

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



LEGAL EDGE

SPRING 2013

CREATING A SAFER SOCIETY

RECENT CASE VICTORIES

FIRM FILES AMICUS ON BEHALF OF COMATOSE PATIENT

IMPORTANT UPDATE TO PIP LAW

AWARDS & ACCOLADES

TWO-YEAR PARTNERSHIP WITH COLEMAN PARK

PERSONAL INJURY

WRONGFUL DEATH

PRODUCTS LIABILITY

MEDICAL MALPRACTICE

BUSINESS LITIGATION

APPELLATE LAW

Litigation Improves Vehicle Design and Decreases Fatalities



Last fall, the American Journal of Public Health published a study on the leading cause of injury-related deaths in the United States. Car crashes, which had reigned number one for nine years, fell to number two, behind suicide. Several factors combined to reduce the number of car fatalities over the last decade [according to the study].

Public health efforts, advancements in safety technology systems, insurance companies education campaigns and successful litigation against negligent car manufacturers, among other factors, all contributed to this reduction that is saving lives.

“Comprehensive and sustained traffic safety measures have apparently substantially diminished the motor vehicle traffic mortality rate, and similar attention and resources are needed to reduce the burden of other injury,” researcher Ian Rockett, Ph.D., MPH of West Virginia University and colleagues wrote in the Journal.

Clark, Fountain, La Vista, Prather, Keen & Littky-Rubin is proud that its work in the field of automobile products liability litigation has helped diminish the number of vehicle fatalities and has increased the safety of drivers and their passengers. With every successful representation, we help set legal precedent that can lead to design improvements, more safety features, greater adherence to current safety standards, and a stronger commitment to excellence among car and tire manufacturers and designers. We look forward to continuing this important work in 2013.

Source: <http://www.webmd.com/mental-health/news/20120920/suicide-top-cause-of-injury-death>

ATTORNEYS: DAVID C. PRATHER // MARK C. CLARK



CLARK FOUNTAIN FIGHTS FOR SETTLEMENT TO AID CAR ACCIDENT VICTIM

After the defendant driver ran a red light, the firm’s client suffered injuries to his low back and neck. The client was eventually diagnosed with a herniated lumbar disc, which required surgery. Following the surgery, the client suffered from erectile dysfunction and residual leg and low back pain. **David C. Prather** and **Mark W. Clark** settled the case for \$750,000 shortly before trial.

DID YOU KNOW?



Partner **Nancy La Vista** was recognized as a finalist in the Daily Business Review’s 2012 Most Effective Lawyers in the category of arbitration. Nancy’s 2011 arbitration award on behalf of Belinda and Scott Burns resulted in a \$6.32 million judgment, after Belinda’s hands were deformed following improper radiation treatment. Nancy was featured in DBR’s special report on Dec. 10, 2012.

ATTORNEY: JULIE H. LITTKY-RUBIN



CLARK FOUNTAIN'S APPELLATE EXPERT AIDS COMATOSE WOMAN IN BAD FAITH CASE

Answering a call made by the Florida Justice Association (FJA), **Julie Littky-Rubin** wrote an *amicus curiae* brief on behalf of the organization, to support the victim's position in *Goheagan v. American Vehicle Ins. Co.*, 37 Fla. L. Weekly D2774 [Fla. 4th DCA December 5, 2012].

The FJA asked Julie to assist after the Fourth District ruled that the insurance company defendant had not acted in bad faith when it failed to tender the policy limits to a woman put in a coma by the driver's negligence. The insurance company had argued that the woman's condition prevented it from tendering its policy limits [no one to send the check to and could not get calls back from the woman's mother or her attorneys]. The Fourth District granted rehearing on the original decision, and reversed the summary judgment granted by the trial judge. It ruled that courts should view bad faith cases by evaluating the steps taken by the insurer, and not by looking at the actions of the person making the claim.

