

ETHYL GASOLINE CORPORATION

CHRYSLER BUILDING
135 EAST 42ND STREET

NEW YORK October 24, 1932.

INTER-OFFICE
CORRESPONDENCE

PERSONAL & CONFIDENTIAL

Dr. R. A. Kehoe,

Dear Dr. Kehoe:

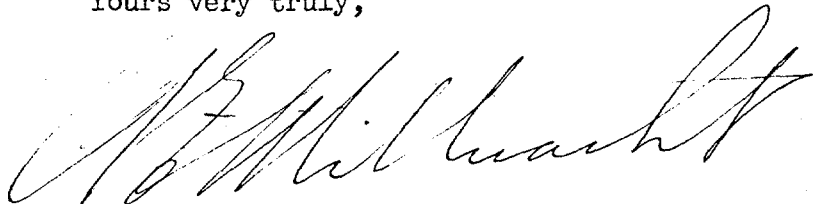
Referring further to the [REDACTED] case, attached hereto is original letter from Mr. Akolt relating the [REDACTED] of Jack Durham's and his interview with Mrs. [REDACTED], together with a photostat copy of the copy of [REDACTED] certificate.

I have discussed this very fully with Mr. Webb today and we are of the opinion that there does not seem to be very much of a logical approach to Doctors Norris and Gettler. Undoubtedly their work will be scientifically correct and if we should suggest that they advise us the results they would probably take the position that they were examining the organs in a strictly confidential sense and that they can only report to the doctor in Colorado Springs who sent them on and/or to Mrs. [REDACTED]. On the other hand, if we should ask them for parts of the organs for our own analyses they might resent the inference that we mistrusted their medical work.

I believe that Jack Durham is fairly close to some of the University of Colorado people and we are writing him today in accord with attached copy of letter.

We don't know what we can do in this situation except to await developments but would be pleased to receive your comments and recommendations.

Yours very truly,



C:C

ELMER L. BROCK
JOHN P. AKOLT
E. R. CAMPBELL
MILTON SMITH, JR.
KARL F. CRASS
J. R. TURNQUIST
J. H. SHEPHERD
ROBERT A. DICK

LAW OFFICES OF
SMITH, BROCK, AKOLT & CAMPBELL
SUITE 1300 TELEPHONE BUILDING
DENVER, COLORADO

October 21, 1932

Mr. J. R. Durham,
Ethyl Gasoline Corporation,
Continental Oil Building,
Denver, Colorado.

Re: Death of [REDACTED]
Colorado Springs, Colorado.

Dear Sir:

I will here report upon the result of the trip which you and I took yesterday to Colorado Springs at the request of Mr. A. E. Mittnacht made to you over long distance telephone.

Mr. [REDACTED] was the owner of a filling station and barbecue stand known as "Fat Boy Barbecue" at the north end of Colorado Springs on the main paved highway to Denver. A general description of this filling station and barbecue stand is as follows:

Four 10-gallon Clear Vision Pumps in front separated from a little filling station building by a driveway, and two additional pumps, one on each side of the filling station building; another driveway separating the filling station building from the barbecue building to the rear. This barbecue building is quite a sizable building with a lunch counter, a number of tables, and space for dancing, a kitchen, etc. Of the four pumps in front of the station two are used for "Phillips 66" gasoline, one for Phillips second grade gasoline, and one for Ethyl gasoline. One of the pumps at the side of the station is for "Phillips 66" and the other for Ethyl. The Ethyl pumps have attached thereto the customary danger warning sign. The two Ethyl pumps are connected to one underground storage tank of 560-gallon capacity.

Mr. [REDACTED], while the owner of the filling station and barbecue, did not work at the station, but worked as the cook in the barbecue. His wife, Mrs. Rose [REDACTED], also worked in the barbecue. James Donahue and D. J. Cauty were the two filling station attendants employed by Mr. Sullivan to run the station. They alternated on the day and night shifts. The barbecue catered to a late evening crowd and would remain open considerably after midnight, and the filling station would be kept open as long as the barbecue stand was open.

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You and I examined the surroundings and interviewed Mrs. [REDACTED] Mr. Donahue and Mr. Canty. I appeared just as a [REDACTED] along with you.

