

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



# LEGAL EDGE

WELCOME TO OUR NEW OFFICE

UPDATE ON \$35 MILLION MEDICAL SAGA

CRITICAL PRO BONO WIN

REFERRAL RESULTS / BECOME OUR PARTNER

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FREE LEGAL NEWS, DELIVERED TO YOU

PERSONAL INJURY

WRONGFUL DEATH

PRODUCTS LIABILITY

MEDICAL MALPRACTICE

BUSINESS LITIGATION

APPELLATE LAW

WELCOME // VERDICT UPHELD



It's hard to believe we'll soon be wrapping up 2011. This year has brought Clark, Fountain, La Vista, Prather, Keen & Littky-Rubin dynamic and interesting case work, travel around the country to co-counsel on complex matters, new connections with many of you, and... brand-new office space.

After a few months of unpacking, the boxes are finally gone, the pictures are hung and we are finally settled in to our brand new, more than 10,000-square-foot, state-of-the-art office on the Intracoastal Waterway. Here's one photo of our legal team inside our conference room. See the clear glass walls behind us? For more privacy, a flick of a switch can make it opaque. The custom-built conference room table fits 20 and just opposite us, there are video conference capabilities, plenty of space to review evidence, a 65-inch flat panel monitor and a projection screen.

We invite you to visit us in our new office or to contact us if you'd like to discuss a legal matter. We wish you a prosperous Fall and happy holidays.

We recognize that lives can change in an instant. From the less serious to the catastrophic, learn how we can help at [www.ClarkFountain.com](http://www.ClarkFountain.com).

ATTORNEYS: NANCY LA VISTA // DAVID C. PRATHER

### \$35 MILLION VERDICT UPHELD DURING 12-YEAR SAGA FOR BRAIN-DAMAGED BABY



After eight years of trial delays, partners **Nancy La Vista** and **David Prather** successfully obtained a \$35 million verdict for a wonderful family whose son was born with severe birth defects due to medical negligence while at the hospital.

Now, four years later, **Clark Fountain** continues to battle on behalf of the family. Appellate attorney **Julie Littky-Rubin** had successfully defended the hospital's appeal and after two declaratory actions filed in federal court, **Nancy La Vista** settled the case.

As part of the settlement, the hospital agreed to a claim bill for the \$2 million insurance policy. La Vista presented the evidence to the claim bill special masters, who recommended that it be approved. At the last minute however, despite the hospital having the funds, the legislature voted against the claim bill. Clark Fountain will be back in front of the legislature next term to continue this now 12-year battle on behalf of the family.

ATTORNEYS: DON FOUNTAIN // HAMPTON KEEN



#### CHILD RENDERED QUADRIPLÉGIC IN PRODUCT DEFECT CASE, SETTLEMENT REACHED WITH MANUFACTURER

During a frontal car collision, cargo from the rear of the vehicle became a dangerous projectile when it hit the vehicle's seatback, which caused it to break from its mounts and collapse forward on to three young children who were properly seat belted. Two were seriously injured and one was rendered quadriplegic.

Although the vehicle manufacturer accurately claimed that no federal safety standard in the United States required any level of seat back strength in the forward direction and that no one had ever made such a claim against them, a confidential settlement was reached thanks to the firm's development of an easily overlooked design defect theory, a particular skill of the firm's product liability attorneys. The firm also researched vehicle standards from other countries and found a European standard that supported our claim.

Because frontal collisions are the most common type of car accident and with manufacturers instructing vehicle owners to have children ride in the back for safety, attorneys in our products liability department claimed that the vehicle should have been designed with the seatback strong enough to remain upright and in place when impacted by cargo that the vehicle was designed to carry.

#### FLORIDA TREND'S LEGAL ELITE FOR 2011



The six named partners – **Mark Clark**, **Donald R. Fountain Jr.**, **Nancy La Vista**, **David C. Prather**, **W. Hampton Keen** and **Julie H. Littky-Rubin** – have been recognized as Florida Trend's Legal Elite for 2011.

Associate **Cyrus Niakan** has been named an **Up & Comer**.

#### DID YOU KNOW?



Clark Fountain offers a helpful free summary of Florida Case Law, written by board certified in-house appellate attorney, Julie H. Littky-Rubin. Called **The Week in Torts**, it's designed to give you the headlines (while saving you hours of reading). Sign up on the Resources page of our web site.

RECENT CASE WINS //  
AWARDS AND ACCOLADES



**DID YOU KNOW?**

Did you know that five out of six of our named partners are Board Certified by the Florida Bar? Less than five percent of attorneys have earned this distinction.