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



FIRM FILES UNIQUE WRONGFUL DEATH CASE FOR CHLORINE GAS OVEREXPOSURE

Donald R. Fountain, Jr. and **Poorad Razavi** filed a law suit on behalf of their client for the wrongful death of her husband, who died from exposure to chlorine gas while working at his employer's place of business. The basis of the suit is the employer's negligence, strict liability, and lack of safety procedures for handling lethal gases.

"We accepted this case not only to provide some measure of justice for our client," Poorad said, "but also to highlight the need for greater safety practices by companies that handle large quantities of extremely deadly substances that have the potential to cause widespread devastation to the public in general."



ATTORNEY: NANCY LA VISTA // CYRUS S. NIAKAN



FIRM HELPS WORKMAN WHO FALLS FROM 10-FOOT LADDER OBTAIN CONFIDENTIAL SETTLEMENT

Nancy La Vista and **Cyrus S. Niakan** secured a confidential settlement for a workman who suffered lower back and traumatic brain injuries after being knocked from a 10-foot ladder by a delivery man's cart. The deliveryman, who works for an international firm, was transporting a pallet of items to a location when he struck the ladder, causing the client to fall and land on his head. The settlement will allow the client to receive the medical care he needs and provide for his family, while he continues to deal with lifelong impairments.

COMMUNITY CONNECTIONS



When Clark, Fountain, La Vista, Prather, Keen & Littky-Rubin initiated a relationship with the leaders of the Coleman Park Neighborhood Association, they were hoping for good things in the West Palm Beach community where they had established their new law firm offices. Two years later, that hope is a reality.

Working in partnership to help improve the lives of the neighborhood's residents, Clark Fountain and Coleman Park have created mentoring programs, awarded scholarship monies to deserving students, conducted drives to supply necessary educational and personal hygiene products and even put on amateur entertainment shows during holiday events. The efforts have paid off on both sides, with Clark Fountain becoming a supportive part of its surrounding community, and Coleman Park thriving as an active, substantive resource for its young people and seniors alike.



In celebration of the two-year anniversary and the holiday season, the attorneys and staff of Clark Fountain sang carols at a Smart CATS [Coleman Area Talented Seniors] luncheon at Coleman Park Recreation Center on Friday, Dec. 21.

"Clark Fountain has really gotten involved with Coleman Park," said Cathy Gardner, president of the Coleman Park Neighborhood Association. "For the past two years, they have contributed considerably to our Back-To-School Drives, and recently provided several large bins of food for our joint Thanksgiving Drive done in conjunction with the Helping Hands Initiative, to help feed needy families."

ATTORNEY: NANCY LA VISTA



POST-OPERATIVE DEATH OF PIONEER IN "GREEN" ENGINEERING SPURS LAW SUIT

Partner **Nancy La Vista** filed a lawsuit against the University of Miami d/b/a University of Miami Hospital and its medical resident for the wrongful death of a "green" energy pioneer and highly regarded researcher, Subrato Chandra. The suit alleges hospital staff failed to respond appropriately to Chandra's post-operative complications, which led to cardiac arrest and fatal oxygen deprivation to his brain. On behalf of her client, Nancy alleged that the University of Miami Hospital and the resident on duty were negligent in providing medical and surgical services within the standard of care, and that the hospital was negligent in failing to properly credential its resident.

RAZAVI EARNS CALIFORNIA LICENSURE

As Clark Fountain continues to handle more and more cases throughout the country and particularly in California along the West Coast, attorney **Poorad Razavi** has become licensed to practice in the State of California. "I'm driven to assist victims of negligence so expanding my jurisdictional practice has been an important step to expand my ability to serve them."



