

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



# LEGAL EDGE

FALL 2012

CREATING A SAFER SOCIETY

ALL SIX PARTNERS NAMED 2013 BEST LAWYERS

RECENT CASE WINS

VOTE TO RETAIN FLORIDA'S SUPREME COURT JUSTICES

AWARDS & ACCOLADES

COMMUNITY CONNECTIONS

PERSONAL INJURY

WRONGFUL DEATH

PRODUCTS LIABILITY

MEDICAL MALPRACTICE

BUSINESS LITIGATION

APPELLATE LAW

**Litigation Plays Critical Role in Automobile Safety Advancements**

When new model vehicles are introduced at car shows or in TV ads, very few people wonder how their new safety features came to be. While manufacturers rightfully attribute such advancements to visionary engineers and thoughtful designers, we can never overlook how successful litigation often compels the manufacturers to think about such safety features. As personal injury lawyers, we not only seek to help repair the lives of our clients, we also contribute to creating a safer society.

Clark Fountain's significant case wins have forced automobile manufacturers to revise — and in some cases scrap and completely redesign — their products, so that they are safer and more secure.

When you look at the photos on this page of how automobiles used to crumble and collapse upon impact with no interior infrastructure protecting the passengers, you can see how far automobile safety has come. Air bags, vehicle construction, braking systems, tires, window and mirror placement, ventilation systems, seat belts – the list goes on as to the many advancements made with the safety of the consumer in mind. In this arena, litigation has been an unsung, yet vital, hero, and we are proud to continue the pursuit of even greater progress.



Wishing a safe and happy holiday season to you and your loved ones.  
*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

ATTORNEY: JULIE H. LITTKY-RUBIN



**FIRM HELPS KEEP  
LOCAL RESTAURANT  
IN BUSINESS**

After a judge mistakenly agreed with the landlord in this landlord/tenant dispute, and ruled to evict a well established Palm Beach Gardens restaurant from its longtime location, attorney **Julie H. Littky-Rubin** helped them to stay put. In the case of Maida Vale, Inc. v. Abbey Road Plaza Corp, the trial court found both that the landlord had not only overcharged the tenant for common area maintenance (CAM), and owed the restaurant tenant money because of the overpayment, but also still ruled to evict the restaurant. The Fourth District agreed with Julie and Abbey Road that a tenant who has overpaid its obligations should not be evicted. The ruling allowed the restaurant to continue operating in its well-established location.



**NANCY LA VISTA NAMED  
PRESIDENT-ELECT  
OF FLABOTA**

**Nancy La Vista**, has been named President-Elect of the Florida chapter of the American Board of Trial Advocates (FL ABOTA). Nancy completed her one-year term as treasurer of the Florida chapter of ABOTA and was sworn in as president-elect at the annual convention on July 21, 2012. She served as president of the Palm Beach County chapter of ABOTA, the first female president in its history. During her tenure, the chapter was named the 2011 Chapter of the Year by the national organization.



**ALL SIX PARTNERS NAMED TO BEST LAWYERS 2013**

The prestigious publication, Best Lawyers in America, has selected all six partners – **Mark W. Clark, Donald R. Fountain, Jr., Nancy La Vista, David C. Prather, W. Hampton Keen, and Julie H. Littky-Rubin** – for inclusion in its 2013 edition.

Additionally, Mark and Donald are among an elite group that has earned this distinction for more than a decade. The publication singled out Mark for his successes in personal injury, product liability and medical malpractice; Donald and W. Hampton were recognized in product liability and personal injury litigation; Nancy was recognized for her expertise both in medical malpractice and product liability litigation; David for personal injury litigation; and Julie for her appellate practice.

Best Lawyers selects attorneys for inclusion based on an exhaustive and rigorous peer-review survey, comprised of more than four million confidential evaluations by the top attorneys in the country. The annual Best Lawyers publication has been described by The American Lawyer as “the most respected referral list of attorneys in practice.” Because no fee or purchase is required, being listed in Best Lawyers is considered a singular honor.

ATTORNEYS: W. HAMPTON KEEN // POORAD RAZAVI



**FIRM SECURES CLIENT'S FINANCIAL SECURITY  
FOLLOWING TIRE FAILURE AND ROLLOVER**

**W. Hampton Keen** and **Poorad Razavi** recently resolved a case involving a tire failure and subsequent rollover that resulted in catastrophic injuries to our clients. The firm filed a lawsuit alleging defective design and manufacture of both the vehicle and the failed tire. Although the respective defendant tire and vehicle manufacturer each denied any responsibility whatsoever even after a lawsuit was filed, with the trial date looming, the defendants settled the case for a confidential sum, assuring that the firm's clients will have the necessary resources to obtain proper medical care and financial security for the rest of their lives.

**DID YOU KNOW?**

**Super Lawyers**

Florida Super Lawyers named **Nancy La Vista** and **Julie H. Littky-Rubin** to its prestigious list of Top 50 Women Super Lawyers for 2012. **David C. Prather** was listed as one of the Top 100 Super Lawyers in the state. Super Lawyers also bestows its honors based on peer-selection.



