

# SETTLEMENTS

## Death Claim Resolved

### In Forklift Accident

#### Foose v. T&S Equipment

#### \$1.6 Million Settlement

Date of Settlement:  
Oct. 17, 2006.

Court and Case No.:  
C.P. Philadelphia, No. 2004-000784

Mediator:  
Harris T. Bock

Type of Action:  
Wrongful Death and Survival.

Injuries:  
Death.

Plaintiffs' Attorney:  
Arthur L. Bugay, Galfand Berger,  
Philadelphia.

Defense Attorneys:  
Paul R. Brady III, Marshall Dennehey  
Warner Coleman & Goggin, Philadelphia;

Patrick J. Hermsmann, Law Office of  
Craig M. Terkowitz, Piscataway, N.J.;

Richard B. Wickersham and Patricia J.  
Baxter, Post & Schell, Philadelphia.

Plaintiffs' Experts:  
Campbell Laird, engineer; Peter Coste  
engineer; Stephen B. Wilcox, human fac-

tors; Robert Loderstedt, warranty; Dr. Ian  
Hood, pathology; Royal Bunin and David  
Bunin, actuarial and economic loss.

Defense Experts:

Fawzi P. Bryan, accident reconstruction;  
Douglas Townsend, metallurgy and  
mechanical engineering; John E.  
Chamberlain, human factors; John E.  
Johnson, mechanical engineering; Jerome  
M. Staller, economics, vocation.

Comment:  
Steven J. Foose, a 45-year-old worker at  
C&S Wholesale Grocers in Harrisburg, was  
conducting an inventory inspection on  
Nov. 20, 2002 using a T&S Equipment  
work platform attached to the mast of a  
forklift truck.

The platform was attached to the fork-  
lift by a single steel chain. Sometime after  
the platform was purchased and before  
Foose's accident, C&S had replaced the  
carabener supplied by the manufacturer to  
fasten the end of the chain with a bolt, nut  
and washer that were hand tightened when  
the platform was put onto the forklift.

On the day of the accident, Foose was on  
the platform and the mast of the truck was  
extended to 25 feet. Foose signaled the  
operator of the forklift to move the plat-  
form to an adjacent warehouse bay. The  
forklift operator backed the truck. In the  
process, the work platform's rear mast  
guard struck an overhead beam and the  
platform peeled off the forklift's tines. The  
platform fell with Foose to the concrete  
warehouse floor.

Foose was taken to Hershey Medical  
Center where he died during surgery to  
repair an incompletely ruptured aorta. The

federal Occupation Safety and Health  
Administration fined C&S after conclu-  
ding the company had used an improper  
method to secure the work platform to the  
forklift.

The OSHA investigation found the  
homemade fastener failed because the nut  
had pulled through a chain link during the  
impact with the roof beam.

Foose's widow brought the wrongful  
death and survival action as administrator  
of her husband's estate and on behalf of  
their 13-year-old son.

Plaintiffs argued strict liability and  
breaches of warranty. They contended the  
work platform was sold without an ade-

quate securing system and that the product  
should have included controls that immo-  
bilized the forklift truck while the plat-  
form was raised.

Defendants T&S Equipment, Vestil  
Manufacturing Co. and Robert Abel & Co.  
disputed the plaintiffs' defect and warranty  
claims, arguing the platform complied  
with industry standards and OSHA regula-  
tions. The contended that, had the pro-  
posed attachment system been included,  
the impact would have overturned the  
forklift truck and the fatal accident would  
have occurred anyway. Abel argued that it  
did not sell the work platform.

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*Holiday & New Year's  
Greetings*

## VERTICALS SETTLEMENTS

Report  
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Name of Case: \_\_\_\_\_  
No. of Settlements? \_\_\_\_\_

