

SEPTEMBER 29, 2020

CLOSED SESSION REPORT OUT OF FINAL DECISION

Date of Meeting: *Tuesday, September 29, 2020*

Litigation Negotiations

NAME OF ACTION:

**City of Oakland v. Monsanto Company, Solutia Inc., and Pharmacia Corporation, and
DOES 1-100**
United States District Court No. 15-CV-05152-EJD

This matter is listed as **Item No. 1(a)** on the Closed Session Agenda:

The council authorized **accepting a settlement payment from defendant, Monsanto, in the amount of \$7,222,424**

This case arose out of incidents occurring from **1936 to 1976**

FACTS/ISSUES:

In 2015, the Office of the City Attorney filed a lawsuit against Monsanto to hold it responsible for the PCB-related contamination of the Bay and the City's stormwater system. PCBs are man-made chemical compounds that have become notorious as environmental contaminants, found in bays, oceans, rivers, streams, soils and air and have been detected in the tissues of all living beings on earth, including all forms of marine life, various animals, birds, plants and trees and humans.

From approximately 1935 to 1976, Monsanto Company was the only manufacturer in the United States that intentionally produced PCBs for commercial use. PCBs easily migrate out of their original source material or enclosure and contaminate nearby surfaces, air, water, soil, and other materials. PCBs present serious risks to the health of humans, wildlife, and the environment; the EPA has determined that Monsanto's PCBs are probable human carcinogens, and they are toxic to a number of aquatic species and wildlife including fish, marine mammals, reptiles, amphibians, and birds.

Monsanto did not fully cease production of PCBs until 1976, when Congress' Toxic Substances Control Act outlawed PCB manufacture. However, the evidence confirms that Monsanto recognized that PCBs were becoming a global contaminant several years before the 1976 ban; yet the company concealed this information and increased production of these profitable compounds for several years.

Late last year, Monsanto sought to settle this case, along with fifteen other pending lawsuits, on a nationwide basis with all affected jurisdictions. Earlier this year, both sides tentatively accepted a mediator's proposal for a class settlement, subject to approval by the governing body of each local jurisdiction. The proposed share of the City's settlement is **\$7,222,424**, to be disbursed to the City over four years. The City Attorney signed the settlement agreement subject to Council approval and the Council has ratified the settlement.

Motion Made by: **Councilmember Taylor**

Motion Seconded by: **Councilmember Thao**

AYES: Fortunato Bas, Gallo, Gibson McElhaney, ~~Kalb~~, Reid, Taylor, Thao and President Kaplan= 7

NOES: Fortunato Bas, Gallo, Gibson McElhaney, Kalb, Reid, Taylor, Thao and President Kaplan=

ABSENT: ~~Fortunato Bas, Gallo, Gibson McElhaney, Kalb, Reid, Taylor, Thao and President Kaplan~~= 1

ABSTENTIONS: Fortunato Bas, Gallo, Gibson McElhaney, Kalb, Reid, Taylor, Thao and President Kaplan=

SEPTEMBER 29, 2020

CLOSED SESSION REPORT OUT OF FINAL DECISION

Date of Meeting: *Tuesday, September 29, 2020*

Litigation Negotiations

NAME OF ACTION:

**Brady Murphy v. City of Oakland, Crowd Fund Investment Group and
Rowena R. Torres and DOES 1 through 20, inclusive
Alameda County Superior Court, Case No. RG18908476**

This matter is listed as **Item No. 1(b)** on the Closed Session Agenda:

The council authorized settlement in the amount of: **\$40,000.00**

This case arose out of incidents occurring on: **October 10, 2016**

FACTS/ISSUES:

On October 10, 2016, when Mr. Brady exited his car he stepped into an open storm drain in front of 3444 Hannah Street. The grate cover for the inlet had become dislodged, which created a few-inches-wide gap. Plaintiff alleges it represented a dangerous condition of public property, and that he hit his head during the fall and suffered a seizure, among other injuries to his leg, knee and foot. He suffers from a preexisting epileptic seizure disorder and claims his seizures have been exacerbated by the fall.

