

July 20, 1959

Dr. Sherman S. Pinto
American Smelting and Refining Co.
P.O. Box No. 1605
Tacoma, Washington

Dear Doctor Pinto:

Since it was through your request of me that I became involved in the case of alleged lead poisoning which arose in the New Jersey plant of a subsidiary of American Smelting and Mining Company, I am writing to you about certain aspects of the case, which I learned in connection with my appearance as an expert witness. It seems unlikely that you have any responsibility for the situation I shall describe, and I am not criticizing you, therefore, in what I have to say. It is evident, however, that this subsidiary company needs medical advice and guidance, and since you are my only medical avenue to the situation I bring it to your attention for action or not, as you may decide. It is not my responsibility, but since I have been victimized by it, to some extent, I think I have some professional duty in the matter.

First let me say, without including you in my displeasure, that I do not like to be involved in cases of this type, and if I had not felt that my acquiescence to your request had put me under some obligation, I would have taken myself out of it, after I received the available information from the attorneys. I had supposed that the Medical Department of A.S. and R. had been concerned with the situation and that the facts in the case had been established by a competent medical "work-up" of the case, and it was on this assumption that I agreed to your request. I found, to the contrary, that there is no medical function worthy of mentioning at this plant, that the claimant had not even been examined by a company physician at the right time, and that the situation was like that with which I am so disgustingly familiar in my consideration of controversial cases for the Ohio Industrial Commission - namely, that neither had the facts concerning the occupational exposure been established, nor had the medical facts been established satisfactorily and documented properly. In my opinion, the merits of the case originally were slight, and the present claim of disability due to lead poisoning was entirely unfounded, but the hygienic and medical job at, and in connection with, the plant had been so badly done that no real evidence, on which to prove the correctness of my opinion, was available. I very much object to being regarded as an advocate of an industry

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except when it is clearly in the right. In this instance it was clear that the industry was doing such an utterly incompetent medical job that it had no real concern for its rightness or wrongness, and I felt very strongly that it - the industry - would receive its just desserts if it were penalized by losing this and other cases like it.

It is nothing short of foolhardy to conduct a business such as that involved in this case, in the State of New Jersey, in which the claimant has the benefit of every possible doubt, without being as fully prepared as possible to substantiate or to disprove the merits of a claim for compensation. In the case of lead poisoning it is entirely possible to have such proof at hand at all time, and if the management does not make provision for so doing, or for at least some responsible approach thereto, it is either ignorant or irresponsible. Moreover, from a medical viewpoint, this situation smacked of the dark ages of occupational medicine. I was surprised and shocked to find that such a situation could exist in the A.S. and R. family, despite my knowledge of the fact that subsidiary companies are often difficult to control or even to guide. Certainly, regardless of the facts behind the situation, this company is in bad need of medical advice and guidance, and I think something should be done about it.

I have no impression as to how this case will turn out, or whether an appeal may be necessary or successful. I know full well, however, that the legal people should not be asked to go into a court battle with little more than their bare hands, and the expert witness should not be expected to carry the burden of both evidence and opinion. I was able, in this instance, I believe, to discern the truth, somewhat by indirection, but if I had been cross-examined by an attorney who understood the problem, my testimony would have had a disastrous effect upon your Company's position.

Sincerely yours,

Robert A. Kehoe, M.D.

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