

THE SIDE BAR

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

Attorneys Trial Group

We are on your side

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Jury Awards \$300,000 in TMJ Case

In August 1995 a tractor-trailer truck clipped the right rear end of Karen's vehicle while she was waiting to make a left turn. Karen was very confused and in a state of shock at the scene of the accident. She presented to the emergency room that evening with headaches, jaw and neck pain. Her treating physician at the Jewett Orthopedic Clinic diagnosed her with a concussion, neck injury, and temporomandibular joint (TMJ) or jaw area pain.

Karen was referred to a TMJ specialist where she was diagnosed as having suffered injuries to the TMJ's on both sides of her face. She underwent months of conservative treatment including maintaining a restricted diet and use of specially fabricated splints. Ultimately she required surgery to both TMJ's.

The trucking company responsible for the accident denied any negligence. After conducting lengthy discovery and by the time the case went to trial, the company agreed it was negligent, however, denied that its negligence caused Karen's TMJ problems. Prior to trial, the trucking company's top offer to settle the claim was \$30,000.

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Firm Obtains \$2,000,000 from Trucking Company

In September, 1998, a 40-year-old husband and father of three children was driving his Toyota Corolla on a country road in North Florida. He had been a frequent traveler on that particular road because it comprised part of his route as a wholesale food salesman for a food distributor. On the morning of September 28, 1998, he was traveling to a grocery store.

ATG proved through engineering experts that the trucking company had been completely responsible for the collision.

The trip usually provided a picturesque relief to his hectic work day. The road is dotted with horse farms and lush fields. However, on this day he was unable to enjoy the scenery because of the blustery weather. The skies were cloudy, and the rain would vary from a steady down-pour to a torrential storm.

While driving down the road, a semi-tractor, traveling in the opposite direction, lost control and collided into the Toyota Corolla. The impact of the collision propelled the Toyota Corolla off the road and into a tree. As a result of the collision, despite the use of seat belts and the deployment of air bags, the driver sustained a fatal head injury.

ATG was retained by the family of the deceased to pursue a wrongful death claim against the trucking company. In its initial



Principal area of impact at the fender area rearward of the left front wheel and massive crush at the driver position.



Right front quarter view of truck shows the hood, grille and fenders, which were torn off in the accident.

response to the lawsuit, the trucking company claimed that it was not negligent, and that the collision had been caused by the negligence of others. The trucking company went so far as to

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Carlos Diez-Arguelles, former Orange County Chairman Mel Martinez and Julio Martinez pictured at a Bar Association meeting hosted by ATG.

THE BRIEF CASE

Nursing home pays family of resident \$450,000

Alinda Avera was 42 years old when she suffered a serious stroke which left her comatose. She was placed in a local nursing home for around the clock care. Ms. Avera was bedridden and unable to communicate her needs. Her physical condition placed her at a high risk for developing bedsores and required that she be turned and repositioned on a regular basis. The nursing home staff failed to turn or reposition Ms. Avera. She developed a bed sore on her back side that went unnoticed and untreated by the nursing home staff for an unacceptable amount of time. The bed sore spread which led to an infection in her bloodstream. Eventually, due to a number of complications in her care, she died. The nursing home ultimately agreed to pay Ms. Avera's survivors \$450,000.



Birthing center responsible for baby's death

A 27-year-old client was anxiously awaiting the arrival of her first baby. She had been under the care of a certified nursing midwife employed by a local birthing center. On October 25th she presented to the birthing center to deliver her baby. A prior sonogram displayed a healthy baby girl. The midwife was the only person present to assist in the delivery. A few hours after arriving the baby went into distress. The midwife placed a monitor on the baby's heart. Despite the findings, the nurse failed to get immediate medical attention. Instead, the midwife left the expectant mother alone in the delivery room and went back to her station where she fell asleep. She awoke a few hours later and checked on the baby. Again she placed a monitor to hear the baby's heart. There were no audible heart beats. The midwife then waited 45 minutes to call 911. By the time she arrived at the hospital the baby had died. ATG argued the midwife should have obtained immediate medical attention. The midwife's insurance company eventually paid the maximum policy limits available.

HMO Doctor without insurance fails to diagnose heart attack; HMO pays widow \$350,000

On September 25, 1996, a 65-year-old retiree presented to his HMO doctor for care. He was complaining of chest pain and shortness of breath. He was sent home with cough syrup. Two days later, he returned to his doctor's office complaining of worse pain and shortness of breath. A chest x-ray was done which, under careful review, revealed that he was in congestive heart failure. Despite these findings he was sent home again. Two days later, he died at home as a result of the heart attack that was untreated and undiagnosed.

The negligent doctor did not have insurance coverage for acts of medical malpractice and was insolvent. ATG argued that the negligent doctor was under the control of the HMO and therefore the HMO was financially responsible for the doctor's negligence. The HMO agreed to pay the widow \$350,000 despite there being no law in Florida at this time to hold HMO's responsible for a doctor's negligence.