ON NOV. 6, VOTE TO RETAIN FLORIDA’S SUPREME COURT JUSTICES



QUINCE



LEWIS



PARIENTE

Every six years, Florida’s voters are asked whether its appellate court judges and Supreme Court justices are incompetent or unethical, and if not, asks voters to “retain” them. This has nothing to do with politics or one’s political party, and judges in Florida never reveal their political affiliations because their “politics” are not relevant to making fair and impartial decisions for ALL. Judges vow to make decisions based on the Constitution, state law, and established precedent. Good judges follow the law, even when it involves making tough decisions.

However, as of late, groups with a political agenda want to take over the judiciary. They want voters to ignore how important it is to have judges who don’t answer to anyone but the law itself, and want politics to crush our third and only “independent” branch of government.

Recently, the Florida Bar polled all of the attorneys in the state regarding the quality of the three Florida Supreme Court justices who are up for merit retention: **Justice Fred Lewis, Justice Peggy Quince and Justice Barbara Pariente**. Irrespective of their political parties or personal feelings about decisions, **90 percent of the lawyers polled** voted that these justices **should be retained** on the court, because they continue to do their job of upholding Florida law in a manner fair for all of its citizens.

We at Clark, Fountain, La Vista, Prather, Keen & Littky-Rubin urge you to follow our many colleagues in the legal profession, and to vote YES on retaining these fine jurists on November 6th. An independent judiciary — judges who are guided by law, reason and fairness and not by political affiliation — is the very key to our democracy.



ATTORNEYS: DONALD R. FOUNTAIN, JR. // JULIE H. LITTKY-RUBIN



FIRM WINS SETTLEMENT IN ROAD DESIGN DEFECT CASE

Our client, and his wife of many years, visited Florida to evaluate the area as a potential home to spend their golden years.

Unfortunately, the barriers set up at an intersection under construction, impaired the ability of the drivers to see each other, and even though our client wore his seat belt properly, he was rendered paraplegic when the driver from the opposite direction crashed into his car.

The litigation of the lawsuit revealed negligently designed plans drafted by the architect and engineering firms, followed without question by the general contractor, resulting in a hazardous condition for all who entered the intersection. Adding to the danger, the inspection services firm failed to recommend a halt to the traffic flow to allow the dangerous condition to be remedied.

By demonstrating the violation of sight line regulations and standards, as well as a collective failure to recognize the problem, despite other accidents, our team successfully obtained a confidential settlement for our client.

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



MULTI-YEAR BATTLE WITH DEFECTIVE TIRE MANUFACTURER ENDS WITH SUCCESSFUL SETTLEMENT

Our client became catastrophically injured when one of the front tires of the accident vehicle suffered a tread and belt separation, causing the vehicle to lose control and crash on the shoulder of the road. The client was hospitalized for an extended period of time and required numerous surgeries. In addition, the client suffered a traumatic brain injury. These debilitating injuries rendered the client totally disabled and unable to continue prior employment.

After years of litigation, **Mark W. Clark** and **Cyrus S. Niakan** successfully convinced the tire manufacturer to settle the case prior to trial, citing defects with the design and manufacture of the failed tire. The lawsuit was the first of its kind for this popular brand of truck tire. The confidential settlement our firm obtained will help provide stability and support for our client’s future.

SAFETY ALERT!

MENINGITIS AND STROKE ASSOCIATED WITH POTENTIALLY CONTAMINATED PRODUCT

The Centers for Disease Control and Prevention and the Food and Drug Administration are coordinating a multi-state investigation of fungal meningitis among patients who received an epidural steroid injection, including two patients in Florida. Several of these patients also suffered strokes that are believed to have resulted from their infection. To date, more than a dozen deaths have been reported. Fungal meningitis is not transmitted from person to person. These cases are associated with a potentially contaminated medication. Investigation into the exact source is ongoing; however, interim data show that all infected patients received injection with preservative-free methylprednisolone acetate (80mg/ml) prepared by New England Compounding Center, located in Framingham, MA. For more information, visit <http://www.cdc.gov/HAI/outbreaks/meningitis.html>

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



CLARK FOUNTAIN SECURES PARAPLEGIC CLIENT’S FUTURE FOLLOWING CATASTROPHIC TIRE FAILURE

**W. Hampton Keen** and **Donald R. Fountain, Jr.** recently resolved a catastrophic tire failure case, which involved an alleged negligent inspection of the vehicle’s tires by a retail automotive shop.

The failure rendered our client paraplegic. Despite the defendant’s denial of any responsibility, W. Hampton and Donald documented through litigation that the client’s vehicle was, in fact, at the repair establishment, and that the facility should have removed the subject tire. Thanks to the settlement, the firm’s clients will no longer have to worry about their future.



