

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES



DATE: 08/20/14

DEPT.

HONORABLE EMILIE H. ELIAS

JUDGE

A. MORALES

DEPUTY CLERK

HONORABLE
ADD ON

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

E. RUIZ, C.A.

Deputy Sheriff

NONE

Reporter

1:45 pm JCCP4674

Plaintiff
Counsel

Coordination Proceeding Special
Title Rule (3.550)
LAOSD ASBESTOS CASES

NONE

Defendant
Counsel

NATURE OF PROCEEDINGS:

MOTION OF DEFENDANT, CHEVRON U.S.A. INC., TO APPLY
IRANIAN LAW- NOTICE OF RULING ON SUBMITTED MATTER
(BC529503-SAROOIE)

In the matter heretofore taken under submission on
August 7, 2014, 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 & ServeXpress.

MINUTES ENTERED
08/20/14
COUNTY CLERK

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

AUG 20 2014

Sherri R. Carter, 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

SAMAD SAROOIE, et al.,

Case No.: BC529503

Plaintiffs,

ORDER RE: MOTION TO APPLY IRANIAN
LAW

vs.

ASBESTOS CORPORATION LIMITED, et
al.,

Defendants.

I. BACKGROUND

This is a survival and wrongful death action. Samad Sarooie, Kambiz Sarooie, Koroush Sarooie, Soheila Sarooie, and Soudabeh Sarooie (collectively "Plaintiffs") allege that Galin Keshavarzi ("Decedent") died due to exposures to asbestos at an oil refinery in Iran from 1950 to 1979. Decedent was a resident of Iran during the alleged exposure period. She then emigrated from Iran to California and resided there until her death in March 2013. The complaint alleges that numerous Defendants are liable for the alleged injuries.

1 At issue is a motion to apply Iranian law. The motion is brought by UOP LLC, Chevron
2 U.S.A. Inc., and Texaco Inc. (collectively "Moving Defendants").¹ The premise of the motion
3 is that, under the governmental interest test, Iran has a greater interest in having its law applied
4 than California has in having California law applied.

5 This is not the first time Moving Defendants have asked this Court to find Iranian law
6 applicable. In *Alkhas v. A.W. Chesterton Company* (BC473745), Moving Defendants,
7 represented by the same defense attorneys who represent them here, filed an almost identical
8 motion. This Court denied that motion in May 2013, in part because Iranian law, in effect,
9 provided "no remedy at all" since Moving Defendants' own expert – the same expert on which
10 Moving Defendants rely in the present motion – admitted that application of Iranian law may
11 have necessitated use of Shi'ite Islamic law to decide the case. (Taylor Decl., Ex. K, p. 7.)²

12 As for the present motion, the Court heard oral arguments on August 7, 2014. At the
13 hearing, defense counsel conceded that the factual and legal circumstances are essentially the
14 same as they were in *Alkhas*; nevertheless, they chose to file the motion because they believe
15 this Court got the *Alkhas* ruling wrong. The Court, consequently, took the matter under
16 submission in order to further consider the parties' papers and positions. Having so considered,
17 the Court now issues its ruling.

18 II. DISCUSSION

19 A. *Requests for Judicial Notice*

20 1. **Moving Defendants**

21 The Court grants the request to judicially notice Exhibits A, B, D, G, I, K, L, P, and Q to
22 the declaration of Hersel Saidian.

23
24 ¹ Multiple Defendants filed joinders in support of Moving Defendants' motion.

25 ² The record includes orders from other California asbestos cases, including a *LAOSD Asbestos Case* assigned to the Honorable Marc Marmaro, in which motions to apply Iranian law were denied. (*See id.* at Exs. I, J, L.)

1 The Court denies the request to judicially notice Exhibit 3 to the declaration of
2 Mahmoud Katirai.

3 **2. Plaintiffs**

4 The Court grants the request to judicially notice Exhibits E, F, G, H, I, J, K, and L to the
5 declaration of Stephanie M. Taylor.

