

ETHYL GASOLINE CORPORATION

ATLANTA OFFICE

RHODES-HAVERTY BUILDING

ATLANTA, GEORGIA

INTER-OFFICE
CORRESPONDENCE

July 1, 1940.

DR. ROBT. A. KEHOE,

Dear Dr. Kehoe,

Attached is our latest report on developments in the Orange State Oil Company case. This includes a report of our Safety Representative, Mr. Sweeney, and also a copy of an opinion rendered by Hudson & Cason, Attorneys for the Orange State Oil Company.

I am inclined to feel that a satisfactory settlement of this case rests with the Maryland Casualty Company. However, if there is anything further which you wish us to do, we will be pleased to be advised.

Very truly yours,


J. A. Costello.

JAC/P.L

CC-Mr. Lewis.

enclosures.

ETHYL GASOLINE CORPORATION

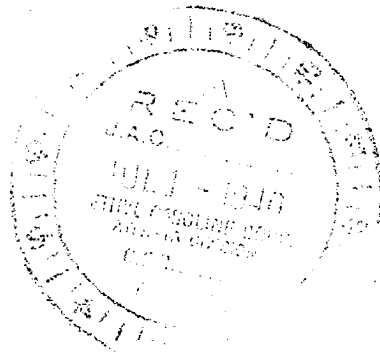
ATLANTA OFFICE

RHODES-HAVERTY BUILDING

ATLANTA, GEORGIA

Miami, Fla
June 28, 1940

INTER-OFFICE
CORRESPONDENCE



Mr. J. A. Costello

Dear Joe:

At your request I have spent quite some time with Mr. Van Brunt and Major Carter of the Orange State Oil Co. here in Miami with the idea of finding out the status of the [REDACTED] case. Mr. Van Brunt told me that so far no one had done anything on account of the fact that the Maryland Casualty Co., insurers of Orange State has denied liability, claiming that the cases of lead poisoning which occurred at their Tampa, Fla. terminal last Dec. were cases of occupational diseases and not accidents as classed under the Fla. Workmans Compensation Act. Maryland Casualty Co. has done nothing since up until last week no claim had been filed by any parties representing the deceased. Orange State has left everything up to Maryland Casualty with the result that over six months have elapsed without anyone taking action. Last week Mr. Fenn, Pres. of Orange State Oil Co. received a letter from the mother of Mr. Hubbard (deceased white worker of Jacksonville, Fla.) asking him what he expected to do about the death of her son who died as a result of poisoning due to working in tank 201 in Tampa. (Mrs. [REDACTED] is aware of the fact that her son died of "Tetraethyl Lead Poisoning".) This letter has been turned over to the Maryland Casualty Co. and a reply of a very non-committal nature made to Mrs. Hubbard. So far no claim has been made by anyone representing the negro who died in Bradenton Fla. Enclosed is no information as to when either of these two men worked as Mr. Van Brunt had placed all of this matter in the hands of their lawyers. He says that he wrote you a letter containing this information.

Enclosed is a copy of a letter from the Law Firm of Hudson and Cason, attorneys for Orange State, expressing their opinions on the case. The letter speaks for itself and I will not comment.

The Maryland Casualty Co. is now investigating the case of Willie Mitchell, colored, about whom you have a letter. They have made no report as yet. I asked Mr. Van Brunt why he wrote you that Willie Mitchell worked for them in Tampa from Nov. 15th through Nov. 17th 1939 and Nov. 19th through Nov. 26th 1939 and although the cleaning of tank 201 took place in Dec. he stated that he might have worked in the tank in question. He told me that Mr. Glover's time records were very much confused and that they were not too sure of them. This seems to me to be a case of the foreman

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keeping records that will look very good to the Labor Board or it might be a case of Mr. Glover trying to confuse the whole thing in order to evade the responsibility that might be put on him by the officials of the Orage State Oil Co. I can think of nothing that we can do to get the real truth on this matter without making the officials of the Orage State Oil Co. very mad so I did not press this too far.

