

# NFL Concussion Settlement

## \$765 Million Settlement



On August 29, 2013, in cooperation with Marc Albert and several other prominent attorneys of the plaintiffs' bar, the NFL agreed to a Global Settlement that would compensate former players of the league that had suffered injuries due to concussions the sum of \$765 Million.

Marc S. Albert originally filed a lawsuit on behalf of 11 former NFL players in the District Court of New Jersey against the NFL for serious brain injuries suffered due to concussions during their time playing in the league. Mr. Albert, together with co-counsel Seeger Weiss were the pioneers of the case, bringing the first concussion related claims to the attention of the league. The case filed by Mr. Albert detailed the NFL's protocol of returning players who had suffered concussions back to play shortly after they sustained the injury – often during the same game. This irresponsible and dangerous practice was followed for years, despite overwhelming medical evidence that all concussions - including seemingly mild ones – permanently damage the brain

and hasten mental decay, including early onset of senility and dementia, especially when they recur frequently.

The plaintiffs in the case also alleged that since the 1990s, the NFL has misrepresented the medical evidence on the issue of concussions through its “hand-picked” committee of unqualified physicians who were purportedly researching the problem. The NFL's Mild Traumatic Brain Injury Committee had been established by the League to study post-concussion syndrome in NFL players. Remarkably, however, the NFL appointed a rheumatologist, Dr. Elliot Pellman, to chair the MTBI Committee, rather than a qualified neurologist. Dr. Pellman, who was trained in joint and muscle treatment, not head injuries and his Committee would go on for the next 13 years minimizing the significance of concussions.

Finally, the case brought to light for the first time the dangerous practice of administering Toradol injections to players in a pre-game setting, an issue that has since become a hot button topic in the media including but not limited to a segment on HBO Real Sports. For decades, NFL players have been lining up in locker rooms for Toradol injections before games with injections being administered in a “cattle call” fashion one

after the next, often in the absence of any documented injury. Expert neurologists agree that the administration of Toradol to NFL players in a pre-game setting is a dangerous and irresponsible practice and puts players at a significant risk of harm. Toradol, a non-steroidal anti-inflammatory, increases the

risk of bleeding, a major concern for NFL players who are about to step onto a football field and butt heads for three hours. In addition, because Toradol masks pain, players who have suffered a concussion during a game will likely not feel many of the symptoms that they would under normal circumstances, such as a severe headache, allowing for diagnosis of the condition and removal from the game.

**Following countless settlement meetings with NFL attorneys and representatives, the parties agreed to a global \$765 Million Settlement which has been presented to Federal District Court Judge Anita Brody for approval.**



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# Boating Accident -Wrongful Death- \$2.9 Million Settlement

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Marc S. Albert is pleased to announce the \$2.9 million settlement of a wrongful death action brought on behalf of the family of a 41 year old technologist who was tragically killed in a boating accident in Greenport, Long Island. The settlement is the culmination of nearly three years of litigation in which multiple obstacles were encountered and ultimately overcome, the most notable of which was the insurance carriers' disclaimers for what they deemed to be a criminal and/or intentional act on the part of their insured in causing the subject accident.

The incident occurred when, after a night of socializing with friends in Eastern Long Island, our client was invited by one of those friends onto a 30 foot Grady White vessel which he owned. Three other individuals were also invited onto the boat. Unfortunately, the owner and operator of the boat was highly intoxicated and operating the boat in an erratic manner when, without warning, the boat struck the Greenport Jetty, a 1000 foot long and 25 foot wide structure constructed of large boulders. Our client, who was seated on the bow of the boat, was propelled into the water and onto the Jetty upon impact suffering blunt force trauma to his head and other serious injuries from which he ultimately drowned. His body was not recovered from the water until three days after the accident at which time an autopsy confirmed the cause of death to be blunt force trauma and drowning. One of the other passengers of the boat was trapped under the boat after the boat capsized and also drowned.

**While the tragic loss felt by this wonderful family will always be felt, our clients expressed a feeling of vindication due to the successful result and closure of this case.**

Marc Albert commenced an action on behalf of our client's family—his spouse and two minor children—against the owner and operator of the boat in the United States District Court, Eastern District of New York. The defendant's insurance carriers immediately disclaimed coverage for the loss citing exclusions in their respective policies for criminal or intentional acts. Their insured, who had been arrested at the scene and found to have a blood alcohol content of .15, nearly double the legal limit in the State of New York, subsequently pled guilty in a criminal proceeding for criminally negligent manslaughter. As the case proceeded towards trial, the insurance carriers commenced a Declaratory Judgment action seeking to enforce their disclaimer.

