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12 AND THROUGH THE DEPARTMENT OF WATER AND  
POWER OF THE CITY OF LOS ANGELES  
13

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **COUNTY OF LOS ANGELES**

17 RHODA EVANS AND BOBBY EVANS,  
18 Plaintiff,  
19 v.

20 A.W. CHESTERTON COMPANY;  
ADVOCATE MINES, LTD.; AK STEEL  
21 HOLDING CORPORATION, INDIVIDUALLY  
AND AS SUCCESSOR-IN-INTEREST TO  
22 ARMCO INC.; AMERON INTERNATIONAL  
CORPORATION; ASBESTOS  
23 CORPORATION, LTD.; CERTAIN-TEED  
CORPORATION; CONSUMERS PIPE AND  
24 SUPPLY CO.; CRANE CO., INDIVIDUALLY  
AND AS SUCCESSOR-IN-INTEREST TO  
25 CHAPMAN VALVE CO.; CROWN, CORK &  
SEAL, INDIVIDUALLY AND AS  
26 SUCCESSOR-IN-INTEREST TO MUNDET  
CORK; CSR, LTD., AKA COLONIAL  
27 SUGAR REFINERY; FAMILIAN  
CORPORATION, DBA FAMILIAN PIPE &  
28 SUPPLY; FERGUSON ENTERPRISES.

NOTED FOR COURT COORDINATOR  
AMOUNT OF CONSIDERABLE DISCOUNT  
TO \$100.00  
PLUS A ONE TIME FEE NOT PAYABLE IN FULL  
IF THE PARTY BECOMES A JUDGMENT CREDITOR

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

MAR 22 2010

John A. Clarke, Executive Officer/Clerk  
By Amber Lafleur Clayton Deputy  
AMBER LAFLEUR-CLAYTON

CASE NO. BC418867  
Complaint Filed: 7/29/09

[Assigned for all purposes to Judge Conrad Richard  
Aragon, Dept. 49]

**DEFENDANT, CITY OF LOS ANGELES  
ACTING BY AND THROUGH THE  
DEPARTMENT OF WATER AND  
POWER OF THE CITY OF LOS  
ANGELES' NOTICE OF MOTION AND  
MOTION FOR GOOD FAITH  
SETTLEMENT DETERMINATION;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATIONS OF R.  
GREGORY AMUNDSON AND  
SHANNON M. BENBOW; EXHIBITS;  
[PROPOSED] ORDER**

DATE: 3/20/10  
TIME: 8:30 a.m. 9:30 a.m.  
DEPT.: 49

Trial Date: 3/22/10

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1 INC., INDIVIDUALLY, AS SUCCESSOR-IN-  
2 INTEREST AND PARENT ALTER EGO TO  
3 INDIANA PIPE & SUPPLY COMPANY;  
4 GARLOCK SEALING TECHNOLOGIES LLC  
5 INDIVIDUALLY AND AS SUCCESSOR-IN-  
6 INTEREST TO GARLOCK, INC.; GENERAL  
7 ELECTRIC COMPANY; GRINNELL LLC;  
8 HAJOCA CORPORATION; HIRSCH PIPE &  
9 SUPPLY CO., INC.; HONEYWELL  
10 INTERNATIONAL, INC. FKA ALLIED  
11 SIGNAL INC., INDIVIDUALLY AND AS  
12 SUCCESSOR-IN-INTEREST TO THE  
13 BENDIX CORPORATION; KEENAN  
14 PROPERTIES, INC.; KUBOTA  
15 CORPORATION, INDIVIDUALLY AND AS  
16 SUCCESSOR IN INTEREST TO KUBOTA  
17 IRON AND MACHINERY WORKS AND  
18 KUBOTA AMERICA; LOS ANGELES  
19 DEPARTMENT OF WATER AND POWER;  
20 MARDEN SUSCO, INC.; MCJUNKIN  
21 CORPORATION, INDIVIDUALLY, AS  
22 SUCCESSOR-IN-INTEREST AND PARENT  
23 ALTER EGO TO THE REPUBLIC SUPPLY  
24 COMPANY OF CALIFORNIA; METALCLAD  
25 INSULATION CORPORATION; MUELLER  
26 WATER PRODUCTS, INC., INDIVIDUALLY,  
27 AS SUCCESSOR-IN-INTEREST, PARENT  
28 ALTER EGO AND FKA U.S. PIPE; OWENS  
-ILLINOIS INC.; PLUMBING AND  
INDUSTRIAL SUPPLY COMPANY; SOCO-  
WEST, INC. FKA BRENNTAG WEST, INC.  
FKA SOCO-LYNCH CORPORATION,  
INDIVIDUALLY AND AS SUCCESSOR-IN-  
INTEREST TO WESTERN CHEMICAL &  
MANUFACTURING COMPANY; UNION  
CARBIDE CORPORATION; UNIROYAL,  
INC.; WESTERN WATER WORKS SUPPLY  
COMPANY; VIACOM, INC. AS  
SUCCESSOR-BY-MERGER TO CBS  
CORPORATION FKA WESTINGHOUSE  
ELECTRIC CORPORATION AND THE  
FIRST DOE THROUGH THREE  
HUNDREDTH DOE, INCLUSIVE,

