

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



LEGAL EDGE

WINTER 2014

\$11 MILLION VERDICT AGAINST CONTINENTAL TIRE

\$3.5 MILLION RECOVERY FOR MILD TRAUMATIC BRAIN INJURY

INJURED TRAIN CONDUCTOR ACHIEVES SETTLEMENT AGAINST RAILROAD

SETTLEMENT FOR FAMILY OF TEEN DROWNING VICTIM

CLARK FOUNTAIN AMONG "BEST LAW FIRMS"

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PERSONAL INJURY

WRONGFUL DEATH

PRODUCTS LIABILITY

MEDICAL MALPRACTICE

BUSINESS LITIGATION

APPELLATE LAW



We hope you are enjoying a healthy and prosperous start to 2014! After an exciting 2013 at the firm, we have returned to our feverish pace, representing our clients and working with our referral attorneys on a diverse range of cases.

Reflecting on our successes both in the last year, and in years past, we continue to hone in on those distinct ingredients that continue to catapult us to victory, even in the face of the most difficult challenges.

Top Talent in Niche Practices: We believe in hiring and cultivating the best of the best—attorneys with proven, dedicated track records within specialty fields. At Clark Fountain, we are honored to have some of the industry's leading talent. All of our attorneys have been recognized for excellence in their respective legal fields.

Team Approach: No two cases are ever the same, and each client and legal matter presents its own set of unique challenges and obstacles. Collaboration, a seamless team approach, and the ability to leverage the strengths of our attorneys along with our talented staff of paralegals, continue to define who we are as a firm.

Deep and Vast Resources: Our firm has the financial strength, relationships and experience to provide every resource needed to achieve justice for our clients. These resources, available at our fingertips, have allowed us to obtain successful verdicts and settlements on the most complex cases. Most recently, our team successfully negotiated a \$3.5 million settlement shortly before trial after months of extensive and involved preparation [see page 2 for case details]. Last fall, we took on Continental Tire at trial and obtained an \$11 million verdict.

As you read through this edition of the Legal Edge, you'll see these core characteristics at work, illustrated in our successful case results. We invite you to visit www.clarkfountain.com to learn more about our firm, our people and our philosophy.

The Partners of Clark, Fountain, La Vista, Prather, Keen and Littky-Rubin

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



CLARK FOUNTAIN CLIENT ACHIEVES NEARLY \$11 MILLION VERDICT AGAINST CONTINENTAL TIRE

After listening to evidence presented during the course of a complex three-week trial, a Palm Beach County jury found that Continental manufactured its tire with a defect, resulting in a horrific tire-blowout on I-95 in 2009. On the afternoon of May 19, 2009, Tracey Parker was driving to her job in Port Saint Lucie, FL, when her vehicle's right rear tire failed, causing the vehicle to roll over three times.

Trial attorneys **W. Hampton Keen**, **Donald R. Fountain**, and appellate attorney, **Julie H. Littky-Rubin**, contended that a defect in the tire caused it to prematurely fail without warning. At the time of its failure, Parker's tire appeared well maintained, with no uneven tread wear, no repairs, plenty of tread depth and three years remaining on its warranty. Continental Tire, a German-owned company, denied all responsibility for the tire's failure.

The jury awarded the 39-year-old mother of three and her husband nearly \$11 million for the catastrophic injuries she suffered. Mrs. Parker spent over a month in a coma, 102 days in the hospital and underwent 17 surgical procedures, succumbing to extensive and ongoing medical treatment.

Clark Fountain is proud to have represented and achieved justice for the Parkers after an almost four-year battle against the defendant, Continental Tire, one of the largest tire manufacturers in the world.

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



\$3.5 MILLION RECOVERY FOR MILD TRAUMATIC BRAIN INJURY

Mark W. Clark and **Christa L. McCann** represented a client who suffered a mild traumatic brain injury and multiple non-surgical orthopedic injuries as a result of an automobile accident. Following the accident, the client developed complex regional pain syndrome in the upper extremity which required a series of stellate ganglion blocks. These injuries prevented the client from returning to pre-accident employment.

Liability was vigorously contested by the defendants, however, the accident reconstruction and bio-mechanical engineer experts hired by the firm were able to scientifically establish fault on the defendant driver. As a result, Clark and McCann were able to successfully negotiate a \$3.5 million settlement shortly before trial. The client now has the funds necessary to offset the significant loss of income and to pay for future medical care.