Mrs. [REDACTED] told us the following story: That Mr. [REDACTED], she and their three girls (present ages 20, 17 and 13) moved to Colorado Springs from Cadiz, Ohio, four years ago, and opened up this station and barbacue; that Mr. [REDACTED] was at least six feet in height and weighed 247 pounds (hence the name "Fat Boy Barbacue" given to the stand); that he was just a few days short of being 53 years of age; that he was exceptionally strong and had not consulted a doctor for some fifteen or seventeen years; that the two attendants at the filling station were having a hard time checking out even on their gasoline; that there was a continual shortage and they became suspicious that their gasoline pumps were not properly gauged and that they were making over-deliveries from these pumps which might account for the shortage; that they determined to check all these pumps and for that purpose borrowed from a deputy state oil inspector who lives at Manitou (a suburb of Colorado Springs) a 5-gallon measuring can used by the state in checking pumps, which measuring can was graduated for each gallon.

Mrs. [REDACTED] stated that Mr. [REDACTED] went out to help the two attendants make this check of the pumps on Thursday, September 29, and worked practically all day at the station on this check. He came in to the barbacue stand sometime shortly after six o'clock in the evening, made some remark about having a headache, but ate a big steak dinner. After dinner Mrs. [REDACTED] went over to Glockner Sanitarium (a large hospital in Colorado Springs) to visit her tubercular brother who is confined in the hospital. (She said something to the effect that this brother had had only a part of one kidney for the last few years.) She stated that she stayed at the hospital about two hours and came back about ten o'clock. Mr. [REDACTED] had a room in the barbacue stand where he slept nights. Their home was some distance away where Mrs. [REDACTED] stayed with the girls. When Mrs. [REDACTED] came back from the hospital, Mr. [REDACTED] was in bed and complained that he did not feel well. The next day, Friday, September 30, he was up and down off and on all day, and had a continual desire for lemonade, orange juice, etc. He had a bad headache, cramps in his stomach and was troubled with dysentery. Mrs. [REDACTED] asked him once or twice whether he wanted a doctor and he said he did not. On the morning of October 1st Mr. [REDACTED] seemed much worse and about eleven o'clock they took him to Glockner Sanitarium. He died at five o'clock that evening, October 1st. He did not lose consciousness and while he was in the hospital Mrs. [REDACTED] asked him whether he was in pain and he said he was not. The family doctor is a Dr. Conway of Colorado Springs and he was called on the case. The house doctor at Glockner Sanitarium is Dr. Mullet (correct spelling uncertain). Mrs. [REDACTED] states that when Mr. [REDACTED] was brought to the [REDACTED], Dr. Mullet noticed that the tops of his ears were darkened and he then stated he thought he was a victim of lead

poisoning. We gather, however, that the fact that he had been working on the pumps had been told to the doctors. Either before or after the death, a Dr. Ryder of Colorado Springs was called in. We understand Dr. Ryder is a pathologist. The body was taken to the undertaking parlor of E. T. Beyle in Colorado Springs. There the body was opened and the organs removed. We gather from you that some time after that, Dr. Lester W. Sanders of the College of Medicine of the University of Cincinnati interviewed Dr. Ryder and requested part of the organs and tissues to send to the Medical College at the University of Cincinnati for examination, but his request was refused. Mrs. [REDACTED] states that Dr. Ryder claims Mr. [REDACTED] died from lead poisoning. She also states that a part of the liver was sent to the University of Colorado for examination and that the report came back that they found enough lead in the liver to kill 15,000 men. (You understand I am reporting what Mrs. [REDACTED] said.) Mrs. [REDACTED] was frank in stating that she was just telling us her understanding as she got it from the doctors, and suggested that we see the doctors ourselves to get it accurate. She then stated that the remainder of Mr. [REDACTED] organs had been kept for safekeeping at Glockner Sanitarium and are still there; that Dr. Ryder had requested that they be sent for examination to Drs. Norris and Gatter of New York University, but that she did not want to do it without letting you know; hence her letter to you. She stated that not having heard from you, just before you telephoned her yesterday morning, she got in touch with an attorney in Colorado Springs named H. T. McGarry, who had been her husband's attorney, and through him she signed a release consenting to have the organs shipped to New York University. When you telephoned, she then called Mr. McGarry and told him to hold up the shipment until after you came down. She indicated that if you would tell her not to, she would not send on the organs. You told her, however, that you did not want to interfere with her plans, but that if she did send them, you would appreciate it if you would be advised as to the findings. She promised she would do this. You also asked her if, when the New York University finished with the organs, she would consent to having them examined again by someone else of your choosing, and she said she could see no objection to that.

