

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



# LEGAL EDGE

MOUNTAINS OF EVIDENCE

\$6.32 MILLION VERDICT AMONG TOP IN FLORIDA

RECENT CASE WINS

GOVERNOR SIGNS CLAIM BILL FOR CLIENTS

AWARDS & ACCOLADES

COMMUNITY CONNECTIONS

PERSONAL INJURY

WRONGFUL DEATH

PRODUCTS LIABILITY

MEDICAL MALPRACTICE

BUSINESS LITIGATION

APPELLATE LAW

**Defective products, wrongful death, auto and truck accidents**—the thousands of cases we have handled have generated, and continue to generate, mountains of evidence used by our team to protect the rights and interests of our clients. As part of any major case, the negligence and/or product defect is often buried between the twisted metal and steel carnage.



The evidence we gather underscores our firm's commitment to providing highly individualized attention to address the specific needs of each case, and has led us to recover hundreds of millions of dollars for our injured clients. We have the knowledge, experience and vast resources to investigate and research every aspect of our client's legal issues, and we use that information to build and prepare comprehensive legal strategies for each client. We invite you to visit our website or contact us to learn more about our case preparation strategies and resources.

Wishing you a happy, safe summer.

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

Mark W. Clark

Donald R. Fountain, Jr.

Nancy La Vista

David C. Prather

W. Hampton Keen

Julie H. Littky-Rubin

ATTORNEYS: MARK W. CLARK // CYRUS S. NIAKAN



**FIRM EARNS \$925,000 SETTLEMENT IN TWO-LEVEL LUMBAR FUSION AUTO ACCIDENT CASE**

Our firm's client was stopped while waiting to exit the parking lot of Lowe's in West Palm Beach, when the rear of her vehicle was clipped by the trailer of an 18-wheeler that was also attempting to exit the parking lot in the adjacent lane. The client was diagnosed with a herniated nucleus pulposus, or HNP. After a series of epidural steroid injections, she underwent a lumbar discogram. Following the discogram, she developed erosion of the end plates in her spine, and ultimately underwent a posterolateral discectomy with two fusion points. Just 54-years-old at the time, our client had to undergo vocational retraining as a result of her injury.

The defendant hired a biomechanical engineer with Biodynamic Research Corp. [BRC] who opined that the forces of the accident were not sufficient enough to cause damage to the plaintiff's lumbar discs. In addition, the defense's compulsory medical exam doctor said that the disc herniation and surgery was not related to the accident, but rather a result of preexisting degenerative disc disease. Despite this testimony, our client's treating doctors causally related the disc injury and surgery to the accident. We settled for \$925,000 the day before we planned to strike the defendant's biomechanical engineer's testimony at a specially set *Frye* hearing.

**TOP 100 TRIAL LAWYERS**

Mark W. Clark has been selected by the National Trial Lawyers [NTL] to join an elite group of top attorneys in Florida as a "Top 100 Trial Lawyers" for 2012. Membership into this prestigious organization is by invitation only, and is extended to attorneys who exemplify superior trial results, qualifications and leadership.

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



**FIRM SETTLES COMPLEX AIRBAG FAILURE CASE WITH TRIAL DATE PENDING**

When our client lost control of her vehicle and crashed due to a rainstorm, she tragically lost her eye when her airbag failed to deploy. The defendant argued that the crash was not sufficient enough to trigger the airbag. They also argued that the airbag light had been on for months preceding the accident, and plaintiff bore responsibility for failing to properly service the vehicle. Despite their arguments, **W. Hampton Keen** and **Timothy Murphy** were able to demonstrate that the force of the crash was sufficient to require the airbag to deploy, and that the airbag deployment would have spared their client's eye. After multiple inspections by experts from across the country and with trial pending, Keen and Murphy resolved the case favorably for the client for a confidential amount.



