

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

**Civil Division**

Central District, Spring Street Courthouse, Department 15



**JCCP4674**  
**LAOSD Asbestos Cases**

October 24, 2018  
1:53 PM

Judge: Honorable John J. Kralik  
Judicial Assistant: A. Morales  
Courtroom Assistant: M. Torres

CSR: None  
ERM: None  
Deputy Sheriff: None

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**APPEARANCES:**

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

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**NATURE OF PROCEEDINGS:** Court Order- Ruling on Submitted Matters Regarding Motions to Apply Iranian Law Filed by Defendants Foster Wheeler, LLC, Exxon Mobil Corporation, and ExxonMobil Oil Corporation (Re: Sabetian-BC699945)

In the matters heretofore taken under submission on October 18, 2018, the Court hereby issues its ruling as set forth in the separate Ruling on Iranian Law signed and filed this date.

Clerk's Certificate of Service By Electronic Service is attached. A copy of this minute order will append to the following coordinated case under JCCP4674: BC699945.

<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES</b>		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Spring Street Courthouse 312 North Spring Street, Los Angeles, CA 90012		<b>FILED</b> Superior Court of California County of Los Angeles <b>10/24/2018</b> Sherri R. Carter, Executive Officer / Clerk of Court By: <u>Alfredo Morales</u> Deputy
PLAINTIFF: LAOSD Asbestos Cases		
DEFENDANT:		
<b>CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6</b>		CASE NUMBER: <b>JCCP4674</b>

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Minute Order and Ruling on Iranian Law entered herein, on 10/24/2018, upon each party or counsel of record in the above entitled action, by electronically serving the document(s) on File & ServeXpress at fileandservexpress.com on 10/24/2018 from my place of business, Spring Street Courthouse 312 North Spring Street, Los Angeles, CA 90012 in accordance with standard court practices.

Sherri R. Carter, Executive Officer / Clerk of Court

Dated: 10/24/2018

By: Alfredo Morales  
Deputy Clerk

**FILED**  
Superior Court of California  
County of Los Angeles

**OCT 24 2018**

Sherri R. Carter, Executive Officer/Clerk  
By Alfredo Morales deputy  
ALFREDO MORALES

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

LAOSD ASBESTOS CASES

JCCP Case No. 4674

LASC CASE NO. BC699945

HOUSHANG SABETIAN, et al.,

**RULING ON IRANIAN LAW**

Plaintiffs,

vs.

Hon. John J. Kralik  
Spring Street Courthouse  
Department 15

AIR & LIQUID SYSTEMS CORP., et al.,

Defendants.

This is a personal-injury case. Plaintiffs allege Houshang Sabetian suffered asbestos exposures while working at oil refineries and oil fields in Iran from 1959 to 1979. The refineries and oil fields were owned by the Iranian Government.

At issue here are two motions to apply Iranian law filed by Foster Wheeler, LLC, Exxon Mobil Corporation, and ExxonMobil Oil Corporation.<sup>1</sup> The motions seek application of Iranian

<sup>1</sup> The motions are joined by Chevron, U.S.A. Inc., Texaco Inc., the Fluor Defendants, Sequoia Ventures, Inc., Brand Insulations, Inc., Aurora Pump Company, Blackmer Pump Company, Flowserve US Inc., Nordstrom Audco, LLC, Edward Valves, Inc., Warren Pumps, LLC, Air & Liquid Systems Corp., and the Parsons Defendants.

1 law to the negligence standard of care, strict liability, joint and several liability, compensatory  
2 damages, and punitive damages.

3 The Exxon Defendants have submitted the Declaration of Mahmood Katirai, who was an  
4 attorney in Iran from 1969 to 1980. He has continuously studied Iranian law since leaving the  
5 country. Plaintiffs Houshang Sabetian and Soraya Sabetian have submitted the declaration of  
6 Amirhassan Boozari, SJD, who is currently licensed to practice law in Iran, and actually practiced  
7 there between 1993 and 2002. Both gentlemen appear to be experts in Iranian law, and the Court  
8 accepts their declarations. The understanding of a foreign government's laws is a subject on  
9 which the Court can benefit by listening to the advice of an expert. (*See Evid. Code § 454(b).*) As  
10 with any lawyer's opinion, the Court will find those parts of the opinions that are clearly stated  
11 and well-supported with controlling authority to be more persuasive than those opinions that seem  
12 argumentative or lacking in support. For this reason, the Court finds it unnecessary to consider the  
13 objections of the parties to particular parts of the declarations.

14 The Court also overrules Defendants' objections to the English translations of the Iranian  
15 laws submitted by Plaintiffs via notice of errata. The translations are certified, and the Court  
16 accepts the certifications. The Court finds the translations relevant and useful to the Court's  
17 analysis of Iranian law.

