## Florida Attorney Chosen to Argue Before the United States Supreme Court

On December 3, 2003, the Association of Trial Lawyers (ATLA) announced that Pensacola attorney Daniel M. Soloway has been chosen from its 50,000 lawyers nationwide to appear before the United States Supreme Court as its designated representative on two cases involving HMO liability in America. This is the first time in the history of ATLA that a Pensacola lawyer has been designated as its representative before the Supreme Court.

The two consolidated cases for Supreme Court review are Cigna Health Care v. Calad, Number 03-83, and Aetna Health Care v. Davila, Number 02-1845. The High Court agreed to resolve the controversial issue known as ERISA preemption, and the central question whether individuals in the United States may sue their HMO's for malpractice in refusing to pay for the care recommended by the treating physician.

The Calad and Davila cases are brought by individuals seeking money damages under the Texas Health Care Liability Act. Both persons claimed that they suffered severe injuries because their HMOs (Health Maintenance Organizations Cigna and Aetna) denied medically necessary care.

According to the opinions rendered in the federal appeals accepted for Supreme Court review, Davila's physician prescribed the medicine Vioxx for arthritis pain because stomach problems could result from taking less expensive alternative medications. Aetna used a "step program" that required Davila to try the cheaper medications first. After three weeks on that mandatory insurance program, he was rushed to the hospital when a bleeding ulcer caused a near heart attack, the court said. Mr. Davila had to spend five days in critical care and can no longer take any medication absorbed through the stomach.

Mrs. Calad underwent a hysterectomy with rectal, bladder and vaginal repair performed by a Cigna doctor. "Although that doctor recommended a longer stay, Cigna's hospital discharge nurse decided that the standard, one-day hospital stay would be sufficient," the United States 5th Circuit Court of Appeals said. Calad alleged that as a result, she had to return to the emergency room a few days later with massive complications.

According to an article printed recently in the National Law Journal, high hopes are riding on these cases. HMOs and others concerned about the rising costs of medical care hope that the Supreme Court will reaffirm a 1987 ruling that broadly speaking, prevented plan participants from bringing claims under state laws against their HMO. Plaintiff lawyers and patient rights advocates hope that several post-1987 Supreme Court rulings signal that the federal law in question, the 1974 Employee Retirement Income Security Act (ERISA) must make room for state-law remedies.

The ultimate decision to be made by the United States Supreme Court could change the face of managed health care in America. If ERISA is found to preempt the field, plan participants would be left with no claims for compensation for their injuries resulting from the denial of recommended medical care. Should the court decide that such lawsuits are not preempted by ERISA, HMOs could be exposed to both compensatory and punitive damage

awards of millions of dollars.

Mr. Soloway commented briefly on his selection, saying only, "I am honored that ATLA has chosen me as their representative before the United States Supreme Court, to file a "friend of the Court" legal brief and present argument to the nine Justices in Washington, D.C.. As I do not make public statements concerning any of my cases filed in federal courts, I'll simply quote my friend, light heavyweight boxing champion Roy Jones, Jr., - "Pensacola is in the House."