

CLARK · FOUNTAIN · LA VISTA  
PRATHER · KEEN & LITTKY-RUBIN



# LEGAL EDGE

SPRING 2016

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PERSEVERANCE HOLDS NEGLIGENT DOCTOR ACCOUNTABLE

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\$1.2 MILLION WIN ON \$10K POLICY

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HONDA ISSUES AIRBAG RECALL FOLLOWING FIRM SUIT

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\$10 MILLION VERDICT AFFIRMED BY FOURTH DCA

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CONNECTING WITH OUR COMMUNITY

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CONTINUED EXPANSION AT THE FIRM

PERSONAL INJURY

WRONGFUL DEATH

PRODUCTS LIABILITY

MEDICAL MALPRACTICE

BUSINESS LITIGATION

APPELLATE LAW



ATTORNEY: NANCY LA VISTA

**\$6.32 MILLION ARBITRATION AWARD: HOW CLARK FOUNTAIN HELD A DOCTOR ACCOUNTABLE FOR HIS EGREGIOUS MALPRACTICE**

When Belinda Burns initially sought medical care for what she believed were minor skin cancers on her arms, she never dreamed that years later, she would be the victim of a doctor's negligence, injuring her arms so badly that she may one day lose them to amputation.

What went wrong?

After her initial visit, Belinda Burns' dermatologist referred her to radiation oncologist, Ronald Woody, M.D.

Trusting Dr. Woody to do the right thing, Mrs. Burns agreed to radiation treatment. Unfortunately, Dr. Woody did not properly monitor her and allowed his treatment to burn her arms with radiation. This caused severe pain and fibrosis that damaged the muscles, ligaments and entire arm structure in both arms. After multiple surgeries, she sought help from attorneys at Clark Fountain.

On November 3, 2011, Nancy La Vista obtained a \$6.32 million arbitration award for Mrs. Burns, where the arbitration panel found Dr. Woody solely responsible for this horrific act. Uninsured, Dr. Woody declared bankruptcy following arbitration. Not to give up, the Clark Fountain team pursued the award, and in October 2013, the bankruptcy court awarded Mrs. Burns \$1.45 million as a creditor, to be paid by Dr. Woody through the bankruptcy proceedings. Although it took several years, on October 15, 2015 Mrs. Burns received her final payment from Dr. Woody.

Sadly, nothing can be done to correct this doctor's egregious mistake. Now retired, the injuries to Mrs. Burns' arms have permanently disabled her. Still, she has the satisfaction of knowing that the attorneys at Clark Fountain were willing to pursue justice on her behalf against an uninsured doctor and the tenacity and commitment of the firm allowed her to receive compensation to right the wrong perpetrated on her.

ATTORNEYS:  
MARK W. CLARK // CHRISTA L. MCCANN

**PRODUCT LIABILITY TURNDOWN RESULTS IN \$1.2 MILLION RECOVERY FOR BAD FAITH ON \$10,000 POLICY**



Mark Clark and Christa McCann were contacted by an out-of-state referral attorney to investigate a potential product liability case arising out of a violent collision. Following a thorough inspection of the vehicle with their experts, Clark and McCann determined that there was no viable product liability claim.

However, they brought a lawsuit against the other driver who caused the collision. After obtaining an excess judgment against the at-fault driver, Clark and McCann filed a bad faith action against the driver's insurance company based on its failure to timely pay the driver's \$10,000 liability limits pre-suit. Ultimately, Clark and McCann made a \$1.2 million bad faith recovery on behalf of the client--\$1.19 million above the policy limits--to cover the client's damages.

The firm has been awarded the prestigious **2015 Litigator Award**. This honor distinguishes the firm and its attorneys among the top one percent in the areas of medical malpractice, product liability, wrongful death and spinal cord injury litigation.



All six partners have been recognized by the prestigious publication, *Best Lawyers in America*, for inclusion in the 2016 edition. Selection is based on a rigorous peer review survey comprised of more than 5.5 million confidential evaluations given by the top attorneys in the country. Each attorney has also been distinguished as "Top Lawyers" for 2016 by *South Florida Legal Guide*.

ATTORNEY: JASON CORNELL

**NEGLIGENT CONSTRUCTION OF FISHING PIER RESULTS IN YOUNG WOMAN BEING RENDERED QUADRIPLÉGIC**



Jason Cornell recently obtained a confidential settlement on behalf of a client who sustained a spinal cord injury that resulted in quadriplegia, after she fell from a pier that extended over 100 feet out into a waterway. Through his investigation of the incident, Cornell determined that the "terminal" [end point] of the pier lacked a railing, despite the fact that the permits and plans called for the installation of railing along all sides.

In addition, through discovery, the firm was able to show that the pier she was on at the time of the incident was not properly constructed. As a result, the state-wide construction company that built the pier agreed to a confidential settlement.



