

Exhibit 1

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

TERRY GENE BOLLEA,
professionally known as HULK
HOGAN,

Plaintiff,

Case No.
12-012447-CI-011

vs.

HEATHER CLEM; GAWKER MEDIA,
LLC, aka GAWKER MEDIA, et
al.,

Defendants.

_____ /

HEARING BEFORE THE HONORABLE PAMELA A.M. CAMPBELL

DATE: July 1, 2015

TIME: 1:36 p.m. to 5:10 p.m.

PLACE: Pinellas County Courthouse
545 1st Avenue North
Third Floor
St. Petersburg, Florida

REPORTED BY: Aaron T. Perkins, RPR
Notary Public, State of
Florida at Large

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Pages 123 to 301

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1 THE COURT: Okay. Yes, I did. Publisher
2 defendants.

3 And, No. 3, settlement discussions.

4 MR. TURKEL: That's mine, Judge.

5 THE COURT: So let's just say this. Are
6 the -- do the defense intend to bring up
7 settlement discussions? I see you have got a
8 response in there. Never mind. I know the
9 answer.

10 MR. TURKEL: Yes, Judge, they do. I don't
11 know exactly to what extent or whether they want
12 to try to admit in the actual settlement
13 agreement. In reading the response -- and I'm
14 trying to keep all these fairly straight, Judge,
15 so if I'm off on this one -- I think this is the
16 one where they argue it's a Mary Carter
17 agreement --

18 THE COURT: Yes.

19 MR. TURKEL: -- and then cite Dossdourian and
20 they go through that analysis.

21 And, Judge, first of all, it's not Mary
22 Carter agreement. We're not going to have the
23 defendants sitting in trial pretending he's still
24 a defendant. The whole premise of those cases, as
25 you know, was, You're deceiving the jury; you're

1 acting like they're a defendant, and they're not.
2 It's a settlement agreement. And it's -- there is
3 nothing even remotely that brings it into the Mary
4 Carter arena.

5 I have read their response, and I don't see
6 anything that excepts it out of the well-establish
7 Florida law that you don't tell jurors about
8 settlement agreements. They made some sort of
9 unsubstantiated allegations based on the terms of
10 it, that its evidence of some kind of a collusion,
11 because it's got standard nondisparagement
12 language.

13 They have taken that to mean that it means
14 somebody can't get on the witness stand and tell
15 the truth pursuant to a subpoena, even though
16 there is a provision in there, I think, that
17 relates to -- I thought there was something in
18 there that related to whether he gets subpoenaed
19 or not. This is the Bubba the Love Sponge
20 settlement, Your Honor, in case you didn't already
21 know that.

22 Florida law is well established on this. You
23 don't bring settlement agreements in front of
24 juries. The reasons they assert for it don't take
25 it out of that. And the one thing I would go to

1 is they sort of have tried to infer -- I don't
2 know if the word "infer" is right -- glean from it
3 because both parties agreed not to disparage each
4 other, that somehow that implies collusion. It's
5 not relevant. It means nothing in this case, and
6 it needs to be kept out like settlement agreements
7 are usually kept out.

8 MR. BERRY: Thank you, Your Honor.

9 And I have to say our response was filed in
10 confidence. And there is stuff that I would like
11 to discuss that I think is confidential pursuant
12 to the markings of the plaintiff of the settlement
13 agreement, because I think the specific terms and
14 circumstances surrounding that agreement are
15 pertinent to our argument and were not touched on
16 by Mr. Turkel. We don't object to them being
17 public, but it wasn't our designation.

18 MR. TURKEL: Judge, I think we probably need
19 a protocol to deal with this on virtually
20 everything we're talking about. The settlement is
21 a confidential agreement. It's, by its terms,
22 confidential as many settlements are and, frankly,
23 usually are.

24 THE COURT: Well, I think what you're
25 referring to is potential issues or arguments,

1 anyway, as to potential spoliation of evidence.
2 Is that where you're going?

3 MR. BERRY: There is three aspects of this, I
4 think, that -- one is spoliation. The second does
5 not deal with it, with nondisparagement, but it is
6 something that we believe is a violation of the
7 rules of professional conduct and, therefore, a
8 violation of our due process rights, and make it
9 akin to a Mary Carter agreement. The third was
10 another provision of that agreement that we
11 believe will essentially affect and has affected
12 Mr. Clem's testimony throughout this case.