ATTORNEYS: MARK W. CLARK // TIMOTHY J. MURPHY



**FIRM UPHOLDS NATIONAL REPUTATION WITH
COMPLEX PRODUCT LIABILITY CASE**

A young electrician was crushed to death while operating a motorized aerial work platform, known as a scissor lift. The decedent left behind a young daughter. Based on Clark Fountain's national reputation for litigating catastrophic injury and wrongful death cases, **Mark W. Clark** and **Timothy J. Murphy** were selected to represent the Estate. The team pursued a products liability suit against nine corporate defendants responsible for the electrical and mechanical systems on the scissor lift over three years, conducting discovery throughout the United States and Canada. Experts were brought in from around the country and represented a veritable "who's who" in electrical engineering. Facing potential punitive damages exposure, the defendants ultimately agreed to pay a confidential settlement.

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



**COMPENSATION OBTAINED FOR CA.
FAMILY CATASTROPHICALLY AFFECTED
BY DEFECTIVE SUV IN MEXICO**

When a California family experienced a rollover and catastrophic injuries, including one wrongful death and one traumatic brain injury, when returning to California from a mission trip to Mexico, they enlisted the help of Clark Fountain to pursue crashworthiness claims against the manufacturer and designer of the SUV.

W. Hampton Keen and **Donald R. Fountain, Jr.**'s extensive litigation experience with the model SUV that the clients were riding in at the time of the accident, enabled them to successfully obtain a confidential settlement against the manufacturer and designer of the vehicle long before trial. Although nothing can replace their lost loved one, the family no longer needs to worry about the proper medical care and future of their brain injured son.



MURPHY PARTICIPATES IN LAWYERS FOR LITERACY

Attorney **Tim Murphy** recently participated with attorneys from Palm Beach County in a valuable program called Lawyers for Literacy. He spent time encouraging adult students from other countries including China, Vietnam and Haiti to become literate and most importantly, he offered encouragement to them to achieve their GED and continue with their education.



ATTORNEY: DAVID C. PRATHER



DROWNING DEATH OF DISABLED TEEN THE BASIS OF WRONGFUL DEATH CASE

David C. Prather has filed a wrongful death suit against The Children's Place at Home Safe Foundation, Inc., involving the drowning death of a 17-year-old mentally and emotionally disabled girl during a sponsored field trip to the beach. On behalf of the client, Clark Fountain has alleged that the lack of supervision provided by the defendant's staff and the failure of staff to take proper precautions, given that the girl could not swim, led to the tragic events that took place at Lake Worth beach.



MARK W. CLARK NAMED TOP RATED LAWYER

Partner **Mark W. Clark** has been named a "2012 Top Rated Lawyer," as a managing partner of the firm, by American Lawyer Media and Martindale-Hubbell™. The recognition indicates that Clark has achieved Martindale-Hubbell's® AV® Preeminent™ rating, the highest rating in legal ability and ethical standards.

ATTORNEY: NANCY LA VISTA



CONFIDENTIAL WRONGFUL DEATH SETTLEMENT OBTAINED FOR YOUNG WOMAN

Nancy La Vista obtained a confidential settlement on behalf of the parents of a deceased 20-year-old woman. Their daughter died during a medical treatment as a result of improper monitoring.

ATTORNEY: MARK W. CLARK



\$786,000 VERDICT RESULTS IN BAD FAITH CASE SETTLEMENT

Mark W. Clark obtained a \$786,000 jury verdict on behalf of the firm's client that was \$686,000 in excess of the defendant's policy limits of \$100,000. Because the defendant's insurance company failed to pay the policy limits before the trial, when it should have done so, a subsequent bad faith case was brought to recover the excess judgment. After exposing the insurance company's bad faith claims handling practices through litigation, the case was settled for the full judgment.



Timothy J. Murphy has been elected to serve on the board of directors for the Palm Beach County Justice Association [PBCJA] for a one-year term. As part of his responsibilities, Murphy will represent the interests of the PBCJA and its members by promoting justice for individuals in Palm Beach County who need a voice, as well as to ensure equality under the law.