Defendant.

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TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 26, 2010, at <sup>9:30</sup>~~8:30~~ a.m. in Department 49 of  
the above-entitled court, located at 111 North Hill St., Los Angeles, CA 90012, defendant,  
CITY OF LOS ANGELES ACTING BY AND THROUGH THE DEPARTMENT OF

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1 WATER AND POWER OF THE CITY OF LOS ANGELES (hereinafter "LA DWP"), will  
2 move this Court for the following orders:

3 (1) That the resolution between plaintiffs, RHODA EVANS and BOBBY  
4 EVANS (hereinafter "plaintiffs"), and potential claimants, SEAN EVANS and  
5 TANAYA EVANS (collectively "claimants"), and LA DWP for a full release of  
6 all pending and future claims related to this matter as to LA DWP in  
7 exchange for a sliding scale settlement with a high of \$975,000 and a low of  
8 \$600,000 has been entered into in good faith; and

9 (2) Any and all past, present, or future claims by any person or entity  
10 against LA DWP for equitable comparative contribution, total, partial, or  
11 comparative indemnity or contribution, or for implied contractual indemnity  
12 in connection with, or arising out of, the circumstances which are the  
13 subject of this action, are forever barred.

14 This Motion is made pursuant to California Code of Civil Procedure §877 et seq.,  
15 on the grounds the settlement entered into between claimants and LA DWP was made in  
16 good faith.

17 The parties affected by this Motion are:

- 18 (1) Plaintiffs, RHODA EVANS and BOBBY EVANS;  
19 (2) Potential claimants, SEAN EVANS and TANAYA EVANS;  
20 (3) Defendant, CITY OF LOS ANGELES ACTING BY AND THROUGH  
21 THE DEPARTMENT OF WATER AND POWER OF THE CITY OF  
22 LOS ANGELES; and  
23 (4) The remaining co-defendants, ADVOCATE MINES, LTD., CERTAIN-  
24 TEED CORP., and KUBOTA CORPORATION, INDIVIDUALLY AND  
25 AS SUCCESSOR IN INTEREST TO KUBOTA IRON AND  
26 MACHINERY WORKS AND KUBOTA AMERICA.

27 The pleadings affected by this Motion are:

- 28 (1) Plaintiffs' First Amended Complaint, filed on December 21, 2009;

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1 (2) First Amended General Order No. 10 dated December 19, 1989, which  
2 provides that a defendant appearing in any Los Angeles Asbestos Litigation  
3 action by answer shall be deemed to have filed and served a cross-  
4 complaint for indemnity, contribution, and declaratory relief against all other  
5 defendants having appeared or thereafter appearing.

6 This Motion is based upon this notice, the attached Memorandum of Points and  
7 Authorities, the Declarations of R. Gregory Amundson and Shannon M. Benbow, the  
8 exhibits thereto, all other pleadings and papers on file with the court, and upon such oral  
9 and documentary evidence as may be presented at the hearing of this matter.

10  
11 DATED: March 19, 2010

WOOD, SMITH, HENNING & BERMAN LLP

12  
13 By: 

DANIEL A. BERMAN  
R. GREGORY AMUNDSON  
SEYMOUR B. EVERETT  
SHANNON M. BENBOW

Attorneys for Defendant, CITY OF LOS ANGELES  
ACTING BY AND THROUGH THE  
DEPARTMENT OF WATER AND POWER OF  
THE CITY OF LOS ANGELES

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I. **INTRODUCTION**

3 Plaintiffs, RHODA EVANS and BOBBY EVANS (hereinafter "plaintiffs") brought  
4 this action against various defendants, including the CITY OF LOS ANGELES ACTING  
5 BY AND THROUGH THE DEPARTMENT OF WATER AND POWER OF THE CITY OF  
6 LOS ANGELES ("LA DWP"). As against LA DWP, RHODA EVANS ("Mrs. Evans"),  
7 asserted two causes of action: Negligence – Dangerous Condition (Government Code  
8 §835) and Breach of Statutory Duty (Government Code §815.2). BOBBY EVANS ("Mr.  
9 Evans") asserted a cause of action for Loss of Consortium against LA DWP, which was  
10 dismissed pursuant to the stipulation of the parties. (Benbow Decl. ¶2.)

