

LAW OFFICES OF
PILLSBURY, MADISON & SUTRO
STANDARD OIL BUILDING
SAN FRANCISCO

February 2, 1935.

AIR MAIL

Dr. Robert A. Kehoe,
Kettering Laboratory of Applied Physiology,
University of Cincinnati,
Cincinnati, Ohio.

Dear Doctor:

We are counsel for Standard Oil Company of California.
Mr. Wagner, of the Ethyl Corporation at Los Angeles, has suggested
that we write to you and has advised us that he is likewise doing
so.

Yesterday a jury in our Superior Court here in San Francisco
awarded damages in the sum of \$5,000 against the Standard Oil Company
in favor of the plaintiff, a former employee who claimed that he suf-
fered lead poisoning as a result of being exposed to tetraethyl gaso-
line fumes in the pump room of one of the tankers of the Standard Oil
Company on September 26, 1932, while such vessel was discharging its
cargo of ethyl gasoline and plain gasoline at San Diego. Plaintiff
was employed as a pumpman at the time and his duties required him to
be in the pump room for approximately fifteen-minute periods at half
hour intervals.

A mechanical blower which was used for sucking out gases
from the bilge below the floor of the pump room, by reason of a break-
down, was not used at the time the cargo was being discharged. The
total period of time that the cargo was being discharged was ap-
proximately twelve hours. The log book of the ship shows that the
ethyl gasoline was being discharged between 6:10 P.M. and 10 P.M. of

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that day, although the plaintiff contended that the ethyl gasoline was being discharged from 9 o'clock in the evening until 3 o'clock the following morning, or a total of six hours. The evidence showed that he could not have been in the pump room more than one-third of the time during the period when the cargo was being discharged. The evidence also showed that other members of the crew were in the pump room off and on during the discharge of the cargo and suffered no discomfort of any kind. There were other means of ventilation, which consisted of two large ventilators 24 ^{inches} feet in diameter and a skylight above the pump room. The pump room was approximately 30 feet wide across ships, about 8 feet lengthwise, and the floor of the pump room was approximately 24 feet below the deck. There was some evidence that gasoline was dripping down into the pump room from the gauges up on deck, although the evidence does not clearly show that this dripping occurred during the discharge of the ethyl gasoline.

The plaintiff continued his duties during the entire period of the discharge of the cargo and continued to perform such duties for some twelve days thereafter to the end of the voyage of the ship without revealing any signs of illness, as far as the other members of the crew could see, although he contends that he became dizzy and nauseated in the pump room and that all of his illness, which he described as headaches, soreness in the lungs and abdomen, sleeplessness and nervousness, dated from the time of his exposure in the pump room. He contends that when he left the ship he complained to the United States Marine Hospital that he was ill from the gasoline fumes but that was not confirmed by the records of the hospital.

Approximately a year and a half later he consulted a Dr. Baker in San Francisco with a view to determining whether he was suffering from some illness which would justify a suit against the Standard Oil Company. This doctor made periodical examinations for some months and testified in the case that he was convinced that the plaintiff was suffering from lead poisoning. Dr. Baker predicated his opinion on the plaintiff's complaint of his exposure to fumes and some gasoline on his hands and feet during the time the vessel was discharging cargo. He also based his opinion on the fact that the plaintiff had probably accumulated a certain amount of lead in his system (which he said was undoubtedly stored up in his bones) and that the unusually great exposure on the particular time in question filled his system with an amount of lead which could not be excreted or otherwise taken care of and thus brought about the injuries or damage. He testified that the only objective symptom he could find was abnormal reflexes of the legs, an increased knee jerk and a sub-normal achilles tendon reaction. He summarized his opinion by saying that plaintiff had undoubtedly suffered nerve destruction which was irreparable and would be permanent.

We had the plaintiff examined about a year ago by two very competent physicians in San Francisco who could find no evidence of lead poisoning. The records in the Marine Hospital also show that subsequent to the claimed exposure the plaintiff was examined for gastro-intestinal and other complaints; that at the time his history was taken he made no complaint of gasoline exposure and there was nothing found which would indicate lead poisoning. Neither the

plaintiff's physician nor any of the physicians who examined him found any stippled blood cells, anemia or lead line. The jury evidently accepted the opinion and conclusion of plaintiff's physician notwithstanding.

We are convinced that the man is not suffering from lead poisoning and feel that unless a new trial is granted or the case reversed, it will possibly be the result of a great deal more litigation and trouble which will be unfounded and this, of course, is something that interests and will possibly affect all concerns using or distributing tetraethyl gasoline. Hence we are particularly desirous of being fortified with new or additional evidence to present in affidavit form to the court in support of our motion for a new trial.

The plaintiff's physician in testifying stated that he based his opinion partly upon the research and work and reports of experts and your name was the only name mentioned. We sought to cross-examine him with reference to an article by you, Frederick Thamann and Jacob Cholak published in the March issue of the "Journal of Industrial Hygiene" which article, particularly the statements and conclusions on page 102, seem to definitely refute the testimony of the plaintiff's physician. Unfortunately, we were not permitted to do this because the doctor testified that he had not based his opinion upon the statements in that article, but upon statements and findings by you as published in a report by the United States Bureau of Public Health in 1924. The court (we think erroneously) refused to permit the witness to be cross-examined concerning the

March, 1934, article. We hope to establish this error as the basis for a new trial for the reason that the plaintiff's testimony, being based in part on your findings, should entitle us to cross-examine him with reference to your later report.

What we particularly desire and need at this time is an affidavit or affidavits of experts who are particularly qualified by study and research on this problem showing that the circumstances under which the plaintiff claims he was poisoned were not such as to cause such poison or injuries. Such affidavit or affidavits should also, if possible, further show the facts or basis for such conclusion. We are writing this to you believing that you are the one person who is probably best able to assist us in the present problem and also that you may be able to assist in securing information and evidence from other competent authorities. We would therefore appreciate an immediate reply from you so that we may act upon your advice.

If information is furnished to us we will be pleased to prepare the necessary affidavits or arrange with counsel anywhere in the country to do this for us. We would also like to know whether anything has been written or published since the article of March, 1934, and if so, where we may find the same, also whether any research investigations have been made by public or private agencies which in your opinion would have a direct bearing upon this question.

As the time is very short within which we must submit further evidence to the court it is therefore necessary that whatever is done be done at once. Our clients will, of course, bear any expense incurred or charges for services rendered.

Yours very truly,

Felix T. Smith _{ES}