

Exhibit C

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

TERRY GENE BOLLEA, professionally
known as HULK HOGAN,

Plaintiff,

No. 12-012447-CI-011

vs.

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

Defendants.

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HEARING BEFORE THE HONORABLE PAMELA A.M. CAMPBELL

DATE: November 18, 2015
TIME: 2:56 p.m. to 5:01 p.m.
PLACE: Pinellas County Courthouse
545 First Avenue North
St. Petersburg, Florida
REPORTED BY: Susan C. Riesdorff, RPR, CRR
Notary Public, State of
Florida

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1 So let's start out, then, with plaintiff's
2 motion to compel complete production.

3 MR. HARDER: That will be Mr. Vogt, Your
4 Honor.

5 MR. VOGT: May it please the Court.
6 Your Honor, what we're moving to compel here is
7 two additional depositions and the production of
8 two additional documents relating to net worth.

9 I'll start with the depositions. We're
10 asking to take follow-up depositions of Nick
11 Denton and a corporate representative for Gawker
12 Media. We had originally asked for these
13 follow-up depositions back in June, but it was
14 only a few days before trial. In reviewing the
15 transcript of that, I believe you denied that
16 motion at that time because you wanted us to get
17 some sleep. We had been flying all over the
18 country for depositions.

19 THE COURT: I wanted you all to get some
20 sleep.

21 MR. VOGT: Right, which I appreciate because
22 I happened to been one of the people who was
23 flying all over.

24 What happened in the first set of depositions
25 is we discovered there were a significant number

1 of documents that we didn't have that you
2 subsequently, after the depositions, ordered to be
3 produced. We want the opportunity to ask
4 questions about those. Some of those are very
5 significant. For example, one of the things we
6 sent you was an executive summary, was that
7 PowerPoint presentation they were ordered to
8 produce, which is basically a financial overview
9 of the company and also has a valuation in it that
10 is very significant for punitive damages purposes.
11 So there are several documents like that.

12 The other reason we want these follow-up
13 depositions is because we took them in June and
14 we're going to trial in March. A lot changes in
15 nine months. They're going to have year-end
16 financials at the end of '15. In addition to
17 that, Your Honor, there's been a number of
18 significant changes at Gawker, a lot of which were
19 released I believe by memos to the press and
20 public yesterday, where they're changing the
21 structure of the company. They're changing their
22 budgeting. They're cutting back on costs.
23 They're not developing the Kinja platform anymore,
24 which would result in substantial savings to the
25 company financially.

1 We think we need to be able to go in and
2 develop those areas in order to determine the true
3 and accurate financial worth of the companies.
4 We're not talking about taking long exhaustive
5 depositions. The last time we had depositions, I
6 think Mr. Denton was four hours. Mr. Kidder was
7 three and a half. These wouldn't go anywhere near
8 that length. They would be much more narrowly
9 defined topic areas, but we don't think it's
10 unreasonable to ask for those.

11 On the additional documents we're asking for
12 the relief on, I'll start with the trust document.
13 There is a family trust document for Mr. Denton
14 that has an ownership interest and shares in GMGI,
15 Gawker Media Group, Inc. Mr. Denton transferred
16 shares in that trust. There are news reports,
17 which we've attached to our motion, quoting
18 Mr. Denton as saying between myself and my family
19 trust, I own 68 percent of the company, which
20 gives him a controlling interest, which is very
21 important for the purposes of valuing his shares
22 for his net worth.

23 We asked for the trust document. He didn't
24 produce it. You ordered him to produce it, and he
25 still hasn't produced it. What I saw in response,

1 there were a bunch of arguments as to why we don't
2 think we have to produce it. We disagree. We
3 think the case law says if you've been asked for
4 it, you need to produce it. As far as I can tell,
5 he didn't bother to do that. He didn't even ask
6 his family members for it.

7 One of the things we know is his
8 brother-in-law -- I believe the trustee of the
9 trust is Mr. Denton's sister. His brother-in-law
10 is on the board of directors of GMGI. He's the
11 main conduit of information with Mr. Denton's
12 sister. So for them to say he doesn't have the
13 control or the ability to obtain this trust
14 document just doesn't hold muster.

15 So because he's already been ordered to
16 produce it, what we're asking the Court to do
17 under 1.380 is to your invoke your powers to
18 establish factually that through the trust he and
19 the trust own 68 percent of the total interest of
20 the company. They had the opportunity to produce
21 the documents and they chose not to. There's
22 ramifications on that.