11 Following lengthy settlement discussions, plaintiffs and LA DWP reached a sliding  
12 scale settlement in this matter. (Id. ¶3.) Per the terms of the agreement, which was  
13 approved by the LA DWP Claims Board on March 18, 2010, LA DWP has agreed to pay  
14 plaintiffs, their son, SEAN EVANS, and their granddaughter, TANAYA EVANS  
15 (hereinafter "Tanaya") (collectively, plaintiffs, Sean, and Tanaya are referred to as  
16 "claimants") a collective high of \$975,000 and a collective low of \$600,000. (Id.)

17 More specifically, LA DWP agreed to pay claimants \$975,000 if LA DWP was  
18 found more than four percent (i.e., 4.1% or more) at fault for claimants' existing and  
19 anticipated injuries as a result of Mrs. Evans' exposure to asbestos. (Id.) LA DWP and  
20 claimants agreed that the settlement would be reduced to \$800,000 if LA DWP's share of  
21 liability at trial is found to be more than three percent, up to four percent (i.e., 3.1% to  
22 4%). (Id.) Finally, if the trier of fact determines that LA DWP's liability three percent or  
23 less (i.e., 0% to 3%), then LA DWP will pay claimants \$600,000. (Id.) Each party to the  
24 agreement will bear their own costs and expert witness and attorneys' fees. (Id.) The  
25 settlement is contingent upon claimants executing a full release of LA DWP, including a  
26 waiver pursuant to Civil Code §1542.

27 This settlement is also contingent upon the court's finding that the parties entered  
28 into it the agreement in good faith. (Id.)

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1 II. CODE OF CIVIL PROCEDURE §877.6 AUTHORIZES THE COURT TO ISSUE  
2 AN ORDER DETERMINING THAT THE SETTLEMENT BETWEEN CLAIMANTS  
3 AND LA DWP WAS ENTERED INTO IN GOOD FAITH.

4 In 1992, the state legislature amended the Code of Civil Procedure to state clear  
5 and precise procedural guidelines for the determination of good faith resolutions. Section  
6 877.6 provides in pertinent part:

7 (a)(1) Any party to an action in which it is alleged that two or more parties  
8 are joint tortfeasors or co-obligors on a contract debt shall be entitled to a  
9 hearing on the issue of the good faith of a settlement entered into by the  
10 plaintiff or other claimant and one or more alleged tortfeasors or  
11 co-obligors, upon giving notice thereof. . . . Upon a showing of good cause,  
the court may shorten the time for giving the required notice to permit the  
determination of the issue to be made before the commencement of the trial  
of the action, or before the verdict or judgment a settlement is made after  
the trial has commenced.

12 . . . .  
13 (b) The issue of the good faith of a settlement may be determined by the  
14 court on the basis of affidavits served with the notice of hearing, and any  
counter affidavits filed in response thereto, or the court may, in its  
discretion, receive other evidence at the hearing.

15 (c) A determination by the court that the settlement was made in good  
16 faith shall bar any other joint tortfeasor or co-obligor from any further claims  
17 against the settling tortfeasor or co-obligor for equitable comparative  
contribution, partial or comparative indemnity, based on comparative  
negligence or comparative fault.

18 (d) The party asserting the lack of good faith shall have the burden of  
19 proof on that issue.

20 The court in Stambaugh v. Superior Court, (1976) 62 Cal.App.3d 231, held that  
21 except in rare cases of collusion or bad faith, "a joint tortfeasor should be permitted to  
22 negotiate settlement of an adverse claim according to his best interests, whether for his  
23 financial advantage or for the purchase of peace and quiet or otherwise."

