

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

**TERRY GENE BOLLEA professionally
known as HULK HOGAN,**

Plaintiff,

Case No. 12012447CI-011

vs.

**GAWKER MEDIA, LLC aka GAWKER
MEDIA; NICK DENTON; A.J.
DAULERIO,**

Defendants.

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PHASE II JURY INSTRUCTIONS

Presiding Judge:

**Pamela A.M. Campbell
Circuit Judge**

INSTRUCTION # 1

PUNITIVE DAMAGES (AMOUNT) – OPENING INSTRUCTION

Members of the jury, I am now going to tell you about the rules of law that apply to determining whether punitive damages should be assessed and, if so, in what amount. When I finish with these instructions, the parties will present additional evidence. You should consider this additional evidence along with the evidence already presented, and you should decide any disputed factual issues by the greater weight of the evidence. “Greater weight of the evidence” means the more persuasive and convincing force and effect of the entire evidence in the case.

AUTHORITY: Fla. Std. Jury Instr. [Civ.] 503.1 (modified)

INSTRUCTION # 2

PUNITIVE DAMAGES (AMOUNT) – CONSIDERATIONS

You are to decide the amount of punitive damages, if any, to be assessed as punishment against Defendants and as a deterrent to others. This amount would be in addition to the compensatory damages you have previously awarded. In making this determination, you should consider the following:

(A) the nature, extent and degree of misconduct and the related circumstances, including the following:

i. whether the wrongful conduct was motivated solely by unreasonable financial gain;

ii. whether the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known by defendants;

iii. whether, at the time of the loss, injury or damage to Plaintiff, the Defendants had a specific intent to harm plaintiff and the conduct of defendants did in fact harm plaintiff, and

(B) the financial resources of defendants.

You may in your discretion decline to assess punitive damages. You should impose punitive damages only if you conclude that monetary liability beyond your award of compensatory damages is necessary to accomplish punishment and deterrence.

You may assess punitive damages against one defendant and not the other[s] or against more than one defendant. Punitive damages may be assessed against different defendants in different amounts.

AUTHORITY: Fla. Std. Jury Instr. [Civ.] 503.1 (modified); *State Farm Mutual Auto Insurance Co. v. Campbell*, 538 U.S. 408, 419 (2003) (“It should be presumed that a plaintiff has been made whole . . . by compensatory damages, so punitive damages should only be awarded if defendant’s culpability . . . is so reprehensible as to warrant the imposition of further sanctions to achieve punishment and deterrence.”).

INSTRUCTION # 3

PUNITIVE DAMAGES (AMOUNT) – NO PUNISHMENT FOR HARM TO OTHERS

When determining the amount, if any, of punitive damages to be awarded, you may impose punitive damages to punish Defendants only for the specific conduct that you have concluded caused Plaintiff harm. You may not award punitive damages to punish Defendants for any injury they may have inflicted upon anyone other than Plaintiff.

AUTHORITY: *Phillip Morris USA v. Williams*, 549 U.S. 346, 353 (2007) (holding 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”); *id.* at 1064 (“[T]he Due Process Clause requires States to provide assurance that juries are not asking the wrong question, i.e., seeking not simply to determine reprehensibility, but also to punish for harm caused to strangers.”).

INSTRUCTION # 4

PUNITIVE DAMAGES (AMOUNT) – REASONABLE RELATIONSHIP

The amount of punitive damages you award, if any, must not be unreasonably large when considered in relation to the amount of compensatory damages you have awarded to Plaintiff.

AUTHORITY: *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246, 1264 (Fla. 2006) (“[W]e now hold, consistent with the United States Supreme Court decisions . . . that recognize due process limits on punitive damages, that a review of the punitive damages award includes an evaluation of the punitive and compensatory amounts awarded to ensure a reasonable relationship between the two.”).

INSTRUCTION # 5

PUNITIVE DAMAGES (AMOUNT) – NO GREATER AWARD THAN NECESSARY

If you decide to award punitive damages against Defendants, the award should be no greater than the amount that you find necessary to punish Defendants for the conduct you have concluded caused harm to Plaintiff, and to deter Defendants and others similarly situated from engaging in such conduct in the future.

AUTHORITY: Fla. Std. Jury Instr. [Civ.] 503.1 (modified); *State Farm Mutual Auto Insurance Co. v. Campbell*, 538 U.S. 408, 419 (2003) (“It should be presumed that a plaintiff has been made whole . . . by compensatory damages, so punitive damages should only be awarded if defendant’s culpability . . . is so reprehensible as to warrant the imposition of further sanctions to achieve punishment and deterrence.”).

INSTRUCTION # 6

PUNITIVE DAMAGES (AMOUNT) – FINANCIAL CONDITION

You may not award an amount in punitive damages that would financially destroy or bankrupt any of the Defendants.

AUTHORITY: *Bill Branch Chevrolet, Inc. v. Burkert*, 521 So. 2d 153, 155 (Fla. 2d DCA 1988) (“The purposes of punitive damages are served by extracting a sum of money from the defendant, which will hurt but not bankrupt.”); *Wransky v. Dalfo*, 801 So. 2d 239, 243 (Fla. 4th DCA 2001) (error to refuse to give instruction explaining that punitive damages award cannot be an amount that would bankrupt defendants).

INSTRUCTION # 7

PUNITIVE DAMAGES (AMOUNT) – MITIGATING EVIDENCE

You should also take into consideration any mitigating evidence. Mitigating evidence is evidence that may demonstrate that there is no need for punitive damages, or that a reduced amount of punitive damages should be imposed against Defendants.

AUTHORITY: *Humana v. Heath Insurance Co. of Florida, Inc. v. Chipps*, 802 So. 2d 492, 496-97 (Fla. 4th DCA 2001) (“The jury should have been allowed to consider any evidence which would have had the effect of ‘reducing or softening the moral or social culpability attaching to [the defendants]’ act.”).

INSTRUCTION # 8

CONCLUDING INSTRUCTION (BEFORE ARGUMENT)

That is the law you must follow in deciding the second phase of the case. When they are through, I will have a few final instructions about your deliberations.

INSTRUCTION # 9

CLOSING INSTRUCTION

Members of the jury, you have now heard and received all of the evidence on the issue of punitive damages. Your verdict on the issues raised by the punitive damages claim of plaintiff against defendants must be based on the evidence that has been received during the trial of the first phase of this case and on the evidence that has been received in these proceedings and the law on which I have instructed you. In reaching your verdict, you are not to be swayed from the performance of your duty by prejudice or sympathy for or against any party.

Your verdict must be unanimous, that is, your verdict must be agreed to by each of you.

You will be given a form of verdict, which I shall now read to you:

[Court reads and explains verdict form]

When you have agreed on your verdict, the foreman or forewoman, acting for the jury, should date and sign the verdict. You may now retire to consider your verdict.