Insurance company improperly denied coverage to policyholder

Insurance companies often rely on technicalities to avoid paying claims. Mr. Smith had just bought a new Hyundai. Before he drove the car off the lot he purchased insurance coverage. Under the terms of the contract for insurance, his carrier was to provide certain coverages in case of an accident. The insurance carrier was required to pay for property damage to his car and any medical bills resulting from injuries he sustained in an accident.

A few weeks after he bought the car, Mr. Smith had an accident. He requested his carrier pay the cost of repairing the car and cover his medical bills. To his surprise, the insurer claimed that at the time of the accident he was no longer insured. The company admitted he had entered



into a contract for insurance but alleged his policy was cancelled just before the accident. Mr. Smith contended he never received the cancellation in the time the law required. Several offers were made by ATG to settle the case. The insurance carrier refused all offers to settle.

The case was tried before an Orange County jury. ATG argued that the cancellation did not comply with the terms of the contract of insurance and Florida Law. The jury agreed and returned a verdict in favor of Mr. Smith. The carrier was forced to honor its policy of insurance and pay Mr. Smith for the repair of his car, his outstanding medical bills and his attorney costs and fees.

ATG has successfully handled a number of cases involving insurance companies attempts to improperly cancel contracts.

ATG victorious at Fifth District Court of Appeal

Maria Gonzalez was the victim of medical malpractice. She was blinded in the left eye when a local doctor inappropriately treated a bleed during a laser procedure. Several years before the incident Ms. Gonzalez had purchased a disability insurance policy which promised to pay her \$100,000 if she were blinded in an eye as a result of an accident. Ms. Gonzalez filed a claim with her disability insurance company. The insurance company denied the claim and argued her blindness occurred naturally and not as a result of an accident.

After reaching a confidential agreement in the medical negligence case, ATG filed a lawsuit against the disability insurance company. The trial court dismissed the lawsuit based on the insurance company's representation that it did not do business in the State of Florida. ATG appealed to the Fifth District Court of Appeals. The Appellate Court found that the insurance company did conduct business in the State of Florida and that it misrepresented facts to the trial Judge. As a result of the ruling, the insurance company agreed to pay Ms. Gonzalez the \$100,000 policy limits, as well as her attorney costs and fees.

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state that the deceased had been responsible for the collision.

During its investigation, ATG proved through engineering experts that the trucking company had been completely responsible for the collision. Engineers showed that the collision had occurred entirely on the Toyota's side of the road,

and that the semi-tractor had been traveling at an excessive speed. The experts' conclusions were supported by the testimony of an independent witness who testified that the semi-tractor had been traveling at an excessive rate of speed and that the collision had occurred entirely on the deceased man's side of the yellow line.

One month prior to the scheduled trial, the trucking company finally admitted that it was responsible for the crash. Because of the trucking company's admission, the scheduled trial would have solely considered the issue of damages. One week before the trial, the case settled for \$2,000,000. 📌

Register to Vote

Why Vote?

Because it is your fundamental right as an American, and the most basic means by which you have a voice in how your government works. By voting, you participate in a process that determines who will represent you, your family, and your neighbors in your community.

The Importance of One Vote

Several of our states in 1949, including California, Idaho, Oregon, Texas and

Washington, became states by just ONE vote. In 1948, Lyndon B. Johnson, our 36th president, became a U.S. senator by a ONE vote margin.

In the 1960's presidential election, ONE additional vote per precinct in Illinois, Missouri, New Jersey and Texas would have denied John F. Kennedy the presidency.

In recent years, the outcome of many state and congressional races have been reversed as recounts have shifted a handful of votes from one candidate to another.

HOW TO REGISTER TO VOTE

Who can register to vote?

Anyone who

- Is a U.S. citizen
- Is 18 years old (you may pre-register if you are 17)
- Is a resident of any county in Florida, and does not claim the right to vote in another county or state.
- Is not now adjudicated mentally incapacitated with respect to voting in Florida or any other state.
- Has not been convicted of a felony without his or her civil rights having been restored according to law.

Where do I register to vote?

- Public Libraries and Centers for Independent Living
- Florida Department of Motor Vehicle offices
- Florida Department of Families and Children offices and WIC offices
- Offices serving persons with disabilities, such as the Division of Blind Services
- Armed Forces Recruitment offices

How much does it cost to register?

Nothing. Registering to vote is a privilege afforded to you as a United States citizen by the Constitution of the United States.

Do I have to be a resident of the state to register?

Yes. For voter registration purposes you qualify to register by living in the county -with a street or rural route address. Post Office Box addresses do not qualify. We must know where you live so you can be assigned to the proper precinct for election day.

When must I register to vote before an election?

Florida statutes require you to be registered 29 days prior to all elections. This date is called the "book closing" date.

What do I need to bring with me to register?

Nothing. No proof of residency or citizenship is required. 🗳️

EMPLOYEE PROFILE

Meet Sonia Bayona

Sonia Bayona began working with ATG nearly ten years ago when she and her family first moved to Orlando. She is currently Mr. Manglardi's lead trial assistant.



Sonia, a native of Bogotá, Colombia, moved to suburban Boston when she was nine years old. She quickly mastered the English language and obtained a job with the State of Massachusetts. She last served as the Spanish Liaison for the Communications Department of the Massachusetts' Department of Revenue, Child Support Office.