**\$6.32 MILLION ARBITRATION AWARD AMONG TOP IN FLORIDA FOR 2011**

Nancy La Vista and Timothy Murphy's \$6,320,000 arbitration award for clients, Belinda and Scott Burns, against radiation oncologist, Ronald Woody, M.D, is ranked among the top verdicts and settlements in the state of Florida for 2011. Dr. Woody was found negligent of administering an overdose of radiation to treat squamous cell cancer in situ—a precursor to skin cancer—on Ms. Burns' hands. The overdose resulted in radiation burns and radiation fibrosis causing disfigurement, as well as the likelihood of future amputation of one or both of her hands. The verdict and case details will appear in the *Daily Business Review's* special publication, *Top Florida Verdicts & Settlements 2011*, which publishes in June, 2012.



**APPELLATE WIN FOR LITTLE BOY EARNS LITTKY-RUBIN LEGAL AID PRO BONO AWARD FOR 2012**

Board Certified Appellate Attorney **Julie H. Littky-Rubin** received the Palm Beach County Legal Aid Society's 2012 Pro Bono Award in Appellate Law for a case she helped win on appeal. The case involved a two-year-old boy whose father was unable to adequately care for him. Littky-Rubin's appellate court victory successfully preserved the boy's rights and gave him a chance for a solid future by allowing him to be adopted by his long-time foster parents.

Together with the attorneys of the Foster Children's Project of the Legal Aid Society of Palm Beach County, **Littky-Rubin** helped convince the Fourth District Court of Appeal to reverse a trial judge's decision, which refused to terminate the parental rights of the boy's absent father. The father, who had struggled with drugs and had abandoned his son for more than a year, had made sporadic attempts at rehabilitation, finding employment and visiting the child. However, he was unable to show that adoption by the child's foster parents, was not in the child's best interests. **Littky-Rubin** received the award at the Society's 25th Annual Pro Bono Recognition Evening & Auction on May 19.

ATTORNEYS: NANCY LA VISTA // DAVID C. PRATHER



**GOVERNOR SCOTT SIGNS CLAIM BILL AGAINST N. BROWARD HOSPITAL DISTRICT**

On March 29, 2012, Florida Governor Rick Scott signed a Claim Bill against the North Broward Hospital District, finally concluding a 12-year battle for our clients, the Brown family. In 2008, a Broward County jury found the Brown's son, Darian, suffered catastrophic brain injury in utero due to the hospital staff's negligence. The bill enables the family to recover an additional \$2 million in funds from the hospital district to assist with the lifelong care of Darian.

The hospital staff's delay in recognizing signs of fetal distress resulted in Darian's untimely delivery by C-section. His brain was seriously and irreversibly damaged by prolonged hypoxia in the hours before his birth. The damage to his brain was so severe that it has left him suffering from cerebral palsy, spastic quadriplegia and developmental delay. Due to the hospital's delay and negligence, he is, and will be, totally dependent on others for care and treatment for the rest of his life

**Nancy La Vista** and **David Prather** took the case to trial, and after four weeks, the jury awarded the Brown family a total of **\$35.2 million in damages—the largest verdict in Broward County in a medical malpractice claim** and one of the top 100 verdicts in the U.S. that year. The hospital appealed, but the Fourth District Court of Appeal ruled to affirm the jury's verdict. The Hospital District then sued its insurers seeking a declaration of coverage for the damages awarded to the Browns. The coverage lawsuit led to a global settlement, under which the district's insurers paid the Browns \$10.35 million, and the district paid its sovereign immunity limit of \$200,000. The parties agreed that the plaintiffs could seek an additional \$2 million through an uncontested claim bill in that amount.

Because Florida's sovereign immunity law contains caps, and requires most jury awards against the taxing district above \$200,000 be approved by the state, La Vista took the issue to the legislature for her clients. Thanks to the support of Reps. Terry Thurston and Peter Nehr, and Senators Nan Rich, Dave Aronberg and Joe Negron, the claim bill was pushed through and signed by Governor Scott.