## Super Lawyers

### FLORIDA SUPER LAWYERS

**Mark Clark, Donald R. Fountain Jr., Nancy La Vista, David C. Prather** and **Julie H. Littky-Rubin** have been recognized as Florida Super Lawyers for 2011. Just five percent of attorneys in Florida are recognized with this honorable distinction. **W. Hampton Keen** has been named an Up and Comer by Super Lawyers, and **Littky-Rubin** was further distinguished as one of the state's Top 50 Women for 2011 by the prestigious publication. The select group of Super Lawyers were also featured in the Wall Street Journal.

ATTORNEYS: MARK CLARK // NANCY LA VISTA  
JULIE H. LITTKY-RUBIN



### PARAPLEGIC CASE RESOLVED AGAINST HOSPITAL, DOCTORS

Attorneys **Nancy La Vista** and **Mark Clark** with in-house appellate attorney, **Julie H. Littky-Rubin**, successfully resolved a heartbreaking case for a client rendered paraplegic due to alleged medical negligence caused by a hospital and three doctors.

The client's case initially had been complicated after juror misconduct caused the judge to order a new trial. Though the defendants appealed, Littky-Rubin successfully convinced the Second District Court of Appeal to uphold the decision. Following the appellate court ruling in favor of our client, our attorneys negotiated a confidential settlement.



Attorney **David Prather** has been named to the new Judicial Nominating Committee [JNC] established by Senators **Bill Nelson** and **Marco Rubio**. Prather will serve for a two-year term in the JNC's Southern Conference of Florida.

ATTORNEYS: MARK CLARK // CYRUS NIAKAN



### ATTORNEYS SECURE \$425K VERDICT AFTER DEFENDANT OFFERS \$50K

Our client sustained a herniated disc in her cervical spine following a car accident in Broward County. She underwent three cervical epidural injections and received chiropractic treatment for her injuries. The defense argued that her injuries were not caused by the accident in question, but were pre-existing from two prior car accidents. As a result, the defendant only offered \$50,000 to settle the case. Nonetheless, attorneys **Mark Clark** and **Cyrus Niakan** pushed the case to trial. After a four-day trial, the jury returned a verdict for \$425,000 in July 2011.

ATTORNEY: JULIE H. LITTKY-RUBIN



**FOURTH DCA CONVINCED TO REVERSE, AWARDS PARAPLEGIC PLAINTIFF FULL VERDICT OF \$6.3 MILLION**



Appellate attorney **Julie H. Littky-Rubin** persuaded the Fourth District Court of Appeal to reverse a trial judge's ruling that allowed the jury to consider the defendant's seatbelt defense. The appellate court victory enables our client to keep her \$6.3 million dollar verdict.

The court found that the defendant only introduced speculative evidence that the cause of the client's partial ejection from the vehicle and resulting paraplegia was due to her not wearing a seatbelt at the time of the accident.

While the jury found Ms. Henry was 35 percent comparatively negligent, reducing the \$6.3 million dollar verdict to \$4.1 million, the Fourth District disagreed. It awarded her the full verdict because the seatbelt defense should have never have been submitted to the jury.



Attorney **Nancy La Vista** has been named treasurer of the Florida chapter of the American Board of Trial Advocates [FLABOTA]. She recently completed her term as president of the Palm Beach County chapter of ABOTA. Nancy has also been named to serve as a member of the Florida Bar's Civil Trial Board Certification Grade Review Panel.

## COMMUNITY CONNECTIONS



Continuing our vital initiative to provide our time, resources and support to those in Coleman Park – a historically rich, low income neighborhood in West Palm Beach – we have launched the **Clark Fountain Future Leaders Grant Program** to provide hands-on support and financial assistance to promising college students from the area. We have identified four deserving students that we are proud to support for the 2011-2012 academic year. In addition to providing financial resources, lunch-and-learns are being scheduled with the students, and we've connected them to our paralegal, Sandy Duncan, whose mother lives in Coleman Park and is eager to help these students succeed. Sandy has generously offered to serve as a "mentor" to these students, available for questions or to seek her professional advice.

To help the entire community of Coleman Park, Clark Fountain also held a **firm-wide drive** to collect hygiene products for students in desperate need of these critical supplies. The office proudly donated hundreds of items that were distributed during a back-to-school fair at the local community center.

If you'd like to be part of this important cause, please contact attorneys Julie Littky-Rubin or Cyrus Niakan, who are leading the initiative.



**MEET:**  
**CHERYL DISTEFANO**  
// Paralegal Investigator

After more than 23 years working closely with partner Don Fountain as a legal assistant on complex products liability cases, Cheryl recently became a paralegal who continues to be an integral component to the Clark Fountain team.

From the moment she receives a case she's immediately invested in every detail, focusing on the intricacies, finding the country's best experts, and digging in to find a successful resolution for each client.