They cleaned a 20,000 gal bulk sales storage tank that had been used for leaded gasoline here in Miami about two weeks ago and as you know they did not notify us. I asked Major Carter and Mr. Glover in the presence of Mr. Van Brunt why we had received no notification and they told me that Dr. Kehoe had made the statement to them that small tanks of that type were not hazardous. I then described to them the recent result of Dr. Kehoes study and it was agreed that they would notify us of all tank cleanings of leaded gasoline storage tanks in which a man entered. Major Carter has agreed to take this responsibility at the direction of Mr. Van Brundt. I spent a long time going over the fact that they would have to notify us if we were to be of any service to them.

If you have any further information that you want me to get from them or anyone else please send me a letter to the Columbus Hotel here in Miami as I expect to return here from Cuba next Wed. Please mark hold for arrival.

Very truly yours,

W. Whitney Sweeney Jr.
W. Whitney Sweeney Jr.

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LAW OFFICES
HUDSON & CASON
MIAMI, FLORIDA

May 8, 1940

Orange State Oil Company
Miami, Florida

Attention Mr. VanBrunt, Secretary case Subject: [REDACTED]

Gentlemen:

We were interviewed yesterday by Mr. Kille, Local Agent, and Mr. Arthur H. Smith, Assistant Claims Manager out of the Home Office of Maryland Casualty Company with reference to the reported cases of tetra-ethyl lead poisoning reported to us in your letter of May 6. We discussed every detail of these cases for about two hours, and, while no definite agreement was reached, we believe the following is an approximate summary of our tentative views:

We contended that under the circumstances surrounding these cases, and especially in view of the medical conclusion reached by Dr. Robert A. Kehoe, Orange State has incurred liability by reason of the injury and death of the employees in question. It is also our opinion that if Orange State is liable, it is fully protected under the terms of the Workmen's Compensation policy issued by the Maryland Casualty Company, and that the cases would come under the Florida Workmen's Compensation Law.

Mr. Smith was somewhat inclined to the view to begin with, that the injuries and deaths occurred not by reason of accident but by reason of occupational diseases, and contended that in such cases neither Orange State nor the insurance company was liable unless, of course, our Supreme Court should hold that occupational diseases come within the classification of accidents, in which event Mr. Smith contended his company would still be relieved by reason of the clause in its policy excepting occupational diseases.

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LAW OFFICES
HUDSON & CASON
MIAMI, FLORIDA

Most definitions of occupational diseases contemplate a disease resulting gradually and over a period of time from the nature of the occupation followed. For instance, as defined by the Indiana courts, "The natural and reasonably-to-be-expected results of a workman following a certain occupation for a considerable period of time".

United Paper Board Company v. Lewis
117 N. E. 276;
(71 C. J. 599)

As we gather the facts, the men employed in cleaning out the tank in Tampa were workers and helpers who more or less classified as laborers and who were assigned various duties to perform at different times. In other words, they were not tank cleaners by profession or occupation and they happened to be in the tank on this particular occasion because they were directed to work there. Furthermore, even if these men could be classified as occupational employees, we doubt if Orange State would have an "out" in sending them into an unusually dangerous place to work. We do not believe that even an occupational employee is supposed to encounter more than the usual and customary hazards that go with this employment.

It was our joint view that probably Ethyl Corporation is liable in the first instance for placing so dangerous a mixture in a gas tank and failing thereafter to remove it.

Under the Florida Workmen's Compensation Law, the insurer, upon settling a claim under the law becomes subrogated to the rights of the claimant. This means that Maryland Casualty Company, if it settled the claims, would have the right to proceed against Ethyl Corporation. In such event, if a recovery were had, the amount thereof would be determined by the old common law rules, and not by the Florida Workmen's Compensation Law, assuming, of course, that Ethyl Corporation does not carry such insurance in this state. If the recovery exceeded the amount of damages paid to the claimant under the Florida law, such excess would go to the claimant.

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LAW OFFICES
HUDSON & CASON
MIAMI, FLORIDA

We strongly urged the insurance company to proceed with settling the claims under the Florida Workmen's Compensation Law, but Mr. Smith said that so far, no claim had been made and that in any event he would want to make his report to the Home Office and get his instructions from headquarters as to further proceedings. The insurance company may decide to submit the question of occupational diseases to the Florida Industrial Commission.

It is our conclusion that until we hear further from the insurance company, or unless the claims be filed by one of the injured persons or the family of the deceased person, no further action be taken with respect to this matter.

Yours truly,

HUDSON & CASON

By F.W. CASON

FWC:RMC

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