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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

GAIL ELIZABETH WALASHEK,
individually and as successor in interest
to the Estate of MICHAEL WALASHEK,
et al.,

Plaintiffs,

v.

AIR & LIQUID SYSTEMS
CORPORATION (sued as sucesor-by-
merger to BUFFALO PUMPS, INC.), et
al.,

Defendants.

Case No. 14cv1567 BTM(BGS)

**ORDER GRANTING MOTION TO
DISMISS**

Specially appearing Defendant Superior-Lidgerwood-Mundy Corporation (“SLM”) has filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(2). For the reasons discussed below, Defendant’s motion is **GRANTED**.

I. BACKGROUND

This case is a wrongful death action. Plaintiffs allege that the decedent, Michael Walashek, developed malignant mesothelioma as a result of exposure to asbestos from various products that were manufactured, supplied, sold, or distributed by Defendants, including SLM. Plaintiffs allege that Mr. Walashek was exposed to the asbestos during the course of his employment at various

1 jobs from approximately 1967 to 1986.

2 On March 24, 2014, Plaintiffs filed a Complaint for Wrongful Death and
3 Survival Action in the Superior Court of the State of California for the County
4 of San Diego.

5 On June 3, 2014, Plaintiffs served SLM with the Summons and
6 Complaint. (Woodman Decl. ¶¶ 11-12.)

7 On June 27, 2014, Defendant Carrier Corporation removed the State
8 Court Action to this Court. Because the removal was based on federal officer
9 removal jurisdiction under 28 U.S.C. § 1442(a)(1), Carrier Corporation asserted
10 that it did not need to obtain the consent of any other defendant for the
11 removal. (Notice of Removal, ¶ 11.)

12 According to SLM, the Notice of Removal was never served on SLM.
13 (Woodman Decl. ¶ 13; Graniez Decl. ¶ 5.) The Certificate of Service attached
14 to the Notice of Removal does not indicate service on SLM.

15 On July 2, 2014, SLM electronically filed a Motion to Quash Service of
16 Summons in state court. (RJN, Ex. C.) The basis of the motion was that SLM
17 is not subject to personal jurisdiction in the State of California. The motion was
18 accepted for filing by the state court. (RJN, Ex. D.)

19 Counsel for SLM first learned about the removal of the case on August
20 1, 2014. (Graniez Decl. ¶ 6; Risksecker Decl. ¶¶ 2-30.)

21 On August 20, 2014, SLM filed the instant motion.¹

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23 **II. DISCUSSION**

24 SLM brings this motion on the ground that the Court lacks personal
25 jurisdiction over SLM. As discussed below, the Court agrees with SLM.

26 Both the California long-arm statute and Fed. R. Civ. P. 4(k)(2) require
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¹ The Court finds that SLM's motion was filed in a timely manner given SLM's lack of notice regarding the removal of the action.

1 that the exercise of personal jurisdiction comply with federal due process
2 requirements. Pebble Beach Co. v. Caddy, 453 F.3d 1151, 1155 (9th Cir.
3 2006). Generally, a court may exercise jurisdiction over a nonresident
4 defendant where the defendant's minimum contacts with the forum state render
5 the maintenance of the action inoffensive to traditional concepts of fair play and
6 substantial justice. International Shoe Co. v. Washington, 326 U.S. 310, 320
7 (1945).

