



**FILED**  
San Francisco County Superior Court

APR 28 2026  
CLERK OF THE COURT  
BY: Edward J. [Signature]  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

DIANE MAGALONG, as Successor in  
Interest to and as Wrongful Death Heir of  
HARRY MAGALONG, Deceased; and  
RONALD MAGALONG and MICHAEL  
MAGALONG, as Wrongful Death Heirs of  
HARRY MAGALONG, Deceased,

Plaintiffs,

vs.

GENERAL ELECTRIC COMPANY et al.,

Defendants

Case No. CGC-24-277245

ORDER GRANTING INTERVENORS' MOTION  
FOR SUMMARY JUDGMENT

Date: April 28, 2026  
Time: 9:00 a.m.  
Dept: 304, The Hon. Ethan P. Schulman

**1) INTERVENORS' MOTION FOR SUMMARY JUDGMENT**

Intervenors Certain London Market Insurance Companies, Certain Underwriters at Lloyds  
London, National Union Fire Insurance Company of Pittsburgh, PA, and Tig Insurance Company,  
("Intervenors"), as Insurers of Defendant J&H Marine & Industrial Engineering Company ("J&H")  
Motion for Summary Judgment came on hearing on April 28, 2026, in Department 304. Kimberly Chu  
appeared for Plaintiffs and James C. Parker appeared for Intervenors. Having considered the  
pleadings, papers on file in the action, and the arguments of counsel presented at the hearing, the  
motion is hereby GRANTED.

1 **BACKGROUND**

2 On August 28, 2024, Harry and Diane Magalong filed their Complaint for personal injury. Mr.  
3 Magalong alleged he was exposed to asbestos as a result of installation and disturbance of asbestos-  
4 containing ship decking. On April 11, 2025, upon Mr. Magalong’s death, Plaintiffs Diane Magalong  
5 and his two children, Ronald and Michael Magalong (“Plaintiffs”) filed the operative First Amended  
6 Complaint for wrongful death. Plaintiffs allege J&H or its predecessor, Willard Marine Decking, Inc.,  
7 performed asbestos-related decking work in the vicinity of Mr. Magalong at numerous ships and  
8 shipyards where he worked throughout the San Francisco Bay Area from 1981 to 1991.

9 On February 6, 2026, Intervenors filed their motion for summary judgment on the grounds that  
10 Plaintiffs cannot prove that Mr. Magalong was ever exposed to asbestos from any product or work  
11 attributable to J&H. Plaintiffs oppose, arguing that Intervenors have failed to meet their initial burden.

12 The Court finds that Intervenors have met their threshold burden of demonstrating that  
13 Plaintiffs do not have, and cannot reasonably expect to obtain, evidence supporting their claim.

14 **LEGAL STANDARD**

15 A defendant seeking summary judgment or adjudication must “conclusively negate a necessary  
16 element of the plaintiff’s case, or ... demonstrate that under no hypothesis is there a material issue of  
17 fact that requires the process of trial.” (*Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 334.) To show  
18 that a plaintiff cannot establish an element of a cause of action, a defendant must make the initial  
19 showing “that the plaintiff does not possess, and cannot reasonably obtain, needed evidence.” (*Aguilar*  
20 *v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854.) “The defendant may, but need not, present  
21 evidence that conclusively negates an element of the plaintiff’s cause of action. The defendant may  
22 also present evidence that the plaintiff does not possess, and cannot reasonably obtain, needed  
23 evidence - as through admissions by the plaintiff following extensive discovery to the effect that he  
24 has discovered nothing.” (*Id.* at p. 855.) ‘If plaintiffs respond to comprehensive interrogatories seeking  
25 all known facts with boilerplate answers that restate their allegations or simply provide laundry lists of  
26 people and/or documents, the burden of production will almost certainly be shifted to them once  
27

1 defendants move for summary judgment and properly present plaintiff's factually devoid discovery  
2 responses." (*Weber v. John Crane, Inc.* (2006) 143 Cal.App.4th 1433, 1440.) However, "the burden  
3 should not shift without stringent review of the direct, circumstantial and inferential evidence."  
4 (*Andrews v. Foster Wheeler LLC* (2006) 138 Cal.App.4th 96, 103.)

