April 18, 1973

Mr. Kenneth D. Kuykendall
Royston, Rayzor, Cook & Vickery
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One Shell Plaza
Houston, Texas 77002

MV EID - Alleged Lead Poisoning of
Crewmembers - July, 1972 - File 22,492

Dear Mr. Kuykendall:

Thanks very much for your letter of April 9, and for the transcripts of certain items of testimony.

1. I enclose a somewhat complex series of biographical notes of myself and a list of my publications, which include a number of papers and other publications pertinent to the matters at issue, at your request.

2. As to certain questions which you have raised in your letter, I shall do my best to give you appropriate answers. One of these relates to my availability here. Aside from occasional days about which I can make no certain predictions at this time, I shall be at my home (1071 Celestial Street, Apartment #1504 in Cincinnati) or in my office in Kettering Laboratory (from approximately 9:30 a.m. to 4:30 p.m. on weekdays - exclusive of national holidays) for the next several months. I shall meet you or your agent on any one or more of these weekdays, according to your wishes and arrangement, in order to discuss the situation further and to provide you with a detailed deposition.

3. Let me say that the records with which you have provided me have very little relevancy to the matters about which you are concerned. The records of the illness of the workmen give practically no pertinent information. The question here is what will happen to these men later. This can be answered (partially) only in terms of the closely observed experience of other workmen of comparable experience. On account of a fairly comprehensive knowledge of the experience with this disease on the part of other men, I am prepared to say that there is very little likelihood of any permanent damage to the men involved at this time. It is not possible for me (the most experienced physician to be found anywhere - experience with persons who have been poisoned with tetraethyllead) or anyone else to say that no residual effect can possibly occur. The reason for this is that the history of this type of illness has not been completed. Yet, up to the present time - a period of over half a century - no case of residual damage has been seen. This is a long time in the history of any disease of man, and, therefore, no reasonable man would expect to find or see such an outcome. But to say that such is not possible is to fly in the face of all reasonable human speech. I have had more experience with this disease than any other man in the world - to speak not boastfully but only factually - and I do not expect any such thing ever to occur. As a physician and scientist, I

think the matter has been settled with sufficient certainty, but it is not possible to say "never," even after fifty years of observation and investigation. I still consider this matter "theoretically" open to a first-time occurrence. This is in the very nature of the events of this type in the world of human experience - theoretically and philosophically. And I must observe the fact that this type of event must be so accepted by any scientist worthy of the name. One often lives, of course, on the basis of opinion, and, preferably, expert opinion, but, nevertheless, opinion and certain knowledge are two very different things. One learns not to play God.

Cordially yours,

Robert A. Kehoe, M.D.
Professor Emeritus of
Occupational Medicine

RAK:wb

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April 9, 1973

Dr. Robert Kehoe
Professor Emeritus of Occupational
Medicine
College of Medicine
Eden & Bethesda Avenues
Kettering Laboratory
University of Cincinnati
Cincinnati, Ohio 45219

MV EID - Alleged Lead Poisoning
of Crewmembers - July, 1972 -
Our File 22,492

Dear Dr. Kehoe:

We acknowledge receipt of your letter of March 26, 1973, and we have studied your comments with a great deal of interest. Of course, we are presently checking to determine whether this was tetraethyl lead or tetramethyl lead, but we are fairly sure that it was actually tetraethyl lead. We will confirm this information shortly.

Your letter indicates that you have thoroughly studied this particular problem and the case history of each individual who has been exposed to any severity (mild-very serious-fatal) to tetraethyl lead poisoning. We note that all personnel who survived the acute poisoning suffered no permanent disability or recovered completely, and we note that you "have no fear, at all, of residual disease in mildly poisoned persons." Nevertheless, we would like to insure that we understand the gist and meaning of your report. Basically, we understand that you are stating that there is no possibility of permanent disability associated with exposure to tetraethyl lead to the extent these eleven seamen were exposed. If you are of the opinion that there is a possibility of permanent disability associated with this exposure, we would appreciate your full explanation of the possibility in this regard.

