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## Railroad Worker Shocked By Defense Verdict

Jury rejects electrocution claims against Metro-North

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**C***hristopher Biggs v. Metro-North Railroad:* A Waterbury man who claimed to have been twice injured by electricity while repairing trains was unable to persuade a federal jury that his employer should be held responsible.

Christopher Biggs, who was employed by Metro-North Railroad, sought as much as \$16 million in damages, but he ended up with nothing after the jury came back with a defense verdict.

Biggs, a man in his late 50s who was employed for the bulk of his career by IBM before taking a job with the railroad company in April 2005, was a repairman in one of the company's New Haven shops, said attorney **Charles "Chuck" Deluca**, of **Ryan Ryan Deluca** in Stamford. Deluca represented Metro-North Railroad.



Law Tribune File Photo



AP Photo

**Defense attorney Charles 'Chuck' Deluca said that his own expert witnesses felt that the railroad worker plaintiff was malingering and had not been seriously injured by the electricity emanating from the Metro-North trains and wires.**

by electricity, unlike most lines that use diesel locomotives. And so there are wires above the track that power the train. On June 3, 2006, Biggs was standing on top of a train car he was repairing and adjusted a wire above it. Although power to the train was off at this time, Biggs still said he felt a shock — a shock, he claimed, that was bad enough to send him to the hospital.

Deluca said that Biggs remained out of work from what his doctor's called an electrocution until December 2007. Biggs claimed he suffered a traumatic brain injury, cognitive deterioration, facial nerve injuries and that the left side of his body was very weak.

In April 2009, Biggs was again

shocked while doing some work on a train, and once again he went to the hospital. This time, Deluca said, the train was "electrified" and Biggs had tried to disconnect a wire.

"This allegedly aggravated all of those other conditions that he had," said Deluca. "He never returned to work."

Deluca explained that railroad workers are not eligible for workers' compensation, so if an employee is injured on an interstate railroad, he can bring a lawsuit for damages against his employer directly under the Federal Employers' Liability Act (FELA). Deluca said the injured worker must prove the railroad's negligence caused the worker's injuries.



Deluca explained that the New Haven rail line — which runs from Grand Central Terminal in New York City to New Haven — is powered

In this case, Biggs hired a plaintiffs lawyer from New York, **Marc Wietzke of Flynn & Wietzke**. The attorney specializes in representing rail workers, and he filed one lawsuit against Metro-North Railroad for each of the two incidents in which Biggs claims he was electrocuted.

Wietzke did not return calls for comment.

U.S. Magistrate Judge **William I. Garfinkel** consolidated the two FELA claims into one case, which went to trial in July over a two-week period. Deluca said settlement talks and mediation by Garfinkel prior to trial were fruitless.

Metro-North Railroad's defense for the first incident was that it did not know that electricity could remain in the wire even when power was off in the train, and so it could not be held negligent. "The railroad had been operating in that shop since the 1970s and this is the first time that the railroad was aware that anyone working on a de-energized train could encounter electricity," said Deluca.

Deluca said that Metro-North Railroad managers were initially skeptical the situation could even occur, but following an 18-month investigation, they did find a way that stray electricity could exist when certain conditions were met. However, Deluca said, it was not enough

electricity to cause the kinds of injuries the plaintiff was alleging.

"We likened it to walking across a carpet and touching a light switch. The shock was not sufficient enough to cause him any permanent injuries," said Deluca.

Deluca also presented evidence that Biggs' medical problems pre-existed the alleged electrocution episodes. Deluca said Biggs suffered from seizures long before the train repair incidents.

Biggs presented several witnesses, including his neurologist, a neuropsychologist, an ophthalmologist and an economic planner. The witnesses claimed Biggs would need round-the-clock care for the remainder of his life.

Deluca said Wietzke asked the jury for \$16 million in damages. During the trial, he said, the plaintiffs lowered their demand to \$6.5 million.

Deluca, meanwhile, presented an expert neurologist and neuropsychologist, who both opined that Biggs was malingering.

"They both said they did not believe Biggs sustained any injury as a result of either incident," said Deluca. "It's been rare in my experience when an expert witness for the defense is willing to testify that a plaintiff is feigning his injuries or malingering to some degree. But these experts felt that he was and

testified to that. This was an interesting case in that regard."

For example, Deluca explained that during visual memory testing by the neuropsychologist, Biggs scored only three correct responses out of 50 questions. He said because there are only two options for each response — yes or no — even a blind person can guess correctly as much as 50 percent of the time.

"When you get that low of a score, it's called 'below chance' and when you score below chance on a validity test as he did, it's evidence, not conclusive [evidence], that he's purposely trying to pick the wrong answer," explained Deluca.

"There were a number of these tests where he failed the validity tests leading the neuropsychologist to believe there was some malingering going on or purposely trying not to get the right answers," Deluca added.

The jury apparently agreed. Following the two-week trial, the jury took just one hour to side with the defense.

"When you're tossing around these kinds of numbers, you're always concerned about the possible outcome," said Deluca. "But we were reasonably confident throughout the case that the railroad had not done anything wrong and had good causation defenses. We were not surprised by the verdict but were relieved by it." ■