

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.)  
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