18 Case law instructs that "[t]he most prevalent modern choice-of-law rule in California is the  
19 governmental interest analysis." (*Frontier Oil Corp. v. RLI Ins. Co.* (2007) 153 Cal.App.4<sup>th</sup> 1436,  
20 1454.) "Under the governmental interest analysis, the court first determines whether the  
21 applicable rules of law of the potentially concerned jurisdictions are the same or different. If the  
22 applicable rules of law are identical, the court may apply California law. If the applicable rules of  
23 law differ materially, the court proceeds to the second step, which involves an examination of the  
24 interests of each jurisdiction in having its own law applied to the particular dispute. If each  
25 jurisdiction has an interest in applying its own law to the issue, there is a 'true conflict' and the  
26 court must proceed to the third step. In the third step, known as the comparative impairment  
27 analysis, the court determines which jurisdiction has a greater interest in the application of its own  
28 law to the issue or, conversely, which jurisdiction's interest would be more significantly impaired

1 if its law were not applied. The court must apply the law of the jurisdiction whose interest would  
2 be more significantly impaired if its law were not applied.” (*Id.* at 1454-1455 [citing *Kearney v.*  
3 *Salomon Smith Barney, Inc.* (2006) 39 Cal.4<sup>th</sup> 95, 107-108].)

4 In *McCann v. Foster Wheeler, LLC* (2010) 48 Cal.4<sup>th</sup> 68, the California Supreme Court  
5 applied the governmental interest analysis to a case very much like Mr. Sabetian’s case. In  
6 *McCann*, a California resident sued a New York manufacturer for injuries caused by exposures to  
7 the manufacturer’s asbestos-containing product in Oklahoma. The Plaintiff was an Oklahoma  
8 resident during the exposure years, though, like Mr. Sabetian in this case, he was a resident of  
9 California when his asbestos disease first appeared. The Supreme Court found Oklahoma law  
10 applicable under the governmental interest test, reasoning that the state where the tort occurs  
11 possesses the predominant interest in having its law applied. Although California did have an  
12 interest in providing its citizen a remedy, that interest was limited compared to the interest of the  
13 state where the tort had actually occurred.

14 Further, although California has a legitimate interest in affording a remedy to a  
15 resident of California whose asbestos-related illness first manifests itself when the  
16 individual is a California resident, past California cases indicate that it is generally  
17 appropriate for a court to accord limited weight to California's interest in providing  
18 a remedy for a current California resident when the conduct of the defendant from  
19 whom recovery is sought occurred in another state, at a time when the plaintiff was  
20 present in (and, in the present situation, a resident of) that other state, and where  
21 that other state has its own substantive law, that differs from California law,  
22 governing the defendant's potential liability for the conduct that occurred within  
23 that state.

24 (48 Cal. 4<sup>th</sup> at 76.) As Plaintiffs brief concedes, Iran is little different than Oklahoma and  
25 California in that it has a set of laws with the purpose of compensating those who suffer  
26 injuries at the hands of others. (*See* Plaintiffs Omnibus Opposition at 7: 4-11.) While these  
27 laws differ in some ways from those of California, they do not seem out of touch with laws  
28 for compensation in other Civil Law jurisdictions. Moreover, the Government of Iran

1 would have had a strong interest in applying its own laws to a refinery it owned and an  
2 employee that it employed. At the time of his alleged exposure to asbestos, Mr. Sabetian  
3 and his wife were citizens of Iran, and he worked for the Iranian-owned National Iranian  
4 Oil Company. The facilities at which he worked were likewise owned and operated by the  
5 government of Iran. California has little interest in legislating behavior at such refineries  
6 and oil fields.

7 The greatest difficulty in applying Iranian law in this case is not determining the  
8 governmental interests. The difficulty is presented by the differences in language and the  
9 two systems, and the comparatively lesser development of Iranian law in the context of a  
10 jury trial. Moreover, the Court is naturally impaired in understanding the law of a foreign  
11 jurisdiction. The Court will address each question as to which the Defendants seek to apply  
12 Iranian law.

