

Brouse. - Kremser.

A. Well, there was probably some spilled on the road where we loaded it, yes.

Q. And I said where you got the dozer, you had to bring this flat bed transportation thing down there to where that soil was, you had to get some of that soil on all of them wheels, didn't you?

A. Right.

Q. That is all.

By Mr. Ertel:

No further questions.

(Excused from the witness stand.)

PAUL L. KREMSER, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name?

A. Paul L. Kremser.

Q. Your occupation?

A. Contractor.

Q. How long have you been a contractor, Mr. Kremser?

A. 27 years.

Q. Is that basically earth moving?

A. Pardon?

Q. Is that basically the earth moving type?

A. Yes, Sir.

Q. Where is your place of occupation?

A. Montoursville.

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Q. Now, did you have a crew that did work at ARCo on October 19, 1973?

A. October 19th, that is right.

Q. You have the date book with you that shows that they were there?

A. Yes, Sir.

Q. That is your record?

A. Yes, Sir.

Q. Now, did you have occasion to ever be in that area, in the Sylvan Dell area to work with the dirt there?

A. Yes, Sir.

Q. Can you describe the type of dirt that is in the Sylvan Dell area?

By Mr. Fierro:

I object, unless this man is qualified as a soil expert, otherwise if it is something that can be determined by factual testimony, then it is up to the Jury. He has not been qualified as a soil expert.

By The Court:

First limit what area we are talking about?

By Mr. Ertel:

Q. Specifically the area in the ARCO Plant area and the Sylvan Dell area where the Bulk Plants are over there, do you know where that area is?

A. Yes.

Q. Have you worked the soil on occasions?

A. Yes.

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Q. Have you been present when that has been done?

A. Yes, Sir.

By The Court:

Now establish the approximate date?

By Mr. Ertel:

Q. When was the last time you were over there?

A. We were over there twice last year, I was there, oh, probably <sup>5</sup>four months before the 19th and we did another small job.

By The Court:

The objection is over ruled, I will permit it.

By Mr. Ertel:

Q. What is the soil like there?

A. It is a sandy soil.

Q. Is it what you might call a crumbly soil?

A. No, it is sandy, loamy soil.

Q. Will you describe that, if you can?

A. Well, it is rock free, and a lack of clay, let's say. It is not the "gumbo" clay-type soil, and it is not the sand and gravel type soil that we might have at Montoursville.

Q. So your best description it is sandy-loamy soil, is that right?

A. Yes.

Q. Did you do a job down at Dye-Tex?

A. Yes, Sir.

Q. When was you doing that job? I can help you, if you look around the 18th or 19th of October?

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A. Our dozer was there and finished the Dye-TeX job on the 19th of October.

Q. What was the Dye-TeX job, what was the problem there, what were you doing?

A. We had excavated an excavation approximately 40 by 60, and six foot deep, prior to this, like months before, and then the land owner wanted us to cover this hole back up again. The purpose of the excavation was to run some cooling water in this hole from the dye vats inside, it is Borough water coming out at Borough water pressure, it cools the vats, and then they wanted to put it in this hole, and the man that owns the ground wanted this hole covered up.

Q. What was the result of this when you put your bulldozer in there?

A. Well, we had an opportunity to get some dirt from the Sylvania Plant near Muncy, that is the Pennsdale area, and we got a thousand or so yards of dirt down there, and we hauled it up to the Dye-TeX Plant and filled this hole with this type soil.

Q. What type soil was it?

A. This was a very heavy, clay-type soil.

Q. That heavy, clay-type soil, what happened when it got in that particular hole with the water?

A. Well, it was nice and dry around there when we hauled the dirt in, but this pipe that was down at the bottom of this excavation, it was constantly being used to cool these vats, and since it was at Borough water pressure, approximately 45 pounds

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it would come to the surface after we backfilled in this excavation, the water came to the surface and covered over this here clay-type soil and made a quagmire of mud.

Q. So when you drove your bulldozer in there, what would happen?

A. Well, it got on the tracks and stuck fast to everything.

Q. Now, that type mud that you put in there, that clay-type mud, you were not over in the Sylvan Dell area on the 19th, or were you?

A. No, Sir.

Q. Are you familiar with that clay-type mud soil as far as what it does when it dries?

A. I think I am qualified to say I would be, yes.

Q. Describe what it does as it dries?

A. Well, it stays mushy for some time, I would say maybe a day and a half, two days, depending on the consistency of the water in it and how much sunlight there is shining on it, and then after it gets pretty dry why it is what we might call bony, or if you step on it or drive on it, it would crack and crumble.