ATTORNEYS:  
JULIE H. LITTKY-RUBIN // W. HAMPTON KEEN // DONALD R. FOUNTAIN, JR.

**APPEALS COURT AFFIRMS OVER \$10 MILLION VERDICT FOR CLIENT AGAINST CONTINENTAL TIRE**

Firm clients, Tracey and Edward Parker, were triumphant against Continental Tire a second time, when the Fourth District Court of Appeal affirmed the \$10+ million verdict a Palm Beach County jury awarded them in a tire defect case, back in October of 2013, at the conclusion of a month-long trial.

By *per curiam* affirmance, the Fourth District recently determined that the jury correctly found that Continental Tire had manufactured the Parkers' tire with a defect in it; it was that defect that caused Tracey Parker's catastrophic injuries.

Parker was the victim of a horrific tire blowout on I-95 in 2009. She spent a month in a coma, 102 days in the hospital, underwent 17 surgical procedures, and endured other extensive medical treatment.

The trial culminated a four-year battle that Clark Fountain had waged against Continental Tire. The German tire maker was so confident in its position, that it never even offered one penny to settle the case before trial.

Continental vigorously opposed the case at every turn and still made no settlement offer, even after the Palm Beach County jury told Continental they owed the Parkers nearly \$11 million. Instead it vowed to appeal, and did.

The six-year battle finally ended when the Fourth District Court of Appeal punctuated it with its *per curiam* affirmance. The appeal was handled by the firm's Board-Certified appellate attorney, Julie Littky-Rubin, who proudly convinced the appellate court to affirm the significant verdict obtained by her partners, W. Hampton Keen and Donald Fountain.



ATTORNEYS: DONALD R. FOUNTAIN, JR. // W. HAMPTON KEEN

**FIRM'S PROFICIENCY IN TIRE DEFECT CASES HELPS  
A NOW QUADRIPLEGIC MOTHER CARE FOR FAMILY**

Defective tire cases are one of our specialties. Over the last 25 years our firm has handled hundreds of these cases against virtually every major manufacturer. Each case presents its own challenges.

Several more unique issues were recently presented after a tire separation caused the rollover of a small convertible top SUV, which resulted in our client becoming a permanently disabled, wheel chair-dependent quadriplegic.

Our client was a lower income wage earner with no savings or health insurance, who had incurred nearly \$2 million in medical bills by the time she sought our help. A healthy woman in her 40s prior to the accident, the client's severe injuries required 24-hour-a-day care for the rest of her life. With good medical care, her doctors advised her that she could live into her 70s, but the cost of future care was staggering and without quality care, she would likely not survive long, leaving her son parentless. Her future depended on the outcome of her case.

Our client's tire was several years old and had been on the vehicle through multiple changes in ownership. Its maintenance history was spotty at best, and an identical tire had failed previously on the vehicle but resulted in no accident. The tire company claimed that the tire failed because it had been abused and misused, and that dozens of broken steel belt wires indicated the tire had hit something in the road that caused it to blow out. The tire company also blamed the driver for failing to control the vehicle, and posited that convertible tops don't protect occupants during a rollover.

Through numerous depositions and court battles over document production, our lawyers were able to pry several thousand pages of design materials from the tire company's files, identifying key defects that led to the separation of the tire. The contents of these documents are protected by a court-imposed confidentiality order, but one of the non-confidential defects established was the addition of a known separation-resistant design feature: nylon overlays or cap plies.

Shortly after the tire at issue was made, the tire company changed the design and added a cap ply. In fact, two of the tires on the vehicle at the time of the accident had the improved cap ply design. Unfortunately, a tire service company put the tires with the cap ply design on the front of the vehicle, in direct violation of the industry standard that requires the newest and best tires on the rear axle.

The attorneys at Clark Fountain were able to establish that the nylon cap design, which acts as a heat-shrinkable tourniquet between the tread and steel belts, would have prevented the separation. As a result, just before the jury trial of the case was set to begin, Clark Fountain was able to obtain confidential settlements from both the tire manufacturer and the tire service company. One of the great rewards of this practice is being able to provide financial security for clients who have been injured so severely that they are unable to provide for themselves or their family. Our attorneys are honored to have been able to obtain such financial security for our clients in this case.



**Poorad Razavi** was recently elected as a Board Member of the Palm Beach County Justice Association for a two year term.

Razavi has been a significant asset to the Association since joining, most recently securing a number of financial grants for events designed to benefit various local charities, including the YWCA which provides individual counseling to victims of domestic violence.

Razavi has also been selected to co-chair the Palm Beach County Bar Association's Annual Bench Bar Conference which was held on February 19, 2016.