As previously agreed, we will not attempt to call you as a witness in this litigation, unless your health allows and you decide you would like to participate in the litigation of the case. Nevertheless, we do desire to go forward with your testimony by deposition so as to be in a position to offer your testimony at trial, and we would suggest a date in approximately one to two months. If this suggestion is convenient, perhaps you could specify certain dates

in the latter part of May or early June when you would be available for your deposition testimony.

We certainly appreciate your courtesy and cooperation in this matter. In order to provide more information on the matter, we * are enclosing a photostatic copy of the deposition testimony of Dr. Bucklin and Dr. Burdick. Dr. Burdick is the treating physician for Ethyl Corporation.

We would also appreciate being provided a copy of your complete resume concerning your training, experience, writings, etc.

Yours very truly,

KDK:wm
*Enclosures

University of Cincinnati
Cincinnati, Ohio 45219

COLLEGE OF MEDICINE, EDEN AND BETHESDA AVENUES
KETTERING LABORATORY
DEPARTMENT OF ENVIRONMENTAL HEALTH

March 26, 1973

Mr. Kenneth D. Kuykendall
Royston, Rayzor, Cook & Vickery
Attorneys At Law
One Shell Plaza
Houston, Texas 77002

Re: [redacted] vs. -
C.A. No. 72-H-51 - File 22,492

Dear Mr. Kuykendall:

I have reviewed the material which you sent me a few days ago and am prepared to provide you with my opinion on the specific question which you raised in your letter of March 16. First, let me make clear to you, however, the fact that my opinion is based only slightly on the records of this specific group of men, for therein it differs from certain other opinions which have been expressed. That is to say that on account of its different basis, it is totally, or almost totally, of a different weight than the other opinions.

As you are probably aware, I have been involved for a very long time in the observation and study of tetraethyllead poisoning, in contradistinction to the others who have given opinions on the future course of these illnesses, having been initiated into this issue in 1924, when I studied a group of nearly 40 men who, unexpectedly, had become ill, through exposure to tetraethyllead. Let me warn you now that the situation at the present time is a bit different, in that tetramethyllead has been introduced into use along with tetraethyllead. This fact, I believe, does not alter the problem materially, for tetraethyllead and tetramethyllead behave similarly. (I am not certain that tetramethyllead was involved in the present instance, but the fact can be ascertained with little trouble. I simply warn you that this issue may be raised in attempted rebuttal of my statement.)

To proceed, however, I, myself, was troubled, earlier, by the question of the ultimate effects on men of the absorption of tetraethyllead. I would not have been surprised if there had been a serious delayed effect, and I was very guarded in my statements as to the eventual outcome of tetraethyllead poisoning. Doctors who have had no previous experience with this illness, would be likely to have the same attitude as that expressed by Dr. Bucklin, and for the same reasons. I can tell you, however, that there is no valid basis for these doubts and fears. Over the 50 years of experience with the handling of tetraethyllead /tetramethyllead came into use in 1960, or thereabouts. Experimentally, it was handled for several years prior to 1960. There have been no known cases of human poisoning with tetramethyllead/ (initially without much in the way of precautions,

and subsequently when - since 1926 - there have been elaborate precautionary measures of safety) there have been more than 100 cases of poisoning, some fatal, a goodly number very serious, and quite a few - as in the present series - mild. (I speak of these last cases as "mild" because - it seems - no one was seriously ill and none died.) Moreover, it is now known that the severity of the cases varies roughly with the rate of the excretion of lead in the urine of those affected. None of the present group of men had actually highly elevated lead concentrations in their urine.