ATTORNEYS: W. HAMPTON KEEN // CYRUS NIAKAN



FIRM QUICKLY RESOLVES SOUTH CAROLINA TIRE FAILURE CASE

When our clients vehicle suffered a tire failure and rollover in South Carolina that resulted in catastrophic orthopedic injuries, they sought the help of firm attorneys **Hampton Keen** and **Cyrus Niakan** to pursue justice on their behalf. Fortunately, the firm was able to quickly dispatch its investigative team to South Carolina to preserve the critical failed tire and other evidence. Due to the firm's prior experience with the tire manufacturer involved, Keen and Niakan resolved the case with the manufacturer shortly after the lawsuit had been filed.

LAVISTA AND LITTKY-RUBIN NAMED AMONG PREEMINENT WOMEN LAWYERS

Nancy L. La Vista and Julie H. Littky-Rubin have been selected for inclusion into the 2013 edition of the Martindale-Hubbell® Bar Register of Preeminent Women Lawyers™. Fewer than five percent of all women lawyers have been recognized with the AV® Preeminent™ rating, which utilizes a rigorous peer rating system, and is given only to those women lawyers who demonstrate the highest legal and ethical standards and professional ability.

COMMUNITY CONNECTIONS



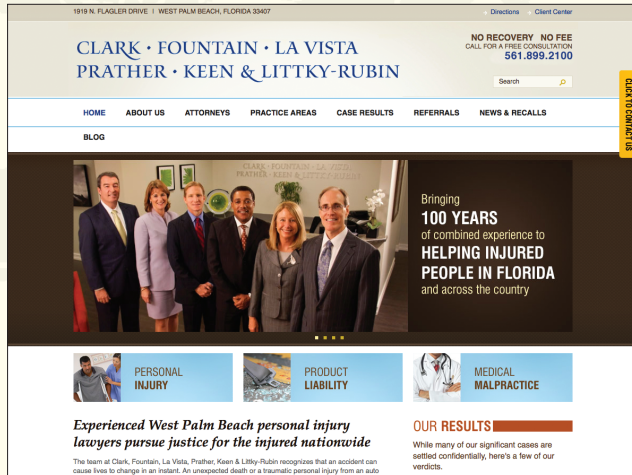
To raise funds and awareness for the fight against breast cancer, members of Clark Fountain, both in honor of paralegal and survivor, Cheryl DiStefano and the cause in general, participated in the South Florida Susan G. Komen Race for the Cure® on Jan. 26, 2013 in downtown West Palm Beach. Proceeds from the event help outreach programs pay for breast health education, screenings and treatment projects in Palm Beach, Martin and St. Lucie counties.

SAFETY ALERT! PIP LAW UPDATES AFFECT YOU

Substantial changes have been made to Florida's Personal Injury Protection [PIP] law, effective Jan. 1, 2013, which impact you and your loved ones. Please take note of the following:

- An individual must seek initial medical services and care within 14 days after an accident to qualify for any benefits.
- PIP will cover up to \$10,000 in benefits, only if the determination is made that the patient had an "Emergency Medical Condition." Otherwise, benefits may be limited to \$2,500.
- Only a medical doctor or another qualified specialist can make the determination that the patient had an "Emergency Medical Condition."

VISIT OUR NEW WEB SITE



VISIT US AT THE NEW **CLARKFOUNTAIN.COM!**

It's with great excitement that we unveil our new website. Aside from an updated look, the site's enhanced navigation gives you a current look at our top case verdicts and a more in-depth listing of our practice areas, making it easier for you to better understand our comprehensive range of services and capabilities.

We encourage you to take a look at our case results from around the country, and visit the firm's new blog for our position on recent cases and legal insights. We've upgraded the Clark Fountain news section, where you can subscribe to our monthly electronic version of the Legal Edge, or the Week in Torts, and also access the latest recalls to protect your loved ones. We think you'll like the new look and easier navigation; We encourage you to email or call to let us know.

**CLARK · FOUNTAIN · LA VISTA
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