

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

GAWKER MEDIA, LLC, *et al.*,

Defendants.

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**DEFENDANTS' BENCH MEMORANDUM REGARDING  
REQUIREMENT THAT JURY INSTRUCTIONS BE NEUTRAL**

Defendants Gawker Media, LLC, Nick Denton, and A.J. Daulerio respectfully submit this Bench Memorandum regarding instructions to be offered to the jury in this case. Florida law emphasizes that, in instructing the jury, the court must present the issues as neutrally as possible so as not to risk influencing the jury's decision-making.

Thus, "[a]rgument must be left to counsel; it has no place in the trial court's instructions to the jury. A charge is objectionable as being argumentative when it assumes facts upon which there is conflicting evidence or when it unduly highlights certain evidence. Argumentative propositions should not be given in a charge to the jury and, if requested, are properly refused." 55 Fla. Jur. 2d Trial § 211. The court expressed this concern in *Hunzinger Const. Corp. v. Quarles & Brady Gen. P'ship*, 735 So. 2d 589, 596 (Fla. 4th DCA 1999), noting that one jury instruction was improper for not providing "a neutral statement of the law to be applied to the case," and that "on the whole, the instructions given in this case were not balanced but tended to favor [one party]'s position." *Id.* As the court put it, "Many of these charges should have been the subject of argument by the attorneys rather than instructions by the court." *Id.* Likewise, in *Sierra v. Winn Dixie Stores, Inc.*, 646 So. 2d 264, 265 (Fla. 3d DCA 1994) (per curiam), the

court reversed and remanded on account of a jury instruction that had been requested by defendant as to the applicable duty of care, which the court found “was improper because it was argumentative, unnecessary and potentially confusing.” *Id.* The court wrote that “[a]lthough this is a proper argument for the defendant to make to the jury, it is not a proper subject for a jury charge because it tends to endorse an argumentative position of the defendant,” further stating that the improper instruction “deprived the plaintiffs of a fair trial under the circumstances of this case, and, accordingly, the error is reversible in nature.” *Id.* Indeed, in *Seaboard Sys. R.R. v. Mells*, 528 So. 2d 934, 938 (Fla. 1st DCA 1988), the court noted that even where requested instructions may have “correctly stated the principles of law,” they should still be denied if those instructions “are essentially argumentative, repetitive, and adequately covered by the general charges” on the issue. *Id.* (citing *Florida E. Coast Ry. Co. v. McKinney*, 227 So. 2d 99, 104 (Fla. 1st DCA 1969)).

February 22, 2016

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 22nd day of February, 2016, I caused a true and correct copy of the foregoing to be served via the Florida Courts' E-Filing Portal on the following counsel of record:

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