

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES



DATE: 05/02/13

DEPT. 324

HONORABLE EMILIE H. ELIAS

JUDGE A. MORALES

DEPUTY CLERK

HONORABLE
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JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

E. MUÑOZ, C.A.

Deputy Sheriff

NONE

Reporter

2:30 pm

JCCP4674

Plaintiff

Counsel

Coordination Proceeding Special

NONE

Title Rule (3.550)

Defendant

LAOSD ASBESTOS CASES

Counsel

NATURE OF PROCEEDINGS:

MOTION TO APPLY IRANIAN LAW- NOTICE OF RULING ON
SUBMITTED MATTER (BC473745-ALKHAS)

In the matter heretofore taken under submission on
April 17, 2013, the Court hereby issues its ruling
as set forth in the separate Order Re: Motion To
Apply Iranian Law signed and filed this date.

The Clerk is to give notice by having copies of this
minute order and the signed order posted on
File & ServeExpress.

MINUTES ENTERED
05/02/13
COUNTY CLERK

FILED
Superior Court of California
County of Los Angeles

MAY 02 2013

John A. Clarke, Executive Officer/ Clerk
By Alfredo Morales, Deputy
ALFREDO MORALES

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

Coordinated Proceeding
Special Title (Rule 3.550)

Case No.: JCCP 4674

LAOSD ASBESTOS CASES

GILBERT ALKHAS, et al.,

Case No.: BC473745

Plaintiffs,

ORDER RE: MOTION TO APPLY IRANIAN
LAW

vs.

A.W. CHESTERTON COMPANY, et al.,

Defendants.

I.

BACKGROUND

This is a survival and wrongful death action. Gilbert Alkhas and Wilmer Alkhas (collectively "Plaintiffs") allege that William Alkhas ("Decedent") died due to exposures to asbestos at oil refineries in Iran from 1949 to 1985. Decedent was an Iranian national during the alleged exposure period. He then emigrated to California, and became a resident, in 1985. The complaint alleges that more than fifty Defendants are liable for the alleged exposures.

1 At issue here is a motion to apply Iranian law.¹ The motion is brought by UOP LLC,
2 Chevron U.S.A. Inc., Texaco Inc., Fluor Constructors International, Inc., Fluor Corporation,
3 Fluor Daniel Engineers & Constructors, Ltd., Fluor Enterprises, Inc., Fluor International, Inc.,
4 Fluor Mideast Limited, Middle East Fluor, Ingersoll Rand Company, R.J. Reynolds Tobacco
5 Company, and Brand Insulations, Inc. (collectively "Moving Defendants").² The basis of the
6 motion is that, pursuant to the governmental interest test, Iran has a greater interest in having its
7 law applied than California has in having California law applied.

8 The Court heard oral arguments on April 10, 2013 and ordered Moving Defendants to
9 file a letter brief regarding the issue of whether the laws of foreign nations can be applied in
10 California cases under the governmental interest test. Upon receiving the letter brief, the Court
11 took the matter under submission on April 17, 2013 in order to further consider the parties'
12 papers and positions. Having so considered, the Court now issues its ruling.

13 II.

14 DISCUSSION

15 The most widely used choice-of-law rule in California is the governmental interest test.
16 It has three steps. First, the court must establish whether the potentially concerned jurisdictions
17 have the same rules of law. If the rules are the same, the court applies California law. Second,
18 if the rules are materially different, the court must examine each jurisdiction's interest in having
19 its own law applied to the dispute. Third, if each jurisdiction has an interest in applying its own
20 law, a true conflict exists, and the court must conduct a comparative impairment analysis to
21 determine which jurisdiction has a greater interest in having its law applied.³

22
23 ¹ In particular, the motion seeks to apply Iranian law to the following issues and/or claims: the negligence standard
24 of care; strict products liability; joint and several liability; compensatory damages; and punitive damages.

25 ² The motion is joined by John Crane Inc., Foster Wheeler Energy Corporation, Riley Power Inc., and
ConocoPhillips Company.

³ (*See Frontier Oil Corp. v. RLI Ins. Co.* (2007) 153 Cal.App.4th 1436, 1454-55.)

1 **A. First Step**

2 **1. Moving Defendants**

3 Moving Defendants cite the declaration of their legal expert, Mahmoud Katirai
4 (“Katirai”), for the proposition that Iranian law and California law are materially different with
5 respect to the relevant issues and/or claims. Katirai’s opinions are based on his interpretations
6 of purported Iranian statutes and legal texts attached to the declaration. Moving Defendants ask
7 the Court to judicially notice the documents.⁴

8 **2. Plaintiffs**

9 Plaintiffs assert that the Iranian legal documents have not been translated by a qualified
10 interpreter and, therefore, that the Katirai declaration is inadmissible. Plaintiffs contend the
11 request for judicial notice should be denied for the same reason.⁵

12 **3. Analysis**

13 The Court finds that the request for judicial notice should be denied. The Iranian legal
14 documents are not written in English; Katirai’s translations are not certified under oath; and
15 Moving Defendants have not demonstrated that Katirai is a qualified interpreter under the
16 Evidence Code. These facts make the documents defective for the purpose of judicial notice.

