable statute of repose," then no statute of repose applies to the product. Neb. Rev. Stat. § 25-224 (2001). Oregon's Legislature, though, did not adopt this provision.

The Oregon Legislature's 2009 amendments were much more modest. The Legislature extended the eight-year repose period to ten years and borrowed from the first part of the Nebraska statute, stating that a product liability action must be commenced before the later of the new ten-year repose period or the expiration of any statute of repose for an equivalent civil action brought in the state in which the product was manufactured. *See* ORS 30.905(2). The Legislature's decision not to include the Nebraska provision that eliminates repose periods for goods manufactured in states without statutes of repose must be given effect. *See State ex rel. Juv. Dept. v. Ashley*, 312 Or 169, 179, 818 P2d 1270 (1991) ("We generally give meaning to the difference between an Oregon statute and the statute or model code from which it was borrowed.")

Adopting this provision would have had a major impact on product litigation in Oregon. As noted, more than 30 states do not have statutes of repose for products, and, based on national averages, 70 percent of products in Oregon are likely made in other states. *See* United States. Cong. House. Subcommittee on Commercial and Administrative Law, *Hearing on H.R. 3509, the Workplace Jobs Growth and Competitiveness Act. Mar. 14, 2006*. 109th Cong. 2nd sess. (testimony of Kevin McMahon, National Association of Manufacturers).

This Court should not impose a major change in law that the statutory text does not support and that the Legislature considered and clearly chose not to adopt. Oregon's statute of repose has been in effect for forty years, and there is

no indication the Legislature ever intended to gut that law for consumers of products made in other states. The current statute of repose represents an ongoing balancing of interests, and the Court should not undo this legislative compromise.

II. Decades of Legislative and Judicial Public Policy Support Statutes of Repose for Products Made in Other States Because They Protect the Integrity of the State's Civil Litigation System

The public policy benefit of Oregon's statute of repose would be undermined if the Court were to hold that all products manufactured in states without statutes of repose would have no repose period in Oregon. Setting an outer limit on these litigations does not just benefit out-of-state manufacturers; it affects the entire chain of commerce. The Oregon statute of repose provides important benefits to Oregon retailers, installers and other in-state businesses that are often included in product liability litigations. They also set proper expectations and create a level playing field for all Oregon consumers. Contrary to the Oregon Trial Lawyers Association's *amicus* brief, this issue is not just about aiding foreign manufacturers.

Primarily, statutes of repose protect the integrity of courts and the ability of juries to make product liability determinations for old products, regardless of where products are made. When a plaintiff brings a products case, he or she must "prove the defect was in existence at the time the product was sold," not merely that it existed at the time of injury. *Johnson v. Star Mach. Co.*, 270 Or 694, 701, 530 P2d 53 (1974). "Once memories fade, witnesses become unavailable, and

evidence is lost, courts no longer possess the capacity to distinguish valid claims from those which are frivolous or vexatious." *Galligan v. Westfield Ctr. Serv., Inc.*, 412 A2d 122, 124 (N.J. 1980); *see also Beals v. Breeden Bros, Inc.*, 113 Or App 566, 833 P2d 348 (1992) (expressing concern over "the lack of reliability and availability of evidence after a lapse of long periods of time"). Statutes of repose allow for more reliability in civil litigation, *see California Pub. Employees' Ret. Sys. v. ANZ Sec., Inc.*, 137 S Ct 2042, 2055 (2017), by sparing the courts from "stale claims." *Chase Sec. Corp. v. Donaldson*, 325 US 304 (1945). Oregon courts should not be saddled with these claims merely because the products at issue were made in other states.

Of great concern is that when key information is missing from a case, experience has shown that juries will try to fill the gaps with information that can distort justice. For example, they will substitute current knowledge and customs over the knowledge and customs at the time of manufacture – a phenomenon known as hindsight bias. *See* Gregory N. Mandel, *Patently Non-Obvious: Empirical Demonstration that the Hindsight Bias Renders Patent Decisions Irrational*, 67 Ohio St LJ 1391, 1400 (2006) (explaining that hindsight bias is "a robust and widespread cognitive limitation"). A product may have been designed with due care at the time of manufacture, including being compliant with all applicable safety standards, but a defendant may still have to explain why it had not yet developed an innovation commonplace at the time of trial or why a safety

feature was then an additional option for consumers willing to pay more. Jury instructions seeking to "de-bias" jurors have proven ineffective. *Id.* at 1446.

