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SUITS

ADAMS ET AL. V. COOPER INDUSTRIES ET AL.

A mass tort action against electrical products manufacturer Cooper Industries, Ltd., was gutted when a federal district court judge in Lexington, Kentucky, dismissed the first four bellwether personal injury claims on February 5. The claims represented a cross-section of the roughly 500 cases consolidated in this action. But the company still faces hundreds of related claims before the same judge.

The suits involve alleged groundwater contamination at a Dayhoit, Kentucky, plant where coal-mining equipment and motors were cleaned. In 1989 state environmental officials discovered contamination in water wells near the plant. The Environmental Protection Agency declared the grounds a Superfund site in 1990, making the site's owner, Houston-based Cooper, liable for remediation. Cooper removed more than 5,000 tons of contaminated soil and installed new water lines for area residents.

Between 1990 and 1992, more than 500 residents and former plant workers filed personal injury suits against the company, claiming that more than three decades of exposure to toxins from the plant had caused their illnesses. The claims were consolidated before U.S. district court judge Jennifer Coffman and were settled in 1996 for an undisclosed sum.

Additional residents filed similar personal injury suits in the same district after the 1996 settlement. They claimed a variety of illnesses, including cancers, endometriosis, diabetes, and liver disease. The residents' lawyers grouped the suits, which were assigned to the same judge, into four consolidated mass torts according to the date they were filed.

In 2006 four plaintiffs were selected as a cross-section of the approximately 500 community members listed in the first of the four consolidated mass torts. In Daubert proceedings last spring, Cooper's lawyers challenged the validity and admissibility

of the expert testimony the plaintiffs team sought to introduce at trial. Lawyers for the residents contended that the presence of chemicals in the neighborhoods, along with elevated levels of toxins in claimants' bloodstream, provided sufficient evidence to proceed. Citing two previous appellate rulings, Cooper's attorneys argued that to warrant litigation, the experts had to measure the quantity of chemicals in the environment and testify that it was enough to cause the residents' diseases.

But last July, Judge Coffman excluded five key plaintiffs experts from testifying that chemicals from the plant caused the claimants' illnesses. Cooper's attorneys then filed a motion for summary judgment. After six months of motions and countermotions, the judge ruled for Cooper. At press time residents had not appealed.

FOR PLAINTIFF CHARLES W. ADAMS, JR., ET AL. (LEXINGTON, KENTUCKY)

BARON & BUDD: Laura Baughman, Jory Lange, Jr., Cary McDougal, Ellen Presby, and counsel Thomas Sims and Scott Summy. (All are in Dallas, except for Sims, who is in Austin.) The firm has served as lead counsel in several toxic tort claims against Cooper.

CUNNINGHAM & FELL: Charles Cunningham, Jr., and Charles Fell, Jr. (They are in Louisville.) The firm, which originally represented about 350 plaintiffs, was local counsel.

MASRY & VITTOE: Nancy Eichler and Edward Masry. (Eichler is in Westlake Village, California; Masry died in 2005.)

The firm originally represented approximately 300 plaintiffs.

LAW OFFICE OF DONNA KEENE HOLT:

Donna Holt. (She is in Knoxville.) Holt originally represented nearly 400 plaintiffs and has been involved in other toxic tort claims against Cooper.

FOR DEFENDANT COOPER INDUSTRIES, LTD. (HOUSTON)

IN-HOUSE: Senior vice president and general counsel Kevin McDonald.

KING & SPALDING: Robert Meadows, Tracie Renfroe, C. Brannon Robertson, Cynthia Stroman, and counsel Jonathan Marsh. (Stroman is in Washington, D.C.; the rest are in Houston.) Cooper's general counsel approached the firm to join the case as lead counsel in August 2006 because of its experience representing Chevron Corporation and other companies in toxic tort litigation.

CROWELL & MORING: William Anderson, Clifford Zatz, and associate April Nelson. (All are in Washington, D.C.) Zatz has represented Cooper Industries in three cases related to its Dayhoit, Kentucky, plant since 1995. The firm was cocounsel.

HOLME ROBERTS & OWEN: Linnea Brown. (She is in Denver.) As cocounsel, Brown questioned several of the plaintiffs' exposure and medical causation witnesses.

WOODWARD, HOBSON & FULTON: Angela Edwards, Harry Herren, and Elizabeth Mendel. (All are in Louisville.) The firm, which was cocounsel, has worked on environmental and products cases for Cooper since the 1980s.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM: R. Ryan Stoll and counsel Bert Wolff. (Stoll is in Chicago, and Wolff is in New York.) Skadden was involved in the case through the beginning of expert depositions.

—CLAIRE DUFFETT

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