**HONDA ISSUES NEW AIRBAG RECALL  
FOLLOWING CLARK FOUNTAIN SUIT**

Honda issued a new recall for Continental airbags affecting more than five million vehicles two weeks after Clark Fountain, along with co-counsel, filed a formal class action lawsuit against Honda North America, Honda of America Manufacturing, and Honda Trading America Corp., for the same issue.

The recall was released on the same day that Honda released additional recalls for the defective Takata airbags, arguably burying the additional bad news. Repair parts for the recall will not be available until Fall.

Following an in-depth investigation, our attorneys discovered that multiple 2008-2010 Honda vehicles are fitted with a defective Airbag Control Module [ACM] manufactured by Continental Automotive. In addition to Honda, the Continental airbag recall vehicle population includes Fiat, Chrysler, Daimler, and Mercedes. The class action lawsuit, which covers 13 violations, was recently featured as a cover story in *Daily Business Review*.



ATTORNEY: DAVID C. PRATHER

**TEACHER TRAGICALLY KILLED BY DRIVER WHO WAS TEXTING**

The attorneys at Clark Fountain were contacted by the parents of a young woman who loved being a teacher, and believed that helping to develop the minds of young children was her calling in life. Unfortunately, at the age of 38, the young woman was killed in a horrific head-on collision in Arcadia, Florida.

The firm's investigation into the woman's death, led by partner, **David C. Prather**, revealed that the driver of the car that caused the accident was texting just before the impact. Although the at-fault driver had no insurance coverage at the time of the accident, the vehicle operated by the decedent was insured under a policy with uninsured motorist coverage. As a result, the decedent's parents were able to reach a confidential settlement with their uninsured motorist carrier to compensate them for the untimely and devastating loss of their only daughter.

This case underscores the importance of purchasing uninsured/underinsured motorist coverage to protect you and your family members against the negligence of an uninsured and/or underinsured motorist.



Attorney **Christa McCann** has been named President of the Palm Beach County Hispanic Bar Association for 2016, after years of involvement with this prestigious legal organization. McCann has risen through the ranks of the Association, most recently serving as Vice President [President-Elect] for 2015. Since becoming President, she has launched the Association's first ever monthly e-newsletter to keep members informed of upcoming events as well as the incredible work that the Association does in the Hispanic community. She has also organized several networking and social events to connect lawyers in the area.

Fluent in Spanish and of Puerto Rican descent, McCann has become a visible force in the South Florida legal community, highlighting the importance of diversity in the practice of law, including roles for women and minorities representing a wide range of backgrounds.



ATTORNEYS: MARK W. CLARK // CHRISTA L. MCCANN

**AIRBAGS CAUSE BILATERAL HEARING LOSS,  
SEVERE INJURIES AND DEATH IN MULTIPLE CASES**

While airbags can save lives, they can also cause serious injury or death. **Mark Clark** and **Christa McCann** have recently represented multiple clients who sustained profound bilateral hearing loss as a result of front and/or side airbag deployments during a collision. In each case, after being hit by the airbag, the client sustained immediate onset of hearing loss, difficulties with speech discrimination and localization of sound, inner ear ringing, and positional vertigo. Through expert testimony, Clark and McCann were able to establish in each case that the client's condition was a direct result of an injury to the inner ear anatomy caused by the airbag deployment.

Over the years, Clark Fountain attorneys have also obtained numerous multi-million dollar recoveries against major vehicle manufacturers for defective airbag deployment resulting in death and/or catastrophic injuries to their clients. Additionally, the firm has handled claims on behalf of clients who were severely injured by "exploding airbags" manufactured by the now-infamous airbag manufacturer, Takata. In those cases, the design of the Takata airbag inflator caused metal fragments and shards of the inflator to explode upon deployment, impaling the driver or passenger. As of January 2016, 24 million vehicles have been recalled due to the defective Takata airbag system.

Most recently, the attorneys at Clark Fountain filed a class action lawsuit against Honda and Continental Automotive Systems based on Honda's use of a defective Airbag Control Module (ACM) affecting more than five million of its vehicles. The defective design of the airbag system prevents the ACM from properly booting up during the vehicle's ignition cycle, making the airbag inactive and unable to deploy in the event of a collision.

If you have a case involving injuries or death following an airbag deployment, or non-deployment, the attorneys at Clark Fountain would be happy to investigate a potential product liability case for you.

The firm has been recognized in the 2016 edition of the *U.S. News & World Report* and *Best Lawyers*™ rankings of the "Best Law Firms" in the country. The firm has received a prestigious Metropolitan Tier 1 in the areas of personal injury litigation and product liability litigation. The firm also received special recognition for its appellate practice in the area of medical malpractice law.



Dwyer Principal, Dr. Glenda Sheffield, with Julie H. Littky-Rubin

Attorney, **Julie H. Littky-Rubin's**, work extends well beyond heading up a prominent and well-respected state-wide appellate practice, and authoring the popular weekly e-blast, *The Week in Torts*. Littky-Rubin co-founded and currently serves as President of the "We Are Dwyer" Foundation, which supports the students and teachers of William T. Dwyer High School in Palm Beach Gardens, Fla.