24 "[The defendants'] good faith will not be determined by the proportion his  
25 settlement bears to the damages of the claimant for the damages are often speculative,  
26 and the probability of legal liability therefore is often uncertain or remote". (Stambaugh,  
27 supra, 62 Cal.App.3d at 238.) Bad faith is not established by a showing that a settling  
28 defendant paid less than his theoretical proportional or fair share of the value of plaintiff's



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1 case. Where plaintiff settles with fewer than all defendants, the defendants are clearly  
2 adverse parties. A settling defendant does not owe a legal duty to adverse parties, the  
3 non-settling defendants, to pay the plaintiff more so the adverse parties may pay plaintiff  
4 less. The settling parties owe the non-settling defendants a legal duty to refrain from  
5 tortious or other wrongful conduct; absent conduct violative of such a duty, the settling  
6 parties may act to further their respective interests without regard to the effect of their  
7 settlement upon other defendants. (Tech-Bilt, Inc. v. Woodward Clyde & Associates  
8 (1985) 38 Cal.3d 448, 497-98.)

9 **III. LA DWP HAS ENTERED INTO A GOOD FAITH RESOLUTION OF THIS**  
10 **MATTER WITH CLAIMANTS.**

11 In the landmark Tech-Bilt case, the California Supreme Court considered the  
12 meaning of the phrase "good faith" as used in Code of Civil Procedure §877.6. In  
13 keeping with the policies of American Motorcycle Association v. Superior Court, (1978)  
14 20 Cal.3d 578, the Tech-Bilt court concluded that an appropriate definition of "good faith"  
15 would allow the trial court to determine whether the resolution is reasonable. (Tech-Bilt,  
16 supra, 38 Cal.3d at 499.)

17 To accomplish this, the settlement needs to be within a "reasonable range" of the  
18 settling party's proportional share of comparative liability for plaintiff's injuries. (Id. at 499.)  
19 California courts have recognized that good faith is a flexible concept. (Price Pfister, Inc.  
20 v. William Lyon Co. (1993) 14 Cal.App.4th 1643.) Such a determination depends upon  
21 what the plaintiff knew about the liability at the time of settlement, not evidence that might  
22 be acquired later. (Tech-Bilt, Inc., supra, 38 Cal.3d at 499.)

23 Whether the settlement was within the "good faith ballpark" is to be evaluated on  
24 the basis of information available at the time of settlement, including: (1) a rough  
25 approximation of plaintiff's total recovery and the settlor's proportionate liability; (2) the  
26 amount paid in settlement; (3) a recognition that a settlor should pay less in settlement  
27 than if found liable after a trial; (4) the allocation of the settlement proceeds among  
28 plaintiffs; (5) and the settlor's financial condition and insurance policy limits. (Id. at 500.)

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1 Proposition 51 requires apportionment of non-economic damages among  
2 defendants in actions where liability is based upon fault. As a settling defendant, LA DWP  
3 attempted to determine its liability in a proportionate manner with respect to the  
4 economic, as well as non-economic, damages attributable to its apportioned liability.

5 **A. The Settlement Represents a "Rough Approximation" of Claimants'**  
6 **Potential Total Recovery and LA DWP's Potential Total Liability.**

7 Claimants' claims involves Mrs. Evans' alleged para-occupational asbestos  
8 exposure. (Benbow Decl. ¶4.) Plaintiffs provided responses to the In re: Los Angeles  
9 Asbestos Litigation General Orders – General Order No. 13 (Standard Interrogatories).  
10 Per their responses to those interrogatories, plaintiffs (and presumably Sean and  
11 Tanaya) contend that Mrs. Evans was exposed to asbestos brought home on Mr. Evans'  
12 clothes while he worked at DWP from 1968 to 1998. (Standard Interrogatories No. 26,  
13 attached as **Exhibit A** to the Benbow Decl. is a true and correct copy of the Standard  
14 Interrogatories; Plaintiffs' Responses to Interrogatories Propounded to Plaintiffs on Behalf  
15 of Defendants No. 26, attached as **Exhibit B** to the Benbow Decl. is a true and correct  
16 copy of Plaintiffs' Responses to Interrogatories Propounded to Plaintiffs on Behalf of  
17 Defendants.)

18 LA DWP's pulmonologist expert, Dr. Gerald Meyers, does not dispute that Mrs.  
19 Evans has mesothelioma. (Deposition of Gerald Meyers, M.D., at 08:22-09:01, attached  
20 as **Exhibit C** to the Benbow Decl. is a true and correct copy of the relevant pages of the  
21 Deposition of Gerald Meyers, M.D.) He also does not dispute that Mrs. Evans' illness  
22 was caused by her para-occupational exposure to asbestos. (*Id.* at 09:24-10:02.) He  
23 believes Mrs. Evans has a life expectancy of up to the end of 2010. (*Id.* at 21:09-21:20.)

