SKELLY OIL COMPANY

TULSA, OKLAHOMA

INSURANCE DEPARTMENT
C. L. SWIM

JUNE TWENTIETH,
1 9 3 9.

Dr. Robert A. Kehoe
Kettering Laboratory
Eden and Bethesda Streets
Cincinnati, Ohio

Dear Dr. Kehoe: Re: [redacted] vs. Skelly Oil Company

You will perhaps remember that I visited you in Cincinnati in the latter part of 1938 in connection with the above case at which time [redacted] was making claim against us under the Workmen's Compensation Law of Oklahoma. Subsequently I advised you that the Industrial Commission of Oklahoma had rejected his claim on the ground that he had failed to prove an injury by accident which is a necessary requirement under the Oklahoma Workmen's Compensation Law. This man has now filed a common law action against us which is in the Federal District Court for the Northern District of Oklahoma and will probably come on for trial in September or October of this year. In this suit he seeks recovery of $25,000.00.

To refresh your memory may we say that [redacted] was for some 12 or 13 years a truck driver hauling gasoline (including ethyl gasoline) from our bulk plant here in Tulsa to various retail outlets in the vicinity of Tulsa. His work in that connection was essentially like that of any tank wagon driver. As to his complaints and symptoms, beginning as far back as 1936 at least, I refer you to my letter to you of December 7, 1938, with which I sent you copy of report made by Dr. J. C. Brogden in which was included the findings and reports of Drs. Larrabee, Lhevine and Nelson and also the report of Dr. R. M. Shepard, all of this city. Subsequently we received the report of Dr. Bernard L. Branley of Tulsa who examined Mr. [redacted] last fall in connection with these other doctors and also treated this man as a private patient in February and March, 1936. I now enclose copy of that report from all of which you will be able to get the clinical picture of this case.

In the present action Mr. [redacted] is claiming total permanent disability. The petition as drawn by his attorney is a little confusing but apparently the burden of his complaint is the claim that he has sustained an occupational disease from the continuous breathing of gasoline fumes and the poisons which he alleges the gasoline contained as distinguished from physical

contact with the gasoline as a liquid. I am enclosing a copy of his complaint and call your attention to certain allegations as follows:

Page 1, Paragraph 2, he alleges the handling of "gasoline containing Ethyl, one of the chemical contents thereof being lead, which was poisonous to the plaintiff's system. * * * and constantly breathed fumes from said gas."

Page 2, Paragraph 3, alleges ethyl gasoline was harmful to him.

Paragraph 4, plaintiff alleges that he was "sick with his lungs by reason of his occupation as aforesaid." This was presumably in 1936 as he goes on to allege that on a date in that year the writer and Dr. Brogden of this city made certain representations which last allegation is not true in fact.

Page 3, Paragraph 5, here plaintiff alleges that his present condition is due to poisons from said gasoline and oil, particularly said ethyl gasoline.

Paragraph 6 - here the plaintiff alleges total and permanent disability from (a) "his central nervous system has been affected" (b) "his lungs affected by fibrosis" and (c) "because he suffers extreme and excruciating physical pain."

As to all of this you will observe from the doctor's reports mentioned above that they do not think he is disabled.

Mr. Alvin F. Molony and Mr. Hawley C. Kerr, attorneys in our legal department, are working on our defense to this suit and because of my previous contact with you they have asked me to write you soliciting your reactions and observations respecting the contentions made in this complaint which are briefly enumerated in this letter. We surmise that plaintiff's attorney will find some doctor who will testify that the breathing of gasoline fumes alone, and particularly if such gasoline contains tetraethyl lead, will affect the central nervous system and that the same will cause fibrosis in the lungs and that when these two results have occurred the effect is to cause pain and total permanent disability. In this connection you will remember that this man does have fibrosis in his lungs so that we would like to know your opinion of whether the breathing of gasoline fumes would cause fibrosis in his lungs, considering for the purpose of your answer that some of the gasoline contained tetraethyl lead and some of it did not, but that in all events the gasoline

to which he was exposed was commercial motor fuel. As you will observe from reading the complaint itself it is not perfectly clear whether plaintiff expects to claim injury from the fact that tetraethyl lead was in the gasoline or to claim such effect from the gasoline regardless of tetraethyl lead, or both, so that we solicit your opinion as to what, if any, injury would result from this nature of exposure in addition to the question of lead poisoning.

We are of the present opinion that we should like, and that it would be important to us, for you to come to Tulsa and testify when this case is tried with respect to your knowledge of the effect of breathing gasoline vapors from gasoline which does or does not contain tetraethyl lead. Between now and trial time these attorneys may wish to go to Cincinnati to see you at a date convenient to you so that if there is a period between now and September when you definitely will not be available for such consultation I should be glad if you will let me know now about that.

There is another matter on which we solicit your indulgence. We note in the report of the case of United States vs. Ethyl Gasoline Corporation in the District Court of the United States for the Southern District of New York, decided May 19, 1939, and reported in the United States Law Week for June 6, 1939, page 22, the court said:

> "Such provisions of the license agreements with the refiners cannot be sustained on the theory that the corporation (Ethyl Gasoline Corporation) has a right to require jobbers dealing in lead-treated gasoline to be licensed in order . . . . to secure compliance with the regulations proposed by the Surgeon General of the United States governing the sale of lead-treated gasoline to the public."

Our present interest lies only in ascertaining what "regulations proposed by the Surgeon General of the United States governing the sale of lead-treated gasoline to the public" are referred to by the court in the quotation above. I am sure you are familiar with any regulations proposed by the Surgeon General and I should be glad if you would let us know where and how we may obtain a copy or if this particular reference by the court is not clear to you may we request that you pass this part of our inquiry on to the Ethyl Gasoline Corporation's Legal Department together with your request that they advise us.

We certainly do not want to impose on your good nature but we feel that our contract relationship with the Ethyl Gasoline Corporation is such, together with the very

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mutual interest of both the Ethyl Gasoline Corporation and ourselves in preventing recoveries by those who allege injury from handling ethyl gasoline, when such claims are not justified, is such as to authorize the bringing of our troubles to you to this extent. In addition to this we shall thoroughly appreciate the favor of your early reply.

With personal regards, I am

Yours very truly,

CLS:K