

DRAFT

NEW YORK

NEW YORK COUNTY

**PREMISES LIABILITY**

— Premises Liability — Gas Station/Service Station — Negligence

Motorcyclist claimed toll gate officer waved her forward when gate fell...

**Verdict (P)** \$152,500

**Case** Mallory DeMayo v. Metropolitan Transportation Administration and Triborough Bridge and Tunnel Authority, No. 103141-2006

**Court** New York Supreme

**Judge** Donna M. Mills

**Date** 9/14/2009

**Plaintiff**

**Attorney(s)**

Edward R. Young & Associates by Seth I Fields Esq., West Babylon, NY

**Defense**

**Attorney(s)**

Gregory Nelson, Morris, Duffy, Alonso & Faley, LLP, New York, NY

**Facts & Allegations**

On June 5, 2005, plaintiff Mallory DeMayo, a 49 year-old delivery manager, was traveling on her motorcycle **South on Route 695** through an officer-attended toll plaza at the Throgs Neck Bridge, when the toll plaza arm gate came down as she passed through and fractured her nose.

DeMayo sued the Metropolitan Transportation Authority and the Triborough Bridge and Tunnel Authority. She alleged that the Bridge and Tunnel Officer, Shadid Ahmad, approached the lane to assist another rider in front of her whose transponder was not working and that the officer manually scanned the tag and then manually raised the gate and proceeded to gesture with his hand for the group of motorcycles, which included DeMayo, to pass through. DeMayo alleged that she was the fourth rider through the open gate and that the officer was holding the gate open and gestured for her to proceed as she approached the gate arm. When she arrived at the gate arm, the arm dropped on her nose. Plaintiff's counsel noted that DeMayo's husband was on the motorcycle proceeding directly behind hers, observed the occurrence and corroborated her version of events.

DeMayo contended that the Metropolitan Transportation Authority and the Triborough Bridge and Tunnel Authority were both liable for the officer's actions.

Defense counsel presented Officer Ahmad, who testified that he only waved the first rider through after manually scanning the tag and raising the gate arm and that he walked to another lane immediately thereafter to assist another motorist. Defense argued that the gate remained in the up position by virtue of the fact that each of the riders passing through the gate had an operational tag that kept the gate up and that Ahmad was not gesturing DeMayo to proceed.

A surveillance video of the occurrence was available and was presented at the time of trial. Plaintiff's counsel argued that the video quality was too poor to identify the gesturing alleged of the officer, but that it was clear enough to identify several inconsistencies in Ahmad's EBT testimony, trial testimony and incident report. Counsel added that it was demonstrated that certain respects of Ahmad's EBT testimony, trial testimony and incident report were not consistent with each other.

Defense argued that the video did not show Ahmad gesturing to DeMayo as she was approaching the gate arm.

**Injuries/Damages**

*Fracture, nose; deviated septum; septoplasty*

DeMayo sustained a fractured nose and deviated septum. She treated with an otolaryngologist for three months and had complaints of snoring and general nasal discomfort. All treatment was discontinued in 2008, when she presented for a septoplasty. Additionally, future revision procedure was deemed medically necessary to correct a minor bony protrusion to the nose.

**Plaintiff continues to have difficulty breathing, and snores.**

**DeMayo asked for past medical expenses of \$10,500 and future medical expenses of \$5,000 for the future procedure. She also asked the jury for \$100,000 for her past pain and suffering and \$100,000 for her future pain and suffering.**

Defense contended that DeMayo's septoplasty was successful and that there were no residuals. Defense further argued that a portion of the procedure was cosmetic in nature and entirely unrelated to the injuries alleged.

**Result**

The jury returned a verdict for DeMayo and awarded her \$80,000 for her past pain and suffering, \$56,000 for her future pain and suffering, \$10,500 for her past medical expenses and \$6,000 for her future medical expenses for a total award of \$152,500.

**Plaintiff(s)****Mallory DeMayo**

\$10,500 past medical cost  
\$6,000 future medical cost  
\$80,000 past pain and suffering  
\$56,000 future pain and suffering  
**\$152,500 plaintiff's total award**

**Demand** None reported

**Offer** None reported

**Insurer(s)**

None reported

**Trial Details**

**Trial Length:** 4 Days  
**Jury Deliberations:** 3 Hours  
**Jury Poll:** None reported  
**Jury Composition:** 4 male, 2 female

**Plaintiff****Expert(s)**

Mark N. Goldstein, otolaryngology, Great Neck, NY (Seth I. Fields)

**Defense****Expert(s)**

Daniel Arick, M.D., internal medicine, New York, NY (Gregory Nelson) (precluded - did not testify)

**Post-Trial**

None reported

**Editor's Note**

None reported

**Plaintiff(s)**  
**Demographics**

**Mallory DeMayo**

**Age:** 49 Years

**Occupation:** delivery manager

**Gender:** Female

**Married:** Yes

**Children:** None reported

**Children Description:** injured party

**Written By** –Priya Idiculla