- 13 1. **Negligence Standard of Care.** The competing experts seem to agree that Iran's  
14 standard of care is based on "custom and usage," rather than the reasonable  
15 person standard as articulated in CACI Instruction 401. See Katirai Decl. Ex.  
16 F. Nevertheless, the Court declines to apply this aspect of Iranian Law.  
17 Although it is boldly and clearly stated in Iran's Civil Code, there is a lack of  
18 authoritative decisional or explicative law that could explain just what is meant  
19 by "custom and usage." Does this mean the "custom and usage" of the  
20 reasonably careful person, or the reasonably careful oil professional in Iran?  
21 Can the custom and usage of the industry worldwide be considered? The  
22 evidence does not present a clear enough distinction to formulate jury  
23 instructions that will provide answers to these and other questions under Iranian  
24 law. While resort could be had to a treatises on Iranian law, the Court is not  
25 comfortable placing as great a reliance on such treatises as Iranian lawyers  
26 apparently do. The Court therefore declines to apply this aspect of Iranian law.
- 27 2. **Strict Liability.** Defendants' expert Mr. Katirai establishes that there is no  
28 strict liability in Iran, certainly not during the relevant time period. Plaintiff's

1 expert does not present persuasive contrary evidence. The Court can apply this  
2 law by not submitting strict liability claims to the jury. The Court accepts this  
3 application of Iranian law.

4 3. **Joint and Several Liability.** Plaintiffs' expert Mr. Boozari and Defense expert  
5 Mr. Katirai seem in agreement that Iranian law does not provide for joint and  
6 several liability unless there is an explicit statutory exception. Mr. Boozari  
7 argues that there is an explicit statutory exception for persons determined to  
8 be "employers" under the Civil Responsibility Act, and this is not disputed by  
9 Defendants. It seems practical for the Court to make a post-verdict  
10 determination of whether there has been a showing of whether any of the  
11 Defendants were joint "employers" such that this provision comes into play.  
12 The Court accepts this application of Iranian law.

13 4. **Punitive Damages.** The Court is persuaded by Mr. Kitarai's declaration that  
14 Iranian law does not provide for punitive damages. Mr. Boozari's contrary  
15 opinion appears to speculate about bilateral treaties affecting this determination,  
16 but he does not offer concrete evidence of a treaty that would affect Mr.  
17 Sabetian's case. The Court accepts this application of Iranian law.

18 5. **Monetary limit on General Damages.** Although the experts do not appear in  
19 disagreement that there is some sort of monetary cap on general damages, the  
20 Court declines to apply it in this case. Apparently the cap is set by reference to  
21 a memorandum prepared by unnamed Iranian government lawyers who have  
22 the power to alter the cap as they see fit. Defendants did not produce a sample  
23 determination for the Court, leaving the Court in doubt as to what the cap was  
24 and how it is determined. The cap also varies by season of the year. As such,  
25 the Court is left unsure that the cap is not so arbitrary in nature and application  
26 that it would offend fundamental due process if applied in an American court.

27 6. **Prohibition on Loss of Consortium Damages.** The Court was initially  
28 concerned that this limitation might also violate fundamental due process

1 because it was applied in a manner that arbitrarily limited damages by sex. At  
2 the hearing, defense counsel persuasively argued that a prohibition on loss of  
3 consortium could apply to either sex. Nevertheless, the Court is worried that  
4 Iran does not neatly define loss of consortium in the same way that California  
5 does, and that the damages could be considered in other categories under  
6 Iranian law. (*See* Boozari Dec., ¶¶ 55-58.) Therefore, the Court finds that this  
7 prohibition is not established with sufficient clarity in Iranian law to allow for  
8 application in this case.

9 Where the Court is unable to determine a difference between Iranian and California  
10 law, the Court will apply California law. Where the Court is unable to ascertain Iranian law  
11 with clarity, the Court will apply California law based on California's interest as the forum  
12 state.

13 The Court is cognizant that this ruling differs from prior rulings in this JCCP. While prior  
14 courts were worried about the religious influence on Iranian law, these provisions of law appear  
15 well-established, civil, and secular in nature. All laws of civil redress have root in some religious  
16 tradition, and these laws do not radically or offensively differ from traditions in the law of the  
17 various United States.

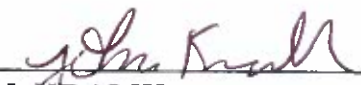
18 The Court considers the question of whether to apply Iranian law to be a separate question  
19 of whether there would be a remedy for Mr. Sabetian in Iran. Nevertheless, the Court notes that  
20 Defendants did present evidence that Iranian law does provide a remedy for worker injuries at the  
21 locations referenced. (*See* Katirai Dec., ¶¶ 46-51.)

22 The subject of what law to apply to a trial, and how to instruct the jury, are under the  
23 continuing jurisdiction and responsibility of the trial judge. Sometimes, the evidence can evolve in  
24 a direction that causes revision in the law to be submitted to the jury. Therefore, the trial court  
25 retains its power to revise these rulings as it sees fit and to hear further evidence from experts  
26 regarding Iranian law should it find such evidence necessary.



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

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5 DATED: October 24, 2018

  
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6 JOHN J. KRALIK  
7 JUDGE OF THE SUPERIOR COURT

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