

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.

DEFENDANTS' MOTION *IN LIMINE* RE: ALLEGED HARM TO NONPARTIES

Defendants Gawker Media, LLC (“Gawker”), Nick Denton, and A.J. Daulerio hereby move *in limine* for an order precluding Plaintiff from presenting evidence or argument relating to harm allegedly suffered by persons other than Plaintiff in Phase II of these proceedings.

In *Phillip Morris USA v. Williams*, 594 U.S. 346, 353 (2007), the United States Supreme Court held that the “Constitution’s Due Process Clause forbids a State to use a punitive damages award to punish a defendant for injury that it inflicts upon nonparties.” *See also R.J. Reynolds Tobacco Co v. Townsend*, 90 So. 3d 307, 310 n.2 (Fla. 1st DCA 2012) (acknowledging the *Williams* rule). The *Williams* Court further held that, while evidence of conduct toward others can, under limited circumstances, be admissible to show the *reprehensibility* of a defendant’s conduct, a trial court must ensure that the presentation of such evidence does not lead the jury to believe that it can award punitive damages to punish that defendant for harm other than the harm at issue in the lawsuit. As the Court explained:

How can we know whether a jury, in taking into account of harm caused others under the rubric of reprehensibility, also seeks to punish the defendant for having caused injury to others? Our answer is that state courts cannot authorize procedures that create an unreasonable and unnecessary risk of any such procedure occurring. In particular, we believe that where the risk of that misunderstanding is a significant

one – because, for instance, of the sort of evidence that was introduced at trial or the kinds of argument the plaintiff made to the jury – a court, upon request, must protect against that risk. Although the States have some flexibility to determine what *kind* of procedures they will implement, ***federal constitutional law obligates them to provide some form of protection in appropriate cases.***

Williams, 549 U.S. at 357 (emphasis added).

In this case, Plaintiff has been permitted, over Defendants’ repeated objections, to put on substantial evidence about harm Defendants have allegedly caused to people other than himself. Defendants continue to believe that such evidence should not have been presented to the jury *at all*, even to show the “reprehensibility” of their conduct, because the conduct at issue in those instances was not “substantially similar” to that at issue here. Defendants now ask, at this stage at least, that Plaintiff not be permitted to put on evidence, or present argument about, harm to persons other than himself. *Williams* makes clear that, to permit Plaintiff to do so, would constitute a violation of Defendants’ due process rights.

Accordingly, Defendants respectfully request that this Court grant this motion *in limine* and enter an order precluding Plaintiff from presenting evidence of, or making arguments about, harm caused by Defendants to persons other than himself.

March 21, 2016

Respectfully submitted,

THOMAS & LOCICERO PL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of March 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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