

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, *et al.*,

Defendants.

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**THE PUBLISHER DEFENDANTS' MOTION *IN LIMINE* TO EXCLUDE  
EVIDENCE OF PLAINTIFF'S SETTLEMENT COMMUNICATIONS  
AND INCORPORATED MEMORANDUM OF LAW**

Defendants Gawker Media, LLC ("Gawker"), Nick Denton and A.J. Daulerio (collectively, the "Publisher Defendants") hereby move the Court for the entry of an order excluding settlement communications that counsel for plaintiff Terry Gene Bollea, professionally known as "Hulk Hogan," sent to the Publisher Defendants for the reasons set forth herein.

1. Based on the Exhibit List filed by Hogan on June 8, 2015, it appears that Hogan intends to offer into evidence his own counsel's communications to the Publisher Defendants offering to settle all claims (the "settlement offer"). *See, e.g.*, Pl.'s Exs. 49, 119. The first settlement offer was a letter sent to defendant Nick Denton by Hogan's personal lawyer, David Houston, which is labeled "SETTLEMENT COMMUNICATION UNDER F.R.E. 408" and set forth the terms of a proposed resolution of Hogan's claims. The second settlement offer was an email from Houston to Denton that attached the initial "SETTLEMENT COMMUNICATION" and proposed a similar resolution.

2. Evidence of such settlement communications is patently inadmissible under Rule 90.408 of the Florida Rules of Evidence.

WHEREFORE, the Publisher Defendants respectfully request that this Court enter an order precluding the admission of these documents.

### **MEMORANDUM OF LAW**

“Evidence of an offer to compromise a claim which was disputed as to validity or amount, as well as any relevant conduct or statements made in negotiations concerning a compromise, is inadmissible to prove liability or absence of liability for the claim or its value.” Fla. Stat. § 90.408. As the Florida Supreme Court has instructed, “[t]he meaning of this statute is equally clear. No evidence of settlement is admissible at trial on the issue of liability.” *Saleeby v. Rocky Elson Const., Inc.*, 3 So. 3d 1078, 1083 (Fla. 2009). Admission of such evidence may irreparably bias a jury. *Id.* at 1085.

The offers from Hogan to settle his claims against the Publisher Defendants fall squarely within Rule 90.408’s prohibition on the admission of settlement negotiations. Admission of this evidence – which is explicitly labeled a “SETTLEMENT COMMUNICATION” – would prejudice the Publisher Defendants and be grounds for a new trial. *Rubrecht v. Cone Distrib., Inc.*, 95 So. 3d 950, 956 (Fla. 5th DCA 2012). Indeed, the settlement offers expressly state that Hogan would not sue the Publisher Defendants in exchange for specific settlement terms. Such evidence is precisely the type contemplated by Rule 90.408, and thus should be excluded.

### **CONCLUSION**

The Publisher Defendants respectfully request that this Court should grant the motion *in limine* and enter an order excluding Hogan’s settlement communications to the Publisher Defendants.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 12th day of June 2015, I caused a true and correct copy of the foregoing to be served via the Florida Courts' E-Filing portal upon the following counsel of record:

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