

# NEW YORK

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## Worker/Workplace Negligence

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**WORKER/WORKPLACE NEGLIGENCE**

Negligent Maintenance — Workplace — Workplace Safety — Railroad

**Rail worker claimed accident caused spinal injuries****VERDICT** \$1,400,000**ACTUAL** \$1,446,097**CASE** Charles Cicalo v. Long Island Railroad,  
No. 15899/08**COURT** Queens Supreme**JUDGE** Frederick D.R. Sampson**DATE** 2/1/2017**PLAINTIFF****ATTORNEY(S)** Michael A. Rose (lead), Hach & Rose, LLP,  
New York, NY  
Mark Glen Sokoloff, Hach & Rose, LLP,  
New York, NY**DEFENSE****ATTORNEY(S)** William J. Blumenschein, Krez & Flores,  
LLP, New York, NY

**FACTS & ALLEGATIONS** On July 5, 2005, plaintiff Charles Cicalo, 53, a railroad's yard foreman, worked at a rail yard that was located on 121st Street, near its intersection at Atlantic Avenue, in the Richmond Hill section of Queens. Cicalo was operating a shuttle wagon, which is an on-track vehicle that tows trains. The vehicle derailed, and Cicalo was tossed about the interior of the operator's cabin. He claimed that he suffered an injury of his neck.

Cicalo sued the rail yard's operator, the Long Island Rail Road. He alleged that the railroad was negligent in its maintenance of the shuttle wagon. He further alleged that the railroad's negligence caused the accident.

Cicalo claimed that the accident was a result of a failure of the shuttle wagon's hydraulic system. He contended that the railroad had not adequately maintained the system and its components.

Defense counsel claimed that Cicalo was responsible for maintenance of the shuttle wagon and was therefore liable for the accident. Defense counsel also contended that the railroad could not have reasonably foreseen the shuttle wagon's malfunction.

**INJURIES/DAMAGES** *aggravation of pre-existing condition; decreased range of motion; degenerative disc condition, exacerbation of; disc protrusion, cervical; discectomy; fusion, cervical; nerve impingement; osteophyte; physical therapy; radiculopathy; trigger point injection*

Cicalo was placed in an ambulance, and he was transported to Jamaica Hospital Medical Center, in Queens. He claimed that his head and neck were painful. A doctor opined that Cicalo was suffering a sprain of the

neck. Cicalo underwent treatment of a minor abrasion of his head.

Cicalo ultimately claimed that the accident aggravated an asymptomatic degenerative condition of his spine's cervical region. The condition comprised a protrusion of his C6-7 intervertebral disc and osteophytes, which are commonly termed bone spurs. The osteophytes occupied the spine's C3, C4 and C5 levels. Cicalo further claimed that he developed residual impingement of the root of his spine's C5 nerve and resultant radiculopathy.

Cicalo underwent years of physical therapy, but he claimed that he suffered ongoing pain. During the early months of 2012, he underwent administration of painkilling trigger-point injections. On April 3, 2012, he underwent surgery that included a discectomy—which involved excision of his C5-6 disc—and fusion of the corresponding level of his spine. He subsequently underwent about six months of intermittent physical therapy. His treatment concluded in late 2012.

Cicalo claimed that his injuries prevented his performance of about six months of work and later necessitated a switch to a less-demanding mechanic's role. He retired in 2008.

Cicalo further claimed that his neck remains painful, that the pain is particularly pronounced when he performs overhead activities, that he suffers a residual diminution of his neck's range of motion, and that his pain prevents his performance of tasks that involve carrying or lifting heavy objects. He also claimed that he previously enjoyed repairing and restoring classic cars, but that his residual effects prevent his resumption of that activity.

The parties stipulated that Cicalo's past medical expenses totaled \$24,372, and they stipulated that his past lost earnings totaled \$21,725. Cicalo sought recovery of those amounts and damages for past and future pain and suffering.

Defense counsel contended that Cicalo healed in a relatively minimal amount of time and as a result of merely basic conservative treatment. He contended that Cicalo's surgery was not related to the accident.

**RESULT** The jury found that the Long Island Rail Road was entirely liable for the accident. After a failed appeal, a second jury determined that Cicalo's damages totaled \$1.4 million. After addition of the stipulated damages, Cicalo's recovery totaled \$1,446,097.

**CHARLES**

<b>CICALO</b>	\$650,000 past pain and suffering
	<del>\$750,000 future pain and suffering</del>
	\$1,400,000

<b>DEMAND</b>	\$1,500,000
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<b>OFFER</b>	\$500,000
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<b>TRIAL DETAILS</b>	Trial Length: 6 days
	Trial Deliberations: 3 hours
	Jury Vote: 5-1