#### 5 DISCUSSION

6 A plaintiff "must first establish some threshold exposure to the defendant's defective asbestos-  
7 containing products." (*Rutherford, supra*, 16 Cal.4th at 982.) "At the very least, the plaintiff must  
8 provide circumstantial evidence sufficient to support a reasonable inference that the defendant's  
9 asbestos products or activities were present at [the relevant] work site." (*Casey v. Perini Corp* (2012)  
10 206 Cal.App.4th 1222, 1237.) "If there has been no exposure, there is no causation." (*McGonnell v.*  
11 *Kaiser Gypsum Co.* (2002) 98 Cal.App.4th 1098, 1103.) Intervenors have satisfied their initial burden  
12 of production by making a prima facie showing that Plaintiffs do not have, and cannot obtain,  
13 evidence necessary to link J&H to Mr. Magalong's asbestos exposure.

14 Plaintiffs contend that Intervenors failed to meet their burden because they propounded no  
15 written discovery in this wrongful death action and "made no efforts to determine what evidence the  
16 wrongful death Plaintiffs possess or can reasonably obtain in support of their wrongful death claims."  
17 (Opposition at pp. 2, 9.) At the hearing, Plaintiffs argued that Intervenors did not adequately address  
18 the discovery propounded on Plaintiff Diane Magalong, and that, as a result Intervenors' motion was  
19 insufficient to shift the burden. The Court disagrees.

20 In their moving papers, Intervenors showed, among other things, that Decedent was deposed  
21 for only one session prior to his death, during which he did not identify J&H or Willard as a source of  
22 exposure; that Decedent's responses to special interrogatories were served without a verification, and  
23 that no verification was ever provided prior to his death; and that Plaintiffs had identified three product  
24 identification witnesses, including J&H's person most knowledgeable. However, Intervenors  
25 acknowledged that they had not deposed two of those witnesses, but simply asserted, without  
26 evidence, that they "lack any confirmed knowledge regarding J&H's activities." (Motion, pg. 3.) In  
27

1 addition, Plaintiffs themselves (Diane Magalong, Decedent's widow, and his adult children Ronald  
2 and Michael Magalong) entered into stipulations that "no product identification would be made at  
3 [their] depositions, inclusive of any identification of contractors, subcontractors, or work performed by  
4 J&H," a stipulation that extended to any future declaration, affidavit, or testimony at trial. (Sekona  
5 Decl. ¶ 8.)

6 In opposition to the motion, Plaintiffs argued that Intervenors failed to meet their threshold  
7 burden because, among other things, (a) their motion relies on "stale discovery responses from a now-  
8 deceased plaintiff [Plaintiffs' decedent Harry Magalong] in the personal injury case that pre-dates the  
9 wrongful death claims"; (b) Intervenors failed to depose the three product identification witnesses they  
10 had identified as "having knowledge of Harry Magalong's exposure resulting from J&H MARINE's  
11 installation and disturbance of asbestos-containing ship decking in Decedent's presence"; and (c) they  
12 "ignore the verified special interrogatory responses to Plaintiff Diane Magalong served in the personal  
13 injury case." (Opposition, pg. 2.) None of those arguments is persuasive.

14 First, it is material to the motion that Decedent never testified that he was exposed to asbestos  
15 as a result of work performed by J&H or Willard, and that he never verified his special interrogatory  
16 responses before his death. As Intervenors point out, because those responses are not verified, they are  
17 not admissible at trial. (See, e.g., *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d  
18 481, 489 [unverified interrogatory responses are "legally invalid"].)

19 Second, because Intervenors failed to depose the product identification witnesses identified by  
20 Plaintiffs, that showing ordinarily would have been insufficient to meet their initial burden. (*Scheidung*  
21 *v. Dinwiddie Const. Co.* (1999) 69 Cal.App.4th 64.) However, Plaintiffs themselves subsequently  
22 *withdrew* the product identification witnesses they had previously identified. Initially, Plaintiffs  
23 identified three product-identification witnesses: Harry Sypowicz, Jesse Del Moral, and J&H's PMK.  
24 (Opposition at p. 2.) However, Plaintiffs withdrew Harry Sypowicz before filing their opposition and  
25 Jesse Del Moral after the reply was filed. (Opposition at p. 3, fn. 1; Supplemental Sekona Decl., ¶ 2.)  
26 In addition, J&H's PMK, Walter Willard, has since passed away. (Reply at p. 2.) Moreover, Mr.

1 Willard was deposed by Plaintiffs' counsel in June 1995 and did not ever mention Mr. Magalong.  
2 (Reply at p. 2; Sekona Decl. on Reply Ex. A.) In short, by the time briefing on the motion was  
3 complete, Plaintiffs lacked a single identified witness who could tie Decedent's alleged asbestos  
4 exposure to work performed by J&H or Willard at the shipyards where he worked.

