FORM 337

TIDE WATER ASSOCIATED OIL COMPANY

ASSOCIATED

DIVISION

79 NEW MONTGOMERY STREET

SAN FRANCISCO, CALIFORNIA

LAW DEPARTMENT

June 14, 1938

Robert A. Kehoe, M. D.,
University of Cincinnati,
College of Medicine,
Cincinnati, Ohio.

Re - [redacted]v. Tide Water Associated Oil Co.
I. A. C. No. 51389

Dear Dr. Kehoe:

I have not received any decision in the above case as yet and thought that writing a letter to the Commission might speed it up, so I have written them a short brief and am enclosing a copy with the thought that it might interest you.

With kind regards, I am

Sincerely yours,

DMH*FM

Enc.

KE 0022032

June 10, 1938

Industrial Accident Commission
State Building
San Francisco, California

Re - [redacted] Title Insurance Associated Oil Company - Claim No. 61339

Gentlemen:

Inasmuch as considerable time has elapsed since the hearing of evidence in this case, I felt it might be helpful to write this letter, copy of which is being sent to applicant's attorney, to briefly summarize the case and the points involved.

[redacted] was an employee of Associated (Title Insurance Associated Oil Company, successor), working as a tester in the Company's laboratory, in connection with which he tested samples of leaded gasoline.

He did not work with leaded gasoline after November, 1935, and shortly thereafter his employment with the Company terminated.

During his lifetime he suffered the disability which he claimed was due to lead poisoning and filed a claim for compensation, hearing on which was held at San Francisco in September, 1936.

On October 4, 1936, the Commission issued its Findings and Award, denying [redacted] claim, and which Award et al:

> "The evidence does not establish that the disability complained of by Applicant herein was proximately caused or aggravated by injury arising out of and in the course of his employment."

Petition for rehearing filed by [redacted] on January 14, 1937, denied by the Commission, [redacted] other proceedings were taken in connection with said claim by him.

Thereafter, on July 23, 1937, [redacted] filed, following which his widow, [redacted] before the Commission.

Title Insurance Associated Oil Company filed an answer to this claim, denying that Michael Telepnev sustained any injury or disability arising out of or occurring in the course of his employment. The answer further set up the facts relating to the

[redacted] during his lifetime, and setting forth that therefore the claim by the widow was barred by lapse of time and by the previous adjudication.

By stipulation, all of the evidence and the entire record in the case of Michael Zeleprnev against the Company was made part of the record in this case instituted by his widow.

It is true that any Award to the applicant should be denied in this case for the reason that the widow's claim is the same claim as that presented previously by her husband, and which was denied by the Commission.

Moreover, we point out that in the present claim instituted by the widow nothing new was offered in behalf of the applicant other than the fact that the employee had died; in addition to which the widow presented evidence of the autopsy results. These included the report of the Western Laboratories, dated July 2, 1937, made by Dr. Gertrude Moore, showing a larger lead content in mixed specimens of tissue and in specimens of rib than is normally found; and also the report of Dr. H. H. Reeves, autopsy surgeon, which stated:

"Cause of death: Uremia secondary to interstitial nephritis which was probably secondary to lead poisoning."

These matters added nothing in support of any claim for the reasons herein given.

Regarding Dr. Moore's laboratory findings, the uncontradicted evidence shows that the finding of an abnormal quantity of lead in the tissues examined after death was not indicative of the condition of those tissues in the body of [redacted] but could only be accounted for by contamination of the tissues after removal of the tissues from his body. This is the summary of the statements made by Dr. Moore who made the tests and as testified to by Dr. Kehoe. In this connection, see the testimony of the hearing on March 1, 1938, pages 35 to 42. In this connection, Dr. Kehoe testified as follows (pp. 38-40):

> " * * * I am therefore fully convinced as Dr. Moore is that these results were the effect of contamination and not a true representation of the facts so far as the lead contents of this man's tissues. * * * Dr. Moore has so expressed herself to me personally and has authorized me to say that that is her opinion."