13 Again, you know, as we outlined in our
14 papers, we believe that there are serious due
15 process questions about us not being able to
16 question Mr. Clem about this given the
17 circumstances surrounding how that settlement came
18 about. And I can talk a little bit about the
19 factual background. I can make some of the legal
20 arguments, but the specifics of that agreement
21 are the reasons that we believe that we should be
22 permitted to question him about it.

23 THE COURT: So does someone intend to call
24 Mr. Clem as a witness?

25 MR. BERRY: I believe both parties have him

1 on the witness list.

2 MR. TURKEL: Yes.

3 THE COURT: Okay.

4 MR. BERRY: I mean, would you like me to
5 explain the facts and then kind of --

6 THE COURT: I'm familiar with the facts. I
7 mean, I have read through your documents, so --

8 MR. SULLIVAN: Well, how much can I say in
9 open court?

10 MR. BERRY: In open court?

11 THE COURT: Does anybody want to be heard on
12 that?

13 MR. TURKEL: Judge, I feel like I want that
14 question answered for everything. I think it's
15 all confidential, and I don't think it should
16 discussed in open court. It's confidential as
17 between the party in this case and a third party
18 who is not in this case and not here to assert
19 anything or protect themselves. So other than the
20 very general arguments they made, that's all I can
21 really discuss right now. We can argue to be held
22 in breach of the settlement agreement for arguing
23 in too great a detail.

24 THE COURT: Well, then, why don't we have
25 that argument when somebody representing Mr. Clem

1 is here? And then that way they have an
2 opportunity to be heard. Otherwise, while the
3 settlement may be confidential, I certainly
4 understand some of those terms might be the
5 spoliation, or the potential for spoliation is
6 there. So I think some of those issues may be
7 fair game for the jury to hear. But unless their
8 attorney is here and can argue that aspect of it,
9 as far as closing the courtroom and asking the
10 reporters in the back to step out, I don't know
11 that that's really appropriate at this point in
12 time. I don't know of any case law that would
13 allow that.

14 MR. TURKEL: That was kind of my point when
15 Mr. Berry raised it. But I think -- why don't we
16 try this, Judge, if the Court is amenable to this
17 process. Preclude them from discussing it in
18 openings. Have them proffer their predicate for
19 it at the time the witness is called or shortly
20 before.

21 THE COURT: Well, let me ask this: Are the
22 witnesses coming with their attorneys so that we
23 can discuss all this? I mean, I think he needs to
24 have legal counsel.

25 MR. TURKEL: I don't know for sure, but I

1 think probably if they know that's going to be an
2 issue, Mr. Clem's attorney would come, yes.

3 THE COURT: Who is his attorney?

4 MR. TURKEL: Jay Diaco, I mean, as far as I
5 know. That's who has been here in the case up to
6 this point.

7 THE COURT: All right. Well, let's have the
8 issue pertaining to him discussed when his
9 attorney is here.

10 MR. TURKEL: That's probably fair.

11 THE COURT: If that's later on that's fine.
12 If he comes right before he's to testify, then we
13 just need to -- somebody, before he comes to
14 testify, needs to let him know what the topic of
15 the conversation so that we can have the attorney
16 present when we talk about it, which will probably
17 be at 8:00 a.m. before the jury comes.

18 MR. TURKEL: On whatever day we're going to
19 call him --

20 THE COURT: Right.

21 MR. TURKEL: -- that would make sense, Judge.

22 MR. BERRY: Again, our legal arguments are
23 obviously outlined in the papers.

24 THE COURT: I will reserve on No. 3, and
25 that's as it pertains to Mr. Clem.

1 Is Bubba Clem his legal name?

2 MR. SULLIVAN: Bubba the Love Sponge Clem is
3 his legal name.

4 MR. TURKEL: The whole thing is the actual
5 the legal name.

6 Judge, could we get some guidance? I think,
7 obviously, this is what we think is pretty
8 well-established Florida law on settlement
9 agreements. We would ask that they refrain from
10 mentioning this in opening for fear that, under
11 conditional relevance, they don't tie it up and
12 then we're in a very bad spot at that point, so --

13 THE COURT: That's sounds reasonable.

14 MR. BERRY: Okay.

15 THE COURT: Or if it's discussed prior to
16 openings, that means we'll have to have a noticed
17 hearing with his attorney here.