**Super Lawyers**

FLORIDA SUPER LAWYERS 2012

**Mark W. Clark, Donald R. Fountain Jr., Nancy La Vista, David C. Prather, W. Hampton Keen** and **Julie H. Littky-Rubin** have been recognized as Florida Super Lawyers for 2012. Just five percent of attorneys in Florida are recognized with this honorable distinction. Associates **Cyrus S. Niakan** and **Poorad Razavi** were each recognized as a Rising Star by Florida Super Lawyers.



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



**FIRM PROVES TIRE REPAIR STORE NEGLIGENCE, WINS SETTLEMENT FOR CLIENT**

A tire repair store failed to follow the long-standing, industry recommended tire repair procedures when it fixed a nail puncture in our client's tire. That improper repair allowed inflation-pressurized air to migrate into the tire's belt structure, causing a separation that led to a blowout and rollover of our client's SUV in the desert outside of Las Vegas. Even though properly seat belted, our client was killed in the crash. Attorneys **Don Fountain** and **W. Hampton Keen** obtained a confidential settlement.

ATTORNEYS: MARK W. CLARK // POORAD RAZAVI



**DESPITE PRE-EXISTING INJURIES, \$600,000 RECOVERED FOR CERVICAL FUSION ACCIDENT**

Our firm's client was a passenger in a vehicle traveling in the south-bound lane of I-95, when the defendant made an improper lane change resulting in a collision. Complicating matters, the client had two pre-existing herniated discs from a prior auto accident, for which doctors had previously recommended a two-level cervical spine surgery to treat. However, the client was able to avoid having the surgery. As a result of this I-95 crash, the client's pre-existing condition was aggravated to the point that she had to undergo the two-level cervical fusion to repair her spine. Despite the complexity of the case because of these pre-existing injuries, **Mark Clark** and **Poorad Razavi** successfully argued that the need for surgery was solely a result of aggravations caused by the new accident. Clark and Razavi recovered \$600,000 for the client.

**DID YOU KNOW?**

According to statistics available on [distraction.gov](http://distraction.gov), the official U.S. government website for distracted driving:

Text messaging creates a crash risk **23 TIMES WORSE** than driving while not distracted.

Sending or receiving a text takes a driver's eyes from the road for an average of **4.6 SECONDS**, the equivalent of driving 55 mph for the entire length of a football field—blind.

In the month of June 2011, more than **196 BILLION** text messages were sent or received in the US; up nearly **50%** from June 2009.



Drivers who use hand-held devices are **4 TIMES MORE LIKELY** to get into crashes serious enough to injure themselves.

Driving while using a cell phone reduces the amount of brain activity associated with driving by **37%**.

At Clark Fountain, we have seen a dramatic increase in the number of cases involving distracted driving—and texting and driving in particular. The amount of accidents attributed to texting/emailing has risen so dramatically that currently 38 states and the District of Columbia ban text messaging for all drivers. In Florida, it falls upon the State Legislature to enact bans on distracted driving, and thus far, it has failed to do so.

We all lead very busy lives, and it is very tempting to check your phone while driving to provide an immediate response to a pressing issue. However, we have seen first-hand the consequences of taking your eyes off the road for even a second. We have made a pledge to ourselves and our families to no longer look at our phones while we drive, and we hope you will join us in doing the same.



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



**TIRE FAILURE TURNS CHURCH YOUTH ROAD TRIP INTO TRAGEDY**

A road trip for a group of teenagers traveling to a church camp retreat in the remote Utah mountains turned deadly, when the SUV they were riding in suffered a tire separation and blowout. The tire failure caused the vehicle to roll over, resulting in several severe injuries and death. Attorneys **Hampton Keen** and **Don Fountain** were able to obtain confidential settlements in the case.



