



# THE LEGAL EDGE



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September/October  
2018

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Clark, Fountain, La Vista, Prather, Keen & Littky-Rubin is pleased to help you evaluate any factual scenario or potential case you may have. We handle cases on referral or co-counsel basis around the state and country. Please visit our web site for details or call us at 866.643.3318

## Case Resolution

### **Confidential Settlement Reached with Major Corporation for Alleged Violations of *Florida's Deceptive and Unfair Trade Practices Act***

Don Fountain and Mark Clark recently teamed with another local law firm to present business damages claims against one of the world's largest corporations. The firm accepted this commercial case on a contingent fee basis and pursued claims based upon *Florida's Deceptive and Unfair Trade Practice Act* known as (FDUTPA) as well as a claims surrounding fraud and misrepresentation.

After litigating the case for years the firm was able to obtain a confidential settlement for its corporate client.

The firm was pleased to handle the case on a contingent fee basis because the corporation seeking our firm's representation had been so adversely affected by the actions that led to the lawsuit that they were financially unable to hire a lawyer on an hourly basis to handle the claims against this massive corporate defendant.

Although contingent fee arrangements are the norm in personal injury and product defect litigation the vast majority of corporate and commercial litigation is handled on an hourly basis by most firms.

Our firm does not charge by the hour and welcomes the opportunity to consider commercial cases on a contingent basis to help make it possible for businesses and corporations to pursue their claims.

### **Firm Reaches Multi-Million Dollar Settlement in Nevada Product Defect Wrongful Death Case Where Insurance Carrier Spoliated Evidence.**

A confidential multi million dollar settlement on behalf of the mother of a young boy who was killed in a tragic motor vehicle incident in Nevada. The child was ejected from a vehicle that was uncontrolled due to a suspension failure.

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vehicle that was uncontrollable due to a rear axle tire failure and was rolling through a median. The child was ejected from the vehicle and into oncoming traffic and killed by a semi tractor trailer.

Claims were brought against the driver of the vehicle, the manufacturer of the tire, and in the automobile insurance company that insured the driver. After extensive litigation involving depositions across the United States and multiple appeals to the Supreme Court of Nevada, the parties were able to reach a settlement prior to trial that appropriately compensated the mother for the loss of her child. The settlements included an extra contractual settlement paid by an insurance carrier for their failure to make appropriate offers to timely settle the case on behalf of their insured driver to avoid an excess judgement and a bad faith lawsuit.

***U.S. News and World Report Best Lawyers® has recently named Clark, Fountain, La Vista, Prather & Littky-Rubin to its 2019 Best Law Firms list.***

It will be the firms' 8th consecutive year receiving the award, which is based on our high rankings in Personal Injury Litigation, Product Liability Litigation and Medical Malpractice Law. The "Best Law Firm" selection process includes exhaustive peer review surveys in which tens of thousands of leading lawyers confidentially evaluate their professional peers. Clark, Fountain, La Vista, Prather & Littky-Rubin is honored to be included in the oldest and most respected peer review publication in the legal profession. Recognition in this prestigious publication is just one example of the hard work and dedication we give to each client we have the privilege of representing.

## Legal Insights

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### Florida's Impact Rule: No Harm, No Distress

After being in an accident of any sort, it is common for survivors to experience significant emotional pain and suffering. However, due to Florida's impact rule, [seeking noneconomic damages for such trauma is more difficult than in most other states.](#)

The impact rule requires in most personal injury claims for the plaintiff to have suffered some sort of physical harm or contact in an accident or incident before they can also seek damages for emotional pain.



On our blog, we discuss Florida's impact rule, how it may affect a person's ability to seek compensation through the civil justice system, and various exceptions to the rule.