The crucial fact out of all of these cases is that although some men died promptly, of acute poisoning, none - not a single one - who survived, suffered any permanent disability, but all recovered completely. I have been very careful to collect the medical records and the "follow up" records on these cases, all of which were reported in detail by physicians whom I know or with whom I have corresponded. There have been no cases of peripheral neuritis. No cases of delayed brain disease, and, in fact, no residual injuries. Since this was such an important fact to establish, I have gone to great trouble to learn the facts, mostly from word of mouth and trusted (repeated) interviews with the doctors in question. Since we set up early means of investigating all accidents and incidents within the industry, I accumulated all of the records of all of the cases over a period of almost half a century. Since severely poisoned people (who survived the initial intoxication) within this group recovered completely and returned to their former jobs satisfactorily, I have no fear at all, now, of residual disease in mildly poisoned persons. I admit to being deeply concerned about persons who go into coma or have repeated convulsions - that is, seriously poisoned persons - for I admit to being deeply concerned about persons who go into coma or have repeated convulsions - that is, seriously poisoned persons - for as a physician and investigator, I must be on the lookout for a first exception to the rule of those who have been poisoned in the past and failed completely to develop any delayed disability. However, after 50 years of experience, I have little doubt as to the validity of the observations of physicians who have taken care of those who have been poisoned. Incidentally, the physicians of Ethyl Corporation, in this and other countries, who have been selected directly or indirectly by me, and have reported to me, are just about the only physicians who have ever seen any tetraethyllead poisoning, for cases have not occurred within the general public (except perhaps outside the USA, during the second world war) since all of those which have occurred have been limited to persons - few - who have handled Ethyl Fluid. None have occurred among men engaged in the commercial handling of leaded gasoline. This has been a very closely observed industry, I can assure you, so that there have not been any considerable number of unreported cases.

Now, I should say something about the present series of cases and the documents concerning them. These documents demonstrate (as I said before) that these were mild cases (point number one). Moreover, there were no cases of prolonged illness, but all of the men involved, showed the typical drop-off in the concentration of lead in their urine. They can be expected, therefore, to go on and excrete the excessive quantities of lead which they absorbed in consequence of their employment. None of these men, it seems, fortunately, had any debilitating disease to begin with, and therefore would not be likely to have a disability which might mistakenly be interpreted as an after effect of their poisoning.

Sincerely yours,

Robert A. Kehoe, M.D.
Professor Emeritus of Occupational Medicine

RAK:wb

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March 16, 1973

Dr. Robert Kehoe
947 Green Street
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San Francisco, California 94133

[redacted] vs.
Ethyl Corporation, Et Al -
C. A. No. 72-H-51 -
Our File 22,492

Dear Sirs:

This will confirm our telephone conference on February 28, 1973. In accordance with our conference, we enclose the medical records in connection with the treatment rendered to the Spanish and Portuguese seamen allegedly suffering from tetraethyl lead poisoning. We understand that you will carefully review the full medical information and provide your evaluation concerning possible permanent disability associated with the injury and any adverse effects on these seamen exhibited by the medical records. Of course, we would appreciate receiving a report from you as soon as possible.

We represent Marine Transport Lines, Inc. in connection with the claims asserted by eleven seamen for personal injuries as a result of tetraethyl lead poisoning while onboard the MV EID between May and August, 1972. The eleven seamen have filed suit in the United States District Court for the Southern District of Texas, Houston Division, claiming permanent disability associated with the exposure to tetraethyl lead during the period of the voyage. The vessel EID was carrying tetraethyl lead cargo during this period of time. The urine samples indicated a higher than normal lead reading for some of the seamen prior to the time the vessel left Europe en route to the United States. Hence, when the vessel arrived in the United States, Dr. Burdick, a physician employed by Ethyl Corporation in Houston, promptly attended onboard the vessel and obtained urine samples. These samples were promptly analyzed, and it was ascertained that 14 seamen had been exposed to tetraethyl lead poisoning. Dr. Burdick was of the opinion that the men should remain under medical observation until the lead readings in the urine samples had reduced to a satisfactory level, and then the men could return to their employment.

