

LEGAL EDGE



CLARK ■ FOUNTAIN
LA VISTA ■ PRATHER
& LITTKY-RUBIN

PERSONAL INJURY

WRONGFUL DEATH

PRODUCTS LIABILITY

MEDICAL MALPRACTICE

BUSINESS LITIGATION

APPELLATE LAW

Firm Awarded \$3.6 Million in Attorneys' Fees and Costs After a \$15.5 Million Verdict in a 2018 Wrongful Death Product Defect Trial



**ATTORNEYS:
Julie Littky-Rubin & Donald R. Fountain**

Upon losing the case, the defendant refused to pay a reasonable amount of taxable costs, resulting in a two-day evidentiary hearing in February of 2019, where Partners Donald R. Fountain and Julie H. Littky-Rubin convinced the trial judge to award \$406,000 in such costs.

The defendant then argued that the plaintiff's proposal for settlement for the defendant's million dollar policy limits was not made in good faith (even though the jury had awarded the plaintiff over 15 times that amount), refusing to agree that plaintiffs were entitled to their fees, and further refusing to agree to a reasonable amount of those fees if the judge found that they were. The defendant's continued intractability forced Fountain and Littky-Rubin to participate in an additional five-day evidentiary hearing on their fees in May.

The time spent ended up being well worth it for the firm's clients, whom the judge awarded an additional \$3.2 million in fees. Finding that the firm's lawyers possessed a wealth of knowledge and extensive experience in the area of product defect litigation, the judge quantified the value of their work by awarding hourly rates between \$625 and \$900 - some of the highest in the state.

Thus, after five years of litigation, culminating in a three-week jury trial, seven additional days of bench trials and \$750,000 spent by the firm in litigating the case, the Clark Fountain team recovered more than \$18 million for its grateful clients.



Mark W. Clark Named Best Lawyers® Lawyer of the Year in Product Liability Litigation

The 26th Edition of Best Lawyers® in America named Managing Partner Mark W. Clark as 2020 "Lawyer of the Year" in Product Liability Litigation.



**ATTORNEYS:
Nancy La Vista & Michael S. Smith**

Nancy La Vista and Michael S. Smith Obtain Confidential Settlement for Brain-Damaged 13-Year-Old Girl Who Also Suffered an Amputation

Our clients took their daughter, who was simply diagnosed with bronchitis, to the emergency room when she spiked a 105 fever. In the emergency room, she was diagnosed with pneumonia. Concerned about sepsis, an echocardiogram was ordered.

Three days after it was performed – and while the child's condition was worsening – it was read as normal. In reality, the echocardiogram showed vegetation in the right ventricle of the heart – a diagnosis that requires immediate medical treatment. Because of her worsening condition, the parents arranged for their daughter to be transported to a tertiary center children's hospital for critical care, where it was discovered that the original echocardiogram was misread, and that the left and right ventricles now had vegetation.

Despite emergency treatment, the child suffered clots throughout her body resulting in a massive stroke and amputation of her left leg. After three years of investigation and litigation, which included more than 100 doctors and 20 expert witnesses, Partner Nancy La Vista, Attorney Michael S. Smith and the medical malpractice team at Clark Fountain resolved the case for a confidential amount. The settlement will provide financial security for the young girl and her family and allow her to continue to receive proper medical care for the rest of her life.



**Firm Welcomes New Attorneys
Ian B. Miller, Jennifer A. Lettman**

Ian B. Miller joins the Clark Fountain team with more than a decade of experience handling complex personal injury, medical malpractice, legal malpractice, and general liability defense cases. A graduate of Nova Southeastern University Shepard Broad College of Law, Miller will handle personal injury, wrongful death, and products liability cases for Clark Fountain clients in Florida and throughout the United States. Prior to joining our team, Miller focused his practice on defending medical providers, hospitals, physician groups and insurance companies in significant injury and wrongful death cases.

Jennifer A. Lettman brings significant trial experience to the Clark Fountain team, having previously served as an assistant state attorney for the Fifteenth Judicial Circuit in Palm Beach County and a trial lawyer for a civil litigation law firm. A South Florida native, Lettman obtained a bachelor of science from University of Florida and earned her law degree from Florida State University. As a prosecutor, she tried more than 75 jury trials, including 15 felony trials. Prior to joining the team, Lettman practiced in complex civil litigation matters, including first-party and third-party liability, and property disputes for the defense.