6 **B. Evidentiary Objections**

7 **1. Moving Defendants**

8 As to the declaration of Amirhassan Boozari, the Court overrules the objections to
9 paragraphs 10 through 44 and Exhibits A, Z-3, and Z-4 and sustains the objections to Exhibits B
10 through F and I through Z-2.

11 As to the declaration of Stephanie M. Taylor, the Court sustains the objections to
12 Exhibits A through D and overrules the objections to Exhibits E through L.

13 As to the declaration of Samad Sarooie, the Court overrules the objections to paragraphs
14 2 through 9.

15 **2. Brand Insulations, Inc.³**

16 The Court sustains objection numbers 1 through 4 and overrules objection numbers 5
17 through 12.

18 **3. Plaintiffs**

19 The Court overrules objection numbers 1 and 3 through 7 and sustains objection number
20 8 (there is no objection number 2).

21 **C. Law**

22 Case law instructs that “[t]he most prevalent modern choice-of-law rule in California is
23 the governmental interest analysis.” (*Frontier Oil Corp. v. RLI Ins. Co.* (2007) 153 Cal.App.4th
24

25 ³ Brand Insulations, Inc. is one of the Defendants who filed a joinder.

1 1436, 1454.) “Under the governmental interest analysis, the court first determines whether the
2 applicable rules of law of the potentially concerned jurisdictions are the same or different. If the
3 applicable rules of law are identical, the court may apply California law. If the applicable rules
4 of law differ materially, the court proceeds to the second step, which involves an examination of
5 the interests of each jurisdiction in having its own law applied to the particular dispute. If each
6 jurisdiction has an interest in applying its own law to the issue, there is a ‘true conflict’ and the
7 court must proceed to the third step. In the third step, known as the comparative impairment
8 analysis, the court determines which jurisdiction has a greater interest in the application of its
9 own law to the issue or, conversely, which jurisdiction’s interest would be more significantly
10 impaired if its law were not applied. The court must apply the law of the jurisdiction whose
11 interest would be more significantly impaired if its law were not applied.” (*Id.* at 1454-1455
12 [citing *Kearney v. Salomon Smith Barney, Inc.* (2006) 39 Cal.4th 95, 107-108].)

13 ***D. First Step***

14 The Court finds that Moving Defendants demonstrate material distinctions between
15 Iranian law and California law. As in *Alkhas*, the Court is persuaded that the declaration of
16 Moving Defendants’ expert, Mahmoud Katirai (“Katirai”), is sufficient to satisfy Moving
17 Defendants’ burden.

18 In addition, the Court notes that Plaintiffs’ expert, Amirhassan Boozari (“Boozari”),
19 does not dispute the existence of material differences. Indeed, Plaintiffs appear to agree that
20 material differences exist. (*See, e.g.*, Opposition, pp. 23-24 [arguing that Iranian law conflicts
21 with California policy and the First Amendment of the United States Constitution].)

22 ***E. Second and Third Steps***

23 **1. Moving Defendants**

24 Moving Defendants assert that the motion should be granted on ground that Iran’s
25 interest is greater than California’s interest because:

- 1 • The 1954 Iranian Oil Consortium Agreement (“Consortium Agreement”) and
- 2 Iran’s 1955 Act for Attraction and Protection of Foreign Capital (“AAPFC”)
- 3 convey that Iran intended to limit liability and damages for the purpose of
- 4 promoting foreign investments.⁴
- 5 • The Foreign Investment Act extends the benefits of Iran’s tort laws to all foreign
- 6 companies, including American companies.
- 7 • Iran owned the relevant oil refinery.
- 8 • Decedent was a resident of Iran when the alleged exposures took place.
- 9 • The alleged exposures occurred exclusively in Iran.
- 10 • Thus, the situation here is governed by *McCann v. Foster Wheeler LLC* (2010)
- 11 48 Cal.4th 68.

12 Moving Defendants also contend the motion should be granted because, in *Alkhas*, this
13 Court improperly applied forum non conveniens principles in deciding the choice-of-law issue.
14 Moving Defendants claim there is no threat of Plaintiffs receiving an unfair trial given that the
15 trial will be conducted in California before a California jury rather than in Iran.