18 MR. BERRY: And just to be clear, the fact
19 that settlement has been widely and publicly
20 reported, including in a press release issued by
21 the plaintiff --

22 THE COURT: Well, I'm understanding that Bay
23 News 9 is already reporting that the case has been
24 settled. So maybe it has been; I just don't know.

25 MR. SULLIVAN: Who is, Your Honor?

1 THE COURT: Bay News 9 says the case has been
2 settled.

3 MR. SULLIVAN: News before it happened.

4 MR. TURKEL: Judge, can we approach?

5 (At the bench)

6 (Discussion off the record.)

7 MR. TURKEL: As we're sitting here,
8 Mr. Berry's argument is -- wanting to argue
9 specific facts. We know that their opposition
10 papers talk about the specific facts --

11 THE COURT: Right.

12 MR. TURKEL: -- they attach.

13 THE COURT: Right.

14 MR. TURKEL: Giving that we have third-party
15 rights to confidentiality here, I don't know --
16 you know, this is -- I didn't contemplate this
17 coming up in every single one of these motions.
18 But what is the press's access to the terms of the
19 confidential settlement agreement pertaining to a
20 third party who is not here to assert his rights?

21 THE COURT: That's why he has -- he has to
22 have an attorney here to come assert his rights.

23 MR. HARDER: Here is the point. We had to
24 mark this document as confidential --

25 THE COURT: Right.

1 MR. HARDER: -- under the protective order.
2 They put in provisions from the settlement
3 agreement into the public record.

4 MR. BERRY: But it's under seal.

5 MR. HARDER: It's under seal.

6 MR. BERRY: I was the one that brought this
7 up. I brought this issue up.

8 MR. TURKEL: I know. It dawned on me as you
9 were arguing. Okay. So then we'll wait until the
10 issue comes up, and then we'll vet it out that
11 day.

12 THE COURT: Right.

13 MR. TURKEL: That's fine.

14 MR. SULLIVAN: I mean, to be clear, this
15 isn't going to be a secret trial. All kinds of
16 stuff is now going to come out.

17 MR. TURKEL: I think where this is a little
18 different is that we do have a third-party's
19 rights who is not here to discuss any of this.

20 THE COURT: Right.

21 MR. TURKEL: And maybe we all should have
22 thought about that and had them come for this
23 motion in limine, but we didn't, so --

24 THE COURT: Yes. So we'll make the time when
25 they can come, and we'll be fine.

1 MR. TURKEL: Yeah, that's fine.

2 MR. BERRY: That's fair.

3 MR. HARDER: Thank you, Your Honor.

4 MR. TURKEL: Because I certainly don't want
5 them coming back to all of us for --

6 MR. BERRY: No, no. And that makes perfect
7 sense. And that hadn't occurred to me either, but
8 that's why I --

9 MR. TURKEL: Unless --

10 THE COURT: And we'll even let Ms. Steele
11 come to the hearing.

12 (In open court)

13 THE COURT: Okay. Number 4, motivation for
14 filing a lawsuit --

15 MR. BERRY: Your Honor, I know -- this is
16 their motion, but it may -- this is all kind of
17 tied up together with the DVD issue and the FBI
18 issue.

19 MR. HARDER: That's fine. If you want -- we
20 can argue those at the same time. And, No. 5
21 also, Your Honor, the extended video footage, I
22 believe that's related as well. We're talking
23 about the 30 minutes.

24 THE COURT: I understand.

25 MR. BERRY: That's tied up with the --

1 grant it, but you-all are going to narrow what
2 your issues are.

3 MR. BERLIN: This was -- the motion was
4 limited to, not things about this tape, but other
5 topics, and for those employees, you know, then
6 you have -- then we have a problem here. We've
7 got, Oh, well, such-and-such employee, and they're
8 not here to explain themselves.

9 THE COURT: So let's see what you-all want to
10 do with it.

11 MR. TURKEL: Let me just respond to that,
12 Judge. Under 90.803(18), it mentions, Employees
13 and agents are the corporation. It's not hearsay,
14 because they're not here to explain it. They
15 choose who they want to explain. We have
16 identified it. I can put in a written statement
17 from any employee if I'm offering against them.
18 It's an admission against the party, so I'm a
19 little more concerned about him arguing that part
20 than the relevance part.

21 THE COURT: All right. So No. 9 is a
22 defendant's motion in limine to exclude evidence
23 of plaintiff's settlement communications, and I
24 believe this really goes more specifically to
25 Mr. Houston.