The litigation posed several significant obstacles in addition to the coverage issue. Primarily, plaintiff's conscious pain and suffering claim was being combated by testimony that nobody had seen our client alive following the impact. On this issue, Mr. Albert retained noted pathologist Dr. Michael Baden, who opined that the plaintiff in this case would have been conscious and able to experience pain and suffering for at least five minutes after he was thrown into the water under these circumstances

and that, if he were able to swim or tread water, he would have remained conscious longer.

With respect to plaintiff's future lost earnings claim, a significant concern was the fact that the plaintiff had not worked for almost two years prior to the date of the incident. On this issue, Mr. Albert retained an economist, Dr. Conrad Berenson, and obtained testimony from a headhunter who had worked with our client in previous years to show our client's significant earning potential and the amount that was lost in future earnings due to his unfortunate passing.

Finally, a significant issue existed as to the amount of coverage—which was limited—and the fact that a lawsuit had also been commenced by the family of the other passenger who had been killed in the subject accident, a 21 year old girl, against the owner and operator of the vessel.

After the completion of discovery and as the parties awaited a trial date, both sides agreed to participate in a non-binding mediation proceeding in an attempt to resolve the case amicably. With the Declaratory Judgment action and a decision as to whether coverage existed for this loss still pending, Mr. Albert procured a \$2.9 million settlement offer on behalf of our clients following extensive negotiations at the mediation proceeding.



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# Hunting Accident

## Confidential Seven Figure Settlement

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On December 8, 2007, our client, Lucio Biase, a fit and active 31-year old Columbia University graduate, was the victim of an incident that would forever change his life. Having been invited to participate in a weekend of duck and pheasant hunting at a California Ranch in by a college classmate and co-owner of the ranch with his father, Biase boarded a plane to California for what he expected would be an enjoyable weekend. What followed, however, was a physical and emotional nightmare for Biase that will continue forevermore into the future.

**Marc Albert started an action on Mr. Biase's behalf in San Francisco, California. After several years of litigation, a mediation was held by and between the parties and a confidential seven figure settlement was ultimately agreed to.**

It was during a hunting excursion at the Ranch in the afternoon of December 8, 2007, when Biase was shot by an inebriated and drug-impaired guest of the ranch owners from a range of approximately five feet. The blast of this guest's 20-gauge shotgun nearly blew Biase's foot off. The guest, who was and, upon information and belief, remains a long-time friend of the owners of the ranch that had been invited to the hunting weekend by them, was a known abuser of alcohol and drugs. The ranch owners compounded this problem by plying him with alcohol throughout the day of the subject hunting excursion.

The ranch owners started serving alcohol early in the morning, furnishing this guest and others with cognac-spiked coffee in lieu of breakfast. Later, they would give a case-and-a-half of beer to their guest, who was already highly-intoxicated by this time, to take with him on the afternoon excursion. Despite his obvious intoxication and knowledge that their guest had also

smoked marijuana prior to the afternoon hunt, the ranch owners gave him the rifle that they had been storing for him and provided him with ammunition with which to shoot. Shortly after the excursion began, Biase was shot by the guest in the right lower leg from a mere five feet away. Biase's leg, which

was nearly lost in the shooting, was ultimately saved through multiple surgeries. However, he sustained a permanently disability in the incident, was relegated to using a cane and will be forever unable to perform many of the activities to which he had become accustomed prior to the incident.



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# Alternative School Abuse

## Confidential Seven Figure Settlement

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On behalf of six students of an alternative school named the Edwin Gould Academy, Marc Albert filed suit alleging both physical and emotional injuries which the students suffered at the hands of violent and abusive staff members. After a lengthy litigation uncovered documents supporting the plaintiffs' claims of abuse, Mr. Albert brought the case to a successful resolution through a confidential seven figure settlement.