ATTORNEY: NANCY LA VISTA

SETTLEMENT REACHED FOR MAN LEFT PARALYZED FOLLOWING SURGERY

Attorney **Nancy La Vista** obtained a confidential settlement for a 62-year-old man who underwent elective abdominal aortic aneurysm repair. After surgery, the hospital failed to keep his blood pressure at a sufficient level to maintain blood flow to the arteries that supply the spinal cord.

As a result, he suffered a spinal cord infarction similar to a brain stroke, and was left paralyzed from the waist down. While the settlement will never give the man the use of his legs back, the efforts of Ms. La Vista have helped him to regain his freedom. The client, who was left homebound with no transportation for the last three years, recently purchased a special van with a portion of his settlement. "I feel like I have been let out of jail," he said after the case was resolved.

ATTORNEYS: W. HAMPTON KEEN
TIMOTHY J. MURPHY // CYRUS NIAKAN



SETTLEMENT REACHED FOR MAN SEVERELY INJURED BY DEFECTIVE DUMP TRUCK BRAKING SYSTEM

Our client became catastrophically injured when the park brake system in his roll-off dump truck failed, causing the truck to unintentionally come out of park and into drive. As a result, the massive truck rolled forward, pinning the client against a metal gate as he was in the process of unlocking it. The client suffered significant internal and orthopedic injuries, but miraculously survived. However, this harrowing ordeal left him with a lifetime of serious medical issues, dramatically reducing his quality of life.

Shortly after the accident, the manufacturers of the truck issued a nationwide recall for defects with the park brake system, although the recall allegedly did not involve the subject truck's brake system. Attorneys **W. Hampton Keen**, **Timothy J. Murphy** and **Cyrus Niakan** collaborated in pursuit of justice for the injured client, and convinced the truck manufacturer and the park brake system component designer to settle the case prior to trial. The confidential settlement will help provide stability and support for our client's future.

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



SEMI-TRACTOR LOSES CONTROL CAUSING VIOLENT COLLISION AND SEVERE INJURIES

This past month **Mark Clark** and **Christa L. McCann** obtained a confidential settlement on behalf of a client involved in a violent collision on the Florida Turnpike involving a commercial semi-tractor. The semi-tractor driver struck the driver's side of the client's vehicle, pinning her vehicle up against the Turnpike guardrail and trapping her inside her vehicle.

The defendant's truck driver contended that he lost control of the semi because of another accident on the Turnpike. As a result of the collision, the client suffered severe spinal, hand and wrist injuries that required lumbar spine surgery, hand and wrist surgery, as well as chronic pain management. Suit was filed against the defendant driver and his corporate employer. Shortly before trial, the defendant's insurance company paid a confidential settlement.

ATTORNEYS: DAVID C. PRATHER // DONALD R. FOUNTAIN



CONFIDENTIAL SETTLEMENT OBTAINED FOR TRAIN CONDUCTOR INJURED ON THE JOB

While working the night shift, a cargo train conductor descended from his train, falling on debris that had spilled from the train's cars and accumulated in the area where the railroad employees were trained to walk. The young man fell under the slowly moving train, suffering traumatic amputations to his feet, as well as a fractured pelvis, and significant neck and back injuries. He was also diagnosed with Post-Traumatic Stress Disorder caused by the terrifying mental and physical trauma he endured.

The injured man retained attorneys **David C. Prather** and **Donald R. Fountain** who pursued negligence claims against the railroad for allowing vegetation to accumulate and remain on the tracks in violation of railroad policy, and for failing to follow proper safety procedures. From the evidence adduced during the numerous depositions of both lay and expert witnesses, the firm ascertained that the railroad violated certain federal and state safety laws, which mandated safety procedures that were not followed. The work done by the firm resulted in a confidential settlement shortly before trial, providing compensation for the physical and emotional needs our client and his family will have for the rest of his life.



**MEET:
CHRISTA L. MCCANN**

Christa L. McCann joined **Clark, Fountain, La Vista, Prather, Keen & Littky-Rubin** as an associate attorney in the Summer of 2013.

McCann concentrates her practice in the areas of personal injury, automobile negligence, wrongful death, products liability and medical malpractice. Prior to joining Clark Fountain, she worked at another West Palm Beach area firm, specializing in premises liability claims, automobile negligence claims, and first-party breach-of-contract claims against insurance carriers.

She graduated cum laude from the University of Florida Levin College of Law, where she earned her Juris Doctorate, and earned her Bachelor of Arts degree in International Studies from the University of North Carolina at Chapel Hill.

She is fluent in Spanish and available to assist the needs of the firm's Spanish-speaking clients.

