

MAHAN, BACON & WHITE

Law Offices
Fayetteville, W. Va.

November 21, 1938

Mr. A. G. Stone,
Rummel, Blagg & Stone
Attorneys at Law,
Charleston, W. Va.

In re: [REDACTED] v. Standard Oil Company of
New Jersey, et al.

Dear Sir:

After I talked to you the first of last week in regard to the above-styled case, I talked to S. J. Jasper, of Glen Jean, together with John Bysett, who has general charge and supervision of the Jasper's business activities, including his gasoline station, and a man by the name of Pearl, who has been in charge of the gasoline station for several years, and from them I obtained some information, which I believe will be of most substantial benefit to us.

It is stated by S. J. Jasper that the Standard Oil Company owns all of the high test pumps used at his station and all of the other pumps, except one low test, which he owns himself; that the occupational history of [REDACTED] for a period of years is that he started to working for Jasper in December 1932; that the father of [REDACTED] died early in the year 1936, of cancer, and immediately thereafter [REDACTED] complained of pain in his stomach and took the months of January and February 1936 off, at which time he went to the Laird Memorial Hospital (then called the Coal Valley Hospital), at Montgomery, West Virginia, where he received treatments and upon his return advised that the doctors had reported to him that he had an ulcerated stomach.

Either in March or April 1936 he went to the West Virginia State Hospital, at McKendree, and Dr. Reeves, according to the statement made by him to Pearl and Bysett, advised him that he had ulcerated stomach and gastritis.

Subsequently, in the year 1936, the date of which has not yet been definitely ascertained, he went to the Raleigh General Hospital and was treated by Dr. Broadus for the same stomach condition.

KE 0010385

Mr. Stone

-2-

Nov. 21, 1938

On the 15th day of August, 1937, he went to the Mayo Clinic, at Rochester, Minnesota, and returned on or about September 4, 1937, stating that there had been a diagnosis at the Mayo Clinic of a slight trace of lead poisoning, and that he had been there advised that he should no longer work in and about a gasoline filling station. He brought his suit on August 27, 1938.

He told about the trace of lead poisoning and their advice that he should quit work around the gasoline station, but begged them to let him stay on, as he was very badly in need of the money, and he was permitted to work at the filling station until some time in November, 1937. He stated that Mayos advised him that he would be all right after he had quit working at the filling station for a while and had let his system absorb the slight lead poisoning.

Beginning about the year 1933, he consumed large quantities of beer each day, drinking on the average of twelve bottles a day, and in 1935 he began drinking liquor and mixing beer and liquors, and as Jasper says, a pint of liquor was only a drink for him.

However, about the time he went to the Laird Memorial Hospital and the West Virginia State Hospital, at McKendree, he either quit or very substantially let up on his beer and whiskey drinking for nearly two years, but since September, 1937, he has been drinking a good deal of whiskey and beer both.

I forgot to say that Judge Lee, as attorney for S. J. Jasper, was present during this conference. It was our opinion that some of the Standard Oil Company's representatives, or if they could obtain the services of a medical expert located near that place, it would be advisable to have the records checked at the Mayo Clinic. The reason that this seems so very material to us is that if he quit work on August 15th and then had a trace of lead poisoning, that the statute begin to run on the date that he quit work, whether he knew that he had such poisoning or not, but in all probability he did know about it prior to the 27th day of August, 1937, which would make our case still stronger as to the bar of the statute of limitations. This would constitute a complete defense as indicated in the case of Scott v. Rinehart & Dennis, Inc., and others, 116 W. Va. 319.

KE 0010386

It also occurred to us that we should ask for a medical examination of [REDACTED] at some time within the reasonably near future and I feel confident that his attorneys will require such an examination, or that the Court will do so, if the attorneys will not. This examination would necessarily be made by doctors who have special qualifications in the detection of lead poisoning, and Messrs. Jasper, Bysett and Pearl feel confident that there is nothing wrong with him, as he goes hunting and apparently enjoys all normal activities of life.

In 1935 and 1936, he was engaged for the period of three or four months in his off-hours in painting the [REDACTED] residence building, a large two-story dwelling and rooming house. I do not know that this would contribute to the alleged lead poisoning, but it is a factor worthy of consideration.

I explained to Judge Lee and Mr. Jasper that the Standard Oil Company desired the fullest spirit of cooperation, and that, among other things, I understood that you would have their Engineering Department make a sketch of the lay-out of the plant and also have photographs taken.

Neither of them were exactly sure as to what kind of a warning was attached to the high test tanks, although they promised to get this information to me right away, and they did remember that there was some kind of a warning that the contents was tetraethyl and that it contains lead and is to be used only for motor fuel.

They stated that [REDACTED] frequently washed his hands in low test gasoline and Jasper says that he warned him that he should not do so.

Although I have not given any lengthy consideration to the question of law therein involved, it is my opinion that the Standard Oil Company could file a special plea to the effect that its liability ended when it delivered the gasoline to Jasper, and that the Standard Oil had no duty towards the plaintiff after that time, because it will be indicated from this letter that Jasper knew that gasoline could cause poisoning.

Mr. Stone

-4-

Nov. 21, 1938

I take it that [REDACTED] working for the Standard Oil Company for the period September to November, 1937, would play no part in this case, as we can undoubtedly show that he knew and had been advised at the Mayo Clinic to quit that kind of occupation, that he already had a small amount of lead poisoning.

If we do file a special plea along the lines indicated above, I believe that counsel for the plaintiff would demur to the plea and we would probably get a ruling on it as a question of law in advance of the trial, because neither [REDACTED] nor his attorneys have any money to prosecute any extensive litigation and would not want to do so if they faced the prospect of having a verdict directed.

I think that under the decision, cited above, our strongest point is the statute of limitations, and shall be very glad for you to let me know at your convenience what you think you will be able to obtain in the way of records or information from the Mayo Clinic, who you think would be qualified to examine the plaintiff to ascertain the present presence of lead poisoning and any other idea that you have accumulated relative to securing maps or plans of the lay-out and photographs, and any other points that occur to you from your conference with the representatives of the Ethel Gasoline Corporation and other counsel for the Standard Oil Company.

Placing myself at your further service, I am

Very truly yours,

(Signed) Chas. E. Mahan

m/w

KE 0010388