**ATTORNEYS:
Donald R. Fountain, Mark W. Clark & Ben J. Whitman**

Defective Seatback Design Results In the Death of a 15-Year-Old Boy

A father, mother and their 15 and 19-year-old sons were all properly seat belted and stopped at a red light when their vehicle was struck from behind by a drunk driver. The impact of the crash caused the driver's seat to collapse rearward, striking the younger son and causing fatal head injuries. The boy's father, mother, and older brother sustained minor injuries.

The case was referred to Clark Fountain after being turned down by three other law firms. Partners Donald R. Fountain, Mark W. Clark, and Attorney Ben J. Whitman hired a team of experts and brought suit against the vehicle manufacturer and the designer of the seats when they discovered a series of seatback design defects that led to the young man's death. Namely, the driver's seatback was too flexible, which caused it to dynamically recline rearward. In addition, the trailing edge of the driver's seatback and the metal structural components in the upper seatback were not properly constructed or padded to prevent serious injury to rear seat occupants.

When the driver's seatback abruptly reclined into the rear occupant compartment, the pocketed design of the internal horizontal steel braces in the upper part of the seatback, captured and held the young man's face and head, causing his fatal injuries.

The parties reached a confidential settlement that included the return of the vehicle and seat to the manufacturer defendants. Although the settlement provides some closure for our clients, our hope is that the manufacturer will modify the existing design to prevent this type of tragedy from occurring again.



Firm Named "Best Law Firm" For Eighth Consecutive Year

Clark, Fountain, La Vista, Prather & Littky-Rubin was named "Best Law Firm" by U.S. News & World Report for the eighth consecutive year. The firm was recognized in Personal Injury Litigation, Products Liability Litigation and Medical Malpractice Law.



Commercial Trucking Accident Results in Multiple Surgeries, Total Knee Replacement

ATTORNEY:
David C. Prather

While driving on I-75 in Nokomis, Florida, our client was struck by a commercial truck and sustained severe injuries that required multiple surgeries to her shoulder and knee, including a total knee replacement. The truck lost control after a tire blowout, and struck the right side of our client's vehicle, dragging it to the shoulder of the interstate, and causing it to crash head-on into a guardrail.

Partner David C. Prather filed suit alleging the well-known national trucking company was negligent in the maintenance of the company vehicle, stating the tire blowout was a result of improper inspection and maintenance, which ultimately led to the defective condition of the tire at the time of the accident.

Prather successfully resolved the case before trial for a significant amount. The settlement will cover our client's medical expenses, as well as any treatment she will need in the future. It will also compensate her for the mental anguish she suffered as a result of the accident.

Firm Represents Aviation Crash Victims in Wrongful Death and Catastrophic Injury Claims



ATTORNEYS:
Mark W. Clark & Ben J. Whitman

off during flight. They were also able to identify a defect in the wing component parts. As a result, Clark and Whitman were able to negotiate a confidential settlement and hold the defendants accountable for the wrongful death of the pilot.

In a similar case, Clark represented an engineer who sustained catastrophic injuries in an airplane crash after the aircraft's propeller struck the runway and stalled the engine while attempting to land. Our client was airlifted to a local hospital and sustained burst fractures to his thoracic and lumbar spine, bleeding on the brain, and a 49% permanent whole body impairment.

Both aviation accident cases settled for confidential amounts.



Clark Fountain Jury Verdict 13th Highest in Florida

Clark, Fountain, La Vista, Prather & Littky-Rubin earned one of the largest jury awards in Florida in 2018 for their work on the Letterman v. National Truck Center, et al. trial. Led by Partners Donald R. Fountain and Julie H. Littky-Rubin, the firm represented the family of a man who died in a truck accident due to a defective tire and a defectively designed commercial truck. After a three-week trial, a Palm Beach County jury awarded \$15.5 million to the man's 14-year-old son, who lost his single dad and only parent in the accident.



Confidential Settlement Reached in Wrongful Death Caused by Defective Vehicle Headrest

ATTORNEYS:
Donald R. Fountain & Ben J. Whitman

Our client and her husband of nearly 50 years were traveling on the Florida Turnpike in their new full-sized four-door pickup truck wearing their seatbelts. As traffic began to slow, their vehicle was struck from behind. While our client suffered only minor injuries, her husband died on scene from a fatal spinal fracture.