Mrs. [REDACTED] stated that at the suggestion of someone she took from the Ethyl pumps four small samples of the Ethyl gasoline which was in them at the time of Mr. [REDACTED] death. She still has these samples, sealed, in her possession. You asked for one, but she stated she was told she should have one for the United States government, one for the state government, one for the local city or county officials, and one to keep for herself.

It was your thought that possibly you could get hold of one of these samples through the state oil inspector. It was also your thought that possibly you could get the official report of Colorado University Medical Department on the liver examination through the state oil inspector.

You and I concluded that for the time being at least it would not be advisable to go to see either the doctors or Mr. McGarry, the attorney.

We then interviewed at length Mr. Donahue and Mr. Canty

Mr. Donahue states that he started making the check of the pumps alone on the afternoon of Wednesday, September 28th, and worked on a "Phillips 66" pump for two or three hours. He finished this pump on the morning of September 29th, starting in about nine o'clock. About ten o'clock Mr. [REDACTED] came out from the barbacue stand to help him and worked from then until about six-fifteen in the evening. They worked on the second grade gasoline pump for several hours and finally got to the Ethyl pump out in front of the filling station about three in the afternoon, and then worked on it until about six-fifteen. The plan of testing when both were working on the pumps was this: Mr. Donahue took off the top of the Clear Vision bowl and had a ladder alongside the pump. The 5-gallon measuring can was sitting on the ground by the pump. Mr. [REDACTED] had charge of the hose putting the gasoline into the can. This can, as above stated, was graduated so that it could be told just when a gallon was in, two gallons, etc. Mr. [REDACTED] would stand over the can and let gasoline into the can through the nozzle of the hose; Mr. Donahue would more or less lie down on the ground so that he could tell Mr. [REDACTED] when to shut off the nozzle when the gasoline in the can was at a one-gallon height, two-gallon height, etc. If, when they had one gallon in the can according to the gauge, the bowl showed more or less than one gallon taken out of it, then Mr. Donahue would get up on the ladder and put his hand down into the bowl through the open top and regulate the measuring contraptions in the bowl. Sometimes to do this a portion of his hand would be down in the gasoline in the bowl.

The filling pipe for the underground Ethyl gasoline storage tank is over by the second Ethyl gasoline pump which is at the side of the station. They had a funnel in this filling pipe and when the 5-gallon measuring can would be full, they would take it over and pour it back into the underground tank. Mr. Donahue stated that he himself probably emptied a couple of five-gallon cans of the Ethyl back into the storage tank and Mr. [REDACTED] several of these cans, but probably not more than 25 gallons in all. He stated that both in filling the 5-gallon can for the testing purpose and emptying the cans back into the storage tank it was necessary for Mr. [REDACTED] face to be directly over the top of the can. This is true not only for the Ethyl but also for the other gasoline which was tested. The Ethyl pump which was tested that day was the last of the four in front of the station. The quantity of gasoline which had been taken from the straight gasoline pumps in their testing and put back in the underground storage tank is not clear, but as near as we can find out it was at least the same quantity per pump as was taken from the Ethyl pump.

Mr. Donahue stated he probably had a headache himself

the night of September 30th but paid no particular attention to it because he had had similar headaches before.

When Mr. [REDACTED] was taken to the hospital and the doctors found out the kind of work he had been doing, these doctors interrogated both Mr. Donahue and Mr. Canty as to how they felt and told them that if they started feeling bad, to let them know. Mr. Donahue states that along about Monday or Tuesday following he started feeling bad and was bothered with frequency of urination and went over to Dr. Mullet at Glockner Sanitarium who gave him a calcium injection.

Mr. [REDACTED] funeral was held on Wednesday, October 5th. Two or three days after that Mr. Donahue completed the tests of the two remaining pumps on the sides of the station, one of which was an Ethyl pump. He worked alone on this completion.

Mr. Canty stated that he was on night duty at this time but knowing the testing was going on he came around the day of September 30th to help out. He got there shortly after Mr. [REDACTED] started to help. Mr. Canty would wait on the trade and between times help on the testing. His story as to the method of testing is the same as Mr. Donahue's. Although Mr. Donahue stated there were not over 35 gallons of Ethyl taken out of the pump and put back into the storage tank, Mr. Canty, when we interviewed him before Mr. Donahue came, gave the figures as 50 or 75 gallons, but frankly stated he could not be sure of the amount. He stated that he himself poured one or two cans of the Ethyl back into the storage tank. He stated that when they first started the tests that morning, 5 gallons were drawn from each of the pumps in front of the station just to make a general test of the 5-gallon measurement, and that these were then immediately poured back into the underground storage tanks and that the intake pipes to the different storage tanks were open with funnels in them, including the Ethyl tank. He stated that along about eleven-thirty in the morning one of Mr. Sullivan's girls in the barbacue stand came to the door and called him to the telephone, and that this girl remarked at the time (looking out the door of the barbacue stand) that there were a lot of fumes coming from that open intake of the Ethyl underground storage tank. The sun was shining in such a way that the fumes showed up.

