

## How Gables Estates Residents Have Helped Shape South Florida And The Nation

ATTORNEY STEVEN C. MARKS'S SIGNIFICANT ROLE IN THE NFL CONCUSSION CASE

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**F**ootball is the great American pastime, but accusations that the NFL knowingly misled players as to the risks of repetitive head trauma and worse, improperly influenced "medical research" have plagued the sport since the revelations surfaced several years ago. The concussion class-action lawsuit involving over 18,000 retired NFL players made headlines all across the nation, spreading awareness of the possible neurological health impacts for those dedicated players throwing the pigskin around. It was the formidable work of doctors, players, and lawyers who came together to reveal the health issues that resulted from constant head injuries on the field. What you may not know, however, is that one of your Gables Estates neighbors, Steven C. Marks, managing partner with Podhurst Orseck, P.A., played a significant role in litigating against the NFL and helping the players secure a landmark settlement, which includes an uncapped fund for seriously injured players.

Steven is a longtime Miamian and grew up in the nearby community of Gables by the Sea. He would walk to Gulliver Academy, the same school his son and daughter attend today. "Those were great years; I had a lot of close friends. It was a much smaller community but Miami has changed dramatically since those years," Steven reminisces about his school years. After graduating from high school, Steven attended the University of Florida for his undergraduate studies, and then pursued a law degree at the University of Miami Law School.

Steven's family was involved in construction and development, and his intentions were to go into the family business. Although he went to law school, he didn't plan on actually practicing law. But when he graduated in 1985 it was a terrible time for development and the construction business. "I figured if I didn't practice law, I had a job working at a securities firm I was going to take," Steven remembers thinking. Everyone at UM told him that he was crazy. He was editor-in-chief of the Law Review, cum laude in law school, and had many opportunities because of his academic standing.

Steven was also familiar with the practice law because his father had dealt with many lawyers from his construction business. "My personal life experience has made it easier," Steven acknowledges. When he got the offer from Podhurst Orseck, it hadn't hired in many years. It was a small firm and everyone told him, "You have to take that, you can't give that up. They may not hire for another 10 years!" He realized that the offer was a once-in-a-lifetime opportunity, and took the job with the small but well-respected litigation firm. "I joined with very little information. I didn't even know how much I was going to make. They didn't even have an office for me, I started off in a closet," Steven laughs. He's been with the partnership since 1985 and relates, "I've been blessed ever since. I've been lucky to

practice with a mentor who is somebody I look up to and respect tremendously and admire. Aaron Podhurst is one of a kind. It's been a privilege and a great journey, as he would put it."

Steven focused on cases involving mass disasters, from malpractice and products liability to automobiles and especially aviation. His father was a military pilot and taught Steven how to fly a plane when he was 12 years old. The aviation focus of the firm's practice was a perfect fit. Steven started with what Aaron taught him and expanded from there, involving himself in an impressive amount of mass disaster cases. So, how did someone who focused on aviation and mass disasters wind up litigating the NFL concussion case? Steven says that the, "NFL story is unusual. It wasn't something I was looking for, it kind of fell in our laps."

It began when Steven learned about a Massachusetts professor studying neuro-cognitive injuries at medical facilities associated with Harvard University. This cutting-edge research confirmed a link between brain trauma and neuro-cognitive conditions. At the same time, the NFL had been publishing papers misrepresenting the relationship between concussive events and the cognitive and psychological problems that many former NFL players were facing. The NFL was paying for reports that were false and misleading. Steven closely followed these events, in addition to subsequent congressional hearings, and thought that it was a remarkable story.

For about a year, Steven and his partners, Stephen Rosenthal, Ricardo Martinez-Cid and Matt Weinshall had been taking their time looking into the case. He hadn't heard of any lawyers working on the case until a friend of his, Tom Girardi from California, filed a concussion lawsuit against the NFL. Steven filed a case on behalf of several former players soon after that. Many more players joined the case because, as Steven said, "The players are like a family; they keep in touch with each other and help each other out. So once the first few cases were put together, the word spread pretty quickly."

The class action lawsuit was eventually named Turner V. NFL. Kevin Turner, formerly of the Patriots and Eagles, stepped up as the class representative. He had developed ALS as a result of countless concussive and sub-concussive hits. Kevin was a local hero in Philadelphia, demonstrated in the HBO movie about him titled American Man. Steven looked towards Kevin's Eagles helmet, as it proudly sat in his office as a token from the man who recently passed in March, and said that he "grew to respect and admire Kevin. He was a wonderful person even to the end his strength was unimaginable. Somebody that would have the courage he had to fight this as long as he did. Even when he was weak we were traveling around the country and he was in court and giving press conferences."

The concussion case had all sorts of challenges. Players had collective bargaining agreements that required arbitration, which



The late Kevin Turner, leading plaintiff in NFL concussions lawsuit, battling ALS

would have ended the litigation, there were questions whether the claims fell within the collective bargaining agreements, and proving causation was difficult because most of them had played when they were younger. Steven was not deterred: "I always thought that, given the story of what the NFL had done and how bad their conduct was, that this had PR potential." Real problems arose for the NFL because the injuries were so severe. Some of the players who Steven represents suffer from ALS, Parkinson's, dementia, and other serious illnesses.

After Steven and a few others had filed lawsuits, the cases were consolidated and sent to Judge Anita Brody in Philadelphia, who appointed Steven to a leadership committee to guide the litigation on behalf of the players. The case was divided into two classes: symptomatic players and asymptomatic players who were at risk of developing serious cognitive and neurological conditions in the future. Kevin Turner represented the symptomatic class while Shawn Wooden, a former Miami Dolphins player, was co-lead plaintiff for the asymptomatic class.