**COMMUNITY CONNECTIONS**

Every year, more than a dozen members of the firm show their commitment to the fight against breast cancer by gathering with their friends and family to participate in the annual **South Florida Susan G. Komen Race for the Cure**. Funds raised go to supporting vital breast health programs such as education, screenings and treatment in Palm Beach, Martin and St. Lucie counties.



**NANCY LA VISTA EARNS BOARD CERTIFICATION AS MEDICAL MALPRACTICE LAWYER**

**Nancy La Vista** has earned Board Certification as a Medical Malpractice Lawyer by the American Board of Professional Liability Attorneys (ABPLA). The distinction places La Vista among the best lawyers in medical malpractice law in the country. Only 14 lawyers in Florida have this special designation. The ABPLA is the only organization accredited by the American Bar Association (ABA) to certify attorneys in the areas of medical malpractice and legal malpractice.

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



**FIRM WINS SETTLEMENT IN MISSOURI WRONGFUL DEATH AGAINST COMMERCIAL DEFENDANTS**

Tragedy struck a family in a small, rural Missouri town just after Thanksgiving in 2010, when the life of an 18-year-old expectant mother was abruptly ended after the driver of the flatbed truck in which she was a passenger lost control and overturned. All of the occupants were ejected during the accident. The driver was unharmed, but the expectant mother and her unborn child died as a result of their injuries. Because of Clark Fountain's nationwide reputation for handling both auto negligence and product liability cases, attorneys **Mark W. Clark** and **Timothy J. Murphy** were contacted to represent the family in the litigation against the commercial defendants who owned the flatbed vehicle and employed the driver, as well as the manufacturer of the vehicle. Clark and Murphy conducted discovery in both Missouri and Iowa, and the lawsuit was filed in Missouri in 2011. As the trial date approached, the matter was settled for a confidential amount.

**CLARK FOUNTAIN CELEBRATES ADMINISTRATIVE PROFESSIONALS' DAY**



In 1955, the U.S. officially recognized the nation's "secretaries" with a special day. Today, most businesses recognize that without a talented, hard-working and dedicated workforce, business in this country would come to a standstill.

Fully valuing our treasured staff, the attorneys of Clark, Fountain, LaVista, Prather, Keen and Littky-Rubin want to take this opportunity to say **THANK YOU** to all of the administrative professionals who are the back bone of our firm. These wonderful individuals include our Legal Assistants, Paralegal Assistants, Office Service Assistants, Accounting Assistants and our Receptionist—the unsung heroes of our firm.

**LEGAL ASSISTANTS**

- Kerry Janis – Assistant to Mark Clark*
- Suzan Bates – Assistant to Don Fountain*
- Lisa Lopez – Assistant to Nancy La Vista*
- Rosie Cardona – Assistant to David Prather*
- Janie Castillo – Assistant to Hampton Keen*

- Tammy Deacy – Assistant to Julie Littky-Rubin*
- Susanne Ridley – Assistant to Cyrus Niakan*
- Sandra Marin – Assistant to Tim Murphy*
- Marie Abbosso – Overflow Assistant*

**ACCOUNTING ASSISTANT**

- Nikki Galbreath – Assistant to Stephany Kraft*

**OFFICE SERVICES ASSISTANT**

- Norma Harms*

**RECEPTIONIST**

- Luisa Rojas*

**PARALEGAL ASSISTANTS**

- Claudine Tolinger – Assistant to Eliana Putney & Cheryl DiStefano*
- Laura Brihn – Assistant to Michelle Berry & Sandy Duncan*
- Coral Ferrer – Assistant to Ken Dishman*

COMMITTED TO DIVERSITY



#### FIRM EARNS HIGH MARKS FOR DIVERSITY

Clark, Fountain, La Vista, Prather, Keen & Littky-Rubin, LLP was ranked among the top 10 law firms for diversity in the *Daily Business Review's* South Florida Diversity Scorecard issue. The firm ranked first on the list comparing women partners to firm attorneys, and also received high rankings comparing women partners to firm partners and firms with the highest percentage of black attorneys.

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