

THE SIDE BAR

A Publication of Martinez, Manglardi, Diez-Arguelles & Tejedor



We are on your side

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MMDT Becomes Attorneys Trial Group

From the beginning, Martinez, Manglardi, Diez-Arguelles & Tejedor has enjoyed phenomenal success. The firm has achieved stunning victories at trial and numerous seven-figure results on behalf of its clients. It has expanded by building new offices, hiring trial attorneys, paralegals and staff. Every partner is a member of the Million Dollar Advocates Forum. Lawyers, judges and clients recognize MMDT as one of the top civil trial firms in Central Florida.

The firm has now entered a new and exciting era. To effectively project the firm's image as a trial firm, Martinez, Manglardi, Diez-Arguelles & Tejedor has become Attorneys Trial Group.

2.6 Million Dollar Recovery in Faulty Tire Case

The entire G family was driving home from a short vacation. Mr. G was traveling approximately 55 mph along a local interstate. His wife and children were passengers in the recently purchased used vehicle. Suddenly and without warning, Mr. G heard a loud noise and lost control of his vehicle. The vehicle was sent spinning down the highway and violently rolled through the median.

ATG determined that the offending tire had certain manufacturing defects and moreover should not have been used on the vehicle being driven by Mr. G.

Ms. G, a back seat passenger, was not wearing her seat belt and was ejected from the vehicle. She was pronounced dead at the scene. Part of the rear tire tread had separated from the body of the tire which lead to the loss of control of the vehicle. Fortunately, the rest of the family walked away from the accident with relatively

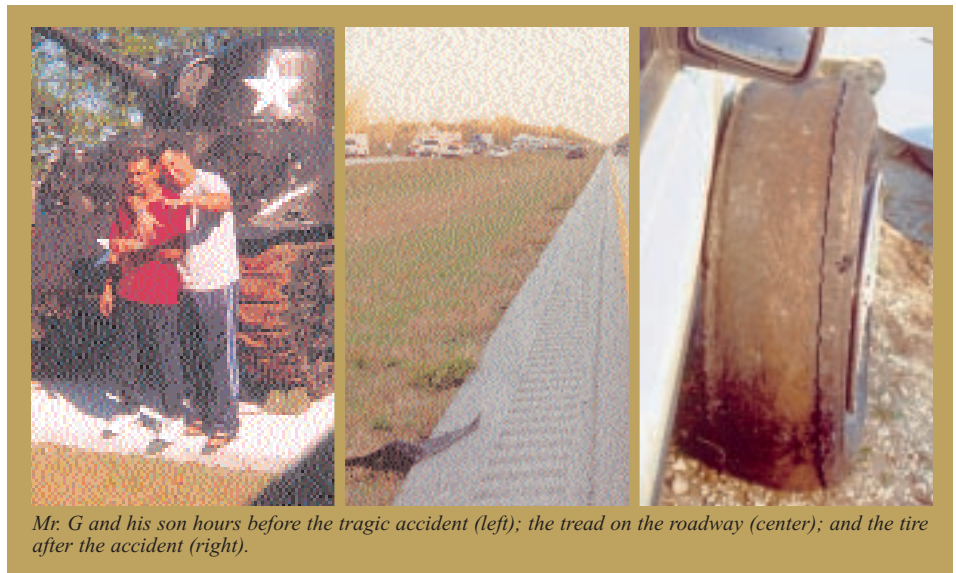
minor physical injuries.

ATG was hired to investigate the accident. ATG made arrangements to purchase the salvage of the vehicle and located the best experts available on the issue of tire separation. ATG determined that the offending tire had certain manufacturing defects and moreover should not have been used on the vehicle being driven by Mr. G.

It was also discovered that the local car dealership from which Mr. G purchased the vehicle, had internally documented that the vehicle's tires should have been replaced prior to resale. These notations were made by dealership personnel when the vehicle was purchased from an auction and placed on the dealership's lot. The tires, however, were not replaced by the dealership prior to selling the vehicle to Mr. G. When Mr. G test-drove the vehicle he requested that two new front tires be placed on the vehicle. The dealership ultimately replaced the two front tires with two used tires but never replaced the rear tires.