ATTORNEY: DAVID C. PRATHER



FAMILY OF TEEN DROWNING VICTIM REACHES SETTLEMENT WITH GROUP HOME

In 2012, attorney **David C. Prather** filed a wrongful death suit against a group home in Lake Worth involving the death of a 17-year-old mentally and emotionally disabled teenager who resided there. Even though she could not swim, the group home staff failed to properly supervise the girl, or take the proper precautions to ensure the young woman's safety during a sponsored trip to Lake Worth Beach. Left unattended, the force of the ocean currents dragged her under water, causing her to drown.

Mr. Prather confirmed the lack of supervision through the multiple depositions of the lifeguards, staff members, and independent witnesses. Prior to trial, the defendant settled for a confidential amount. While the settlement cannot bring the young victim back, it will serve as a reminder to group facilities and others to take better safety measures to prevent these kinds of tragedies.



LEGAL ALERT: DROWNING PREVENTION TIPS

Unfortunately, our firm has seen many tragic cases that involve accidental drowning. In so many cases, the injuries are preventable. According to the Centers for Disease Control, approximately 10 people die from accidental drowning every day in the U.S. Of these, two are children age 14 years and younger. Drowning ranks fifth among the leading causes of unintentional injury in the United States. Being educated and aware just might help save a life.

How can you ensure proper water safety for you, your loved ones and those around you? According to **Safekids.org**:

1 KEEP A CLOSE EYE ON YOUR KIDS

Whether you're at the pool or at the beach, it goes without saying that your children should be your first priority. If you're with a toddler or an infant, keep them within arm's reach, even if they are in the shallow end. Small children can drown in as little as one inch of water. Avoid any distractions, such as using your cell phone.

Safekids.org recommends using the Water Watcher strategy when there is more than one adult present, where one adult is designated to be the primary supervisor for at least 15 minutes at a time.

2 INTRODUCE YOUR CHILD TO THE WATER AS SOON AS POSSIBLE

Don't wait to introduce your children to the water. Lessons are available for children as young as six-months old. If you feel they're ready, teach them how to tread water, float and stay by the shore.

3 LEARN CPR

Don't rely on a lifeguard or someone else to save your child's life. Learn CPR and get recertified every two years. Have your children learn CPR too.

4 USE THE BUDDY SYSTEM

Kids should always swim with a buddy. Look for swimming areas that have lifeguards on duty whenever possible. Teach your children never to go near any body of water if an adult is not with them.

5 BE AWARE OF RIP TIDES

If you get caught in a rip tide, don't swim against the current or start to thrash. Stay calm, and swim sideways, parallel to the beach until the tide dissipates or you reach less turbulent water.

6 SWIMMING IN OPEN WATER ISN'T THE SAME AS SWIMMING IN A POOL

When you're at the beach or at the lake, kids [and adults] should only swim in approved swimming areas. Educate them on how river currents, ocean undertow and changing weather can be hazardous.

7 POOL TOYS ARE NOT THE SAME AS FLOATATION DEVICES

While water wings, inner tubes or noodles can be fun, they are not designed to prevent your child from drowning. Only life jackets can do that.

ATTORNEYS: DONALD R. FOUNTAIN // TIMOTHY J. MURPHY // CYRUS NIAKAN



SETTLEMENT ENDS LENGTHY LITIGATION FOR AMPUTEE INJURED BY CARWASH MACHINERY

On the eve of trial, and after years of litigation, attorneys **Donald R. Fountain, Timothy J. Murphy** and **Cyrus Niakan** secured a confidential settlement in a product defect case for a central Florida woman, who suffered an above-the-knee leg amputation inside an automatic carwash tunnel. The client, an employee of the carwash, was walking inside the carwash tunnel when one of the rotating wash brushes suddenly made contact with a steel reinforced water hose, in turn wrapping the client between the hose and the rapidly rotating brush. The power of the machinery going awry constricted the woman's body against the brush and severed her leg.

The firm asserted that the manufacturer defectively designed the carwash equipment, and that its design and installation were both unreasonably dangerous. Their experts explained that the rotating wash brush should have automatically shut off when it encountered the resistance of the client's body – before any injury occurred. The settlement will allow the client to afford the extensive and ongoing medical care she will need from her now lifelong impairments.



ATTORNEY: NANCY LA VISTA

SETTLEMENT REACHED IN DEATH OF REHABILITATION CENTER PATIENT

After suffering a heart attack, an 80-year-old patient was admitted to the Lexington Rehabilitation Center in St. Petersburg, Fla. for rehabilitation. Despite the fact that he was a known fall risk, once he arrived at the facility, staff members left the man unattended for approximately 10 minutes as they reviewed his paperwork.