17 Plaintiffs’ challenge to the Katirai declaration, on the other hand, is unavailing in part.
18 Though Moving Defendants fail to show that Katirai is a qualified interpreter such that the
19 Iranian legal documents cannot be admitted into evidence, his testimony is admissible. Expert
20 witnesses are permitted to rely on inadmissible documents as long as the documents are “of a
21 type that reasonably may be relied upon by an expert in forming an opinion upon the subject to
22 which his testimony relates[.]”⁶ The declaration states that Katirai is fluent in Farsi and has a

24 ⁴ (See Motion, pp. 3-5; see also Katirai Decl., ¶¶ 18-35; Moving Defendants’ Request for Judicial Notice.)

25 ⁵ (See, e.g., Opposition, pp. 2-3.)

⁶ (Evid. Code § 801(b).)

1 reading knowledge of Arabic.⁷ The Court is persuaded that a typical expert on Iranian law with
2 language and reading skills akin to those of Katirai would rely on Iranian statutes and legal texts
3 in rendering opinions. Consequently, the fact that the documents are not written in English is
4 not a reason for finding the text of the declaration inadmissible. Thus, Plaintiffs' objection is
5 sustained as to the exhibits but is overruled as to the testimony in the body of the declaration.⁸

6 Moreover, the Court finds the Katirai declaration sufficient to establish material
7 distinctions between Iranian law and California law as to the relevant issues and/or claims. In
8 reaching this conclusion, the Court notes that Plaintiffs do not make a meaningful attempt to
9 show that the respective laws are similar.⁹ Indeed, Plaintiffs appear to concede that material
10 differences exist.¹⁰

11 **B. Second and Third Steps**

12 **1. Moving Defendants**

13 Moving Defendants argue that Iran has a greater interest in having its law applied
14 because (a) the oil refineries were owned by the Iranian government, (b) Decedent was an
15 Iranian national, not a California resident, at the time of the alleged exposures, (c) the alleged
16 exposures occurred exclusively in Iran, and (d) one of the Iranian government's goals in
17 enacting laws that limit damages and liability was to promote foreign investments in Iran. As a
18

19 ⁷ (See Katirai Decl., ¶ 8.)

20 ⁸ As explained in section II.B.3. of this order, the motion must be denied because the evidence fails to show that
21 Iran has a superior interest in the application of Iranian law. In other words, the outcome of the motion is the same
regardless of the admissibility of the Katirai declaration.

22 ⁹ Plaintiffs have attached an expert declaration of their own. It does not advance Plaintiffs' position for at least
23 four reasons. One, it was filed in a separate asbestos case and was not signed under penalty of perjury in this
24 action. Two, it responds to a Katirai declaration that was filed in the separate asbestos case, not the Katirai
25 declaration here. Three, to the extent it has any applicability in the present action, it states that "Katirai's general
description of Iranian remedies law is accurate." (Cook Decl., Ex. B, ¶ 8 (emphasis added).) Four, it only
disagrees with Katirai on two issues, neither of which – damages for loss of consortium and punitive damages for
violations of Iranian officials' political or judicial immunities – is at issue here. (See *id.*)

¹⁰ (See Opposition, pp. 8-11 (arguing that California's interest in compensating California residents for tort-based
injuries would be impaired if the damages and liability limitations of Iranian law were applied).)

1 result, Moving Defendants contend the situation here is analogous to the situation in *McCann v.*
2 *Foster Wheeler LLC* (2010) 48 Cal.4th 68 where our Supreme Court applied Oklahoma law
3 because the exposures occurred in Oklahoma and because Oklahoma had an interest in applying
4 liability limitations for the protection of foreign companies operating in Oklahoma.¹¹

5 In addition, in the letter brief, Moving Defendants cite five cases in which California
6 appellate courts applied foreign laws: *In re Dalip Singh Bir's Estate* (1948) 83 Cal.App.2d 256
7 (applying Indian law); *Hernandez v. Burger* (1980) 102 Cal.App.3d 795 (applying Mexican
8 law); *Wong v. Tenneco, Inc.* (1985) 39 Cal.3d 126 (applying Mexican law); *Tucci v. Club*
9 *Mediterranee, S.A.* (2001) 89 Cal.App.4th 180 (applying Dominican Republic law); and *Vaughn*
10 *v. LJ Intern, Inc.* (2009) 174 Cal.App.4th 213 (applying British Virgin Islands law).