In a short period of time, the Foundation successfully brought back theatre in the form of an after-school program for the 2015-2016 academic year, and is now working to parlay it into a full-time program for next year. Under Littky-Rubin's leadership at the Foundation, the school - which continues to thrive in academics and athletics - will continue its mission of expanding Dwyer's Fine Arts programs, as well as in helping to foster academic enrichment and support capital improvements.

ATTORNEYS:  
POORAD RAZAVI // DONALD R. FOUNTAIN, JR.

**FIRM ATTORNEYS SUCCEEDED IN  
REACHING CONFIDENTIAL SETTLEMENT  
IN CHALLENGING CASE AGAINST GM**



Attorneys **Poorad Razavi** and **Don Fountain** successfully obtained a confidential settlement with automobile maker General Motors. The lawsuit involved the tragic death of a woman who was a passenger in a car involved in a rollover accident that resulted in the roof being crushed. GM focused on shifting liability toward the tortfeasor who had initially caused the accident. Before the Florida Legislature repealed the D'Amario case, evidence of initial driver conduct in causing an accident was not admissible in a product liability case.

Razavi and Fountain had to overcome difficult issues with the tortfeasor, who was driving over 100 MPH when he collided with their client's vehicle, and who had a lengthy criminal record including assault, domestic battery and drug possession. Despite the challenges faced, they were successful in obtaining a favorable confidential settlement on behalf of their client without the need for a protracted trial.



**David C. Prather** was reappointed to the Florida Federal Judicial Nominating Committee [JNC] established by Senators Bill Nelson and Marco Rubio. Prather will serve a third two-year term in the JNC's Southern District Conference of Florida. The JNC recommends the most qualified candidates to serve as U.S. District Court Judges, U.S. Attorneys and U.S. Marshals in Florida, and decides which prospective nominees both senators will forward to the White House for the President's consideration.

Prather also recently served as the emcee for the F. Malcolm Cunningham Bar Association's 15th Annual Holland Scholarship Luncheon on February 5, 2016. More than 250 guests attended the event, including Florida Supreme Court Justice James E.C. Perry.



ATTORNEYS: NANCY LA VISTA // MICHAEL S. SMITH

**DOCTOR, ASSISTANT AND HOSPITAL SETTLE  
FOLLOWING DEATH OF BELOVED MOTHER DUE TO  
ROUTINE SURGERY**

After losing her husband at a young age, our client, a mother pregnant with her second child, boldly moved her family to the United States from her homeland in search of better opportunities. While depriving herself, her persistence enabled her two daughters to graduate from renowned institutions. Always driven to preserve their culture and religion, she would tell her girls that they should have a "chair in life." This meant that while she worked tirelessly at a cash register on her feet all day, her daughters should "sit" with professional careers.

Just as the youngest daughter was leaving for her first of two graduate programs, her mom's life-long goal of seeing her children's success was needlessly cut short when a relatively simple surgery went horribly wrong. The negligence of an assistant, coupled with the carelessness of the doctor responsible for his supervision, deprived the mother of oxygen to her organs, which caused her death on the day of surgery. All of the healthcare providers directly involved in her death paid a confidential settlement.

## CLARK FOUNTAIN CONTINUES ITS EXPANSION



The firm is pleased to announce the addition of attorney **Ben J. Whitman, Esq.**

Prior to joining Clark Fountain, Whitman was an attorney at one of Florida's most established insurance defense firms where he litigated cases on behalf of some of the world's largest insurers. His tenure as a defense lawyer provides Whitman with an insight into the mindset of insurance adjusters, corporate defendants, and defense attorneys in their valuation of claims and litigation strategies. Whitman concentrates his practice on representing those who have been injured by the negligent actions of individuals, corporations and insurance companies with an emphasis on products liability, wrongful death and automobile negligence lawsuits.



Clark Fountain has also added two paralegal/investigators to its West Palm Beach office: **Marjorie Beauvil-Michaud** and **Karen Smilen.**

Beauvil-Michaud is fluent in French and Creole, with 14 years of experience working with victims and the families of those who have suffered catastrophic injuries or death. Smilen, who has over 17 years of experience working on the defense and plaintiff side, brings with her a unique perspective on how insurance companies investigate and evaluate personal injury claims.

Both are certified, Florida Registered paralegals and will concentrate on working with victims of automobile accidents, trucking accidents, motorcycle accidents, wrongful death, defective products, premises liability and negligent security.

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866.643.3318 // 561.899.2100 // [clarkfountain.com](http://clarkfountain.com)



Clark, Fountain, La Vista, Prather,  
Keen & Littky-Rubin  
1919 N. Flagler Drive  
West Palm Beach, FL 33407