

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

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CA 11-01890

PRESENT: SCUDDER, P.J., SMITH, FAHEY, CARNI, AND SCONIERS, JJ.

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SHAWN MCCARTHY, PLAINTIFF-APPELLANT-RESPONDENT,

V

ORDER

CSX TRANSPORTATION, INC.,  
DEFENDANT-RESPONDENT-APPELLANT.

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CELLINO & BARNES, P.C., ROCHESTER (RICHARD P. AMICO OF COUNSEL), FOR  
PLAINTIFF-APPELLANT-RESPONDENT.

MAYER BROWN LLP, WASHINGTON, D.C. (CARL J. SUMMERS OF COUNSEL), FOR  
DEFENDANT-RESPONDENT-APPELLANT.

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Appeal and cross appeal from an order of the Supreme Court, Erie County (Frederick J. Marshall, J.), entered November 19, 2010. The order denied plaintiff's motion to set aside the verdict and denied defendant's cross motion to set aside the verdict.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Entered: March 16, 2012

Frances E. Cafarell  
Clerk of the Court