23 The other document at issue is a transfer
24 pricing study. This is important for a couple of
25 reasons. This transfer pricing study is part of

1 the agreement that -- the licensing agreement that
2 determines how all the profits of Gawker Media are
3 sent overseas. And that's significant for the
4 purposes of valuing Gawker Media, L.L.C., which is
5 a party. We have to determine the financial worth
6 of that entity. Whereas, Mr. Denton as GMGI, they
7 have consolidated financials. So we were looking
8 at the value of Gawker Media, L.L.C. because all
9 of its profits go overseas. It's important for us
10 to determine the validity of how that royalty
11 payment is calculated. Apparently that's done
12 pursuant to a document that was originally
13 identified in privileged logs a long time ago in
14 the litigation as an economic analysis and that
15 was it. We now know, because of the response we
16 received, that apparently this was an economic
17 analysis done by a lawyer as to whether or not
18 this would qualify as an arm's length transaction
19 between interrelated companies to transfer these
20 royalties over. We don't know if that's actually
21 what it says or not. We don't know if it's
22 actually legal advice. We don't know if part of
23 it is legal advice and part is actual facts that
24 we would be entitled to receive.

25 At this point, because the privilege has been

1 asserted, we believe the Court under the law is
2 required to review this document in camera to see
3 if that privilege holds muster. This document is
4 unquestionably responsive to our discovery, and it
5 is unquestionably not being produced solely on the
6 basis of the fact that there's a privilege
7 assertion. So we would like the Court to review
8 it in camera to determine if that holds muster,
9 and if it doesn't, produce the document to us
10 either in full or redact the attorney/client
11 privileged information and produce the facts to us
12 because it's a critical, critical piece of valuing
13 Gawker Media.

14 THE COURT: Thank you, Mr. Vogt. I saw this
15 week that there had been an order at the Second
16 DCA staying Gawker's motion for paragraph 4, 6, 7
17 and 9. I have not had a chance to see what those
18 paragraphs are.

19 MR. VOGT: They are the paragraphs that
20 remove Ms. Dietrick from attorneys' eyes only
21 designation. They also require the audio files
22 from the FBI to be turned over to Judge Case in
23 accordance with the stipulated protocol. I
24 believe that's it.

25 MR. BERLIN: I think the other piece was

1 just -- there was a piece of that that adjudicates
2 the FBI materials as attorneys' eyes only.

3 THE COURT: Okay.

4 MR. BERLIN: That stay was stipulated to by
5 the plaintiff, and then we filed -- I guess the
6 stipulation went to the DCA and they then issued
7 an order based on that stipulation.

8 THE COURT: So the portion about the
9 appointment of the computer forensic analysis,
10 that part wasn't stayed beyond the December 4th?

11 MR. VOGT: That hasn't been appealed yet.

12 MR. BERLIN: That hasn't been appealed, Your
13 Honor. There was an earlier order that removed
14 Ms. Dietrick. That first order, which was I think
15 technically not a motion, but was called an
16 emergency motion for clarification, that first
17 order was rendered earlier. So that appeal was
18 put in. We asked the trial court for a stay and
19 the plaintiffs opposed it. So we got a limited
20 stay. Then we asked for a stay from the appeals
21 court. The record was filed, and rather than
22 respond, the plaintiff said why, don't we
23 stipulate to a stay because it's likely to be
24 granted -- I won't speak for them, but they then
25 stipulated. We filed the stipulation.

1 The one having to do with the electronic
2 discovery is going to be appealed or the subject
3 of a writ petition, but that has not been filed
4 yet.

5 THE COURT: Okay. So in that line, I also
6 wanted to introduce, if you all have not met,
7 Mr. Santiago Ayala. He came today to sort of meet
8 the attorneys and to sort of get his marching
9 orders and put a face with the name. I appreciate
10 Mr. Ayala being here today. I didn't know if this
11 particular order had anything to do with that part
12 of it.

13 MR. BERLIN: That's an earlier order. We did
14 have an opportunity to meet Mr. Ayala before the
15 hearing.

16 MR. VOGT: Thank you.

17 THE COURT: Thank you, Mr. Vogt.

18 Mr. Berlin?

19 MR. BERLIN: Your Honor, let me try and take
20 the two documents first and then come back to the
21 depositions, if I could. I'll start with the --
22 I'll just go in reverse order since that's what's
23 freshest in my mind.

24 The document that they're describing as a
25 transfer pricing study is a piece of legal advice

1 that was prepared by a lawyer. It was a tax
2 lawyer who used to be in the office of the chief
3 counsel for the IRS. He eventually went to work
4 at the Mayer Brown law firm which is a big
5 international law firm that does international tax
6 law among other things. He provided to Gawker,
7 without getting into the substance of the advice,
8 some tax advice. There is a provision of the
9 Internal Revenue Code that says if you are going
10 to do a transaction with a company that is in part
11 of the same corporate family, to make sure you're
12 not shielding assets or shielding income that
13 could be taxed, there is a formula -- formula is
14 the wrong word. There is a test for making sure
15 that that is an appropriate arm's length
16 transaction. They went to this lawyer to get that
17 advice, and that's what's in this document.