**Clark Fountain** – Among Palm Beach’s Best: **Cyrus S. Niakan, Timothy J. Murphy** and **Poorad Razavi** together, enjoying the Palm Beach County Bar Association Annual Installation Banquet on June 2, 2012, at The Breakers Hotel, Palm Beach.





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



**FIRM'S SPECIALIZED  
TIRE EXPERIENCE  
SOUGHT IN CASE  
OUTSIDE OF FLORIDA**

A cross-country trip turned deadly when a tire on the accident vehicle suffered a tread and belt separation. Tragically, two of the occupants lost their lives and left their surviving family members wondering how the accident happened. Even though the accident occurred outside of Florida, the clients contacted Clark Fountain because of our specialized experience handling tire defect and automotive crashworthiness cases. Products liability attorneys **Mark W. Clark** and **Cyrus S. Niakan** set out to prove the tire was defective. After protracted discovery battles with the tire manufacturer, they were able to obtain confidential settlements for the grieving families.



**COMMUNITY CONNECTIONS**

Building on a successful relationship of helping our neighbors, while lending constructive energy to the community, Clark Fountain continues to support the Clark Fountain Future Leaders Grant Program, which provides hands-on support and financial assistance to promising college students from the Coleman Park neighborhood.

A springtime scholarship event recognized the hard work and progress of four students the firm supports and mentors. During the reception, the students were presented with checks to assist them with their educational goals.

Over the summer, Clark Fountain also collected approximately 150 pounds of school supplies for the students of Coleman Park. The firm's employees donated these supplies to help fill 3,000 backpacks for deserving students. The items were boxed and delivered to neighborhood representatives Cathy Gardner and Pastor Cameron of the Temple of Jesus Christ-Helping Hands Initiative (HHI), just in time to prepare the backpacks for the beginning of school.

"When we started our firm in 2010, we wanted to reach out to our neighbors in Coleman Park to show how much we value being part of our local community," said Julie Littky-Rubin. "In the last two years, we have gotten to know many of Coleman Park's community leaders and residents, and we feel honored to support them in their many efforts to enrich people's lives."

ATTORNEYS: DONALD R. FOUNTAIN, JR. // TIMOTHY J. MURPHY



**FIRM OBTAINS CONFIDENTIAL  
SETTLEMENT IN TRAGIC  
ROLLOVER CASE**

Clark Fountain obtained confidential settlements for the victims in a case involving a tragic rollover of an SUV, which resulted in the deaths of two teenagers and serious injuries among the other passengers. The rollover occurred on a remote desert highway in the western U.S., while a group of teenagers was traveling to summer camp. When the vehicle left the roadway and rolled over several times, the vehicle's restraint systems and roof structure failed to protect the occupants.



ATTORNEYS: NANCY LA VISTA // DAVID C. PRATHER



**FIRM SETTLES MEDICAL  
MALPRACTICE SUITS FOR  
OVER-RADIATION AND INJURY**

**Nancy La Vista** obtained a confidential settlement for the over-radiation of a patient who was being treated for cancer. In a separate medical malpractice case, **Nancy** and **David C. Prather** collaborated to reach a confidential settlement with the hospital and the doctor after the doctor allegedly misdiagnosed our client's condition, resulting in a catastrophic injury.



**CLARK FOUNTAIN SENDS ASSOCIATES  
TO HARVARD LAW COLLEGE**

Dedicated to constantly providing the best representation for our clients, the partners of Clark Fountain recently sent two of its associates, Cyrus S. Niakan and Timothy J. Murphy, to Harvard Law College. Sponsored by the American Board of Trial Advocates, Harvard Law College is an intense week of state-of-the-art trial advocacy led by world-renowned faculty at Harvard University. At Clark Fountain, we believe that providing the best representation for our clients can only be accomplished through ongoing professional development and experience.

**U.S. NEWS & WORLD REPORT  
RECOGNIZES CLARK FOUNTAIN AS A "BEST LAW FIRM"**

**Clark, Fountain, La Vista, Prather, Keen & Littky-Rubin** has been recognized in the 2012-2013 edition of the *U.S. News & World Report* and Best Lawyers™ rankings of the "Best Law Firms" in the country. The firm received a prestigious Tier 1 ranking in the areas of personal injury litigation, medical malpractice law and product liability litigation. The annual "Best Law Firms" publication, collaboration between *U.S. News & World Report* and Best Lawyers, features the top ranked U.S. law firms by practice area and by state/metropolitan area. The publication ranked law firms across 180 metropolitan regions.

## REFERRAL EXPERTISE



### WE'RE AVAILABLE TO HELP

**Clark, Fountain, La Vista, Prather, Keen & Littky-Rubin** enjoys a special partnership with hundreds of lawyers and law firms from across the state and country, who seek out our firm due to our special knowledge, resources and experience to co-counsel or to assume total case management of complex litigation. Referrals from other attorneys are a cornerstone of our practice, and we welcome the opportunity to review your cases, whether you need a committed partner or just a second opinion. We happily pay referral fees in accordance with the Florida Bar rules.

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