Plaintiff's out-of-pocket medical bills are at least \$14,000, but that does not include billing from Alta Bates Medical Center, which neither side has obtained yet. Mr. Brady alleges he has experienced an increase in severity and frequency of seizures after the fall and he sought damages in the amount of \$1,050,000. Plaintiff subsequently agreed to a settlement of \$40,000. This settlement will resolve and release all claims in this matter.

Motion Made by: **Councilmember Taylor**

Motion Seconded by: **Councilmember McElhaney**

AYES: Fortunato Bas, Gallo, Gibson McElhaney, ~~Kalb~~, Reid, Taylor, Thao and President Kaplan= 7

NOES: Fortunato Bas, Gallo, Gibson McElhaney, Kalb, Reid, Taylor, Thao and President Kaplan=

ABSENT: ~~Fortunato Bas, Gallo, Gibson McElhaney, Kalb, Reid, Taylor, Thao and President Kaplan= 1~~

ABSTENTIONS: Fortunato Bas, Gallo, Gibson McElhaney, Kalb, Reid, Taylor, Thao and President Kaplan=

SEPTEMBER 29, 2020

CLOSED SESSION REPORT OUT OF FINAL DECISION

Date of Meeting: *Thursday, September 29, 2020*

Litigation Negotiations

NAME OF ACTION:

State of California, by and through Attorney General Xavier Becerra, City of Los Angeles, City of Long Beach, City of Oakland, Los Angeles Unified School District v. Donald J. Trump, in his official capacity as President of the United States; Wilbur L. Ross, Jr., in his official capacity as Secretary of the U.S. Department of Commerce; U.S. Department of Commerce; Steven Dillingham, in his official capacity as Director of the U.S. Census Bureau; U.S. Census Bureau; DOES 1-100 United States District Court Case No. 3:20-CV-05169-LHK

This matter is listed as **Item No. 1(d)** on the Closed Session Agenda:

The council ratified **the City Attorney's filing of a lawsuit on July 28, 2020, during the Council recess, to join the above-referenced lawsuit as a plaintiff.**

This case arose out of incidents occurring on **July 28, 2020**

FACTS/ISSUES:

On July 21, 2020, President Trump issued a Presidential Memorandum ("Order") that ordered the exclusion of all persons who are undocumented immigrants from the reapportionment of House of Representatives following the 2020 census. The Constitution forbids the President from categorically excluding undocumented immigrants from the apportionment base. The State's lawsuit alleges that the Order violates (1) the Constitution's Enumeration Clause and the Apportionment Clause of the Fourteenth Amendment, (2) the Constitution's separation of powers, (3) the Census Act and (4) the Administrative Procedure Act which prohibits federal agencies from acting in an arbitrary and capricious manner. The City Attorney is concerned that exclusion of undocumented immigrants from the apportionment base will cause California to receive fewer seats in the House of Representatives.

The California Attorney General ("AG") asked the City of Oakland to join the lawsuit as a party plaintiff. The filing deadline to join the lawsuit expired during the Council's annual recess. Therefore, the City Attorney filed on July 28, 2020. The Council ratified the filing today.

Motion Made by: **Councilmember Reid**

Motion Seconded by: **Councilmember Kaplan**

AYES: Fortunato Bas, Gallo, Gibson McElhaney, ~~Kalb,~~ Reid, Taylor, Thao and President Kaplan= 7

NOES: Fortunato Bas, Gallo, Gibson McElhaney, Kalb, Reid, Taylor, Thao and President Kaplan=

ABSENT: ~~Fortunato Bas, Gallo, Gibson McElhaney, Kalb, Reid, Taylor, Thao and President Kaplan= 1~~

ABSTENTIONS: Fortunato Bas, Gallo, Gibson McElhaney, Kalb, Reid, Taylor, Thao and President Kaplan=