Mr. Canty stated that he started feeling bad on the next day after Mr. [REDACTED] death and was bothered with frequency of urination and that Sunday evening he went over to the hospital and got a shot of calcium from Dr. Mullet.

You and I went to the office of the Health Board in the city hall in Colorado Springs and got a copy of the death certificate. You will please send in to the Home Office the copy which you have. It will be noted that this death certificate states that the cause of death was "Acute Lead Poisoning of unproved source (Analysis chemical - of organs not permitted)". This death certificate was filed October 4th. The funeral, we

understand, was held on October 5th. Apparently the analysis of the organs which this death certificate states was not permitted must have been made after that time. It will also be noted that this death certificate states that the injury resulted from inhalation of Ethyl gas fumes and lead poisoning. This death certificate will eventually be filed in the office of the Bureau of Vital Statistics in our state capitol. We have a statute in Colorado which provides that a certified copy of a death certificate is admissible in evidence in any court and is prima facie evidence of the truth of its contents, so a certified copy of this death certificate will be prima facie evidence that Mr. [REDACTED] died as the result of lead poisoning coming from the inhalation of Ethyl gasoline fumes.

You will recall that Mrs. [REDACTED] made some remark to you indicating that she knew Dr. Sanders had been down to Colorado Springs, and referred to him as "your doctor."

You and I concluded that it was best not to indicate anything except a friendly interest in Mr. [REDACTED] death and with that in mind we did not go to see the doctors nor Mrs. [REDACTED] attorney, nor insist that the organs be sent to Dr. Robert A. Kehoe of the College of Medicine of the University of Cincinnati. It is entirely possible that a suit against the Ethyl Gasoline Corporation or against someone which it will have to defend may arise out of this death. The Ethyl Gasoline Corporation would no doubt be interested in such a suit but it occurred to us that it might even be more interested in the general consideration of the question as to whether a death could result from Ethyl gasoline under such circumstances as disclosed. The maximum death liability in Colorado is \$5,000. It was our thought that in all probability the examining doctors at New York University are responsible and will not make a report contrary to the facts. It was also our thought that the Home Office of the Ethyl Gasoline Corporation might be able to get this report direct or even might be able to arrange for Dr. Kehoe to participate in the analysis.

While we have not given the matter any mature consideration, our offhand thought is that there is no legal liability for this death upon the part of the Ethyl Gasoline Corporation or the Phillips Petroleum Company which company sold the gasoline to Mr. [REDACTED] even though the death did result from lead poisoning from the Ethyl gasoline. This is a matter, however, which the Ethyl Gasoline Corporation will probably want to consider further.

Mr. [REDACTED] left but \$300 of insurance. He did not believe in insurance, according to Mrs. [REDACTED]. Your understanding from another source is that he had a \$1,000 policy on which he had borrowed \$700. Mrs. [REDACTED] states that she intends to carry on the business at the filling station and barbecue stand, as she does not know what else to do. She said Mr. [REDACTED] owned the property, died without a will, and that some short time ago they incurred an indebtedness of around \$4,000 for new equipment which has not yet been paid off.

Mr. J. R. Durham - 7

We have attempted in this letter to give a general picture of the situation as we found it on our trip yesterday which will enable the Home Office to determine its future course of action. Pending further directions from the Home Office we do not believe it wise for you or us to interview any further people.

We are sending an extra copy of this letter for transmittal to the Home Office. You will of course send in your summary of the investigation and let us have a copy of it. Due to the fact that we only wanted to appear in a friendly position, it was impossible to make notes during our various interviews and while I have dictated this letter the first thing this morning while the matter is fresh in my mind, it is possible that some of the figures given may not be exactly as stated to us, but I believe they are pretty accurate.

Awaiting your further directions, we are

Very truly yours,

SMITH, BROCK, AKOLT & CAMPBELL,

By *John P. Akolt*

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