16 Furthermore, Moving Defendants cite three federal decisions wherein the courts applied
17 Iranian law: *McKesson Corp. v. Islamic Republic of Iran* (D.C. Cir. 2012) 672 F.3d 1066;
18 *Kashfi v. Phibro-Salomon, Inc.* (S.D.N.Y. 1986) 628 F.Supp. 727; and *Bakhshandeh v.*
19 *American Cyanamid Co.* (S.D.N.Y. 1962) 211 F.Supp. 803.

20 2. Plaintiffs

21 Plaintiffs contend the motion should be denied because:

- 22 • The Consortium Agreement is irrelevant to the analysis of the intent and purpose
- 23 behind the relevant Iranian tort laws.

24
25 ⁴ The Consortium Agreement is inadmissible because Moving Defendants’ counsel lacks personal knowledge to authenticate the document and verify its contents. The result, however, would be the same even if the document were admissible.

- 1 • Moving Defendants fail to show that the purpose and operation of the AAPFC is
- 2 to apply the relevant Iranian tort laws to foreign investors in Iran.
- 3 • Plaintiffs' expert, Boozari, states that "the AAPFC does not operate to apply all
- 4 Iranian tort law to foreign investors in Iran, nor does it apply to circumstances
- 5 such as the case at bar." (Opposition, p. 17.)
- 6 • Some of the alleged misconduct occurred in Iran before the passage of the
- 7 AAPFC.
- 8 • Some of the alleged misconduct occurred in California.
- 9 • Application of Iranian law may involve application of Islamic law and would
- 10 violate separation of church and state under the United States and California
- 11 Constitutions. Moving Defendants' expert admitted this point, and the
- 12 declaration of Plaintiffs' expert confirms it.

13 3. Analysis

14 In *Alkhas*, this Court held: "The Court has no confidence that Plaintiffs will receive a

15 fair trial or an adequate opportunity to obtain a remedy under Iranian law. In the forum non

16 conveniens context, the rule in California is that Iran is not a suitable alternative forum, the

17 reason being that Iranian law effectively provides 'no remedy at all' since Iran is run by mullahs

18 and lacks an independent judiciary and due process of law. The Court is persuaded that this

19 rationale should be extended to the choice-of-law context. In the Court's view, application of

20 Iranian law does not constitute a permissible option under the governmental interest test where,

21 as here, mullahs administer the law, and, by Moving Defendants' own admission, Shi'ite

22 Islamic law may be used to decide the case." (Taylor Decl., Ex. K, p. 7 [footnotes and citations

23 omitted].)

24 This continues to be the Court's view. For one thing, Katirai's current declaration does

25 not backtrack from the admission made in *Alkhas* that religious/Islamic law may have to be

1 applied to civil claims to resolve the action. In fact, the current declaration stipulates that “[t]he
2 Constitution of the Islamic Republic of Iran (the “1980 Constitution”) takes precedence over the
3 statutes that are enacted by the parliament” and that Article 4 of the 1980 Constitution states
4 “[a]ll civil, criminal, financial, economic, administrative, cultural, military, political and other
5 laws and regulations must be based on Islamic standards . . .” (Katirai Decl., ¶¶ 11-12
6 [emphasis added].) While Katirai’s current declaration additionally provides that “statutes
7 enacted before the [Iranian Revolution] remain valid unless specifically repealed” (*id.* at ¶ 12),
8 the Court finds the statement too general to overcome the specific admission in *Alkhas*.
9 Moreover, the declaration of Plaintiffs’ expert, Boozari, a professor of law at the University of
10 California Los Angeles who teaches Islamic law courses, opines – with extensive detail – that
11 the entire Iranian legal system is based on and must comply with Islamic law, including
12 Shari’ah, which the declaration defines as “Divine Law.” (Boozari Decl., ¶¶ 10-24.) Thus, it is
13 likely, if not inevitable, that Islamic law will play a role in the trial. The Court believes this is
14 not a viable result under the governmental interest analysis, and finds that the motion should be
15 denied, as applying Islamic law would prejudice Plaintiffs and contravene California policy.