A lawsuit was initiated against the manufacturer of tire, the manufacturer of the vehicle, and the local car dealership that sold the vehicle to Mr. G. The defendants retained high profile experts, who initially claimed there were no

Faulty Tire Case continued on page 2



Mr. G and his son hours before the tragic accident (left); the tread on the roadway (center); and the tire after the accident (right).

Faulty Tire Case continued on page 2

defects in the relevant tire and vehicle. Moreover, the dealership argued that its decision regarding whether to replace tires was based upon the reasonable mileage left on the tire when the vehicle is put on the lot for sale. The dealership argued that the tires were not in need of replacement even though they were old.

As the trial date grew near, the defendants developed alternative theories. ATG's investiga-

tion flushed out serious manufacturing problems with the relevant tire, as well as how those problems were compounded when placed upon the involved vehicle. As a result, the defendants began to point at each other claiming that the other was primarily responsible for the accident and that had Mrs. G been wearing her seat belt, she would not have been fatally injured.

Shortly before trial, as a result of multiple

mediations, a settlement was reached for 2.6 Million Dollars to resolve all claims. Mr. G currently resides in Orlando with his four children and his mother-in-law, who assists in raising the children. Funds have been set aside for each child to guarantee a stream of income to each of them for the foreseeable future. ↩

THE BRIEF CASE

Jury Verdict Favors Client; Judge Pays High Compliment to Attorneys

State Farm Insurance Company refused to pay certain medical expenses resulting from an automobile accident incurred by a policyholder. ATG was retained to sue State Farm to force payment of the bills. State Farm took the position that the bills were not reasonable, necessary nor related to the automobile accident.

State Farm made a conscious decision to defend the claim at all costs. After a three-day jury trial, a verdict was rendered in favor of ATG's client. State Farm was ordered to pay all of the outstanding medical charges as well as attorney's fees and costs.

Following the verdict, the Trial Judge stated to the jury:

".....I am in trial a lot.....these guys are the very top of the list in terms of attorneys. They are professionals..... This is the way it was originally intended to work years ago when the system of ours was created. The idea was it would be populated by attorneys who were consummate professionals and they would work everything out that was humanly possible before they ever came here. And once they got here, they would act as gentlemen towards one another and towards everybody else..... These guys are the epitome of that. If I were asked by a Judge's conference or by a teaching outfit to bring a group of lawyers to show students or judges or other lawyers how its supposed to be done, these are the guys that I would bring. So you should all be very proud. I am proud to be a lawyer again."

The attorneys at ATG are extremely proud to be recognized in such a complimentary fashion by the Court. ATG attorneys strive to promote the long tradition of professionalism in the legal community while zealously representing its clients. ↩



Pedestrian Struck by Pick-up Receives \$800,000.00 at Mediation

A 16-year-old Poinciana High School student left her home to walk to her school bus stop. It was foggy that morning and still dark. Before she reached the bus stop, she was struck by a pick-up truck, thrown at least 50 feet in the air, and rendered unconscious.

The Florida Highway Patrol investigation concluded that the student had been walking in a traffic lane at the time of the accident. Additionally, the investigating officer stated that it had been extremely difficult for the driver of the pick-up truck to see the student because of the density of the fog. The driver of the truck testified that he only had 25 feet of visibility.

Despite the conclusions of the Florida Highway Patrol, ATG conducted its own aggressive investigation of the accident. Interviews with other students revealed that, although it had been dark and foggy, actual visibility was better than reported. One student stated that he had been able to see the collision from a distance of approximately one (1) block. Another witness stated that she had seen the victim just prior to the accident from a distance of more than (1) one block.

Moreover, two of the student witnesses testified that the right front headlight of the truck appeared to be inoperable prior to striking the pedestrian. Based on ATG's investigation, accident reconstructionists concluded that the accident had been caused by the negligence of the truck driver, as well as by the negligence of the owner of the truck in not properly maintaining the vehicle.

After the accident, the student required emergency surgery to reduce swelling of her brain. She required intensive rehabilitation and therapy. She needed assistance in relearning



how to walk, talk and perform other basic activities.