In 1991, Sonia and her husband Jorge left the Boston area for the warmer Florida climate. Jorge started his own business and Sonia has become a very valuable asset to ATG. Her children, Anette and Jason, have also excelled. Anette completed High School at the top of her class. She is now attending the University of Central Florida. Jason is very active in sports, primarily soccer, (his father's first love) and basketball. Sonia and her family are also active in their church, The St. James Cathedral and generally enjoy spending time together as a family. Her mother, father and brother also now live in the Orlando area.

Sonia is a key player on the ATG team. She is hard working, conscientious and eager to assist the firm's clientele. She also enjoys assisting the firm in community related events, with particular emphasis on programs benefiting the Hispanic community. 🗳️

information which would render him qualified to testify concerning the facts specific to Karen's case.

After a vigorously defended case, the Orange County jury returned a verdict in Karen's favor in the amount \$300,000. The jury found that Karen's injuries were a direct result of the accident, and chose not to accept the testimony of the defense expert.

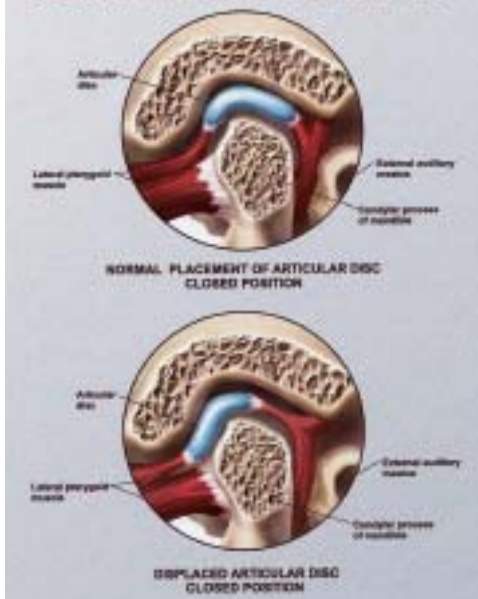
Karen has found a new line of work and is now married. Together, she and her husband celebrated the birth of their first child in July of 1998. They continue to live in the Central Florida area. 🗳️

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Karen was also forced to change her line of work. She had just completed Massage Therapy School when the accident occurred. Unfortunately, the injuries to her jaw, neck, and shoulders prohibited her from engaging in full-time massage therapy work. Karen was able to find a job where she performed some massage therapy but could not maintain that line of work on a fulltime basis.

At the trial, the defense presented evidence that this type of accident could not lead to the TMJ injuries Karen suffered. A defense dental/TMJ "expert" testified that Karen's TMJ problems were longstanding and predated the accident. From reviewing x-rays and other medical information, the defense "expert" testified that Karen suffered from arthritis in the TMJ areas before the accident and had an abnormal bite. ATG was successful in challenging the expert's credentials and having the testimony of another defense expert stricken from the trial. ATG spent considerable time and resources investigating the background of the so called biomechanical expert. It was established to the court's satisfaction that the "expert" did not have enough

TEMPOROMANDIBULAR JOINT DISPLACEMENT



Firm Celebrates Opening of New Kissimmee Office

Attorneys Trial Group, P.A., has served to protect the safety of Florida's families for over a decade. Additionally, to better serve its clientele, ATG has maintained a fully staffed office, including bi-lingual Legal Assistants, Paralegals and Attorneys, in Kissimmee. For various reasons, the Kissimmee office was relocated three times from 1991 through 1999. However, in mid-1999, ATG inaugurated its very own Kissimmee office. Earlier in 1999, the firm purchased the historic "Victorian" house on Main Street in downtown Kissimmee. The firm believed that the house, which had been constructed in 1895, would provide a beautiful, convenient and long term home for its Kissimmee office.

The 3,500 square foot historic house required a lot of refurbishment to meet the firm's high standards. When originally built, and through most of the 20th century, the home was a true masterpiece of Victorian architecture. However, over the years, the home had fallen into a state of despair. Indeed, when the firm initially considered the purchase of the house, one of the partners quipped that the home looked like the "Herman Munster" house.

After purchasing the house, the firm initiated the task of repairing and beautifying the home. During the course of the restoration, the original termite ridden hardwood floors were either meticu-

lously repaired or replaced with new oak floorboards. The firm finished the interior with the addition of tongue and groove ceiling work, double French doors and custom window treatments.

The firm also beautified the exterior of the historic house. Rotting and insect damaged siding was replaced and the whole exterior of the house was repainted. Rotten trees and dead bushes were taken away and replaced with crepe myrtles, azaleas, Indian hawthorn and other vibrant and colorful plants and shrubs. The firm

also restored the dilapidated picket fence to its original condition.

When the firm finally moved into its new offices in July, 1999, the "Victorian" house was a true showplace. In December 1999, the "Victorian" house was chosen to be depicted on the poster for the Kissimmee Historic Home Parade. Moreover, in January 2000, the Kissimmee/Osceola Chamber of Commerce, honored the firm by presenting it with the chamber's Downtown Beautification Award. ↗



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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.