24 However, as discussed more fully below, LA DWP contends that it was an "end  
25 user" of asbestos cement pipe and was not aware of the purported risks of asbestos  
26 exposure to its employees and, more specifically, the family members of its employees.  
27 In short, LA DWP believes that there was a substantial likelihood of a finding of little to no  
28 liability against LA DWP at trial, but also recognized that claimants could recover a

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1 substantial economic and non-economic damages. Thus, even with a finding of little  
2 liability, LA DWP recognized that it faced a large verdict potential. It also recognized that  
3 Mr. Evans, Sean Evans, and Tanaya Evans might bring a subsequent Wrongful Death  
4 action against LA DWP after Mrs. Evans passes away. Thus, the settlement was simply  
5 an economic decision based upon the anticipated cost of defending this action and a  
6 subsequent Wrongful Death action, as well as the potential verdicts in this action and a  
7 subsequent Wrongful Death action.

8 **1. Liability.**

9 As against DWP, plaintiffs, and presumably Sean and Tanaya, allege that Mr.  
10 Evans was employed by DWP, that he was employed on DWP property that was in a  
11 dangerous and defective condition, that DWP provided him with uniforms and/or  
12 coveralls, that his uniforms/coveralls became contaminated with asbestos while he  
13 performed his job, and that he thereafter transported the asbestos-contaminated clothing  
14 into the family vehicle and residence, which exposed Mrs. Evans to asbestos fiber. (First  
15 Amended Complaint ("FAC") 07:06-07:11.)

16 Mrs. Evans washed Mr. Evans' dirty clothing when he returned home from work.  
17 (Deposition of Rhoda Evans (Vol. I) at 20:05-20:14, attached as **Exhibit D** to the Benbow  
18 Decl. is a true and correct copy of the relevant pages of the Deposition of Rhoda Evans  
19 (Vol. I).) Some of the pipes Mr. Evans worked with at the DWP had asbestos in them.  
20 (Deposition of Bobby Evans (Vol. I) at 29:25-30:09, attached hereto as **Exhibit E** to the  
21 Benbow Decl. is a true and correct copy of the relevant pages of the Deposition of Bobby  
22 Evans (Vol. I).) However, he could not tell the difference between asbestos cement pipe  
23 and non-asbestos cement pipe; they were the same thing to him. (Id. at 199:17-199:22,  
24 209:02-209:15.) Mr. Evans would occasionally use the "wet method" of cutting pipe to  
25 keep the dust down. (Id. at 211:22-211:24, 214:24-215:17.) Furthermore, most of the  
26 pipes he worked with at DWP were metal pipes. (Deposition of Bobby Evans (Vol. III) at  
27 513:05-513:12, attached hereto as **Exhibit F** to the Benbow Decl. is a true and correct  
28 copy of the relevant pages of the Deposition of Bobby Evans (Vol. III).)

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1 The LA DWP contends that, as an end user of asbestos cement pipe, it was not  
2 adequately warned of the health hazards associated with asbestos prior to the 1980s.  
3 Joe Castruita, Sr., a General Services Manager with LA DWP, testified that as LA DWP's  
4 person most knowledgeable, that he was not aware of anybody at the LA DWP who  
5 understood, prior to 1977, that asbestos cement pipe created a potential health hazard.  
6 (Deposition of Joe Castruita, Sr., at 43:18-43:24 attached hereto as **Exhibit G** to the  
7 Benbow Decl. is a true and correct copy of the relevant pages of the rough transcript of  
8 the Deposition of Joe Castruita, Sr.) Nor was he aware of any manufacturer of asbestos  
9 cement pipe advising the LA DWP, prior to 1977, of the health hazards associated with  
10 asbestos. (Id. at 43:25-44:05.) Furthermore, literature sent to the LA DWP in the 1970s  
11 indicated a possible health hazard associated with asbestos, but did not indicate to LA  
12 DWP that the health hazards included cancer and mesothelioma. (Id. at 53:01-54:02;  
13 58:01-58:14.)

14 Thus, the LA DWP determined, and believes that plaintiffs similarly determined,  
15 that while some liability may attach to the LA DWP for Rhoda Evans' injuries, the  
16 percentage of liability would be small.

