

## JONES, SKELTON & HOCHULI ATTORNEYS OBTAIN UNANIMOUS DEFENSE VERDICT IN CIVIL ASSAULT TRIAL

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*Franklin v. Clemett* – [William Holm](#), William Schrank and [Erik Stone](#), attorneys at Jones,

Skelton & Hochuli, obtained a unanimous defense verdict in favor of their client in a highly contested 3-week civil assault trial involving an altercation at the Phoenix Coyotes vs. Calgary Flames hockey game on Valentine's Day, 2009.

The Defendants attended the game with their wives or significant other, where they cheered for the Calgary Flames. After the Plaintiff noticed the Defendants were cheering for the visiting team, he began harassing the Defendants and their partners. Plaintiff's harassment continued throughout the game and became increasingly more obscene and vulgar. In particular, Plaintiff started directing his obscene gestures at Defendant Clemett's wife who had ignored him. In response, Defendant Clemett made a "cut-it-out" hand gesture toward the Plaintiff. According to the Plaintiff, the hand gesture infuriated him, so he decided to confront the Defendants who were seated 25 feet to the Plaintiff's right and two rows down. As the Plaintiff approached the Defendants, he invited them to a fight and threatened to kill them. Plaintiff then spit on Defendant Clemett's wife who was seated two rows away.

Fearing for their safety and the safety of others (there were several women and children nearby), the Defendants struck the Plaintiff three times as he continued to threaten them. The Defendants argued they acted reasonably under the circumstances and blamed the Plaintiff for starting the altercation. Defendants also claimed the Arena was negligent for failing to enforce the NHL fan code of conduct (Plaintiff should have been ejected earlier in the game). Last, Defendants argued Plaintiff was intoxicated, assumed the risk of injury, and was a bully. Plaintiff was the aggressor, not the defendants.

Plaintiff declined treatment, but continued to harass the Defendants even after he was restrained. The next day Plaintiff sought treatment claiming he suffered a fractured skull, concussion, traumatic brain injury, permanent brain injury, migraine headaches, TMJ, 50% sensorineural hearing loss in the right ear, and several more health-related complications. Plaintiff further claimed he spent the next two years recovering from his injuries, and that the brain injury, tinnitus, and hearing loss were permanent.

Plaintiff called a brain scan imaging expert, a neurologist and a neuropsychologist to testify Plaintiff sustained a permanent brain injury and cognitive deficiencies as a result of the altercation. Plaintiff also called an ENT doctor to testify he sustained a 50% permanent hearing loss in his right ear; an otoneurologist to testify he sustained permanent tinnitus; and a family doctor to testify he suffered from ongoing TMJ, depression, headaches, insomnia and erectile dysfunction.

Defendants called a neuropsychologist to testify Plaintiff did not sustain a permanent brain injury. No cognitive (memory) complaints were reported until 13 months after the incident. All neurological exams were normal and there was no evidence of any brain injury on CT or MRI scans. Based on neuropsychological testing and the lack of any corroborating clinical evidence of a brain injury, the neuropsychologist concluded Plaintiff was malingering. Defendants also retained a neurologist and a security expert.

Plaintiff's counsel asked the jury to award Plaintiff \$3.14 million. Defendants argued Plaintiff started the fight and was therefore 100% responsible for any and all injuries. In the alternative, Defendants argued Plaintiff was at least 70% at fault, Defendants were each 10% at fault, and Jobing.com Arena was 10% at fault for not ejecting the Plaintiff earlier in the game.

Before trial, Defendants jointly offered Plaintiff \$60,000 (\$30,000 each) and filed Offers of Judgment. Plaintiff filed a joint Offer of Judgment in the amount of \$950,000. The Jury deliberated for approximately 1 hour and 15 minutes before returning a unanimous verdict for the Defendants.

[William Holm](#) has been with Jones, Skelton & Hochuli since its inception in 1983 and has served as Managing Partner since 1995. He concentrates his practice in matters involving business torts, commercial litigation, and personal injury defense.

[Erik Stone](#) is included in the Complex Litigation Group. He is experienced handling a variety of general civil litigation matters, including commercial litigation,

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intellectual property, professional liability, wrongful death and personal injury claims, employment and discrimination, HOA matters, and construction defect.