1 MR. SAFIER: Correct.

2 THE COURT: So I know the other one
3 settlement negotiations was more with Bubba Clem.
4 You seen my note, No. 9, it says "need to see."

5 MR. SAFIER: Yes. I actually brought them.

6 THE COURT: Okay.

7 MR. SAFIER: So here, Your Honor, there are
8 two communications from October 5th, 2012, that
9 are in very close succession. There is a
10 redacted -- some redacted material that has to
11 move forward. But if you look below that, you
12 have an e-mail from Christi Rosser, who I believe
13 is Mr. Houston's assistant, office manager.

14 MR. TURKEL: He's not going to answer the
15 question. She works for Mr. Houston.

16 MR. SAFIER: Works for Mr. Houston, sent at
17 13:02:33 to Nick at Gawker enclosing -- or sent it
18 at 10:02 a.m. enclosing a letter. The letter is
19 on the next page. As you can see, the letter is
20 clearly labeled, Settlement communication under
21 FRB 408. And if you go down, you can see there is
22 a highlighted portion in the last paragraph.

23 "We can assure you that Hulk Hogan tends to
24 pursue all civil and criminal remedies available
25 as to anyone shopping around, distributing, or the

1 otherwise using this video. To this end, we will
2 commence consultations of federal and state law
3 enforcement about the criminal aspects of this
4 matter. Hulk Hogan would like to end this matter
5 immediately by learning the identify of all
6 persons involved with, quote, unquote, shopping
7 the video to any party."

8 And here we have a settlement offer.

9 "If you immediately disclose the requested
10 information and refrain from being involved with
11 any use of the video, Hulk Hogan will consider
12 this matter closed and will not seek legal
13 remedies against you for the issues raised in this
14 letter."

15 That is a clear and an unambiguous settlement
16 negotiation. The next exhibit is an e-mail, which
17 was sent shortly thereafter. Here, this is from
18 David Houston to Mr. Daulerio. I have highlighted
19 the relevant parts, third and four paragraph:

20 "I'm sure your counsel can provide you with
21 appropriate legal advice, so I will not presume to
22 do the same. I am asking to remove the sex tape
23 from your website. If you do not do so, you leave
24 us no option but to proceed legally. We will
25 exhaust every legal avenue possibly, including

1 potential criminal charges."

2 Again, it's a settlement communication.

3 THE COURT: So you want to keep this out?

4 MR. SAFIER: Yeah. I mean, the rule is quite
5 straightforward, right?

6 THE COURT: Do you want it in?

7 MR. TURKEL: Yes, Judge, we would like to
8 have this in evidence. We would like to show --

9 MR. SAFIER: I'm still --

10 MR. TURKEL: I understand. I'm sorry.

11 THE COURT: I know. I was just asking --

12 MR. VOGT: She asked me a question.

13 THE COURT: It's my fault.

14 MR. SAFIER: He's been getting on my case for
15 a couple days.

16 MR. TURKEL: Just please --

17 MR. SAFIER: We're friends. We like each
18 other right now.

19 MR. TURKEL: I don't like anybody, Judge,
20 except the system and the smell of justice.

21 MR. SAFIER: Section 90.408, as you are very
22 well aware -- and I quote -- says, "Evidence of an
23 offer to compromise a claim which was disputed as
24 to validity or amount" -- and this is the key
25 part -- "as well as any relevant conduct or

1 statements made in negotiations concerning a
2 compromise is inadmissible to prove liability or
3 absence of liability for the claim or its value."

4 Here what I have shown you, these are clear
5 settlement communications involving the subject
6 matter of this case. What they want to do -- and,
7 you know, Mr. Turkel will make this argument -- is
8 say, Well, this is to prove that Gawker had notice
9 that Mr. Bollea objected to the material on the
10 website."

11 That's part of the liability case. And the
12 law is clear that you can't use a party's position
13 in settlement talks, and this is what these are,
14 to establish liability. It is just
15 straightforward. This -- literally, this letter
16 is labeled settlement communication. When you get
17 a letter that is labeled settlement communication,
18 you think to yourself, This is not going to be
19 used in subsequent litigation. That's what you
20 think.

21 THE COURT: I think we had this argument
22 earlier today, or this discussion earlier today,
23 about the Bubba the Love Sponge settlement.