Fortunately, she has enjoyed a miraculous recovery and has returned to a fairly normal life. At mediation, the case was settled for \$800,000.00. ↩

Private School Settles Discrimination Claim for \$100,000.00

A private Central Florida school is responsible for discriminating against a Venezuelan man. The private school hired him by promising a full-time teaching job. He did not receive the job, which was filled by a non-Hispanic.

Throughout his tenure, his supervisor made remarks such as the following: "I don't like Hispanics, they are too lazy", "He is an idiot" and "a stupid Hispanic".

The situation became intolerable and ultimately ATG's client was asked to leave. As the case approached trial in Federal Court, it was resolved for \$100,000.00. ↩

\$350,000.00 Recovery for Victim of Electrical Shock

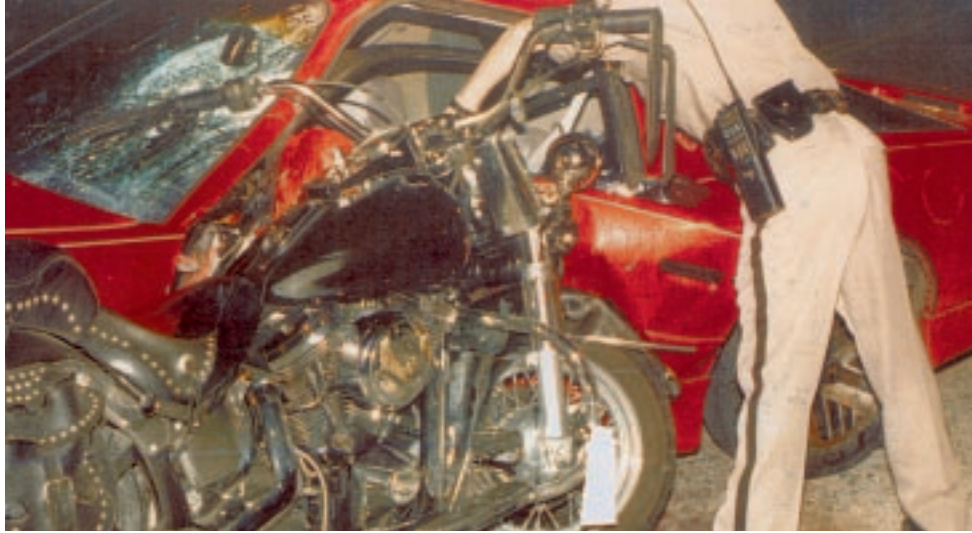
Maximo, a young migrant worker from Mexico, and three of his friends were hired by a sub-contractor to perform some demolition work at a construction site in Orlando. While Maximo was attempting to remove drywall, he came into contact with a live electrical wire, sending 120 volts of electricity through his body.



Maximo and his Father, Jesus.

After rehabilitation, including speech and occupational therapy, Maximo was eventually discharged from the hospital and allowed to

Family of Motorcycle Accident Victim Receives More Than \$1,000,000.00 Dollars



Police officers investigate deadly crash between motorcycle and automobile.

In the fall of 1999, Mr. Davis, ATG's client, was riding his Harley Davidson motorcycle on a major roadway in Orlando, Florida. Mr. Smith, on a sales call for his employer, was traveling North on a crossroad and was lost. Mr. Smith attempted to make a left hand turn onto the major roadway and failed to see Mr. Davis' motorcycle. The

vehicles collided. Mr. Davis was pronounced dead at the scene of the accident.

Mr. Davis was survived by his wife of 19 years, and two sons. He enjoyed spending time with his family, sharing interests such as restoring antique cars, riding his motorcycle and working on computers. He was a strict father, but worked

hard to better the lives of his children. He served in the United States Military and steered his sons toward military service. His tragic and untimely death had a devastating effect on the family.

A lawsuit was filed against Mr. Smith and his employer. Thereafter, their insurance carrier was forced into Bankruptcy. Notwithstanding the insurance carrier's financial problems, the claim was vigorously defended. Expert testimony was developed to support the Defendants proposition that the accident was due to Mr. Davis' own negligence. Defense experts opined that Mr. Davis was traveling at more than 60 mph based upon the physical evidence available from the scene of the crash. Additionally, defense counsel argued that Mr. Davis' helmet failed to comply with the existing motorcycle helmet laws. It was ATG's position that the accident was due solely to the negligence of Mr. Smith. ATG's experts opinion supported that Mr. Davis was not speeding prior to the collision. The defense also attacked the value of the claim by magnifying past problems between the two boys and their father.