Q. If you drive on it during that period of time when it is still in the wet state, what happens from your observation?

A. If you drive on it.

Q. Drive a car through it?

A. You would have an imprint of a tire mark.

Q. That is all.

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430.

By The Court:

Mr. Fierro.

CROSS EXAMINATION

By Mr. Fierro:

Q. Mr. Kremser, as you know, one of your flat bed trailers took this dozer over, whatever it was, over to this Sylvan Dell area on October 19th?

A. Yes, Sir.

Q. And you know that that flat bed trailer also had on the underpart of it and on the wheels the same type of red clay that you are talking about, because it had to go down to this area to get this tractor or dozer, right?

A. No, I would not be aware that that would be the case. We would not drive in this mud with this tractor and trailer because you would never get out of the mud if you drove in there with that tractor and trailer.

Q. You would not?

A. No.

Q. Well, remember making this statement that some of that dirt could have fallen off a flat bed trailer or the trucks while going back and forth to Sylvan Dell?

A. No, I don't believe I made that statement.

Q. You don't?

A. No.

Q. Well, this red, clay-type of stuff that is on this trailer, could some of that have fallen off this dozer or something as it was being transported?

A. I would imagine there would be this red type clay on

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the flat bed trailer that would have jiggled off the bulldozer in unloading.

Q. There would be some of this stuff on the flat bed trailer as you are going along the road, some of it would jiggle off as you put it?

A. It might jiggle off out there on the black-top road. It is not impossible, but it would be very little quantity.

Q. There was a driver, man, I don't know if he was a driver or not who said that when this flat bed trailer went down to pick up the trailer, the man who just testified before you, said that that this flat bed trailer did get this red clay material on the wheels, are you disagreeing with what he said?

By Mr. Ertel:

I object to that, that is not what he said.

By Mr. Fiero:

That is exactly what he said.

By Mr. Ertel:

He said it was possible.

By The Court:

The objection is sustained, reword your question.

By Mr. Fierro:

Q. Well, Mr. Kremser, is it possible this flat bed trailer when it went down to this factory, or whatever you called it, to pick up this dozer would have gotten some of this red clay material on it?

A. On its' wheels?

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Q. Anywhere on it?

A. It is possible it got it on the deck when they loaded that machine, I would imagine some fell off on the floor of the trailer, yes, Sir.

Q. But how about on the wheels?

A. If some got on the wheels, I would imagine it certainly would have fallen off there.

Q. You are just imagining this?

A. I was not there.

Q. That is all, you were not there, no further questions.

By The Court:

Anything further?

By Mr. Ertel:

No, thank you.

(Excused from witness stand.).

By The Court:

The Court is going to adjourn. The Defendant may leave. The Jury may leave. Court is adjourned.

By Mr. Fierro:

If you want a rooting section.....

By The Court:

Just a minute, Gentlemen.

If there are any comments from the audience, the Court will clear the audience.



By Mr. Fierro:

That first row has been doing it all day.

By The Court:

That has not been called to the Court's attention. Tomorrow the Court is going to convene at 9:30. The only door to the Court that will be open is the east, side door. The witnesses and family will identify themselves, and be admitted by the Sheriff, other than that it will be restricted to the capacity of the Court Room because there is nothing else in the Court House that will be open tomorrow except the Court Room. Court is adjourned.

(Adjourned at 6:00 P.M., EDST.).

Bittle.

And Now, to-wit, Saturday, February 23, 1974, beginning at 9:30 A.M., EDST, the trial in the above-captioned matter was continued before the Honorable Charles F. Greevy, President Judge, and a Jury, in Court Room No. 1, at the Lycoming County Court House, Williamsport, Penna., at which time and place the following proceedings were had:

By The Court:

Mr. Ertel.

By Mr. Ertel:

Richard Bittle.

By Mr. Pierro:

I want an offer, your Honor.

By The Court:

Talk to Mr. Ertel there a moment.

(Conference between Mr. Ertel and Mr. Pierro.).

By Mr. Pierro:

All right, your Honor.

RICHARD L. BITTLE, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name?

A. Richard L. Bittle.

Q. Your occupation?

A. I am hired by the State Department of Environmental Resources.