

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION  
LEXINGTON

LEAD CIVIL ACTION NO. 03-476-JBC  
AND RELATED NO. 03-158-JBC

CHARLES W. ADAMS, JR., et al., PLAINTIFFS,

V. ORDER

COOPER INDUSTRIES, INC. and DEFENDANTS.  
MCGRAW EDISON COMPANY,

\* \* \* \* \*

This matter is before the court upon the defendants’ motion for entry of a case management order for the remaining plaintiffs. R. 1094. The court, having reviewed the record and being otherwise sufficiently advised, will grant the defendants’ motion to the extent that the plaintiffs shall be required to establish causation as a prerequisite to proceeding with further discovery.

The plaintiffs’ written factual contentions must have evidentiary support or, if specifically so identified, must be likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. Fed. R. Civ. P. 11(b)(3). “If evidentiary support is not obtained after a reasonable opportunity for further investigation or discovery, the party has a duty under the rule not to persist with that contention.” *Ridder v. City of Springfield*, 109 F.3d 288, 293 (6th Cir. 1997) (citing Fed. R. Civ. P. 11 advisory committee’s notes (1993 Amendments)).

Under Kentucky law, a negligence case requires that the plaintiffs prove that

the defendants owed a duty to the plaintiffs, the defendants breached that duty, and the breach caused injury to the plaintiffs. *Pathways, Inc. v. Hammons*, 113 S.W.3d 85, 88 (Ky. 2003) (citing *Mullins v. Commonwealth Life Insurance Co.*, 839 S.W.2d 245, 247 (Ky. 1992)). The underlying circumstances of the case against the defendants have been a matter of public record for approximately twenty years. *See Adams v. Cooper Indus.*, No. 03-476-JBC, 2008 WL 339714, at \*1 (E.D. Ky. Feb. 5, 2008). Substantial discovery concerning the National Electric Coil Plant in Harlan County, Kentucky, occurred during the 1990's. *See generally id.* While the plaintiffs should have had evidence of causation before they filed their respective claims, they have now had ample opportunity for case investigation and to establish evidentiary support for proof of causation. The plaintiffs may be required by the court to establish causation as a prerequisite to proceeding with further discovery. *See Fed. R. Civ. P. 1, 16, 26.* Accordingly,

**IT IS ORDERED** that the defendants' motion for entry of a case management order for all remaining plaintiffs (R. 1094) is **GRANTED** to the extent that the plaintiffs shall be required by the court to establish causation as a prerequisite to proceeding with further discovery. The plaintiffs are advised that failure to appropriately abide by the court's deadlines may result in dismissal from this action.

**IT IS FURTHER ORDERED** that the plaintiffs shall comply with Federal Rule of Civil Procedure 26(a)(2) relative to causation no later than October 30, 2009. The disclosures required by that rule shall be served on the defendants but need not be

filed in the record.

**IT IS FURTHER ORDERED** that the deadline for the completion of discovery relative to causation is January 29, 2010.

**IT IS FURTHER ORDERED** that the dispositive motion deadline relative to causation is March 31, 2010. The Joint Local Rules for the Eastern and Western Districts of Kentucky shall govern the deadlines for filing responses and replies to such motions.

**IT IS FURTHER ORDERED** that the deadlines established by this order are not intended to preclude the filing of any motions which any party may file at any time.

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**Signed on June 17, 2009**

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*Jennifer B. Coffman*

JENNIFER B. COFFMAN, CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY

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