5 Third, Plaintiffs' insistence that Intervenors should have addressed Mrs. Magalong's  
6 interrogatory responses is inconsistent with their stipulation that she has no product identification  
7 information to offer. That stipulation constitutes a binding factual concession that she has no evidence  
8 to offer. (*Palmer v. City of Anaheim* (2023) 90 Cal.App.5th 718, 723 ["Unless the trial court, in its  
9 discretion, permits a party to withdraw from a stipulation [citations], it is conclusive upon the parties,  
10 and the truth of the facts contained therein cannot be contradicted".]) Further, Plaintiffs failed to  
11 identify, either in their briefing or at oral argument, any material way in which Mrs. Magalong's  
12 discovery responses differed from those of her husband or contained product identification evidence  
13 attributable to J&H. Plaintiffs did not cite any response from Mrs. Magalong identifying J&H, Willard  
14 Marine Decking, Inc, or asbestos-containing products or work performed by those entities in Mr.  
15 Magalong's vicinity. Oddly, although Plaintiffs attached the verification of those responses to their  
16 opposition papers, they failed to supply the responses themselves, which strongly suggests that they  
17 contain no such information.

18 At the hearing, Plaintiffs relied on the fact that in his unverified interrogatory responses, Mr.  
19 Magalong identified a list of supervisors as persons who may have knowledge of his exposure.  
20 (Sekona Decl. Ex. C at pp. 38-39.) However, Plaintiffs failed to acknowledge the express language in  
21 the interrogatory response that qualified that response, stating that those supervisors were not product  
22 identification witnesses. (*Id.* at p. 38 ["Plaintiff does not currently contend this individual is a product  
23 identification witness against defendant".]) Merely listing the names of multiple potential witnesses,  
24 without any indication that they have any knowledge of Intervenors' insured's responsibility for  
25 Decedent's alleged exposure, is not evidence sufficient to defeat summary judgment. (*Andrews v.*  
26 *Foster Wheeler. LLC* (2006) 138 Cal.App.4th 96, 106 ["Rather than provide any facts known to these  
27  
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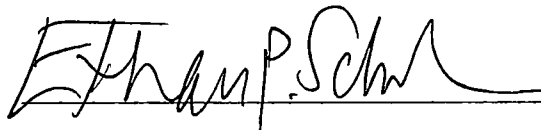
1 persons, plaintiffs merely referred to their list of coworkers and supervisors”].) Indeed, at the hearing,  
2 in response to repeated questions by the Court, Plaintiffs were unable (or unwilling) to identify any  
3 witness who can testify that J&H or its predecessor performed asbestos-related work in proximity to  
4 Mr. Magalong, or that such work caused his alleged injuries and death.

5 The Court notes that trial is scheduled to commence in approximately five weeks, on June 1,  
6 2026. Despite the imminent trial date, Plaintiffs have identified no product identification witnesses and  
7 made no offer of proof as to any witness who could testify that J&H was responsible for Mr.  
8 Magalong’s alleged asbestos exposure. Under the circumstances, the Court can see no practical  
9 purpose that would be served by going through the formalistic exercise of denying the motion and  
10 forcing Intervenor to prepare for and appear for trial when, as a practical matter, it appears from the  
11 record that Plaintiffs have no evidence that would enable them even to make a prima facie showing of  
12 liability against J&H or Willard. (Cf. *Juge v. County of Sacramento* (1993) 12 Cal.App.4th 59, 69  
13 [“To require the trial court to close its eyes to an unmeritorious claim simply because the operative  
14 ground entitling the moving party to summary judgment was not specifically tendered by that party  
15 would elevate form over substance and would be inconsistent with the purpose of the summary  
16 judgment statute”].) In light of Plaintiffs’ binding stipulations, their withdrawal of previously named  
17 product identification witnesses, their failure to identify any other such witnesses, and the absence of  
18 affirmative evidence from either the personal injury or wrongful death discovery, the Court finds that  
19 Plaintiffs do not possess and cannot reasonably obtain admissible evidence linking J&H to Mr.  
20 Magalong’s asbestos exposure.

21 Accordingly, Intervenor’s Motion for Summary Judgment is granted.

22 IT IS SO ORDERED.

23  
24 Dated: April 28, 2026



Ethan P. Schulman  
Judge of the Superior Court

**CERTIFICATE OF ELECTRONIC SERVICE**  
**(CCP 1010.6, and CRC 2.251)**

I, Edward Santos, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On April 28, 2026, I electronically served:

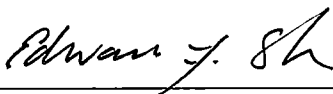
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via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Date:

APR 28 2026

Brandon E. Riley, Court Executive Officer

By: 

Edward Santos, Deputy Clerk