Partner Donald R. Fountain and Attorney Ben J. Whitman hired a team of experts to inspect the vehicle. The investigation revealed the impact of the collision caused the driver's headrest to fracture and break, forcing the driver's head and neck to hyperextend, which resulted in a fatal fracture and aortic dissection. Fountain and Whitman asserted six counts against the vehicle manufacturer for design defects, manufacturing defects, and defective warnings and instructions, and also sued the driver's insurance company and the owner of the commercial vehicle who caused the accident. A confidential settlement was reached to provide financial security for our client and her family despite their grave loss.

\$1,000,000 Settlement Reached for Trip and Fall Resulting in Severe and Permanent Knee Injuries Due to Poor Lighting



ATTORNEY:
David C. Prather

Our client tripped and fell while exiting a building in a shopping plaza after completing her night shift. The two lights in the parking lot were broken and not operating. As a result of the poorly functioning lights, our client stepped in a pothole and fell, sustaining a displaced tibia fracture with several ruptured ligaments and a vascular injury that required a stent be placed. As a result of her injuries she is now permanently disabled from working as a customer service professional. David C. Prather was able to successfully resolve the case for \$1,000,000, which will help compensate our client for future medical needs, loss of her working ability, and her pain and suffering.

Firm Announces the First Annual "Panthers Park Your Phone" Distracted Driving Scholarship, Encouraging Students to Pledge a Distracted-Free Driving Style

In April the firm announced the formation of the "Panthers Park Your Phone" Distracted Driving Scholarship for a graduating senior at William T. Dwyer High School in Palm Beach Gardens.. The \$1,000 scholarship is intended be used for any type of continuing education after high school graduation.

Halie Francois was chosen as the winner of the 2019 competition. Francois captured the attention the Clark Fountain team with her ad campaign suggestion of various billboards featuring emergency vehicles and the caption "The Worst Heartbreak," with the subtle—yet memorable—suggestion that distracted driving can cost you your life.

The firm has a strong connection to William T. Dwyer High School, with Partner Julie H. Littky-Rubin having co-founded the "We are Dwyer" Foundation and having served as its President for the last six years.



Pictured from left to right: William T. Dwyer High School Principal Mr. Corey Brooks; Halie Francois of West Palm Beach; Partner Julie Littky-Rubin; Hannah Rubin, William T. Dwyer High School alumna, class of 2017.



Wrongful Death Results in \$2.5 Million Recovery for Bad Faith on \$30,000 Policy

ATTORNEY:
David C. Prather

David C. Prather was contacted by an attorney in New York City to represent a family who tragically lost their 21-year-old daughter to a fatal accident while she was riding her motor scooter in Tampa. Prather filed the lawsuit against the used car dealership whose vehicle was being test driven at the time of the collision. The adverse driver failed to notice the decedent's scooter and pulled directly into her path of travel causing injuries that ultimately led to her death, despite two days of life-saving medical treatment. While the dealership only had the required amount of insurance to obtain a "dealer" license plate of \$30,000, its insurer refused to pay the limits timely. Convincing the insurer of its bad faith, Prather then successfully obtained a \$2.5 million total recovery on behalf of the parents of their deceased daughter.



Southeast Florida Fund Director Rob Paulk presents Managing Partner Mark W. Clark with the EAGLE Centurion Award.

Florida Justice Association Presents Mark W. Clark with EAGLE Centurion Award

Managing Partner Mark W. Clark received the EAGLE Centurion Award at the 2019 Florida Justice Association (FJA) Convention. The award represents a lifetime commitment to leadership and public justice advocacy and recognizes an exceptionally generous individual contribution

to the Endowment for Association Giving to Law and Education (EAGLE) program. The EAGLE Centurion Award is reserved for individuals who have contributed \$250,000 to the mission – an honor that less than 30 attorneys have received in the 58-year history of the organization.

Confidential Settlement Reached with Tire Shop After Negligent Inspection Leads To Tire Blowout and Kills a 16-Year-Old Boy

ATTORNEY:
Ben J. Whitman



A 16-year-old boy was a passenger in his friend's vehicle on I95 in Miami-Dade County, when the left rear tire on the vehicle failed. The driver steered the vehicle toward the shoulder of the interstate, but was unable to get to the side of the road and out of oncoming traffic. The driver, passenger, and other occupants exited the vehicle to attempt to push it out of the travel lanes when they were struck from behind by a passing vehicle. Both the driver and passenger were killed.



