

1 : A yard hostler is a
2 unique mechanism, it's not a regular tractor. This
3 was the only facility that used this type of
4 vehicle. He was not given training with respect to
5 yard hostlers and how they operated in a yard.

6 THE COURT: Great. I'm ready to rule.
7 I'm granting Bright Sky Cleaning Group and Serv
8 Management's Motion for Summary Judgment as the
9 third-party plaintiffs have failed to proffer
10 evidence that any negligence of the third-party was
11 a proximate cause of Kryca's injuries. Even if the
12 facts established that the employer failed to
13 supervise, and there was absolutely no testimony as
14 to what the standards were, there have been
15 insufficient facts tendered to establish the cause
16 of the accident.

17 Plaintiff has failed to tender
18 evidence establishing proximate cause as per the
19 Bermudez case. Here, like Bermudez, the
20 third-party plaintiff asked this Court to speculate
21 how negligent supervision and training caused the
22 plaintiff's accident; however, the undisputed
23 evidence establishes that Swift established the
24 procedures for hauling the tractors and using

1 stickers to let workers know when a trailer needs
2 to be cleaned. Bright Sky employees were
3 instructed to remove the stickers when they
4 finished cleaning the yard hostler. Swift drivers
5 were trained to look prior to backing up and
6 hooking up the trailer.

7 The unrefuted proffered evidence
8 is that the sticker was on the trailer, so Hill
9 never look to see whether the trailer was ready.
10 Hill backed up prior to verifying and was the
11 proximate cause of the accident here. Alleging
12 proper training and supervision as the proximate
13 cause is merely speculative and it fails to
14 establish proximate cause.

15 Third-party plaintiffs improperly
16 assert that the facts establish that Kryca was not
17 following safety protocol in not wearing a
18 reflective vest and goggles. Here defendant relies
19 exclusively on Hill's testimony to establish a
20 question of fact over whether Kryca was wearing a
21 reflective vest and goggles at the time of the
22 accident. However, based on Hill's testimony,
23 answering no to the question of whether he observed
24 Kryca wearing reflective gear or safety glasses, he

1 testified no observing of Kryca, therefore lacking
2 the foundation that he saw Kryca not wearing a vest
3 or safety glasses as not observing is different
4 from not seeing, obviously. Look at page 55 in the
5 Hill deposition.

6 Further, third-party plaintiffs
7 improperly rely on the OSHA regulations as a basis
8 for duty and evidence of a breach. Third-party
9 Bright Sky Cleaning Group and Serv Management Group
10 note that OSHA violations do not create a duty and
11 that the violations only are permissible evidence
12 of a breach. Ross v. Dae Julie, that's 341 Ill.
13 App. 3d 1065, which held that a violation of OSHA
14 regulations may be evidence of failure to exercise
15 reasonable care, but cannot create a duty of care.

16 MR. SNORF: Thank you, your Honor.

17 THE COURT: That's it.

18 MR. Thank you, your Honor.

19 THE COURT: You're welcome.

20 (Which were all the proceedings
21 had on the above-entitled
22 cause.)
23
24