

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

TERRY GENE BOLLEA professionally  
known as HULK HOGAN,

Case No. 12012447 CI-011

Plaintiff,

vs.

GAWKER MEDIA, LLC  
aka GAWKER MEDIA, et al.,

Defendants.

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**PLAINTIFF'S RENEWED MOTION TO COMPEL AND REQUEST FOR RULING ON  
CLAIM OF PRIVILEGE ASSOCIATED WITH TRANSFER PRICING STUDY<sup>1</sup>**

Plaintiff, Terry Bollea professionally known as Hulk Hogan (“Mr. Bollea”), renews his October 9, 2015 Motion to Compel and requests a ruling on the claim made by Defendants, Gawker Media, LLC (“Gawker”), Nick Denton (“Denton”) and AJ Daulerio (“Daulerio”) (collectively “Gawker Defendants”), that the “Transfer Pricing Study” which supposedly justifies the expatriation of Gawker’s profits to Kinja, KFT (“Kinja”) to avoid U.S. taxes and/or dissipate or divert assets is protected by the attorney-client privilege, and states in support as follows:

**Introduction**

In 2012, Gawker Defendants used “Hulk sex” and “royal breasts” to virally market their website and brand, and propel their viewership to all time highs. [Trans. 1801:23-1802:8; 2049:14-22; 2305:15-2306:5; Plaintiff’s Ex. 127; 1802:17-1803:1] That same year, Gawker generated over \$25.6 million in revenue. [Gawker 18323\_C; “unsealed tax returns offer peak into Gawker’s finances” Capital New York (May 2, 2016)]

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<sup>1</sup> The public version of this filing is being redacted based upon the Protective Order in this case.

However, despite generating over \$25 million under the protections afforded by the U.S. Constitution, Gawker owed nothing in taxes during the year it posted the surreptitious video of Mr. Bollea naked and having sex. [Id.; Plaintiff’s Exhibit 423] In fact, Gawker reported a net loss of over \$1 million on its financial statements and a \$120,426 for U.S. income tax purposes. [Id.; Gawker 18323\_C] In 2012, Gawker paid over \$11 million in salaries (including \$382,935 to Denton) and over \$4.8 million to Kinja as a “royalty expense,” while at the same time borrowing \$1.2 million from its Hungarian sister company. [Id.]

Supposedly, the substantial royalty payments Gawker makes to Kinja are part of a legitimate, arms-length relationship and “determined following an exhaustive study conducted by Mayer Brown, an independent law firm, into the market value of the services that Kinja provides to Gawker.” [Id.] Kinja owns the intellectual property assets (domain names, trademarks, service marks, platform) through which Gawker operates its website and generates revenue.

[REDACTED]

Gawker’s revenues, and its royalty payments to and loans from Kinja grew exponentially during this lawsuit. In the year following the Hogan post, Gawker’s audience increased by 38 percent, and revenue increased 30 percent (to \$33.1 million). [Trans. 3191:18-24; 3195:6-13; Gawker 18323\_C] That same year, Gawker paid \$6.59 million in royalties to Kinja.

[Gawker 18323\_C] At the same time, Gawker borrowed approximately \$4.6 million from its sister company. [5/2/16 Capital New York]

Even from what little Mr. Bollea has been able to uncover through limited discovery of Kinja's operations and financials in this case, the legitimacy of the "royalty" payments being sent overseas to avoid U.S. taxes is very suspect. Gawker is paying more in royalties each year than the value of the intellectual property and attendant services combined; all while borrowing millions of dollars back from Kinja.

Despite these questionable circumstances, Gawker maintains based on the Transfer Pricing Study that its royalty payments are proper. In order to evaluate this contention and establish whether Gawker's corporate structure and these payments are actually a guise to shelter assets that can be used to increase Gawker's net worth and provide a source for collection of the damages awarded by the jury, Mr. Bollea should be entitled to discover the study. Alternatively, to the extent the study does contain legal advice, Mr. Bollea should be entitled to discover the facts upon which the study is based; which are necessary and essential to analyzing the validity of the royalty payments.

### **The Verdict and Post-Trial Motions**

At the conclusion of a three-week trial, the jury determined that Mr. Bollea was entitled to recover \$115 million in compensatory damages and punitive damages from Gawker Defendants. Gawker Defendants' significantly reduced the amount of punitive damages awarded by the jury (totaling \$25.1 million) through a stipulation regarding their net worth, their counsel's representations that they already "owe" and "must pay" the \$115 million compensatory damage award, and a jury instruction providing that the punitive damage award could not bankrupt or financially destroy the defendants.

In connection with Gawker Defendants' April 4, 2016 post-trial motions (which, among other things, seek remittitur of the punitive damages based on net worth), as well as Gawker Defendants' anticipated motion to reduce the amount of the bond necessary to stay execution pursuant to § 45.045, *Fla. Stat.*, Mr. Bollea should be entitled to discovery of the Transfer Pricing Study (the "Study") or, at a minimum, the facts relied upon in the Study. Mr. Bollea also should be entitled to discovery of the Study or its supporting facts to verify whether Gawker's assets are being dissipated or diverted.

