

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

GAIL ELIZABETH WALASHEK,  
Individually and as successor-in-  
interest to THE ESTATE OF  
MICHAEL WALASHEK and THE  
ESTATE OF CHRISTOPHER  
LINDEN, et al.,  
Plaintiffs,

v.

AIR & LIQUID SYSTEMS  
CORPORATION, et al.,  
Defendants.

Case No.: 14cv1567 BTM(BGS)

**ORDER GRANTING  
DEFENDANT J.T. THORPE &  
SON, INC.'S MOTION FOR  
SUMMARY JUDGMENT**

On July 17, 2015, Defendant J.T. Thorpe & Sons, Inc. ("Thorpe") filed a motion for summary judgment against Plaintiffs. On August 28, 2015, Plaintiffs filed a notice of non-opposition to Thorpe's motion.

1 On June 17, 2014, Plaintiffs commenced this wrongful death and survival  
2 action in state court. The Complaint alleges that Michael Walashek's exposure to  
3 asbestos and asbestos-containing products, in the course of performing his work  
4 for various employers, resulted in severe and permanent injury and ultimately  
5 death. On June 27, 2014, this action was removed to federal court.

6 Plaintiffs' claims against Thorpe are based on allegations that Thorpe  
7 exposed Mr. Walashek to asbestos dust through its work with refractory materials  
8 in and around boilers upon which Mr. Walashek may have worked. Thorpe moves  
9 for summary judgment on the ground that Plaintiffs cannot establish that Mr.  
10 Walashek was exposed to asbestos from activities of Thorpe's employees or from  
11 refractory materials installed by Thorpe.

12 Thorpe is a refractory contractor. (Dep. of John Dawson (Ex. K) at 17:13-16.)  
13 Thorpe contracted with shipyards and shipbuilders to perform refractory work  
14 inside boilers aboard ships. (Dawson Dep. at 19:1-10.)

15 However, Plaintiffs have been unable to establish that Mr. Walashek was  
16 exposed to asbestos as a result of the activities of Thorpe. Plaintiffs' written  
17 discovery responses failed to identify specific documents or facts supporting  
18 Plaintiffs' claims against Thorpe. (Ex. C.) When deposed, Frank Walashek, Ron  
19 Gray, and Jim Doud, the three persons identified as persons with knowledge to  
20 support Plaintiffs' claims against Thorpe, could not provide any information

1 regarding Mr. Walashek working with or around any product manufactured or  
2 supplied by Thorpe. (Exs. D, E, F.) Furthermore, Plaintiffs themselves failed to  
3 provide any information about Thorpe at their depositions. (Exs. G-J.)

4 Thorpe has satisfied its initial burden of production on summary judgment by  
5 showing that Plaintiffs have insufficient evidence of an essential element of their  
6 case – i.e., that Mr. Walashek was exposed to asbestos-containing products as a  
7 result of activity by Thorpe. “In the context of a cause of action for asbestos-related  
8 latent injuries, the plaintiff must first establish some threshold exposure to the  
9 defendant's defective asbestos-containing products, and must further establish in  
10 reasonable medical probability that a particular exposure or series of exposures  
11 was a “legal cause” of his injury, i.e., a *substantial factor* in bringing about the  
12 injury.” Rutherford v. Owens-Illinois, Inc., 16 Cal. 4th 953, 982 (1997).

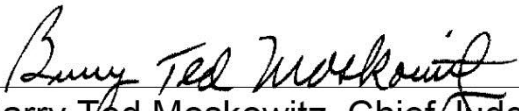
13 Because Thorpe has satisfied its initial burden, the burden shifts to Plaintiffs,  
14 who must produce enough evidence to create a genuine issue of material fact.  
15 See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Plaintiffs have not  
16 submitted any evidence in opposition to the motion and have instead filed a notice  
17 of non-opposition.

18 Therefore, the Court **GRANTS** Thorpe’s motion for summary judgment [Doc.  
19 267] against Plaintiffs. Because the Court finds that there is no just reason for  
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1 delay, the Court orders the Clerk to enter final judgment in favor of J.T. Thorpe &  
2 Son, Inc.

3 **IT IS SO ORDERED.**

4 Dated: November 2, 2015

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6 Barry Ted Moskowitz, Chief Judge  
7 United States District Court  
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