Oregon's use of the consumer expectation test for design defect claims makes the impact of hindsight bias even worse. This test calls upon the jury to assess the level of safety that a reasonable consumer would have expected from the product. *See McCathern v. Toyota Motor Corp.*, 332 Or 59, 75-77, 23 P3d 320 (2001). Jurors will be tempted to insert themselves and their current knowledge as the "reasonable consumer," regardless of when the purchase took place. This problem can be particularly acute for products that may not appear to be from yesteryear, but for which current expectations would distort justice. A person may not be aware of how quickly technologies develop, or how significantly expectations for a product can change in just ten to fifteen years.

Consider safety advances in the auto industry, which is the general subject of the case at bar. For example, anti-lock brakes were in about five percent of cars in model year 1987, 60 percent of cars in model year 1997, and 75 percent in model year 2007. *See* U.S. Dep't of Transp., Nat'l Highway Traffic Safety Admin. *The Long-term Effect of ABS in Passenger Cars and LTVs* 5 (Aug. 2009).[1] Ten to fifteen years makes a big difference. Similarly, the fatality rate per mile went down 80 percent from 1996 and 2009, roughly the time-period at

[1] *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/811182.*

issue in this case. *See* Robert Lange, et al., *Installation Patterns for Emerging Injury Mitigation Technologies*, 1998-2010, NHTSA Paper No. 11-0088. In both situations, jurors in 2009 assessing a crash involving a pre-1996 car would have to adjust their mindsets significantly as to the crashworthiness of the car.

Automobiles are also subject to many of the other shortcomings that courts and scholars have identified with long-tail litigation. For example, owners regularly modify products in ways that they prefer, but can make the product less safe, including against manufacturer warnings. Products can change owners several times, making it less likely that manufacturer notifications will reach the current user and more likely to lead to uncertainties as to how a product was treated. In addition to hindsight bias, juries may fill these gaps with a desire to help a sympathetic plaintiff receive payments for injuries, even when the plaintiff cannot prove a defect existed. *See Huck v. Wyeth, Inc.*, 850 N.W.2d 353, 380 (Iowa 2014) (calling out such verdicts as "[d]eep pocket jurisprudence," which it called "law without principle").

On the other hand, when juries leave these gaps unfilled, as they are supposed to do, the passage of time can make it practically impossible for a plaintiff to prove that a new problem with an old product arose out of a defect at the time of manufacture. *See* H.R. Rep. No. 106-410, at 3 (1999) (finding that it can be rare for a manufacturer to lose a product liability case over old products). In these situations, litigation is a waste of valuable resources. The cost of

defending such claims, however, can be substantial, both in terms of money spent and "person power" lost while company employees respond to discovery for documents that may be difficult, if not impossible, to find; have their depositions taken; and are forced to sit through lengthy trials. *Id.* The result is a "great incentive for manufacturers to settle even the flimsiest cases, so long as the settlement is less than or approximately equal to defense costs." *Id.*

Finally, the application of a statute of repose does not necessarily mean that a person has no avenue for recovering losses. "[A]s more and more American obtain insurance that covers many injury-related costs, the product liability system is no longer the principal source of compensation." Shepherd, 66 Vand L Rev at 279; *see also* A. Mitchell Polinsky & Steven Shavell, *The Uneasy Case for Product Liability,* 123 Harv L Rev 1437, 1462-63 (2010) (observing "the influence of product liability on compensation is incremental, only beyond that furnished by insurance."). Proper homeowner insurance would likely allow Plaintiff to recover losses here.

III. Oregon's Statute of Repose Will Benefit the State's Economy, Including Its Manufacturing Community, Only When Applied to Products Made Both In and Out of State

Statutes of repose have proven to be extremely effective in providing economic and employment benefits in the communities that have them. Emory Law Professor Joanna Shepherd has studied major product liability reforms in the past four decades, finding that a statute of repose are among the three reforms

offering "statistically significant increase[s] in economic activity." Shepherd, 26 Vand L Rev at 261-262. These reforms "increase the number of businesses, employment, and production in industries that bear most of the products liability claims." *Id.* Further, "only statutes of repose have a consistently significant relationship with manufacturing employment." *Id*. at 307. Oregon's statute of repose, though, cannot achieve these benefits unless a finite repose period applies to the products sold in the state, regardless of where manufactured.