The Edwin Gould Academy, which was founded in 1990, receives foster-care children by referral from New York City and state child welfare agencies. At the time the case was filed, it housed 150 to 200 youths from ages 12 to 20. The suit, which was filed in

State Supreme Court in the Bronx, accused the staff of carrying knives and guns, abusing drugs and alcohol, and beating, choking and illegally injecting their charges with antipsychotic drugs like Thorazine. It also alleged that some members of the staff offered to share marijuana with the children under their care and harassed them verbally, warning them to "sleep with one eye open" and telling them they would likely "wind up dead or in jail."

Mr. Albert's investigation into the school and its staff brought to light a horrific atmosphere where students essentially lived in fear. The victims of the abuse not only received just compensation for the physical injuries and emotional torture that they suffered while attending the school, but also were provided with a sense of closure as to a time in their lives that they would certainly like to forget.

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# Medical Malpractice

## \$2 Million Settlement

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The Law Offices of Marc S. Albert is pleased to announce the settlement of a tragic medical malpractice case which was brought on behalf of the family of a 30 year old wife/mother who died as a result of a negligently performed diagnostic mediastinoscopy and biopsy surgical procedure on March 4, 2009. The case, which was brought in the Supreme Court, New York County was recently settled for the sum of \$2,000,000.00 at a pre-trial mediation.

It was our position in the case that the defendant surgeon was negligent in failing to perform the surgery in the first place given the patient's condition and that the manner in which he subsequently carried out the procedure also deviated from the standard of care. Our client had been previously diagnosed with Superior Vena Cava Syndrome (SVCS), compression of the Superior Vena Cava, which makes a mediastinoscopy a far more dangerous procedure than it would be otherwise. A patient with

SVCS undergoing this surgery will face a significantly greater risk of bleeding during the procedure and increased difficulty in controlling a bleed should one occur. Unfortunately, this is precisely what occurred during the surgery, as the surgeon tore the plaintiff's Superior Vena Cava, leading to tremendous bleeding which he could not control. The plaintiff never regained consciousness following the procedure and was pronounced dead later that same day.

The treating surgeon not only performed the mediastinoscopy despite the enhanced risk that the procedure carried rather than other safer alternative procedures, he never even mentioned the words "Superior Vena Cava Syndrome" to the patient or discussed the risks involved. During the procedure, it was our claim that the surgeon found himself out of position with his biopsy forceps being far lateral from where he should have been, causing a bleed in the lateral wall of the SVC. It was our claim that if the procedure had been performed properly, the surgeon could not possibly have gotten to the lateral aspect where the bleed occurred. A bleed in this area, which ordinarily does not occur in Mediastinoscopy creates an enormous risk as there is

nothing to buffer it or prevent the bleed from going directly into the right pleural space.

The result was, simply put, a tragedy, leaving a young man without his 30 year old wife and their 6 year old son without a mother. It is certainly the hope that the

successful resolution of the case can help this truly wonderful family begin to look forward to what will, no doubt, be a bright future together.

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# Windsor Wildcats Bus Accident

## \$36 Million Settlement



On January 29, 2005, 19 players, coaches and family members of the Windsor Wildcats, an Under 21 Female Canadian hockey team boarded a Coach Canada bus in Windsor, Ontario for a trip that would take them into Rochester, New York for a hockey tournament. The events that would follow later that day would go down as one of the most memorable and tragic bus accidents in New York State history.

Coach Canada assigned new driver, 24 year old Ryan Comfort, who had virtually no bus driving experience and minimal training to the charter trip. Comfort had slept a total of two hours in the 24 hours leading up to the crash and decided to sit in the stands to watch the Wildcats play in their hockey game on the afternoon of the accident rather than getting some much needed sleep. After the game ended, the group returned to a nearby hotel to change and then went out for lunch at a restaurant less than a mile away. While at lunch, Comfort was spotted falling asleep at his table with his food in front of him.

The group re-boarded the bus after lunch for a trip up to Swain Ski Hill to go skiing. As the bus approached the Groveland Overpass on Route 390-S, Comfort lost control of the vehicle and it barreled off of the roadway directly into a 70 foot tractor trailer which was illegally parked on the shoulder. By all indications, Comfort had fallen asleep at the wheel. The tremendous impact between the vehicles sheered the bus in half and killed three

passengers on the bus, team coach Rick Edwards, his 13 year old son Brian Edwards and one of the player's mothers, Cathy Roach, as well as the tractor trailer driver, Ernest Zeiset, and seriously injured numerous others.