24 MR. SAFIER: Right. What our argument is
25 there is because of specific terms in the actual

1 settlement agreement, there is an conception that
2 needs to be made there based on Mary-Carter-type
3 considerations and consideration about spoliation.
4 There is nothing here. This is a very
5 straightforward. This in a settlement offer
6 followed up by another settlement offer that's now
7 being offered as part of their liability case
8 against us.

9 And the law is absolutely clear. That
10 doesn't get in. Those kind of interactions and
11 negotiations are shielded from the jury. They're
12 protected. And there are very good policy reasons
13 why we do that. So I think this is an easy
14 motion. I don't think there is wiggle room here,
15 Your Honor.

16 THE COURT: Okay. Thanks.

17 Mr. Turkel?

18 MR. TURKEL: Judge, I think it's easy too.
19 But the other way -- first of all, I'm still
20 getting over him telling me he loved me. That was
21 something --

22 MR. SAFIER: What did I say?

23 MR. TURKEL: Judge, Mr. Houston, when they
24 published the tape, sent them cease-and-desist
25 letters. Cease-and-desist letters are admissible.

1 In Toffoloni, they were admitted into evidence
2 properly. This isn't being offered to show
3 liability. In fact, one of their predicates for
4 their good faith defense was that they didn't find
5 Mr. Houston's letter persuasive enough to prevent
6 them from continuing to publish the video.

7 It's not being offered to prove liability.
8 It's offered to prove their notice. They were on
9 notice that the position was that this was, as set
10 forth in these letters, illegally taken. It was
11 to give them notice exactly as early as possible
12 as to what was going to happen if they did not
13 review this and act accordingly, and they chose
14 not to.

15 And so when you ask them why they chose not
16 to, they say, Well, we didn't find the letter
17 persuasive. So it's not trying to prove
18 liability; it's showing exact things that were
19 carved out of 90.408 for the exact reasons those
20 things were carved out of 90.408, which is to show
21 things other than liability or absence of
22 liability, such as intent, knowledge, notice,
23 things like that.

24 So this is precisely what 408 contemplates
25 being carved out. Nobody is saying, Hey, we sent

1 them a thing, and they're liable, you know. The
2 classic 90.408 scenario is a scenario where the
3 defendant sends a demand and settlement offer
4 over, and they say, We'll offer to settle this
5 case for "X" amount of dollars and you use that
6 and say, Look, they must liable. That's what it's
7 meant to preclude. They're offering us money.
8 It's meant to prohibit a chilling effect on
9 discussions. It's not meant to prevent a letter
10 that was solely written and specifically written
11 to put them on notice of the illegal conduct from
12 getting into evidence. And we've cited the case
13 law that says that.

14 So unless the Court has any questions, I
15 think this is very simple. I think this is
16 textbook of what is an exception under 90.408.
17 And they don't want it in because they basically
18 don't want a jury to see that they were told that
19 the conduct that they were going to engage in was
20 illegal before they engaged in it, that they were
21 put on notice of it. And I think the most telling
22 part is their response, which is we're not
23 persuaded, or words to that effect by these
24 letters, Judge, so --

25 MR. SAFIER: As I said, we think it's a

1 simple motion the other way, Your Honor.

2 THE COURT: Okay. So I will deny. This is
3 under tab 9.

4 All right. Let's go to 11. And this is the
5 motion to bifurcate. If the plaintiff doesn't
6 oppose, are there any other discussions we need to
7 have about it?

8 MR. TURKEL: No.

9 MR. BERLIN: I think we're all good, Your
10 Honor.

11 THE COURT: All right. So then No. 13, the
12 Defendant's motion in limine to exclude all
13 evidence concerning Gawker Media, LLC, revenues or
14 profits during the liability phase of trial and
15 incorporated memorandum of law. Tab 14 is
16 plaintiff's opposition. I don't know if the
17 parties have spoken about this. It seems to me
18 there is a miscommunication. The plaintiffs think
19 that you're trying to get at the damages expert,
20 Mr. Anderson. I don't know that that's really
21 what your point is in this. So that seems to be
22 their response.

23 MR. BERLIN: I think our point on this, Your
24 Honor, is that the financial information under the
25 Grace case in the Florida Supreme Court basically

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REPORTER'S CERTIFICATE

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I, Aaron T. Perkins, Registered Professional Reporter, certify that I was authorized to and did stenographically report the above hearing and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 2nd day of July, 2015.

Aaron T. Perkins, RPR