

## Toyota Escapes \$9M Liability Over Arizona Forklift Accident

By **Steven Trader**

*Law360, New York (August 27, 2015, 9:56 PM ET)* -- Toyota Industrial Corporation Inc. secured its exit from a \$9 million negligence and liability lawsuit Wednesday after an Arizona state jury found that a forklift built by the company wasn't to blame for a 2011 accident in which the lift tipped over, pinning the driver and leaving him with permanent injuries.

Over the course of a 10-day trial, the auto company argued that Republic Plastics Inc. employee Jesus Borquez was improperly driving the forklift with a raised platform and was not wearing his seatbelt, further stating that its vehicle was built to withstand the capacity at which Borquez was using it. Therefore, Toyota said, the only conclusion was that the September 2011 accident must have resulted from user error.

On Wednesday, the jury deliberated for just over an hour before returning a unanimous verdict agreeing with Toyota's argument.

According to an amended complaint filed in February 2013, at the time of the incident, Borquez was operating a Toyota model RPO3 forklift that had been fitted with two metal paddles on the front rather than two forks in order to accommodate bulkier loads, and was also capable of shifting loads side to side while the paddles were raised in the air. Republic Plastics had owned the forklift since 2006.

When the incident occurred, the lift was not carrying any load, but Borquez was backing the vehicle up about 10 feet away from a load with the paddles raised roughly nine feet in the air and shifted to one side. He alleges the vehicle began to tilt as he turned going backwards and at the same time his seat malfunctioned and slid forward.

Fearing the lift would come down on his head, Borquez alleges he unbuckled his seatbelt and jumped from the vehicle but didn't make it in time. The lift crushed his pelvis and left him with severe spinal injuries and internal organ damage, for which he incurred more than \$2 million in medical bills.

At trial, co-counsel for Borquez, Eric Thomson of the Law Office of Eric Thomson, argued that Toyota negligently designed and sold a forklift to Republic Plastic that could not withstand any shift in weight from side to side, and therefore the automaker was strictly liable for the unreasonably dangerous condition Borquez was in.

Thomson explained to Law360 Thursday that Toyota allegedly uses an algorithm to test the maximum 'worst case scenario' weight capacity for its regular forklifts that use two forks, which is then posted on

the vehicle to alert the driver.

However, he said that in the case of a forklift that is mounted with two side paddles and can shift weight side to side, such as the one Borquez was operating, the algorithm produces a much lower capacity. He said Toyota never alerted Republic Plastics of the lower weight threshold, and it was never posted on the vehicle.

He said both the company supervisor and business manager testified at trial that had they known about the lower capacity, they would have either purchased a larger forklift or not allowed their employees to use the smaller one.

"I felt that the jury at least could have found liability against Toyota," Thomson said. "If Toyota would have disclosed that information, this accident would have never occurred because from both the manager's and supervisor's perspective, it wouldn't have been bought or used."

**But Tom Klein of Bowman & Brooke LLP, lead counsel for Toyota, told Law360 Thursday that Republic Plastics had been using this particular forklift for five years without any incident, and furthermore claims that a similar lift was already being used at the company's Texas warehouse before this one was purchased.**

**Klein said this particular forklift was designed to safely reach a maximum of 16 feet and was capable of safely shifting those items over at least a few feet. He said the lift had been approved by both the Occupational Safety and Health Administration and the American National Standards Institute.**

**He said evidence showed that Republic Plastics never raised the forklift in question any higher than nine feet and never shifted it sideways more than a few inches, and therefore, the Toyota lift provided more than enough capacity for what the company was using it for.**

**As for posting the side-shift capacity on the vehicle, Klein said OSHA and ANSI don't require that information be disclosed if the company doesn't plan on using that particular feature.**

**"Had we disclosed that information to them, then arguably we could have upsold them a larger forklift," Klein said. "So why would we purposefully hide from the customer information that allowed us to sell them a bigger, better forklift and make more profit? They're argument never made sense to me."**

**What's more, Klein said an expert testified during the trial that it was not physically possible for Borquez to have had enough time to notice the forklift tipping, unbuckle his seatbelt and jump out safely, reaching the conclusion that Borquez was not buckled.**

**"We showed that if you're backing up and turn too sharply, with the mast raised like he had it, the forklift can tip over," said Klein. "He wasn't wearing his seatbelt, and he wasn't supposed to be driving like that. That's the bottom line."**

Borquez is represented by Eric Thomson and Paul G. Hofmann of the Law Firm of Eric Thomson and Darryl J. Tschirn Esq.

Toyota is represented by Tom Klein, Paul Lee and Travis Wheeler of Bowman & Brooke LLP.

The case is Jesus and Jamie Borquez v. Toyota Industrial Corporation et al., case number C2012-2621, in the Superior Court of the State of Arizona, in the county of Pima.

--Editing by Philip Shea.

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