Before trial the parties reached a settlement in excess of a Million Dollars. Despite the impending bankruptcy of the insurance company, the settlement was honored by the Defendants and settlement funds paid. 📌

Jury Returns \$1,000,000.00 Verdict in Medical Malpractice Case

Following a jury trial in a medical malpractice action, a client of ATG was awarded a \$1,000,000.00 verdict. The client was a 79 year-old female who hired ATG to pursue a medical malpractice action against a urologist. ATG proved that the urologist negligently performed a ureter biopsy causing a rupture of the ureter, ultimately requiring her to wear a bag at the abdomen for drainage of her urine.

Initially, the plaintiff sought treatment from the urologist due to some pain upon urination. She was diagnosed with a small mass in her right ureter. The ureter is one of a pair of tubes that carry the urine from the kidney into the bladder. In order to determine whether the mass was cancerous, a biopsy was ordered. During the biopsy, an instrument was placed in the ureter to remove the mass for pathology examination to determine whether or not the mass was cancerous. Unfortunately, when the instrument was being removed, it tore the ureter. Notwithstanding the initial tear, the urologist continued to pull on the instrument to the point that the ureter was severed from the kidney.

ATG's expert opined that the endoscopic instrument, which was to be used to clamp and

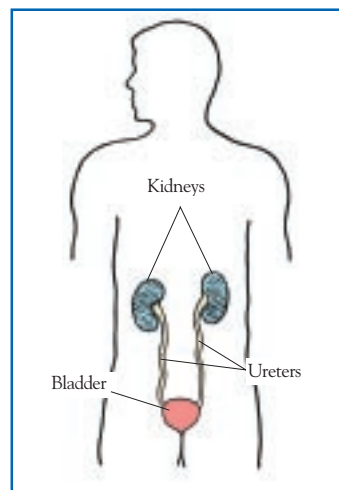
remove the mass, should have been released once it became caught on the ureter. Unfortunately, the ureter itself could not be surgically repaired and the Plaintiff ultimately underwent a permanent urinary ileostomy, whereby her urine was made to drain into a bag worn on her abdomen.

The defendant urologist testified that he did not know how the injury to the ureter occurred. A defense expert testified that the surgery was correctly performed and did not fall below the acceptable standard of care. The defense expert went on to state that sustaining ureter damage is a known risk of the particular biopsy procedure performed and can occur in the absence of negligence. The defendant further argued that the plaintiff's old

age played a role in the dramatic disruption of the ureter.

At trial ATG was able to establish that even though the doctor testified he had done the procedure 20 or 30 times in the past, medical records from his office indicated that he had in fact only performed this type procedure 2 previous times. ATG's investigation also revealed that none of the doctor's partners had ever had a traumatic disruption of the ureter occur during biopsy, as occurred in this case.

The jury found for the Plaintiff and awarded damages of \$1,000,000.00, including approximately \$200,000.00 in past and future medical expenses and \$800,000.00 in pain and suffering. Evidence at the trial revealed that the plaintiff, 82 years old at the time of trial, had a life expectancy of 5 to 7 years. The Defendant's best offer to settle the case was \$20,000.00. 📌



\$750,000.00 Jury Verdict Against Hotel and Elevator Maintenance Company

A jury returned a verdict in favor of an ATG client in the amount of \$750,000.00. ATG's client was injured while stepping into an elevator.

The plaintiff, in her mid-40's, testified that she stepped into the elevator at the defendant's hotel, but did not realize that the elevator was misleveled. The plaintiff claimed that the bottom of the elevator was some six to nine inches below floor level, causing her to fall forward. She was a music teacher who was staying at the defendant's hotel with her students as part of a field trip to a musical event.

Evidence produced at trial showed that the elevator had misleveled the day before the plaintiff's fall and that the defendant elevator company had been called and worked on the elevator.

