

September 26, 1936

Mr. Angus D. MacLean
MacLean, Pou and Emanuel
Lawyers Building
Raleigh, North Carolina

Dear Mr. MacLean:

I have wired you to the effect that I considered it unnecessary and inadvisable for me to examine the claimant in this case. I have taken this position not because of the personal inconvenience involved being in North Carolina next week, but rather because in my experience it is unwise for one who is to appear as a technical expert in cases of this type, to have to bear the burden of presenting factual testimony where the facts may be controversial in character. To present this situation, as I see it, the rebuttal of a diagnosis of tetraethyl lead poisoning in this man can not be made by means of a physical examination at this time. The most important items of information in this direction are not obtainable. If one had seen this man at the height of his illness, the situation would be somewhat different for then one would be able to make studies of the blood and analyses of the excreta in such a way as to establish definitely the presence or absence of significant lead exposure. After the lapse of many months, it is no longer possible to obtain that information. Moreover, in as much as you suggest the advisability of having an expert on tetraethyl lead poisoning, I should point out to you that the only persons in the United States who can qualify from experience as expert witnesses are myself, one or two of my associates, and one or two men in the DuPont organization. In my opinion none of these men are desirable for your purposes since they are in one way or another associated with me, and since what they say will be recognized in some measure as having come from me.

The point which must be made by the defense in this case, if it is to succeed, is that there was no significant lead exposure associated with this man's occupation. This is the point on which you will require my analysis of the case and my testimony. It is for this reason that I think it unwise that I examine the patient and that I attempt to arrive at a diagnosis of his present condition. If, as I suspect, his only suspected exposure has to do with contact with leaded gasoline, it is not possible, in terms of present evidence, that this man could have developed lead

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intoxication from his occupation. I shall make this point since it is supported by adequate experimental and clinical evidence.

This leaves us with one other matter which must be considered by competent medical men, namely, on the supposition that he does not have lead poisoning, what does he have? In arriving at a diagnosis here, you do not need expert medical advice on tetraethyl lead; you need a competent, careful, well established diagnostic expert or experts who will examine the man and come to their own conclusions as to what ails him, and what is the cause of his illness. If a definite diagnosis can be established on such evidence, you will then have attended to the three points which are necessary in the presentation of your case. In order to clarify the issues, let me repeat these three points.

- (a) The claimant has not had a significant exposure to lead compounds.
- (b) His illness is not of the character which has been seen and described in the literature in the case of tetraethyl lead poisoning. (I can, of course, testify on this point not from my examination of the patient, but from a description of the nature and course of his illness.)
- (c) The most logical diagnosis is some condition (to me unknown at present) other than lead poisoning.

In establishing the last point your best recourse is not to outside men, but rather to competent local medical men whose lack of bias and whose judgement will be respected by your jury. In the last case of this type in which I took part, Dr. Kenneth M. Lynch of the Staff of the Medical College of the State of South Carolina gave very sensible and useful information and help. He is more familiar than any other medical man in the South, I believe, with this problem in as much as he went through all the details of the case. It may be you would not wish him to testify, but he could give you very valuable assistance in lining up local medical men, and in the selection of men whose judgement would have weight with the jury not only on account of their professional position, but on account of the quality of their point of view and speech. If you have competent men there in your part of the country whose judgement you have reason to trust, and whose professional position is quite unassailable, you may not need Dr. Lynch. I merely suggest him because I know he is competent.

I believe this covers all the matters on which I can advise you at present, and if it raises any questions which you would like to discuss with me before

Mr. Angus M. MacLean

arranging for the examination of the claimant, I suggest
that you telephone me at the laboratory.

Very truly yours,

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Robert A. Kehoe, M.D.

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