

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

**FRANCES J. BLOOM, individually and as
Personal Representative of the Estate of
JOHN E. BLOOM, deceased,**

Plaintiff,

v.

CASE NO.: 07 22424 AE

**J & J PRODUCE, INC., a Florida corporation,
JAC PROPERTY HOLDINGS, LLC, a Florida limited
liability company, J & J SOUTHERN FARMS, INC.,
a Florida corporation and WILLIAM J. ERNESTON
a/k/a JERRY ERNESTON,**

Defendants.

**Construction – Forklift Accident - OSHA Violations: Negligent Entrustment/Supervision:
Dangerous Instrumentality: Vicarious Liability: Wrongful Death Action ---** Florida. Case resolved in March, 2010. The decedent, an electrician was hired to perform work at a produce warehouse. While working on the ballast of an overhead fluorescent light the decedent fell from a wooden pallet placed on the forks of a forklift used to raise him to the light fixture, suffering injuries which resulted in his death. No safety cage or safety harness and tether, fall arrest system or similar equipment was provided to the decedent. Conflicting testimony was presented on how the decedent gained access to the forklift and who was responsible for raising him in the air. Defendant alleged that decedent had done this on prior occasions and had constructed a device from conduit pipe that he used to raise himself on the forks without defendant's knowledge. Defendant further claimed that the fall was caused by the decedent's comparative negligence in working on the light fixture while power was on and that the fall was caused by an electrical shock he received. An abrasion on the decedent's right thumb was pointed to as proof that he had received an electrical shock. Liability was further complicated by evidence that decedent suffered from a medical condition that could have caused the fall.

Counsel for plaintiff produced evidence showing that the conduit device was not shown in any police photographs taken at the scene and that defendant's employees were unaware of and failed to follow OSHA regulations in connection with forklift use. Liability experts were retained to establish that working on "live" fixtures of this voltage is commonplace among professional electricians and did not fall below the standard of care. An expert medical examiner was retained by the plaintiff who testified that the abrasion on decedent's thumb was not of recent origin, did not result from an electrical shock and that decedent had not received an electrical shock prior to the fall. A biomechanical expert was retained to establish that decedent's positioning after the fall was inconsistent with his having received a shock prior to the fall. Plaintiff alleged violation of OSHA regulations, negligent entrustment of the forklift to improperly trained employees, negligent hiring and supervision of the employees in charge of safety at the warehouse and liability under Florida's Dangerous Instrumentality Doctrine.

The parties settled at mediation for a total amount of \$750,000 for release of Plaintiff's claims. Plaintiff's Counsel -- Joseph P. D'Ambrosio, Esq. of The Law Firm of Joseph P. D'Ambrosio, P.A., Delray Beach, Florida.