The family of the deceased 16-year-old passenger hired Clark, Fountain, La Vista, Prather & Littky-Rubin to determine what caused the incident and their son's death. Attorney Ben J. Whitman was able to identify a used tire store/service facility that had performed an inspection on the vehicle and tires and also sold the two tires on the front axle of the vehicle to the driver. Even though the failed tire was not sold by the facility, Whitman filed a lawsuit based on the tire store/service facility's obligation to inspect every tire on the vehicle, and warn the owner that the rear tires were unsafe. Ultimately, the defendant's liability insurance carrier agreed to pay a substantial confidential settlement to compensate the surviving parents for the devastating and preventable loss of their son.



Firm Settles Wrongful Death Case Involving Issues of Gross Negligence and Workers' Compensation Immunity



ATTORNEYS:
Mark W. Clark & Julie Littky-Rubin

Partners Mark W. Clark and Julie H. Littky-Rubin reached a confidential settlement arising from the wrongful death of a construction worker whose family sought to overcome the workers' compensation immunity defenses of contractors whose gross negligence led to the worker's death. The underlying case involved the tragic death of a construction worker who fell several floors to the ground due to the grossly negligent design, construction and use of scaffolding equipment on the job site. The case presented multiple legal hurdles, including whether the contractors were protected from suit under Florida's broad immunity conferred upon employers under F.S. §440.11 (providing that liability under the workers' compensation statute shall be "exclusive and in place of all other liability").

However, under certain limited circumstances, the statute does not shield employers and contractors when their actions amount to "gross" negligence. Aside from having to overcome work comp immunity, the firm had to defeat the insurers' arguments that the wrongful death claims were not covered due to various insurance policy exclusions. The coverage defense required the case be litigated simultaneously in two counties – one handling the liability component of the case, and the other addressing the insurance coverage dispute. Ultimately, the firm was able to prevail by obtaining a substantial recovery for the deceased construction worker's family, despite the complex legal issues and defenses raised during the course of litigation.



David C. Prather Appointed Vice Chair of the Judicial Nominating Procedures Committee

President of the Florida Bar John M. Stewart has appointed Partner David C. Prather Vice Chair of the Judicial Nominating Procedures Committee. The appointment is a great honor and one that speaks volumes about the respect and recognition Prather has earned throughout the legal community.



Inspiring Young Legal Minds

Attorneys Matthew B. Wasserman and Ian B. Miller celebrated Law Day with students from Palm Beach Lakes High School by participating in "Speed Law" and answering career-related questions from students interested in becoming lawyers.



Partners Selected as Best Lawyers® in America 2020

Partners Mark W. Clark, Donald R. Fountain, Nancy La Vista, David C. Prather, and Julie H. Littky-Rubin have all once again been recognized by their peers for inclusion in the 26th Edition of Best Lawyers® in America in the areas of Product Liability Litigation, Personal Injury Litigation, Medical Malpractice, and Appellate Practice.



**Florida Trend Names Five Clark
Fountain Attorneys to Legal Elite**

Partners Mark W. Clark, Nancy La Vista,
David C. Prather, and Julie H. Littky-

Rubin have been selected for inclusion in the prestigious roster, which highlights less than two percent of practicing attorneys in the state. Attorney Ben J. Whitman is among 131 attorneys to be featured in the "Up & Comer" list.

Super Lawyers

**Five Partners Named 2019 Super Lawyers,
Whitman Named Rising Star**

Each of the five partners at the firm have been named 2019 Super Lawyers. Attorney Ben J. Whitman has been named a Rising Star and Partners David C. Prather, Julie H. Littky-Rubin, and Nancy La Vista are also included in the Top 100: 2019 Miami Super Lawyers list.

South Florida Legal Guide
Names Partners "Top Lawyers,"
Firm as "Top Law Firm"

SFLG
SOUTH FLORIDA LEGAL GUIDE

The 2019 edition of the *South Florida Legal Guide* named all five partners at the firm "Top Lawyers" and the firm was named a "Top Law Firm." The attorneys distinguished by the prestigious publication include Partners Mark W. Clark, Donald R. Fountain, Nancy La Vista, David C. Prather, and Julie H. Littky-Rubin.



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