## 17 2. Causation.

18 "As a general rule, the imposition of liability depends upon a showing by the  
19 plaintiff that his or her injuries were caused by the act of the defendant or by an  
20 instrumentality under the defendant's control." (Powell v. Standard Brands Paint Co.  
21 (1985) 166 Cal.App.3d 357, 363.) Proximate cause is a legal relationship. Whether an  
22 act or incident is the proximate cause of injury is a question of law where the facts are  
23 uncontroverted and only one deduction or inference may reasonably be drawn from those  
24 fact. (Sanders v. Atchison, Topeka & Santa Fe Ry. Co. (1977) 65 Cal.App.3d 630.) The  
25 issue of causation is amenable to disposition by summary judgment. (Hunter v. Pacific  
26 Mechanical Corporation (1995) 37 Cal.App.4th 1282, 1286-88.)

27 A threshold issue in asbestos litigation is exposure to the defendant's  
28 product. The plaintiff bears the burden of proof on this issue. If there has  
been no exposure, there is no causation. Plaintiffs may prove causation in

1 an asbestos case by demonstrating that the plaintiff's . . . exposure to the  
2 defendant's asbestos-containing product in reasonable medical probability  
3 was a substantial factor in contributing to the aggregate doses of asbestos  
4 the plaintiff . . . inhaled or ingested. (McGonnell v. Kaiser Gypsum  
Company, Inc. (2002) 98 Cal.App.4th 1098, 1103 (citations omitted).)

5 Claimants, accordingly, cannot prevail against LA DWP without evidence that Mrs.  
6 Evans was exposed to asbestos-containing materials manufactured or furnished by LA  
7 DWP with enough frequency and regularity as to show a reasonable medical probability  
8 that this exposure was a factor in causing her injuries. (Rutherford v. Owens-Illinois, Inc.  
9 (1997) 16 Cal.4th 953, 975-76.)

10 Mr. Evans worked primarily with metal pipe while employed by DWP. (**Exhibit F**  
11 at 513:05-513:12.) When working with cement pipe, he could not tell the difference  
12 between asbestos cement pipe and non-asbestos cement pipe; they were the same thing  
13 to him. (**Exhibit E** at 199:17-199:22, 209:02-209:15.) Accordingly, LA DWP believes  
14 that a jury could determine that there is insufficient evidence to support a finding that Mrs.  
15 Evans' mesothelioma was caused by her para-occupational exposure to asbestos.

16 This is supported by experts retained by some of the parties in this case. For  
17 instance, Samuel Spivak, M.D., opined Mr. Evans' occupational exposure to asbestos  
18 was not likely to be a high risk for Mrs. Evans' para-occupational exposure. (Benbow  
19 Decl. ¶12.) This is because Mr. Evans primarily worked outdoors, the exposure  
20 would have been transient, and the material in the pipe would have been chrysotile, not  
21 chrysotile. (Id.)

22 On the other hand, other retained experts in this action opined that Mrs. Evans'  
23 mesothelioma was caused by her para-occupational exposure to asbestos. For instance,  
24 Dr. Meyers, as discussed above, believes that Mrs. Evans' mesothelioma was caused by  
25 her para-occupational exposure to asbestos. (**Exhibit C** at 09:24-10:02.)

### 26 3. The Value of the Settlement.

27 Per the terms of the agreement, which was approved by the LA DWP Claims  
28 Board on March 18, 2010, LA DWP has agreed to pay claimants a collective high of  
\$975,000 and a collective low of \$600,000. (Benbow Decl. ¶4.) More specifically, LA

1 DWP agreed to pay claimants \$975,000 if LA DWP was found more than four percent  
2 (i.e., 4.1% or more) at fault for claimants' existing and anticipated injuries as a result of  
3 Mrs. Evans' exposure to asbestos. (Id.) LA DWP and claimants agreed that the  
4 settlement would be reduced to \$800,000 if LA DWP's share of liability at trial is found to  
5 be more than three percent, up to four percent (i.e., 3.1% to 4%). (Id.) Finally, if the trier  
6 of fact determines that LA DWP's liability three percent or less (i.e., 0% to 3%), then LA  
7 DWP will pay claimants \$600,000. (Id.) Each party to the agreement will bear their own  
8 costs and expert witness and attorneys' fees. (Id.)

9 In deciding whether a settlement was made in good faith, the court must determine  
10 the value of the consideration paid in settlement, including both cash and noncash  
11 consideration, such as an assignment of rights. (Erreca's v. Superior Court (1993) 19  
12 Cal.App.4th 1475, 1496.)

13 In the instant matter, the settlement agreement between LA DWP and claimants  
14 does not include non-cash consideration. Thus, the reasonable value of the settlement is  
15 between \$600,000 and \$975,000, depending on the liability determination made by the  
16 trier of fact after a trial in this matter.