16 Moving Defendants’ argument – that the Court erred in *Alkhas* by applying forum non
17 conveniens principles to decide the choice-of-law issue – does not change the outcome. The
18 Court did not apply forum non conveniens principles; the Court merely referenced those
19 principles by analogy to make the point that Iranian law, through utilization of Islamic law, fails
20 to afford a remedy and, therefore, fails to satisfy the second and third steps of the governmental
21 interest test.

22 Likewise, it does not make a difference that the trial will be held in California. The
23 probable use of Islamic law in a civil action is what offends California policy, even if it would
24 be applied by a California judge or a California jury. The instant situation is distinguishable
25 from the facts of *McCann*, *supra*, 48 Cal.4th 68 for this reason. The *McCann* court was being

1 asked to apply Oklahoma statutory law, which was subject to and trumped by the protections of
2 the Oklahoma and United States Constitutions, both of which embrace due process and equal
3 protection (among other rights), not Iranian law that is constitutionally required to comply with
4 Islamic religious standards.

5 Also, the federal cases cited by Moving Defendants – *McKesson Corp. v. Islamic*
6 *Republic of Iran, supra*, 672 F.3d 1066, *Kashfi v. Phibro-Salomon, Inc., supra*, 628 F.Supp.
7 727, and *Bakhshandeh v. American Cyanamid Co., supra*, 211 F.Supp. 803 – are
8 distinguishable. In *McKesson*, the appellate court found that an international treaty between the
9 United States and Iran gave an American company a private right of action against the
10 government of Iran in federal court. In *Kashfi* and *Bakhshandeh*, the plaintiffs were Iranian
11 citizens who sued American companies regarding conduct that occurred in Iran. The district
12 courts applied general rules of contract law (*Kashfi*) and New York tort law (*Bakhshandeh*) that
13 called for application of the law of the location where the conduct occurred. The decisions do
14 not indicate that any party objected to the courts’ reliance on the general rules, nor is there any
15 indication that any party raised an exception to the general rules. The bottom line is that none
16 of the cases were decided under California law, none of them addresses the governmental
17 interest test, and none of them appears to have included a challenge to Iranian law, particularly
18 the use of Islamic law.

19 As well, the Court finds that the motion should be denied for the following reasons:

- 20 • Decedent was a resident of California from July 1983 until her passing in 2013.
- 21 • Decedent’s husband, Plaintiff Samad Sarooie, has been a California resident
22 since July 1983.
- 23 • Moving Defendants are not Iranian companies or residents.
- 24 • The Katirai declaration fails to show that Iran’s purported interest in promoting
25 foreign investments, as allegedly evidenced by the enactment of the AAPFC in

1 the 1950s, applied to American companies at the time of passage and, more
2 importantly, is still applicable to American companies in the post-Iranian
3 Revolution era (the Iranian Revolution took place in 1979).

- 4 • In light of the tense relations between the two countries since the Iranian
5 Revolution, the Court doubts that Iran possesses a goal of securing investments
6 from American companies or an interest in having Iranian tort laws applied in
7 favor of American companies.
- 8 • Even assuming the alleged intent to promote foreign investments remains
9 applicable to American companies, Plaintiffs' expert states that the relevant
10 Iranian tort laws, which Moving Defendants seek to apply, have no "direct
11 relevance to the foreign investment laws of Iran" and are not founded on a goal of
12 securing or protecting foreign investments. (Boozari Decl., ¶ 44.)

13 III. CONCLUSION AND ORDER

14 The motion to apply Iranian law is denied.

15 The Court believes this "is a controlling question of law as to which there are substantial
16 grounds for difference of opinion, appellate resolution of which may materially advance the
17 conclusion of the litigation." (Code Civ. Proc. § 166.1)

18
19 DATED: 8/20/14



EMILIE H. ELIAS
Judge of the Superior Court