Plaintiff and her *amici* urge the Court to focus on the competitive advantage that an exclusive repose period would give to Oregon manufacturers. Any such benefit, though, would be more than counteracted by the enormous incentive that ruling for Plaintiff would give Oregon consumers to purchase their durable goods from out-of-state manufacturers. Their period for suing over late developing product failures, even from normal wear and tear, would be endless. A rational consumer may choose to purchase out-of-state durable goods, particularly when obtaining older goods on the secondary market. Consumers of new goods may also lean toward out-of-state products if these goods have higher resale values. These scenarios hurt Oregon manufacturers of quality, long-lasting products. The Legislature may have been willing to create some distinctions between homegrown goods and goods made in other states, but not to disadvantage Oregon manufacturers in this way.

Manufacturing is vital to Oregon's economy. Manufacturers employ 10.5 percent of Oregon's workforce. *See* Nat'l Ass'n of Mfrs., *Oregon Manufacturing Facts* (2016).[2] As of the second quarter of 2017, some 6,150 manufacturing companies provide Oregonians with nearly 189,000 jobs. *See State of Oregon Employment Dep't, Made in Oregon: A Profile of the State's Manufacturing Sector* (November 3, 2017).[3] Further, Oregon's manufacturing sector is growing at nearly double the national average. *See id.* From an economic standpoint, manufacturing accounts for 25.9 percent of Oregon's total economic output, with durable goods (which this case is likely to impact) accounting for 19.1 percent of the state's GDP. *See* Bureau of Economic Analysis, Oregon (Sept. 26, 2017).[4]

The most vivid example of the benefit that statutes of repose provide to manufacturers, employees, and consumers is the experience of the general aviation community surrounding the enactment of the General Aviation Revitalization Act (GARA) of 1993. The general aviation industry in the United States had been "decimated" by long-tail products liability litigation. Victor E. Schwartz & Leah Lorber, *The General Aviation Act: How Rational Civil Justice*

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[2]http://www.nam.org/Data-and-Reports/State-Manufacturing-Data/2014-State-Manufacturing-Data/Manufacturing-Facts--Oregon/.

[3]https://www.qualityinfo.org/-/made-in-oregon-a-profile-of-the-state-s-manufacturing-sector.

[4]https://www.bea.gov/regional/bearfacts/pdf.cfm?fips=41000&areatype=STATE&geotype=3.

Reform Revitalized an Industry, 67 J Air L & Com 1269 (2002). In the 1970s, numerous manufacturers made more than 14,000 light aircrafts, but by 1993, only nine manufacturers produced about 500 small planes. *See* Timothy S. McAllister, *Law Summary, A "Tail" of Liability Reform: General Aviation Revitalization Act of 1994 & the General Aviation Industry in the United States*, 23 Transp L J 301 (1995). Beech Aircraft was adding $70,000 to each new aircraft just for litigation costs. *See* Christopher v. McNatt, Jr. and Steven L. England, *The Push for Statutes of Repose in General Aviation*, 23 Transp L J 323, 326 (1995).

President Clinton signed GARA in 1993, establishing an 18-year statute of repose for light aircraft. This law is credited with reviving the general aviation industry. At a congressional hearing on GARA's impact, John Peterson of the Montgomery County Action Council of Coffeyville, Kansas, the home of Cessna's new small aircraft plant, testified that, prior to 1995 the County's population, per capital income, property values and employment were down. *See* S. Rep. No. 105-32, at 42 (1997). After GARA, housing starts were up 260 percent, new home values doubled, retail sales were up 5 percent, per capita income doubled, and 500 people per year were moving into the county. *See id.*

If the Oregon Legislature in enacting the 2009 amendments to ORS 30.905(2) intended to gut the statute and deprive Oregon the benefits of its statute of repose, it would have stated so clearly. It did no such thing. To the contrary, the provision's plain language and history suggests that the 2009 revisions only

slightly relaxed the repose period. The Court should support that interpretation, not expansively read these amendments in ways inconsistent with the text, history of the statute of repose in Oregon, and its importance to the Oregon economy.

CONCLUSION

For these reasons, *amici* respectfully urge the Court to answer "no" to the certified question. If the state of manufacture has no relevant statute of repose, a plaintiff should not be entitled to an unlimited period in which to sue in Oregon court. Oregon's ten-year statute of repose applies to these products.

Respectfully Submitted,

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Dated: November 16, 2017

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the word-count limitation in ORAP 5.05(2)(b), and the word count of this brief is 4575 words.

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

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Dated: November 16, 2017

CERTIFICATE OF SERVICE AND FILING

I certify that on November 16, 2017, I electronically filed the foregoing Brief with the State Appellate Court Administrator by the e-filing system. I further certify that I served the Brief on the following parties by the e-Filing system, if applicable, and by sending two copies by the U.S. Postal Service, first-class mail to parties not served by the e-Filing system, at the addresses below.

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