#### 17 **4. Pre-Trial Settlement.**

18 A third Tech-Bilt factor is the recognition that the settling defendant should pay  
19 less in settlement than it would pay at trial. Based on LA DWP's analysis of plaintiffs'  
20 claims, after extensive consultations with experts, counsel for LA DWP believed that this  
21 case had a very good chance of a finding of little to no liability against LA DWP. On the  
22 other hand, LA DWP also recognized that even with a finding of only a small percentage  
23 of liability, plaintiffs' case has potential for a significant verdict. LA DWP also recognized  
24 the uncertainty of a future Wrongful Death action. A settlement such as this, which  
25 resolves a pending personal injury action and a future Wrongful Death action, is common  
26 in asbestos litigation. LA DWP believes that plaintiffs took into account the possibility of a  
27 finding of no liability against LA DWP, as well as the cost of a future Wrongful Death  
28 action in reaching this settlement.

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**5. Allocation of the Settlement Among Claimants.**

The amount of the settlement was a collective amount. Plaintiffs are a married couple, and brought this suit as a married couple. They are raising their minor grand daughter, Tanaya. Mr. Evans will presumably remain her sole guardian after Mrs. Evans passes away. Their son, Sean Evans, is an adult. Plaintiffs will share their settlement and allocate it among themselves. It is LA DWP's understanding that a portion of the settlement will be used to assist Mr. Evans in raising Tanaya after Mrs. Evans passes away.

**6. Insurance.**

LA DWP is self insured. LA DWP's Claims Board has approved this sliding scale settlement, recognizing that LA DWP, as a self-insured entity, will pay the settlement funds. Since LA DWP is paying "out of pocket" for this settlement, this weighs in favor of a finding of good faith by LA DWP.

Applying the relevant factors to this case, LA DWP respectfully submits that it has entered into a good faith resolution of this matter with claimants. Moreover, there is no evidence of collusion, fraud, or tortious conduct between LA DWP and claimants aimed at injuring the interest of any of the co-defendants. In fact, plaintiffs have entered into settlements with a number of defendants in this action. In fact, other than LA DWP, there are only three defendants remaining in this action. Thus, the resolution is consistent with the equitable objectives of Code of Civil Procedure §877.6.

**IV. THE EFFECT OF A GOOD FAITH DETERMINATION IS TO PRECLUDE FUTURE CLAIMS FOR EQUITABLE INDEMNITY OR CONTRIBUTION AGAINST LA DWP.**

A good faith determination immunizes a party against cross-claims for equitable indemnity. (American Motorcycle Association v. Superior Court, (1978) 20 Cal.App.3d 578, 605.) The Legislature expressly codified the mandate of the California Supreme Court in §877.6 of the Code of Civil Procedure. Since the enactment of Section 877.6,

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1 courts have made it clear that good faith immunity extends to all forms of equitable  
2 indemnity. (Kohn v. Superior Court, (1983) 142 Cal.App.3d 323, 329-30, 332.)

3 The courts have not been willing to draw distinctions between parties facing  
4 "primary" liability and those facing "secondary" liability. (See Lopez v. Blecher, (1983)  
5 143 Cal.App.3d 736, 739-40.) In either case, good faith immunity under §877.6 is  
6 available.

7 In Bay Development Ltd. v. Superior Court, (1990) 50 Cal.3d 1012, the California  
8 Supreme Court held that one defendant's good faith resolution with the plaintiff barred a  
9 claim with implied contractual indemnity by another defendant. The court explained that  
10 such a claim is essentially a form of one for equitable indemnity. (Bay Development,  
11 supra, 50 Cal.3d at 1031-32.)

12 **V. A DETERMINATION OF GOOD FAITH BARS FUTURE CLAIMS FOR**  
13 **TOTAL AND/OR IMPLIED EQUITABLE INDEMNITY.**

14 In Standard Pacific of San Diego v. A.A. Baxter Corp., (1986) 176 Cal.App.3d 577,  
15 586, the Court found that a claim for total indemnity should not survive a §877.6 good  
16 faith resolution determination. Total and/or implied equitable indemnification is just one  
17 end of the spectrum of comparative equitable indemnification. (Id. at 587-88.) The  
18 authority cited herein make it clear that the resolution between claimants and LA DWP  
19 will necessarily bar all future claims, whether partial, comparative or total equitable  
20 contribution or indemnity or implied contractual indemnity.