While the NFL and the players fought through litigation, confidential settlement negotiations began. Four lawyers, including Steven, negotiated for almost 2 years. A deal that started off as 20 pages then turned into hundreds of pages as time progressed. "I always marveled at how it remained confidential

for all that time. Not because of the four plaintiff's lawyers, but there were so many people involved on the other side," Steven admits. There was lots of interest in the controversial case and it's amazing that during all that time nothing was leaked.

"One thing I did promise Kevin, which was why he gladly served as lead plaintiff, was that he wanted the public to be aware," Steven says. He is proud to see that the public's understanding of the risks of football has changed. While Steven was working on the case, Hollywood producers started filming the critically acclaimed drama *Concussion*. The movie tells the true story of pathologist Dr. Omalu's research of football players who experienced constant head trauma and their disturbing psychological and cognitive conditions. Dr. Omalu concluded that many players suffered from Chronic Traumatic Encephalopathy, or CTE. Along with the movie, ESPN was running stories almost every day and the book, *League of Denial*, which further documented the NFL's misconduct, was published. The case and consequences of sports-related head trauma became frequent topics of conversation.

The original studies by neurologists on sports-related head trauma actually investigated girls' soccer. The studies found that successive head trauma, even if mild, is worse than a single concussive event. The constant hitting and shaking of the brain

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leads to brain swelling. Steven and his team are glad that the public has become more aware of CTE because the danger it poses to young children is significant. Neurologists even caution about playing football under the age of 13. A study revealed that a college football player suffers approximately 1,000 hits in an average season, while a pro football player suffers approximately 600 hits in an average season. As a result of this increased awareness, warnings have been published, rules have been set in place that prohibit players from reentering the game after concussions, doctors are required to be on the field, and restrictions have been placed on helmet-to-helmet contact.

The case was challenging. Steven and the team of lawyers with whom he worked had to define a class, evaluate actuarial analyses, develop a Baseline Assessment Program which provided health benefits and testing, collect biographical information on thousands of players so that qualified medical providers could be identified in close proximity to the players, and figure out what conditions should qualify for monetary awards. With several hundred players as a sample, they had to figure out the incidences of certain neurological conditions and compare them to background rates of the general population. Doctors had to predict the likely incidence of compensable conditions for roughly 18,000 players. The tests had to be done to define a clear linkage between head injuries from football and the neurological and psychological conditions that players suffered from. The NFL was willing to compensate players who played for an extended period of time and had developed severe conditions, but not more common conditions, such as insomnia or mild depression.

A lot of well-known players were front and center in this battle with the NFL. Steven and three other attorneys eventually reached a final

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settlement with the NFL of an uncapped fund. It is a historic outcome since there has never been a class action settlement involving an uncapped, unlimited fund.

Steven and his colleagues succeeded in establishing a fund that would be available to all players through the rest of their lives, a necessity because it is not clear when or which players will develop severe symptoms. Another significant feature of the settlement that Steven and the team of lawyers were able to negotiate is that it does not require proof of causation. This was a major victory, because otherwise they would have had to fight individual battles for every player.

The settlement provides substantial monetary awards to players who have been diagnosed with dementia, Parkinson's disease, and ALS, and to certain deceased players diagnosed with CTE. The players also retained their rights to benefits under their collective bargaining agreements.

The settlement underwent multiple appeals, but the players and NFL recently prevailed in the Third Circuit Court of Appeals, which affirmed that the settlement was fair and reasonable. Steven believes that, with the settlement, the NFL has owned up to its mistakes. “They were responsible, reasonable and fair to the players,” Steven says. “The NFL did the right thing and all you can do is respect them for doing the right thing and acknowledging an issue and taking care of it. I wish more people would do that.”

Steven understands the love for the sport, but realizes how badly it can affect players. He played intermural football in his youth, and his son wanted to play football ever since he was a child. Much to his chagrin, Steven had promised his son he could play football in middle school, before he knew the dangers of concussions. Steven kept his promise and let him play football when he was in middle

school. I am glad that Eric's interest turned to soccer. Ironically, the first thing the football coach (and more recently the soccer coach) handed him was a waiver and concussion warning notice. Steven started laughing and said, “So I'm responsible for these waivers?” and the coach laughed and said, “Yeah you're the reason they also have a poster in the locker-room.”

Steven's journey through the concussion case brought him a real-life understanding of the impact. “I think most families today thank god for Kevin Turner, Shawn Wood, and other players that had the courage to bring this to light. It is now a part of our common awareness and it should be. There should be no reason to risk people's long-term neuro-cognitive abilities for a sport, especially since most of them are doing it for fun, not as a career, and those risks aren't worth it,” Steven states.

Steven Marks has made Gables Estates proud of his continuous efforts to not only help individuals, but the whole nation in raising awareness through the NFL concussions case. It's changed the course of history for the better. We are honored to feature Steven's story in this issue and we hope you say “hi” next time you see him in the neighborhood.

We hope you enjoyed reading how your Gables Estates neighbor Steven Marks has helped shape South Florida and the nation. We believe there's value in helping you connect with your Gables Estates neighbors. Our aim, as your exclusive Gables Estates newsletter, is to share remarkable stories like these. Look forward to receiving *Life In The Estates* each month, and if you have an interesting story to tell, or know someone who does, feel free to contact the publisher at:  
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