### **Commercial Trucking Regulations: Understanding the Obligations of Trucking Companies**



Weighing as much as 80,000 pounds, slow to stop, and difficult to maneuver, commercial trucks and tractor-trailers are among the most dangerous types of vehicles on public roads. [Because trucks pose such great risks to public safety,](#)

trucking companies have many obligations and regulations with which they must comply. On our blog, we discuss important safety regulations that apply to the trucking industry, how violations commonly occur, and how our team works to help truck accident victims and their families as they work to hold negligent trucking operators liable for causing preventable harm.

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### **When Can I File a Lawsuit for My Personal Injury?**

Under Florida Law, there is no specific criteria that must be met in order to file a lawsuit for a personal injury you sustained due to the negligence of another. The only exception is when it comes to injuries suffered in a motor vehicle accident.



Florida is a no-fault state, which means [drivers involved in accidents are compensated through their insurer regardless of who caused the collision.](#) Anyone who drives in Florida is legally obligated to have no fault insurance coverage. Car accidents resulting in serious injuries increase the likelihood that victims will need to pursue lawsuits, as they often cause significant economic and non-economic damages. Visit our blog to learn more about serious injury auto accident cases how our firm can help.

## **RECALLS**

### **2.43 Million Toyota Hybrid Vehicles, Including Prius, Recalled Due to Stalling Problems**



Toyota is recalling [2.43 million hybrid](#)



[vehicles](#), including over 800,000 in the U.S., for potential problems with stalling. In an announcement made on October 5, 2018, the company stated that in rare cases, vehicles might fail to enter "failsafe" mode, lose power, and stall. Power steering and brakes would still work, but stalling at faster speeds can increase crash risks.

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### **USDA Announces Recall of JBS Tolleson Raw Beef Products Following Possible Salmonella Contamination**

The USDA published a news release earlier this month regarding JBS Tolleson's recall of roughly 6.9 million pounds of various raw beef products which may be contaminated with Salmonella Newport. The recalled items, [including ground beef, were packaged on various dates from July 26, 2018 to Sept. 7, 2018, and are likely gone from use, expired, or in consumers' freezers.](#) The USDA's Agriculture's Food Safety and Inspection Service (FSIS) identified 57 case-patients from 16 states affected by the products.



Recalled beef products were sold in Florida at Winn-Dixie and Harvey's stores. The FSIS is concerned some products may be frozen and in consumers' freezers. Consumers who have purchased these products are urged not to consume them. These products should be thrown away or returned to the place of purchase.

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### **Walmart Recalled 250,000 Camping Axes Over Detachment Risks**



Walmart has announced that it is recalling nearly 250,000 axes sold at stores nationwide because the head of the axe can detach from the handle, potentially causing injuries. The recall is for Ozark Trail camp axes sold exclusively at

Walmart stores and online nationwide between January 2017 and July 2018 for \$8. [The retailer has received several reports of consumers suffering minor injuries due to the detachment issue.](#) Anyone who has purchased a recalled axe is being advised to return it for a full refund.

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### **145,000 Yamaha Golf Cars, Personal Transportation & Specialty Vehicles Recalled Due to Crash Hazard**

Yamaha is recalling 145,000 golf cars, personal transportation vehicles. and



specialty vehicles due to increased crash risks created by accelerator pedal springs which can break. The recall includes model year 2016 through 2018 gas and electric powered golf cars and vehicles, including Drive and Adventurer models.



[Yamaha has received over 400 reports of incidents involving spring failures.](#) Consumers are advised to immediately stop using recalled vehicles and to contact a Yamaha golf car dealer for a free repair.

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### **Kia Recalls Nearly 30,000 Niro Hybrids Over Electrical Fire Concerns**



Kia has issued a recall for 27,030 Niro hybrid-electric hatchbacks. All the vehicles in question are 2017-2018 models with build dates between Nov. 1, 2016 and Sept. 11, 2017. The recall was issued over a power relay assembly which may not have ample connection between its contacts, which can increase resistance and generate heat that [may lead to thermal damage and possible fires.](#) Dealers will perform inspections and free repairs as needed.

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