

EMPLOYERS REINSURANCE CORPORATION

E. G. TRIMBLE, PRESIDENT

INSURANCE EXCHANGE BUILDING

KANSAS CITY

Box 2099 - Houston, Texas.

October 15, 1937.

Dr. Robt. A. Kehoe,
Kettering Laboratories,
Cincinnati, Ohio.

In re: [REDACTED] vs. Employers
Reinsurance Corporation.

Dear Sir:

This letter is intended to supplement my letter to you of yesterday which was hastily written in an effort to get it upon the eastbound mail plane. From the doctor's reports which were enclosed with that letter, you probably have a pretty fair idea as to what the evidence will disclose concerning the origin of Mr. [REDACTED] sickness.

Our evidence will show that Mr. [REDACTED] first became ill on the night of July 28, 1936 at about 9:30 P.M. It will also show that on that day Mr. [REDACTED] did a considerable amount of overtime, working in all 16 hours. The evidence will show that about 9:30 on that night while engaged in loading 87 octane gasoline, which I understand contains 3 cc's of tetra-ethyl of lead per gallon, into drums, he complained of being ill, stepped outside of the barrel house and vomited. His face was bathed with cold water and he said he felt better but did no real work to the end of that shift at 11:30 P.M. so that actually he only worked 14 hours that day.

He reported back to work the next morning and worked on the loading rack, loading two tank cars of naphtha (unleaded, of course), went back to the barrel house and loaded some additional gasoline which was probably leaded, and then came back to the loading rack to aid in the loading of some more cars, this time with gasoline. He ate no lunch that day and about 1:30 complained that he was nauseated and had a cramping sensation in his stomach. He was sent to the company hospital and asked that he be given some medicine, stating that it was his opinion that the food which he had eaten while on the job the night before had disagreed with him. The company has strict rules with regard to men who load leaded gasoline washing their hands and arms before eating and so far as we know Mr. [REDACTED] obeyed these rules.

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The first aid attendant at the hospital told Mr. [REDACTED] that company rules forbade the giving of internal medicine and sent him home. This was on July 29 and the doctors' reports which you already have complete the picture.

Whatever may now be Dr. Lowe's opinion concerning the cause of Mr. [REDACTED] death, there is no doubt, so far as I have been able to determine, that he treated the man for food poisoning right up to the time of his death and never did treat him for lead poisoning though he discussed the possibility of lead poisoning with Dr. Scott and apparently rejected it as thereafter he failed to treat the patient for lead poisoning.

Since except for yourself we have no possibility of obtaining any medical authority competent upon the subject, our defense in the case is one upon which I do not as a general matter like to rely; that is, the weakness of the plaintiff's case. I do, however, feel that there is some reason to expect that the plaintiff may fail to make a case. None of the men with whom Roth worked on either of the days involved saw him get any unusual amount of gasoline upon his clothing or person and it is my belief that if his statement to Dr. Lowe, referred to in the doctor's memorandum, is offered, it will be excluded as hearsay testimony.

From the standpoint, therefore, of the question of accidental injury, which in this state the plaintiff must show, I am inclined that the plaintiff's attorney will have difficulty in making out a case to go to the jury. I think that the same thing is possibly true with regard to the medical testimony which the plaintiff can offer. Under cross-examination I am convinced that Dr. Lowe can be made to admit either that his diagnosis of lead poisoning made after the patient's death was purely a guess, and therefore to be discarded, or based upon the patient's statement to him, which was inadmissible in evidence and, therefore, to be discarded.

After this matter went before the Industrial Accident Board of the State of Texas, the plaintiff's attorney injected into the case as an alternative cause of death, heat exhaustion resulting, as the petition alleges, from excessive dehydration of the tissues of the body. I believe we have a good legal defense in that in this state the court can consider only the facts presented before the Industrial Accident Board and before the Board only acute lead poisoning was claimed. But regardless of that fact, I do not believe the claim of heat exhaustion can be supported for the

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reason that Roth first felt ill at night when the air was cooler and where he was working in a building and that his illness of the second day, July 29th, was obviously a continuation of his original sickness. Further, the hospital attendant who is well versed in cases of heat exhaustion, testifies that when Roth appeared before him at the hospital he had no signs of heat exhaustion, though he was a little pale and I surmise that this accompanied his nausea.

I have written all of these facts in detail because while I would welcome your aid in this case, I have some hesitancy in asking a man of your position to make a trip of the distance involved when I consider that there is a reasonable probability that we may get an instructed verdict when the plaintiff rests his case. Also, while the item of your expenses here and back is not a matter to which we would attach any consequence, I do not know whether you would look to us or to the Ethyl Corporation for your fees for your time and testimony which, of course, is a matter that we must always consider in trying lawsuits.

I have attempted to ascertain what the state of the docket may be next week and so far as I am able to determine at the present time it seems doubtful that the Roth case can be reached prior to Wednesday. After the court calls its docket on Monday, I can be much better informed on that subject.

Now I must go over to San Antonio this afternoon but I will attempt to reach you by telephone tomorrow morning about 11 o'clock and hope that this letter will have been in your hands and you will have had an opportunity to read it before my call comes through. I would then like to talk with a little bit more definiteness about your ideas of how the case should be handled from the medical point of view and also discuss with you again the question of your coming to Houston for the trial.

With thanks again for your kind cooperation, I am

Very truly yours,

EMPLOYERS REINSURANCE CORPORATION,

By _____

J. P. Adone

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Special Delivery

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