With respect to Dr. Reeves' findings as to the cause of death: See the testimony of the hearing on March 1, 1938, pages 44 to 48, which evidence is not contradicted anywhere in the record, and in which Dr. Kehoe pointed out that the only reason that Dr. Reeves stated in his report "probably secondary to lead poisoning" was because of Dr. Moore's laboratory findings above referred to,

and that the only reason that he speculated on this probable cause was because of Dr. Moore's chemistry report and that he (Dr. Reeves) now agreed with Dr. Moore's opinion that the only explanation for the abnormal amount of lead was contamination of the tissues after they had been removed from Telepnev's body.

In this connection, Dr. Shoe testified (page 46, line):

> "By saying that the reference to lead poisoning in the Coroner's diagnosis leaves me entirely unconvinced and leaves me to believe that the statement that it was probably secondary to lead poisoning is entirely without adequate evidence in support of it. I do not take seriously in any way these statements 'probably secondary to lead poisoning' for a variety of reasons.
>
> "First of all, the necropsy report even as it is shown here lucidly demonstrates an adequate cause of death, in that this man had uremia and had interstitial nephritis, a condition which in and of itself is frequently responsible for death, and which requires no further explanation inasmuch as we are not fully aware of all of the conditions which produce chronic interstitial nephritis. Moreover, the report itself does not say frankly that this was secondary to chronic interstitial nephritis, but says 'probably secondary to lead poisoning', which involves a definite suspended judgment on the part of the pathologist and it was the pathologist's opinion as transmitted to me personally that the only reason for this explanatory statement of the probability lies in his knowledge of the analytical finding (Dr. Moore's report) and that he had no other reason whatever for inquiring into the cause of death."

Throughout the evidence the uncontradicted testimony shows that, reduced to layman's language, the reported cause of death was what is known as "Bright's Dis[illegible]", the cause of which, in most cases is unknown. In other words, [redacted] died of Bright's Disease the cause of which, so far as [illegible] is concerned, is totally unrelated to lead.

A reading of the pages in the transcript referred to above will show very clearly that it is the opinion of Dr. Moore, who made the examination of the tissues following Telepnev's death, that the lead found in those tissues can only be accounted for by contamination of the tissues after they left Telepnev's body, and that the report does not represent that there was any abnormal quantity of lead in such tissues while they were in the body of Dr. Telepnev.

This testimony will also clearly show that the only reason Dr. Reeves speculated that the interstitial nephritis might be secondary to lead poisoning was because he had first read Dr. Moore's report without any knowledge at that time that such report did not represent the true condition of the tissue while it was in the body of Telepnev.

Dr. Robert A. Kehoe, who was called as an expert in this case by the defendant, is recognized without dispute as the leading authority, not only in the United States but internationally, on the subject of lead poisoning. He testified, without qualification, that medically the claim that [redacted] suffered from lead poisoning as the result of his employment was ridiculous; that leaded gasoline, which was the only lead product handled by Telepnev during his lifetime, is not a toxic product, and that lead poisoning cannot result from the handling of leaded gasoline. There is no dispute as to this fact.

In this connection, claimant perhaps unintentionally confused the issue by a great deal of testimony respecting the toxic qualities of tetraethyl lead. A clear distinction must be drawn, as was shown by the uncontradicted evidence, between tetraethyl lead and leaded gasoline. Tetraethyl lead is a concentrated fluid and is toxic. No claim was ever made that Michael Telepnev ever handled tetraethyl lead.

On the other hand, leaded gasoline is a diluted fluid in which the proportion is less than one part of tetraethyl lead to 1,200 parts of gasoline, and in most instances the dilution runs as high as one part lead to three and four thousand parts of gasoline.

The evidence shows without contradiction that lead poisoning cannot result from the handling of leaded gasoline, and this result follows from a study of thousands of cases. There are several hundred thousand persons in the United States who have worked for years with leaded gasoline involving far greater contact with it than occurred in the case of Mr. Telepnev, and all without a single recorded case in the experience of any of the doctors or in any of the medical literature of lead poisoning resulting from the handling of leaded gasoline.

The testimony showed without contradiction that persons could bathe their entire bodies in leaded gasoline for hours at a time and over a period of years without absorbing any lead as the result.

The testimony also showed that toxic quantities of lead cannot be inhaled in the handling of leaded gasoline, and there is not a single recorded case of lead poisoning resulting from inhalations of lead from the handling of leaded gasoline.