Marc Albert represented ten (10) of the victims of the accident, including the Edwards family that lost husband/father Rick and his 13 year old son Brian in the crash. Lawsuits were subsequently filed on behalf of the victims of the crash against the owners and operators of both the bus and the tractor-trailer. A lengthy discovery process ensued during which dozens of depositions were conducted and boxes upon boxes of documents were exchanged. A liability trial was held in the Supreme Court of Livingston County in order to assess the percentage of fault for each defendant in causing the accident. During the course of the trial, the defendants stipulated to a liability split

of 90% to the bus and 10% to the tractor trailer. Before damages could be assessed, however, a critical issue remained – whether New York or Canadian damages law would be applied to the case.

The choice of law issue in the case was of the utmost importance because in Canada, there is a cap on pain and suffering damages

in the amount of \$326,000. There is no such cap in New York. Because the vast majority of the plaintiffs' claims had value well in excess of the cap amount, the decision of which law to apply in the case was going to have a profound effect on the ultimate measure of damages that would be received by the plaintiffs. In a groundbreaking decision, New York's highest court, The Court of Appeals ultimately determined that New York law would apply to the case, thereby allowing the plaintiffs to recover the full measure of their damages instead of being "capped" at a completely inadequate amount.

With this ruling in place, Marc Albert tried the first damages case on behalf of three of the victims of the accident whose injuries were somewhat minor in comparison with the other passengers of the bus. The trial resulted in a \$2.25 million verdict by a Livingston County jury and led directly to the parties discussing a global settlement of all the cases. Led by Marc Albert, the parties would ultimately enter into global settlement of the case for the total sum of \$36 Million that concluded what had been a six year litigation.

**“This was a phenomenal and fitting result for what is truly a wonderful group of people. The passengers of that bus have lived with the memories of the tragic accident for the last six years, but hopefully with the successful conclusion of this case, they can gain some closure and move on to the next chapter of their lives.” -Windsor Star, Canada**



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# Rely Health Services

## \$1.5 Million Settlement

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On June 28, 2012, the Law Offices of Marc S. Albert filed a lawsuit against Rely Health Services, its parent companies and one of its employees in the Supreme Court, Erie County relating to a brutal attack that took place at the home of Julius and Elisabeth Gelber in Scotia, New York in November, 2009. The attack, which was covered extensively by the media and resulted in a 22 year prison sentence to the felon responsible for the attack, sent shockwaves through the small upstate New York town where the Gelbers had lived for more than 30 years.

The events that led to the tragic set of circumstances that would follow began when the Gelbers hired Rely to provide home health aides to help care for Dr. Gelber, a retired urological surgeon who had been relegated to a wheelchair following a stroke. The Gelbers would leave their back door open each day and the Rely aides would come into the home to provide assistance to Dr. Gelber. Melissa McCray was one of the aides employed by Rely.

One evening in November, 2009, McCray decided to bring her husband Juan into the Gelber home unannounced, an inexcusable breach especially given the fact that Juan had a long history of drug abuse and violent crimes against the elderly. The Gelbers immediately asked McCray to have her husband leave and then called Rely to complain about what had just occurred. Rely failed to conduct any investigation into the incident and

failed to take action of any kind. In fact, Rely failed to even warn the Gelbers to lock the door that they generally left open for their aides.

On November 9, 2009, Juan McCray came back to the Gelber residence, walked in through the open back door and attacked and viciously beat 83 year old Elisabeth Gelber. Mrs. Gelber suffered catastrophic injuries as a result of the brutal attack, was left in a coma for 6 weeks and ultimately died from her serious injuries.

In the case, Mr. Albert asserted that Mrs. McCray violated company policy in bringing her husband to the Gelber home in the first instance and that Rely and its parent companies were negligent and careless in failing to supervise their employee or take action of any kind once they learned of this breach. The failures on their part had catastrophic repercussions for the Gelber family.

After several years of litigation, Mr. Albert brought the case to conclusion through a settlement that would compensate the

Gelber's family the sum of \$1.5M. It was a result that brought great satisfaction to the Gelber family, who were aware of the many challenges in the case, the most prominent of which was attempting to show that Rely and not the convicted felon himself should be held responsible for the attack and the life changing injuries that Mrs. Gelber suffered.

Ultimately, with the threat of trial hanging over their heads, Rely's insurance carrier signed off on a settlement that constituted an outright victory for the Gelber family.

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