11 The letter brief also contains citations to some federal court decisions and non-California
12 state court decisions that applied the laws of foreign countries such as Canada, France, Saudi
13 Arabia, China, Israel, and Turkmenistan.

14 2. Plaintiffs

15 Plaintiffs contend the motion should be denied because Iran has no interest in applying
16 Iranian law:

17 Iran has no interest in this litigation on the issues of damages or liability because
18 none of the [D]efendants are Iranian residents. Furthermore, there has [] been no
19 showing that Iran has a continuing interest in soliciting the participation of
20 American businesses in Iran's oil production, either from Defendants or any other
21 American corporation. In fact, the [D]efendants participating in the ownership
22 consortium lost all ownership interest in the refinery after the 1979 Iranian
23 Revolution nationalized the oil industry and turned the refinery over to the
24 National Iranian Oil Company. Moreover, the continuing recent events rejecting

25 ¹¹ (See, e.g., Motion, pp. 4-8.)

1 American influence and participation in internal Iranian affairs confirm that Iran
2 has no interest in protecting American companies from punitive damages for
3 causing injuries to a California resident.¹²

4 Plaintiffs also contend the motion should be denied because application of Iranian law
5 may violate the separation of church and state required by both the United States Constitution's
6 First Amendment and the California Constitution. This is because Iranian law – according to
7 Moving Defendants' legal expert – requires application of Shi'ite Islamic law in instances
8 where there is no Iranian statutory authority on point.¹³

9 **3. Analysis**

10 The Court agrees with Plaintiffs. For the following reasons, the Court finds that the
11 motion should be denied:

- 12 • Moving Defendants fail to cite a California case or any other American case that
13 approved application of Iranian law as opposed to some other foreign country's
14 law.
- 15 • Moving Defendants are neither Iranian companies nor Iranian residents.
- 16 • While the Katirai declaration states that the Iranian government enacted certain
17 statutes in an effort to promote and protect foreign investments generally,¹⁴ the
18 evidence fails to demonstrate that the statutes apply to American companies
19 specifically. Moving Defendants cite no Iranian case that interprets the statutes
20 as applying to American companies; there is no admissible document from the
21 Iranian government that expresses an interest in doing business with American
22 companies; and the Katirai declaration is conclusory and ambiguous on this

23
24 ¹² (Opposition, pp. 5-6.)

25 ¹³ (See *id.* at 11-13; see also Katirai Decl., ¶¶ 15-17.)

¹⁴ (See Katirai Decl., ¶¶ 36-39.)

1 point. The Court is not inclined to find that Iran is interested in securing foreign
2 investments from American companies in the absence of admissible evidence,
3 especially given the tense state of post-Iranian Revolution relations between the
4 two countries.¹⁵

5 • The Court has no confidence that Plaintiffs will receive a fair trial or an adequate
6 opportunity to obtain a remedy under Iranian law. In the forum non conveniens
7 context, the rule in California is that Iran is not a suitable alternative forum, the
8 reason being that Iranian law effectively provides “no remedy at all” since Iran is
9 run by mullahs and lacks an independent judiciary and due process of law.¹⁶ The
10 Court is persuaded that this rationale should be extended to the choice-of-law
11 context. In the Court’s view, application of Iranian law does not constitute a
12 permissible option under the governmental interest test where, as here, mullahs
13 administer the law, and, by Moving Defendants’ own admission, Shi’ite Islamic
14 law may be used to decide the case.¹⁷

15 • The facts of *McCann, supra*, 48 Cal.4th 68 are distinguishable. In *McCann*, the
16 issue was whether the law of Oklahoma applied. Oklahoma, in contrast to Iran,
17 has an independent judiciary and provides due process of law.¹⁸

20
21 ¹⁵ The Iranian Revolution took place in 1979.

22 ¹⁶ (Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial (The Rutter Group 2013) § 3:423.2; see also *Guimei*
v. General Electric Co. (2009) 172 Cal.App.4th 689, 697 (citing with approval *Rasoulzadeh v. Associated Press*
(S.D.N.Y. 1983) 574 F.Supp. 854).)

23 ¹⁷ (See Katirai Decl., ¶¶ 15-17.)

24 ¹⁸ The Court declines to analyze Plaintiffs’ argument regarding the separation of church and state, except to
25 reiterate that the potential need to apply Shi’ite Islamic law in this case compels the conclusion that Iranian law
provides “no remedy at all.”

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III.

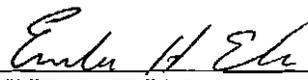
CONCLUSION AND ORDER

The motion to apply Iranian law is denied.

Moving Defendants' request for judicial notice is denied.

Plaintiffs' objection to the Katirai declaration is sustained as to the exhibits and is overruled as to the testimony in the body of the declaration.

DATED: 5/2/13
eh



EMILIE H. ELIAS
Judge of the Superior Court