Moreover, the evidence shows that even if the reverse were true, [redacted] did not inhale any lead and did not get anything more than negligible quantities of the leaded gasoline on any part of his skin. The evidence showed without contradiction that the total quantity of tetraethyl lead contained in all gasoline coming into the laboratory where Mr. [redacted] worked was measured when it came into the laboratory and again when it left the laboratory, and that such measurements showed the same quantity always left the laboratory as came into it, so that none was lost during the time that Telepnev worked with leaded gasoline and therefore

[redacted] could not have absorbed any either by absorption through the skin or by inhalation of lead vapors.

The testimony as to vapors in the laboratory where [redacted] worked showed such vapors to be gasoline vapors and not lead [redacted] and further showed that gasoline vapors are not toxic.

It is also to be pointed out that the doctors who attended Mr. [redacted] during his life and at the time of his death were unwilling to sign a death certificate as to the cause of his death, because they did not feel that they knew the cause of his death, and that it is in the reason that the Coroner's inquest was held.

Certainly Mr. Reeves' report, which was a speculation and a guess as he admits and which merely stated "probably secondary to lead poisoning," can have no bearing on the matter, as Dr. Reeves admitted as testified by Dr. Lehoe, that this speculation on his part was based entirely on Dr. Moore's chemical analysis and on the belief that same represented the true condition of the tissues of the body of Mr. [redacted] from which it follows that had Dr. Reeves learned that Dr. Moore's report showed lead content was due to contamination of the tissues thereof Mr. his report would not have even contained the speculative guess relating to the lead poisoning.

Likewise, Dr. Moore's report of his examination of the tissues following Mr. [redacted] death cannot help the widow's claim in this case for the reason that Dr. Moore conceded that the lead content shown by the analysis was not any indication of the true content while these tissues were in [redacted] body.

Moreover, I desire to point out that nothing in the evidence of the present case in any way added a single thing to the claims made by Michael Belenney in the hearing had by him before the Commission during his lifetime to indicate that any disability suffered by him was connected with his employment, and on this point the Commission ruled adversely to the claimant during his lifetime.

In other words, this is merely a second attempt by the widow of the employee to have the Commission rule again upon a matter which was fully considered by it and ruled upon adversely to them in a previous case during the employee's lifetime.

Even as to medical testimony there cannot be said that there was even a conflict of evidence for the reason that the only medical testimony given by a person skilled in the subject of lead poisoning was the testimony of Dr. Lehoe. Admittedly, none of the doctors testifying for applicant were specialists in lead poisoning.

Dr. Shabanoff, principal medical witness for claimant, was a close friend of the [redacted] family for many years and admitted that she had only handled two cases of lead poisoning, one of which involved organic lead from printers ink and the other, which was not a lead case at all, but involved the handling of gasoline in a cleaning and dyeing establishment, which gasoline contained no lead whatever

The uncontradicted evidence shows that leaded gasoline is no different, so far as lead poisoning is concerned, from gasoline which contains no lead at all; that neither is a toxic product, and that there are no recorded cases of any lead poisoning from the handling of leaded gasoline.

Among the things testified to by Dr. Robert A. Kehoe, the international expert on the subject of lead poisoning, particularly of tetraethyl lead and of leaded gasoline, are included the following statements.

Testimony at Hearing on March 1, 1938:

Page 1:2:

"I have gone carefully over the entire record. * * * My conclusion is that he [redacted] did not have lead poisoning and it is my opinion that he did not die of lead poisoning."

Page 11:

"The occupational lead exposure of Mr. [redacted] is one which I cannot regard as in any way significant for the following reasons: Experimental and clinical observations in a large group of men who have been occupied with the same type of work have failed to show any evidence that there is any unavoidable or actual lead exposure associated with the work. That is to say there are those thousands of men who have been engaged over a period of years in this type of work, and we have studied a selected group of these men with the idea of determining whether or not their occupation does involve lead exposure. These observations have been based upon clinical study of their lead excretions at different times over periods of years. This type of observation has failed to show any evidence in the form of a heightened lead excretion, that the occupation involves actual measurable exposure to lead compounds. Moreover so far as my knowledge goes, I know of no case of lead poisoning, acute or chronic, which has occurred amongst men engaged in this occupation during the entire period of time since 1924. It is therefore an occupation which has no known or recorded instances of lead poisoning, and it cannot be regarded therefore as a hazardous occupation in the sense of a known record of having produced cases of lead poisoning."