ATG's elevator expert testified that the elevator was not properly maintained, causing a misleveling problem. Evidence produced at trial showed that the elevator had misleveled the day before the plaintiff's fall and that the defendant elevator company had been called and worked on the elevator. ATG's elevator expert testified that the defendant maintenance company had not properly repaired the elevator.

Plaintiff sustained a herniated lumbar disc in the fall for which surgery was performed. Additionally a vocational rehabilitation expert testified that the plaintiff could not return to her employment as a school teacher. She had been

out of work for five years at the time of trial.

The defendant elevator company argued that the co-defendant hotel should have shut down the elevator and called for repairs when the misleveling problems continued. This defendant argued that it had no knowledge that the problems were still occurring and believed that the misleveling problem had been satisfactorily repaired.

The defendant hotel contended that the co-defendant elevator maintenance company failed to properly maintain the elevator and failed to repair it when called to do so the day before the fall.

The defendants' psychologist opined that the plaintiff suffered from pre-existing psychological problems which prevented her from returning to work. Both defendants hotly contested the extent and nature of the injuries the plaintiff claimed resulted from the incident. They also argued that plaintiff was largely responsible for her injuries because it was readily apparent that the elevator floor was not level with the floor of the hotel.

The jury found the defendant hotel 65% negligent, the defendant elevator maintenance company 25% negligent and the plaintiff 10% comparatively negligent. The jury awarded \$750,000.00.

ATG also successfully pursued workers' compensation benefits on behalf of the plaintiff. All medical expenses and lost wages were paid by the workers' compensation carrier through a point in time when the plaintiff reached her maximum medical improvement. Thereafter, a settlement of the workers' compensation claim in excess of \$100,000.00 was negotiated on behalf of the plaintiff. ↩



Misleveling problems of an elevator are often not noticeable from the entryway.

EMPLOYEE PROFILE

Meet Zayra Southwell

Zayra Southwell was born and raised in Rio Piedras, Puerto Rico. At the age of 14, she and her family relocated to Orlando, where she attended Colonial High School. After graduating, Zayra attended Southern College where she obtained her Associate Arts Degree in Paralegal Studies. During this time, Zayra met her soon to be



husband, Lynn Southwell, a Police Officer with the Orlando Police Department. Zayra and Lynn often had spirited debates on legal issues which further fueled Zayra's desire to become involved in the legal field.

Zayra, with over ten years of paralegal experience, joined the ATG team in 1996. She is predominantly responsible for interviewing clients and reviewing new cases with the attorneys. Zayra possesses the ability to make clients feel comfortable, particularly when it is someone's first time dealing with a law firm.

Zayra and her husband Lynn have been together for 13 years and enjoy spending time with their 3 sons. Zayra also spends considerable time with her parents who live in Orlando and run an export business.

Zayra's long-term commitment to the legal field is a definite asset to ATG. Over the years Zayra has become an expert in the field of automobile negligence, nursing home abuse and medical mal-practice law. ↩

THE BRIEF CASE continued from page 2

return to his family in Mexico. The electrical shock caused memory problems and slowed his thought process. Maximo's family hired ATG to investigate the accident and pursue benefits on behalf of Maximo.

Neither the sub-contractor nor the general contractor on the project carried worker's compensation insurance. As a result, ATG filed a negligence claim naming the general contractor and sub-contractor as defendants. Neither entity checked to see that the power was turned off prior to commencement of the demolition work. Furthermore, the general contractor did not retain an electrician until after the accident.

The defendants argued that Maximo did not suffer an electrical shock but rather had a seizure. The defendants presented evidence that suggested Maximo suffered from seizures in the past. The defendants also asserted that Maximo was not hired to remove drywall but was only to clean debris from the jobsite, and therefore responsible

for his own injuries.

The insurance carriers for the defendants also filed independent lawsuits against their own policyholders, as well as Maximo. They claimed that the respective liability policies did not provide coverage for injuries sustained by Maximo and were not a substitute for State Law mandated workers' compensation insurance coverage.