21 **VI. ANY PARTY ASSERTING A LACK OF GOOD FAITH HAS A BURDEN OF**  
22 **PROOF AS TO THAT ISSUE.**

23 In Fisher v. Superior Court, (1980) 103 Cal.App.3d 434, 447, the Court held that  
24 once there is a showing made that a resolution is not unreasonable on its face, the  
25 burden of going forward with the evidence on the issue of "good faith" shifts to the  
26 non-settling tortfeasor. In the wake of Fisher, the Legislature enacted §877.6(d), which  
27 codified the rule as follows: "the party asserting the lack of good faith shall have the  
28 burden of proof on that issue." (See also Kohn v. Superior Court, supra, 142 Cal. App.3d



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1 323, 326.) Thus, opponents of a motion for good faith settlement have the burden of  
2 proving that the settlement is so far "out of the ballpark" in relation to the factors set forth  
3 by the moving party, as to be inconsistent with the equitable objectives of Code of Civil  
4 Procedure §877.6(d).

5 However, California Courts have made it clear that only under "rare"  
6 circumstances will a settlement be found to have been made in bad faith. In fact,  
7 California Courts have routinely upheld settlement that bore "no reasonable relationship  
8 to the amount prayed." (Kohn v. Superior Court (1983) 142 Cal.App.3d 323.) It is the  
9 burden of the challenging party to prove that the settlement was actually "inconsistent  
10 with the equitable objectives of the statute." (Tech-Bilt, supra, 38 Cal.3d at 499-500.)

11 **VII. CONCLUSION**

12 For the above reasons, LA DWP respectfully submits that the terms and conditions  
13 of the Settlement Agreement represent a settlement made in good faith pursuant to Code  
14 of Civil Procedure §877.6. The Agreement is clearly the result of arms-length  
15 negotiations and is not the result of any collusion. Accordingly, LA DWP is entitled to an  
16 Order from this Court barring any future claims by joint tortfeasors for indemnity or  
17 contribution bases in equitable principles.

18  
19 DATED: March 19, 2010

WOOD, SMITH, HENNING & BERMAN LLP

20  
21 By: 

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26 DEPARTMENT OF WATER AND POWER OF  
27 THE CITY OF LOS ANGELES  
28



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1 pursuant to Civil Code §1542. This settlement is also contingent upon the court's finding  
2 that the parties entered into it the agreement in good faith.

3 4. Claimants' claims involve Mrs. Evans' alleged para-occupational asbestos  
4 exposure.

5 5. Attached hereto as **Exhibit A** is a true and correct copy of the Standard  
6 Interrogatories.

7 6. Attached hereto as **Exhibit B** is a true and correct copy of Plaintiffs'  
8 Responses to Interrogatories Propounded to Plaintiffs on Behalf of Defendants.

9 7. Attached hereto as **Exhibit C** is a true and correct copy of pages 8-10 and  
10 21 of the Deposition of Gerald Meyers, M.D., taken on March 9, 2010.

11 8. Attached hereto as **Exhibit D** is a true and correct copy of page 20 of the  
12 Deposition of Rhoda Evans (Vol. I), taken on November 17, 2009.

13 9. Attached hereto as **Exhibit E** is a true and correct copy of pages 29-30,  
14 199, 209, 211, and 214-215 of the Deposition of Bobby Evans (Vol. I), taken on  
15 December 8, 2009.

16 10. Attached hereto as **Exhibit F** is a true and correct copy page 513 of the  
17 Deposition of Bobby Evans (Vol. III), taken on December 10, 2009.

18 11. Attached hereto as **Exhibit G** is a true and correct copy pages 43-44, 53-  
19 54, and 58, of the rough Deposition of the LA DWP's person most knowledgeable  
20 regarding various categories of inquiry requested by plaintiff, Joe Castruita, Sr., taken on  
21 March 11, 2010.

22 12. I attended the telephonic deposition of co-defendant's expert, Samuel  
23 Spivak, M.D., on March 15, 2010. At that time, Mr. Spivak testified that it was his opinion  
24 that Mr. Evans' occupational exposure to asbestos was not likely to be a high risk for Mrs.  
25 Evans' para-occupational exposure. This is because Mr. Evans primarily worked

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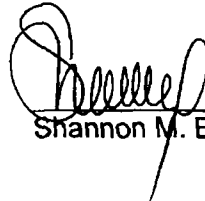
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1 outdoors, the exposure would have been transient, and the material in the pipe would  
2 have been chrysotile, not chrysotilite.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed March 19, 2010, at Glendale, California.



Shannon M. Benbow

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