At page 124 Dr. Kehoe points out the difference between the concentrated tetraethyl lead and the diluted product in leaded gasoline which is not toxic.

At page 145 Dr. Kehoe points out that lead cannot be absorbed through the skin or inhaled as the result of handling leaded gasoline.

Page 146:

Dr. Kehoe points out that no cases of lead poisoning have been seen or reported in medical literature from the handling of gasoline containing tetraethyl lead.

Testimony of Hearing on
March 1, [illegible]

Page 10:

"Q. In your (Dr. Kehoe) opinion, was the condition of chronic interstitial nephritis found on necropsy entirely explainable and completely independent of lead exposure?

"A. Oh, quite. One sees this type of kidney with chronic interstitial nephritis with a small red contracted kidney as an expression of chronic interstitial nephritis over a period of years quite apart from lead poisoning and quite apart from any known toxic agent.

Page 12:

"The first point in my conclusion that he [redacted] did not die of lead poisoning contracted in [redacted] is that in my opinion the lead exposure associated with his occupation even under the worst possible conditions was not sufficient as to be capable of resulting in the absorption of abnormal quantities of lead. This opinion is based on extensive clinical observation and more importantly on extensive study of the rate of blood excretion of men under conditions of exposure in similar occupations, the results of which have been to convince me that there is no measurable lead exposure associated with work of the character performed by Mr. [illegible]lepnov."

Page 15:

"I mean that the exposure associated with the handling of leaded gasoline in any and all ways in which it is commercially handled can never be shown to result even in the absorption of lead. In fact all experimental evidence indicates that lead is never absorbed in measurable quantities as the result of contact to any extent with gasoline containing tetraethyl lead. Moreover, there have been no cases of recognizable and confirmed lead poisoning amongst some hundreds of thousands of persons whose daily occupation involves exposure both by skin contact and by inhalation to gasoline containing tetraethyl lead. In fact, there is at the moment no experimental or clinical evidence that leaded gasoline is more dangerous than is ordinary gasoline from the point of view of lead absorption."

Page [illegible]:

"I have not been able to find any substantial cases of latent lead intoxication in which symptoms came on within a period of six months to one and one-half years after the cessation of exposure."

Transcript of Hearing on March 3, 1939

Page 41:

"Bright's Disease is perhaps a rather incorrect term applied to nephritis and more particularly chronic interstitial nephritis with edema and with uremia, and often associated with blood vessel disease as well but not necessarily so. . . . The actual cause of the disease is not known."

Page 42:

"In fact it is my opinion that it is impossible to acquire lead poisoning in that occupation."

Page 43:

"I know of no case in which lead poisoning has developed [illegible] the presentation of exposure within a period longer than a few weeks."

Page 46:

Mr. Kehoe was asked by applicant's attorney whether it was not a fact that the exposure would be greatly increased in the case of Dr. Deleoney during these experiments with tetraethyl lead gasoline, as compared with the exposure of filling station attendants and garage mechanics. Mr. Kehoe replied, "The answer is distinctly 'no'."

Page [illegible]:

Mr. Kehoe pointed out that there were no recorded cases of cases to his knowledge, such as that claimed to exist in Dr. [redacted] namely, a case of chronic tetraethyl lead poisoning, and Mr. Kehoe stated that any such case would be a "medical curiosity."

Page 49:

"My answer is that it has never been denied by anyone, and least of all by me, that the handling of concentrated tetraethyl lead in any and all places in which it is found is a serious danger, and I have been equally emphatic in saying in my experience and in all the experiments that have been done by me, by the United States Public Health Service and the British Minister of Health, there is not the slightest evidence that the handling of leaded gasoline has the slightest hazard. It has been investigated for fifteen years with negative results."

Page 55:

"If there is anyone who disagrees with me on this, I do not know who it is. I think it is universally accepted at the present time that this is not a hazardous occupation from the point of view of lead."

Page 104:

"I say with that any reservation that I do not believe Mr.

[redacted] suffered any disability or injury from lead as a consequence of his occupation either as a primary, secondary or contributory factor in his illness and death."

Respectfully submitted,

DANIEL W. [illegible]

[illegible]

To: [illegible] Dethlefsen, Esq.,
Attorney at Law,
400 Montgomery Street,
San Francisco, Calif.

cc to Dr. J. F. Beattie