The parties were able to reach a settlement of the claim for \$350,000.00. Along with up front settlement proceeds, Maximo has structured a part of his settlement whereby he is guaranteed to receive monthly payments. He now lives with his parents and siblings in Mexico. ↩

Two Nursing Homes Held Accountable, Pay \$850,000.00

At the age of 80 a woman was admitted to a nursing home for rehabilitation. The goal was to discharge the patient to her family after a short stay at the home. The woman was on a ventilator, but the plan was to wean



her off of it. In order to breathe, she required a tracheotomy. During her stay at the nursing home her care required that she have her airway cleared with frequent suction. Unfortunately, the staff was not monitoring the tracheotomy, and as a result, the patient

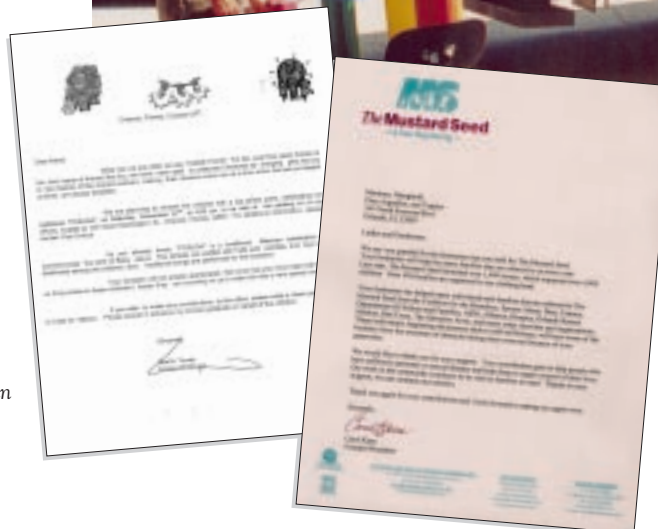
Two Nursing Homes continued on page 6

ATG Supports Charitable Organizations

Recently ATG sponsored a fundraiser for the benefit of The Mustard Seed. The Mustard Seed assists individuals and families referred from various local agencies who are in need of basic furnishings in order to help put their lives back together after suffering from some type of catastrophic event. ATG hosted an event where guests were asked to donate clothing, furniture and toys for children.

ATG was also involved in supporting the traditional Mexican "Posada" hosted by the Mexican Consulate's Office. This traditional Mexican celebration commemorates the birth of Baby Jesus. Children of Mexican migrant workers in the community are showered with a Piñata party. The Christmas time celebration, filled with toys and candy, brings big smiles to many of these less privileged children. ATG supplied toys for the children.

For more information about The Mustard Seed contact (407) 875-2040. For more information about "Posada" contact the Mexican Consulate Office at (407) 422-0514.



Attorney Julio Martinez helps load donated items onto Mustard Seed's truck at the fundraiser.

Two Nursing Homes continued from Brief Case page 5

accumulated large amounts of mucous and other respiratory secretions. As a result of the failure of the nursing home to monitor the tracheotomy, the resident was found blue and not breathing, with no blood pressure and no pulse. CPR was initiated and she was transferred to the hospital in need of emergency care. She was diagnosed at the hospital with oxygen deprivation and neurological problems.

Following her release from the hospital, she was transferred to a second nursing home with the complications associated with the negligence of the first home. At the second nursing home, the problems were compounded when it failed to provide the medication doctors had ordered. Also, the second home did not provide fluids as ordered by the physicians, resulting in dehydration and respiratory failure. Subsequently she died.

The case was resolved on the eve of trial after extensive litigation against both nursing homes. 📄

Maria Dolores Tejedor of Attorneys Trial Group

Maria Dolores Tejedor attended the University of South Florida and graduated Magna Cum Laude. Thereafter, she commenced law school at Stetson University, the number one ranked law school in trial advocacy.

Ms. Tejedor won state and national trial competitions. At graduation, Stetson University College of Law presented her with the Harris Ferrell Competition Award for individual excellence in intercollegiate trial competition.

Upon graduation she joined ATG and continued to excel as a trial lawyer. After prevailing in numerous medical negligence and nursing home cases, she was named partner in the firm. She is a member of The Million Dollar Advocate Forum and frequent quest speaker on medical negligence issues. 📄



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NOTE: The accounts of recent trials, verdicts and settlements contained in this Newsletter are intended to illustrate the experience of the firm in a variety of litigation areas. Each case is unique, and the results in one case do not necessarily indicate the quality or value of any other case.