"Cheryl has worked closely with me to build our products liability department and expand the team so we're in a position to regularly handle cases from around the country," Don Fountain said. "She is so dedicated that she's even been known to regularly drive to clients' homes to pick up documents to make it easier for them or their families after an accident. She's 100 percent committed and it shows daily."

Cheryl was 19-years old when she began working in the legal field, first with the County Clerk's office and then with a defense firm. In her spare time, she coordinates the Clark Fountain team that participates in the Susan G. Komen Walk for the Cure and has started volunteering with the Palm Beach County Guardian Ad Litem program.

ATTORNEYS: DON FOUNTAIN // HAMPTON KEEN



**FIRM SETTLES SEVERE BRAIN  
DAMAGE CASE REFERRED BY  
CALIFORNIA ATTORNEY**

When a Los Angeles, Calif. attorney realized that a case he had been litigating for three years against one of the nation's largest trucking companies on behalf of a severely brain-damaged client was not going to settle, he reached out to Clark Fountain to try the case.

Attorneys **Don Fountain** and **Hampton Keen** began the hotly contested trial before a 12-person jury in San Bernardino County, California. A week into the trial, a mistrial was ordered after the judge spontaneously commented on the evidence in front of the jury. Fountain and Keen insisted that the judge immediately reset the case for trial with a new jury, which he did 10 days later. In the meantime comments made by the discharged jury members convinced the trucking company to finally settle for a confidential amount.

Although our client's severe injury means that she does not even know that we represented her, we hope that the settlement allows her two young daughters to have a level of security in the future.

**BECOME OUR NEXT REFERRAL PARTNER:** *Like this case, our legal team has proudly resolved some of its largest, multi-million dollar verdicts and settlements throughout Florida and the United States for referral partners. Contact us if we can review a case with you in the areas of products liability, auto accidents, personal injury, medical malpractice and wrongful death. We also have an in-house appellate attorney regularly hired by other firms throughout Florida to assist with complex matters. Feel confident that Clark Fountain's legal team is there when you need it.*

ATTORNEY: JULIE H. LITTKY-RUBIN



### LITTKY-RUBIN ASSISTS LEGAL AID SOCIETY IN CRITICAL PRO-BONO WIN FOR LITTLE BOY

In a recent pro-bono case involving a two year-old boy whose father was unable to adequately care for him, **Julie H. Littky-Rubin's** recent appeals court victory successfully preserved the boy's rights while also giving him a chance for a solid future.

Along with the fine 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 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, as time passed, the toddler saw the man only as a playmate, while the parental bond intensified with his longtime foster parents.

Reminding us that the parental bond cannot be preserved at the cost of a child's future, the Fourth District ruled the trial court applied an incorrect legal standard, and ordered it to reconsider its refusal to terminate.



ATTORNEY: NANCY LA VISTA



### BLINDNESS CAUSED BY DEFECTIVE SOLUTION, SETTLEMENT REACHED

When someone has a procedure done in a doctor's office or hospital they trust and assume that the products their physicians use have been tested and are safe. However, this is not always the case, as one of our client's tragically discovered.

As a result of using defective solution, our client was blinded and contacted attorney Nancy La Vista to help. The case was resolved confidentially.

## MEET: STEPHANY KRAFT // Comptroller



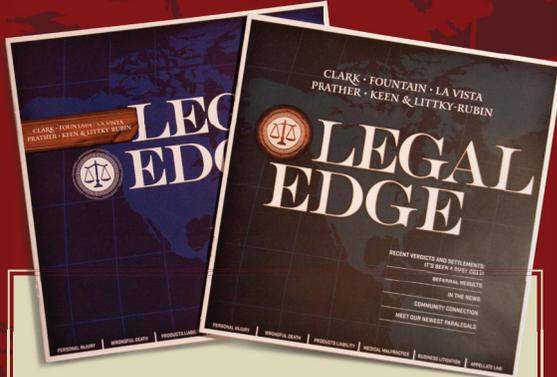
If you're wondering who the genius is behind-the-scenes handling all of the day-to-day accounting operations at the firm, meet Stephany. Since the firm has the financial resources to regularly handle significant cases, we rely on Stephany's financial savvy to manage hundreds of complex cases at all times.

"Creating and maintaining sound financial systems for a firm of this size and caliber is critical for its ongoing success," Stephany shared. "I treat the firm's money like my own; every penny counts."

Stephany is also responsible for creating and managing our state-of-the-art computerized accounting system, and helped establish the firm's policies and procedures to most effectively meet the standards of our clients, partners, the government and the bank. In addition to the internal accounting, she also handles the tax, insurance and human resources issues for the firm.

A 20-year veteran in financial services, Stephany started at the firm last Fall as a consultant, but rather than find a replacement as she typically has done in similar situations, we convinced her join the Clark Fountain team in a full-time position. Case closed!

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