During that time, the man stood up, fell and struck his head. He suffered a closed head injury, and sadly was removed from life support six days later. Attorney **Nancy La Vista** filed suit against the rehabilitation center on behalf of his wife of 61 years. The defendant refused all attempts to settle the claim until the trial judge granted La Vista's motion to amend the complaint to seek punitive damages.

Within days of that ruling, La Vista served Lexington with a settlement proposal, which they promptly accepted.



MEET: MARLENE W. CLARKE

Marlene W. Clarke brings years of legal experience to Clark, Fountain, La Vista, Prather, Keen &

Littky-Rubin, including 13 years as a paralegal/investigator. She has extensive experience handling automobile accident, wrongful death and premises liability cases.

Mrs. Clarke has a dynamic background, having worked for both plaintiffs and defense law firms, and also has a strong educational background, including an MBA, a Bachelor of Science degree, and a Certificate in Paralegal Studies.

Clarke began her paralegal career working for an insurance defense firm where she gained valuable experience working on the defense side of personal injury claims. However, she was troubled by assisting insurance companies and corporations in their goals to undermine the rights of victims. Since 2003, she has been an advocate for those injured in automobile accidents and other personal injury matters.

Her arrival at Clark Fountain can be considered a homecoming, since she worked as Managing Partner, Mark W. Clark's, legal assistant for almost 10 years at his former firm. She also previously worked as a paralegal with Mark and several of the partners after earning her MBA from Palm Beach Atlantic College.

ALL SIX CLARK FOUNTAIN PARTNERS RECOGNIZED AS "TOP LAWYERS"

Mark W. Clark, Donald R. Fountain, Nancy La Vista, David C. Prather, W. Hampton Keen and Julie H. Littky-Rubin have been recognized as "Top Lawyers" for 2014 by the *South Florida Legal Guide*. Associate **Cyrus S. Niakan** was named an "Up and Comer" by *South Florida Legal Guide*.



NANCY LA VISTA NAMED "TRIAL LAWYER OF THE YEAR" FOR THE SECOND TIME

Partner **Nancy La Vista**, a board certified civil trial and medical malpractice attorney, has been named the "2013 Trial Lawyer of the Year" by the Palm Beach County chapter of the American Board of Trial Advocates (ABOTA). She was also the recipient of the award in 2011.



DAVID C. PRATHER NAMED WEST PALM BEACH LAWYER OF THE YEAR

Partner **David C. Prather** has been named the 2014 West Palm Beach Lawyer of the Year in the area of Personal Injury Litigation by the prestigious publication *Best Lawyers in America*.



CLARK FOUNTAIN LISTED AMONG "BEST LAW FIRMS"

Clark, Fountain, La Vista, Prather, Keen & Littky-Rubin will be recognized in the 2014 edition of the *U.S. News & World Report* and *Best Lawyers in America*™ rankings of the "Best Law Firms" in the country. The firm has received a prestigious Tier 1 ranking in the areas of personal injury litigation, medical malpractice law and product liability litigation.

In addition, all six partners have been recognized by *Best Lawyers in America* for inclusion in their 2014 *Best Lawyers* list.



COMMUNITY CONNECTIONS

The holidays were brightened this season for seniors in Coleman Park, a historically rich, but low-income neighborhood in West Palm Beach that Clark Fountain has committed to supporting annually through various initiatives.

For the third year in a row, the firm hosted a festive holiday party for the Smart C.A.T.S. [Coleman Area Talented Seniors] program in the neighborhood's community center. In addition to a delicious lunch and some fun favors, the seniors sang Christmas carols with more than a dozen firm attorneys and staff.

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WELCOME TO THE NEW CLARKFOUNTAIN.COM!

The launch of the new Clark Fountain website offers quick and easy access to essential information for those in need of assistance where personal injury law is concerned. With more and more of our clients finding us via their mobile or smart device, we improved our site to provide mobile users a more robust experience that is every bit as good from their iPhone as it is from their Mac or PC. With “click-to-call” technology, we are now just a fingertip away from our clients’ needs.

Providing access to our team’s wealth of knowledge and expertise is a cornerstone of our firm’s philosophy. Our new site will help bring us closer to clients and to the community, aided by our enhanced social media presence. Our blogs provide the latest information and legal insights to keep attorneys and clients informed on matters impacting their cases and their lives, from understanding the fine print in a Waiver of Liability, to learning about your legal liability as a party host. Our Clark Fountain YouTube Channel will keep viewers current on our team and the industry, as well as provide information addressing critical recalls and other timely news.

We’re proud of our enhanced site and welcome your feedback on how we can continue to improve the online experience with our firm.

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