### **Background**

On October 9, 2015, Plaintiff filed his Motion to Compel Complete Production of Documents in Response to Financial Worth Discovery (the "Motion to Compel").<sup>2</sup> As part of the Motion to Compel, and among other items requested, Plaintiff sought access to a "Transfer Pricing Study" – a document that is and was used to justify the supposed "royalty" through which Gawker's income is transferred to Kinja each year.

Specifically, the Second Amended and Restated License Agreement between Gawker and Kinja (the "License Agreement") (attached to the October 9, 2015 Confidential Affidavit of Charles Harder)<sup>3</sup> states that the Transfer Pricing Study (or "Economic Analysis of Royalty Payments") [REDACTED]

[REDACTED]

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<sup>2</sup> The full title of Plaintiff's Motion was "Motion to Compel Complete Production of Documents in Response to Financial Worth Discovery and Reconsideration of Ruling Regarding Additional Financial Worth Depositions; Request for Sanctions" however in the interests of expediency, Plaintiff has abbreviated it herein. That Motion and all exhibits and attachments to it are attached hereto as **Exhibit A**.

<sup>3</sup> Mr. Bollea also requests a ruling on the confidentiality of the October 9, 2015 Confidential Affidavit and its exhibits, including the License Agreement.

[REDACTED]

[REDACTED]

On November 18, 2015, Plaintiff's Motion to Compel and Gawker Defendant's objections to same were heard. *See Exhibit B* (Excerpts of Nov. 18, 2015 Transcript). The Court ordered Gawker Defendants to provide the Transfer Pricing Study for *in camera* review prior to any final decision being made. (*Id.* at 42:6-7).

Counsel for Gawker Defendants subsequently made a verbal motion for a stay of the Court's order so that they may consider whether or not to once again take this Court's decision to the District Court of Appeal. (*Id.* at 42:8-11). The Court granted Gawker Defendants' motion for stay and stayed the order until December 4, 2015. (*Id.* at 42:12). However, no appeal was taken.

On December 11, 2015, to support the Court's review of the Transfer Pricing Study, Plaintiff filed an affidavit from James Donohue (Plaintiff's expert on the topic of financial worth), and sent the Court correspondence articulating the reasons why the Study or, at a minimum, its underlying facts, should be disclosed. *See Exhibit C.*

As set forth in Gawker's publicly available Income Statements, Gawker sent Kinja approximately \$3-6.5 million in "royalties" each year during 2010-2013. (*See Exhibit D; Gawker 18323\_C*). At the same time, Kinja was purportedly "loaning" Gawker millions of dollars to fund its operations. (*See Promissory Notes; Confidential Exhibit 1*). The end result is that Gawker operated at a loss or minimal profit each year, while incurring significant "debt" to Kinja; thereby avoiding U.S. taxes in lieu of Hungary's much lower tax rate, all while protecting its profits overseas.

For all intents and purposes, Kinja is an alter ego of Gawker used as a tax and asset shelter. Kinja owns all of the intellectual property Gawker uses to operate the Gawker family of websites, while serving as a pass through for all of the income generated through these websites. In an article published on April 13, 2016, Gawker concedes that it “uses offshore tax shelters.” (See **Exhibit E**; “How Much is All this Offshore Tax Dodging Costing Us?”)

As set forth in the Report and Appendix generated by James Donohue, from 2010 through 2014, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Study is essential to determining the validity of the “royalties” paid to Kinja. As set forth *In re: DeCoro USA, Ltd.*, 2014 Bankr. LEXIS 1075 (M.D.N.C. Mar. 18, 2014), the United States Transfer Pricing Regulations establish an “arm’s length standard” in order to prevent the avoidance of U.S. taxes by transferring income between commonly controlled businesses such as Gawker and Kinja. Essentially, the transfer price must reflect what two separate companies would negotiate in an arm’s length transaction. A number of **facts** are taken into consideration as part of this analysis.

Mr. Bollea believes the entire Study is discoverable. It is identified in the License Agreement as an “Economic Analysis,” not a “legal” analysis. The attorney-client privilege does not protect business advice. *Skorman v. Hovnanian of Florida, Inc.*, 382 So.2d 1376 (Fla. 4th DCA 1980). Even if the Study does contain *some* communications between a lawyer and client for the purpose of rendering legal advice, the underlying **facts** memorialized in the Study are **not**

privileged and must be disclosed. *Brookings v. State*, 495 So.2d 135, 139 (Fla. 1986) (“it is the communication with counsel which is privileged, not the facts”). This would include all of the underlying data and factors which support the Study.

It is unclear whether Gawker Defendants ever provided the Study to the Court. If, indeed, Gawker Defendants did provide the Study to the Court, then Plaintiff respectfully requests a ruling on whether the Study, in whole or in part, is privileged; and that any non-privileged portion(s) of the Study be produced. If Gawker Defendants did not provide a copy to the Court, Plaintiff requests that the Court enter an order compelling them to provide the Study to the Court within 24 hours for *in camera* review, and that a decision then be made on whether to compel production of the Study in whole or in part, and which portions (if any) will be produced to Mr. Bollea.

Dated: May 9, 2016.

Respectfully submitted,

/s/ Kenneth G. Turkel

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail via the e-portal system this 9th day of May, 2016 to the following:

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