

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA

TERRY GENE BOLLEA professionally  
known as HULK HOGAN,

Plaintiff,

vs.

Case No. 12012447CI-011

HEATHER CLEM; GAWKER MEDIA, LLC  
aka GAWKER MEDIA; GAWKER MEDIA  
GROUP, INC. aka GAWKER MEDIA;  
GAWKER ENTERTAINMENT, LLC;  
GAWKER TECHNOLOGY, LLC; GAWKER  
SALES, LLC; NICK DENTON; A.J.  
DAULERIO; KATE BENNERT, and  
BLOGWIRE HUNGARY SZELLEMI  
ALKOTAST HASZNOSITO KFT aka  
GAWKER MEDIA,

Defendants.

**PLAINTIFF TERRY BOLLEA'S MOTION IN LIMINE NO. 11 TO EXCLUDE  
IRRELEVANT AND INADMISSIBLE BUBBA CLEM RADIO BROADCASTS  
DISPARAGING PLAINTIFF AND HIS FAMILY**

Plaintiff Terry Bollea, professionally known as "Hulk Hogan" ("Mr. Bollea"), hereby moves this Court in limine under Fla. Stat. §§ 90.104, 90.401, 90.402, 90.403, 90.404 and 90.609, for an Order prohibiting Defendants from introducing any evidence or argument, during any portion of the trial, concerning radio broadcasts by Bubba Clem disparaging Mr. Bollea and members of his family because they are hearsay and irrelevant to this litigation.

In support of his motion, Mr. Bollea states the following:

1. Mr. Bollea's claims in this case arise out of defendant Gawker Media, LLC's ("Gawker") publication of a secretly filmed recording of Mr. Bollea naked and engaged in sexual relations with Heather Clem (the "Sex Video"). Mr. Bollea has brought claims for invasion of

privacy and related torts. Gawker's central defense is that the publication of the Sex Video is protected by the First Amendment as a matter of "legitimate public concern."

2. Gawker intends to introduce or argue about Bubba Clem's radio broadcasts relating to topics other than the material facts relevant to this case. In particular, Defendants may try to introduce evidence or argument relating to Mr. Clem's statements during radio programs disparaging Mr. Bollea, as well as disparaging his family members, including his daughter Brooke Bollea, his son Nick Bollea, his current wife Jennifer Bollea, and his ex-wife Linda Bollea. Gawker used such statements during depositions in this action, and is expected to seek to introduce such evidence at trial as improper character evidence against Mr. Bollea. [See Gawker Trial Exhibit #277-294]

3. Bubba Clem was named as a defendant in this lawsuit on or about October 15, 2012, and during the two days following the filing of this case (approximately October 16-17, 2012), used his radio show to attack Mr. Bollea and his family members. Mr. Bollea's desire to put an end to these disparaging remarks and, in particular, to protect his family, was a large part of his decision to settle his claims against Mr. Clem.<sup>1</sup>

4. Mr. Clem was subsequently deposed in this case, and testified that his statements about Mr. Bollea and his family members were not true. Mr. Clem further testified that, at the time he made those statements in October 2012, he was extremely upset for having been sued, in "cover my ass mode" (in his words), and lashing out at Mr. Bollea to deflect the negative media attention that he was receiving.

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<sup>1</sup> Mr. Bollea also files a motion in limine seeking to exclude all evidence associated with the settlement reached with Bubba Clem. In the event that motion is denied, and the settlement agreement is admitted, Mr. Bollea reserves the right to withdraw this motion and introduce evidence of Mr. Clem's remarks in order to explain his reasons for entering into the settlement.

5. Mr. Clem's statements during these radio broadcasts, which do not pertain to Mr. Bollea's encounter with Heather Clem or the video recording at issue, are inadmissible for several reasons.

6. First, these statements do not tend to prove any material facts in this case. Fla. Stat. §§ 90.401, 90.402.

7. Second, the statements are hearsay, which Gawker would be offering for the truth of the matters asserted. Fla. Stat. §§ 90.801, 90.802.

8. Third, the statements improperly attack Mr. Bollea's character and tarnish his reputation. *See* Fla. Stat. §§ 90.404, 90.609.

9. Fourth, any probative value these statements may have is substantially outweighed by the prejudice of putting these matters before the jury. Fla. Stat. § 90.403. These unfairly disparaging remarks concerning Mr. Bollea and his family will inflame the jury and unfairly prejudice Mr. Bollea. *Perper v. Edell*, 44 So. 2d 78, 80 (Fla. 1949) (stating that "if the introduction of the evidence tends in actual operation to produce a confusion in the minds of the jurors in excess of the legitimate probative effect of such evidence—if it tends to obscure rather than illuminate the true issue before the jury—then such evidence should be excluded"); *see Fischman v. Suen*, 672 So.2d 644, 645 (Fla. 4th DCA 1996) (holding that the "unsubstantiated allegation of medicare fraud is precisely the type of inflammatory matter which should be extinguished by an order in limine").

For the foregoing reasons, Mr. Bollea requests that the Court enter an Order prohibiting Defendants from introducing any evidence or argument at trial relating to radio broadcasts by Bubba Clem on any topics other than Mr. Bollea's encounter with Heather Clem and the video at issue in this case.

Respectfully submitted,

/s/ Kenneth G. Turkel

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail via the e-portal system this 12th day of June, 2015 to the following:

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