

# Motion for New Trial: A Good Idea? The \$16 Million Question

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*Article by: Eric Genau*

In a case illustrating the potential danger of seeking a new trial following a jury verdict, a New York jury awarded three former railroad employees \$16 million for their asbestosis and COPD on April 27. Interestingly, a new trial was previously ordered following a 1999 award of \$800,000, which was held to be excessive after LIRR moved for relief. Lincoln Aquirre was awarded \$6 million, cigarette smoker James Harrington was awarded \$2.4 million after his 40 percent liability for cigarette smoking and Albito Velez-Zapata was awarded \$8 million. We do not yet have any information regarding possible appeals.

Aquirre, Harrington and Velez-Zapata alleged that their diseases were the result of exposure to asbestos in the 1970s while working at the LIRR's repair shop in Morris Park, Queens, N.Y., and its current site, Hillside Maintenance Complex in Jamaica, N.Y. Specifically, it was alleged that they ground and buffed gaskets and that they didn't know they were working with asbestos products. LIRR only provided safety goggles. At trial, LIRR argued that exposure to asbestos at the railroad had not caused the alleged diseases.

Experts: Plaintiffs relied on the testimony of Victor M. Marchione, a pulmonologist who testified that the plaintiffs had asbestosis; and Michael Ellenbecker, a professor of industrial hygiene at the University of Massachusetts in Lowell, Mass. LIRR called Doreen Addrizzo-Harris, a pulmonary function testing expert who testified that the plaintiffs did not have asbestosis. Judge Laurence Knipel presiding over the trial, which began April 18. Aquirre, Harrington and Velez-Zapata v. Long Island Rail Road (NY Sup., Kings Co.)<http://asbestoslitigation.typepad.com/about.html>

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