8 There are two types of personal jurisdiction — general and specific.
9 Specific jurisdiction exists when a defendant's contacts with the forum have
10 given rise to the suit. Helicopteros Nacionales de Colombia, S.A. v. Hall, 466
11 U.S. 408, 414 n. 8 (1984). In contrast, general jurisdiction allows a defendant
12 "to be haled into court in the forum state to answer for any of its activities
13 anywhere in the world." Schwarzenegger v. Fred Martin Motor Co., 374 F.3d
14 797, 801 (9th Cir. 2004). Recently, the Supreme Court clarified that the
15 appropriate inquiry for purposes of general jurisdiction is "whether that
16 corporation's affiliations with the State are so 'continuous and systematic' as
17 to render [it] essentially at home in the forum state." Daimler AG v. Bauman,
18 __ U.S. __, 134 S.Ct. 746, 761 (2014) (quoting Goodyear Dunlop Tires
19 Operations, S.A. v. Brown, 564 U.S. __, 131 S.Ct. 2846, 2851 (2011)).
20 General jurisdiction does not exist just because a corporation "engages in a
21 substantial, continuous, and systematic course of business" in a state.
22 Daimler, 134 S.Ct. at 761.

23 Plaintiffs do not claim that the Court has specific jurisdiction over SLM.
24 Instead, Plaintiffs contend that the Court has general jurisdiction over SLM
25 based on SLM's sale of M.T. Davidson pumps containing asbestos gaskets and
26 packing materials to Naval shipyards in California. The evidence shows that
27 between 1978-1986, SLM shipped 213 pumps to a United States Navy
28 contractor who owned a shipyard located in California. Plaintiffs have not

1 presented any evidence that SLM continued to do business with shipyards in
2 California after 1986.

3 SLM is a corporation organized under the laws of Wisconsin, with its
4 principal place of business in Wisconsin. (Woodman Decl. ¶ 2.) SLM's
5 manufacturing facilities are located in Wisconsin. (Id. at ¶ 3.) Other than the
6 sale of one winch to Los Angeles County three years ago, SLM denies contacts
7 with California after 1986. (Reply at 3.) SLM is not licensed to do business in
8 California, does not own real estate in California, does not maintain offices or
9 employees in California, does not have bank accounts in California, and does
10 not pay taxes in California. (Woodman Decl. ¶¶ 7-9.)

11 It appears that Plaintiffs rely solely on SLM's shipment of the 213 pumps
12 to California from 1978-1986 as the basis for the exercise of general
13 jurisdiction. However, the Court is not convinced that SLM's contacts with
14 California more than 25 years ago render SLM's affiliations with California so
15 "continuous and systematic" as to render SLM "essentially at home" in
16 California. For purposes of general jurisdiction, courts should consider all of
17 the defendant's contacts with the forum state over a period of years prior to the
18 plaintiff's filing of the complaint. 4 C. Wright, A. Miller, E. Cooper, & R. Freer,
19 Federal Practice and Procedure § 1067.5 (3d ed.) Most courts examine a
20 defendant's contacts over a period of three to seven years prior to the filing of
21 the complaint. Id. See also Metropolitan Life Ins. Co., v. Robertson-CECO
22 Corp., 84 F.3d 560, 569-70 (2d Cir. 1996) (holding that district courts should
23 examine a defendant's contacts with the forum state over a time period that is
24 reasonable under the circumstances, and examining the defendant's contacts
25 during the six-year period before the filing of the suit).

26 Plaintiffs have not cited any authority for considering decades' old
27 contacts for purposes of determining general jurisdiction. Even if the Court
28 could look back that far, due to the lack of evidence that other than the sale of

1 one winch, SLM engaged in direct business with California after 1986, the
2 Court cannot conclude that SLM has continuous and systematic contacts with
3 California such that SLM is, at present, essentially at home in California.
4 Plaintiffs have not carried their burden of establishing that this Court has
5 personal jurisdiction over SLM.

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III. CONCLUSION

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For the reasons discussed above, SLM's motion to dismiss for lack of personal jurisdiction is **GRANTED**. Plaintiffs' Complaint is **DISMISSED** as to Defendant SLM. Pursuant to Fed. R. Civ. P. 54(b), the Court directs entry of final judgment dismissing Plaintiffs' claims against Defendant SLM because there is no just reason for delay.

IT IS SO ORDERED.

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DATED: December 29, 2014

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BARRY TED MOSKOWITZ, Chief Judge
United States District Court