We have taken the depositions of the seamen who have filed suit in the United States District Court for the Southern District of Texas, Houston Division. Only 11 out of the 14 seamen actually

brought suit, and the three other seamen have not filed suit. In fact, we have spoken with the Captain of the vessel, who was treated for lead poisoning, and he is not having any further problems as a result of such poisoning. Moreover, the investigation and deposition testimony of the seamen reveals that the only method the lead came into their system was through inhalation. There were two minor spills, and it is possible some of the tetraethyl lead may have come into contact with the skin of a few of the seamen, but it seems probable that the only explanation of some of the seamen having high lead readings is from inhalation rather than contact. For example, one of the seamen exposed was a steward who never had any contact with the cargo other than walking along the main deck. Also, engineers, the Chief Mate and Captain all were exposed, but none of these personnel ever physically handled the cargo or cleaned up the spills.

* We are enclosing a copy of the complete medical records in connection with the treatment to these seamen. These records
* were prepared and maintained by Dr. Burdick. We enclose the complete records of Dr. Bucklin and Dr. Rhem, who examined the
* seamen at the request of the plaintiffs' attorney. Also enclosed are various other medical records which you may find of interest.

In the event any of the entries in these medical records are not clear, we would request that you communicate with Dr. Burdick in order to clarify the information. Dr. Burdick has made certain symbols on his charts and these indicate certain items. If these need to be deciphered, then Dr. Burdick would be most happy to render assistance. On the other hand, in the event information contained in the records of Dr. Bucklin or Dr. Rhem is not clear, please communicate with us and we will contact these doctors through the plaintiffs' attorney in order to obtain further information so that you can make an evaluation.

Briefly, for your edification, we desire to summarize the problem. There does not seem to be any reasonable doubt that the seamen were exposed to some tetraethyl lead during the course of the voyage. Of course, the extent of the exposure varied from seaman to seaman. The seamen were required to remain off work for a certain period of time while Dr. Burdick kept the seamen under observation in Houston, Texas, until they were able to return to their homes or to their employment. Hence, the basic dispute between the seamen and the vessel's interests concerns permanent disability associated with the exposure to tetraethyl lead. In this regard, you will note that the physicians diagnosing the problem are of divergent opinions. Dr. Burdick has stated that the seamen

will not have any residual disability associated with the exposure. In fact, Dr. Burdick testified that permanent disability was not medically possible. On the other hand, Dr. Bucklin has stated that the seamen may well have permanent residual disability associated with the exposure. Hence, we are seeking independent medical advice in order to clarify this dispute.

We would appreciate your looking over the enclosed medical information as soon as possible and communicating with the writer (Kuykendall). Of course, we understand your schedule is such that it may be a few days before you are able to review the medical information and provide your report. We presently do not have a trial setting, and we are not in urgent need for the information. Nevertheless, in view of the divergent views and the problems encountered in developing various medical information, we would certainly appreciate your attention to this matter as soon as possible.

As mentioned in our telephone conversation, we have contacted Dr. Zavon in Cincinnati, and he has provided his evaluation. We are not enclosing a copy of his report as we would appreciate your independent medical evaluation. Of course, we doubt that Dr. Zavon's opinion would have substantial effect upon your judgment in this matter, but we would appreciate your evaluation without reference to other independent experts.

We would appreciate your contacting the writer (Kuykendall) by telephone if there are any problems in connection with your evaluation. Of course, we have previously agreed that we will not require your presence at trial in view of your health problems and that we will come to San Francisco or Cincinnati in order to obtain your deposition testimony, if this is needed prior to trial. As soon as we have assembled the opinions from the various medical experts, we would hope to be in a position to move forward with the plaintiffs' attorney in order to obtain a settlement so that the matter will not have to proceed to litigation. On the other hand, before we can negotiate a settlement, it is imperative that we obtain expert opinions concerning the allegations of permanent disability associated with these injuries.

We certainly appreciate your courtesy and cooperation, and we look forward to hearing from you in the near future.

Yours very truly,

KDK:wm
*Enclosures

P.S. We have just received medical reports on the seamen from * a physician in a foreign country, and we enclose a copy of these reports and communications from the seamen to assist you in your evaluation.

R.R.C.&V.