18 Now, the other piece of this is that the
19 plaintiff is saying, I need this document because
20 it tells me how the royalty payment is calculated.
21 That is actually incorrect. The royalty payment
22 is set -- the royalty formula is already set out
23 in a document that they attached to their motion
24 as Exhibit B, I believe, to the affidavit of
25 Mr. Harder. And it tells you -- it says the

1 royalty from Gawker to Kinja for licensing its
2 various intellectual property, and it tells you
3 how that royalty is calculated. So to the extent
4 they're saying, we need to understand this for
5 purposes of knowing what money goes from Gawker to
6 Kinja, to the extent that affects the value of
7 Gawker Media, LLC, they have that information.

8 And, moreover, we have -- this is a more
9 micro level answer to that question, but you may
10 remember, Your Honor, that one of the pieces of
11 net worth discovery that you asked us to provide
12 was literally provide records of each transaction
13 that reflected payment from Gawker to Kinja, and
14 we provided banks statements to basically do that.
15 So they have this information essentially in two
16 ways. One is in the document attached to their
17 motion and two is in the stack of bank statements
18 that shows on such and such a date, this amount of
19 money went from Gawker to Kinja.

20 You know, we have asserted this privilege and
21 it was asserted in our privilege log almost a
22 couple years ago, and we think that the document
23 is privileged. It's pretty clearly privileged on
24 its face. There are times when courts will do an
25 in camera inspection, but I don't even think

1 that's necessary here. We would obviously object
2 to that.

3 Unless Your Honor has any questions about
4 that, I'll turn to the trust documents. The
5 bottom line of this, Your Honor, is that
6 Mr. Denton does not have these documents. Okay?
7 And the nature of the argument, right, is that
8 there were these news reports -- which they
9 already have. Those, again, go back to late 2014
10 and early 2015. This is not a late-breaking
11 development in this case -- in which Mr. Denton
12 was quoted as saying -- one interpretation is, me
13 and my family own a big chunk of this company. If
14 they want to argue that that makes a difference to
15 the valuation, they have that information. They
16 have a list of who owns what shares. They have
17 Mr. Denton's testimony saying, is it true that
18 your niece and nephew, in your trust of which your
19 sister is the trustee, have shares? They have
20 that information. So the question is -- there's
21 this document. They stated -- at the beginning,
22 Mr. Vogt stated that Mr. Denton transferred his
23 shares into the trust. That is not right. The
24 shares in this trust came from Mr. Denton's
25 father. So he is not the grantor. He is not the

1 beneficiary. That's the niece and nephew. He is
2 not the trustee. That's the sister.

3 The general gist of the argument, as I
4 understand it, is even though they're not his
5 documents, he could go get them. So you should
6 make him go do that. That is legally incorrect.
7 They're in his possession if they're his, they're
8 in his possession, custody or control, they're his
9 or something that he has the legal right to
10 control. If they were in the file of his
11 assistant, he would have a legal right to go into
12 her office and say produce these documents. The
13 cases that they're citing have to do with the
14 legal right to compel something.

15 In this case, Your Honor, we thought there
16 might be a possibility, for example, that Jennifer
17 Bollea -- that's Mr. Bollea's wife -- might have
18 texts or e-mails that relate to the substance of
19 this matter, and we didn't say, Mr. Bollea, you
20 have them in your custody, you have to give them
21 us. We sent a subpoena. It turns out she
22 responded and said, I have no documents, and that
23 was the end of it. But that's the process for
24 doing this. If you want something from someone's
25 family member, if that's what you want, then you

1 send them a subpoena. But to order him to produce
2 something that he does not have would be wrong.
3 So that's the story of that. To be honest, that's
4 true that he doesn't have them, but I also want to
5 make it clear that the point of getting this
6 discovery as articulated by the plaintiff is they
7 want to be able to argue that there is what's
8 called a control premium on the value of his
9 shares because other people in his family own
10 them. They can make that argument. They don't
11 need this document to make that argument. They
12 have testimony and documents that show it's not a
13 secret. Nobody's tried to hide the fact that his
14 niece and nephew own the shares. So that's the
15 two documents.

16 Now the depositions. When Your Honor was
17 asked about this at the last hearing on punitive
18 damages, which was back in June, Your Honor said,
19 we are done with depositions. Then the trial got
20 put off. Then Your Honor issued the order, the
21 written order several weeks later after the trial
22 was put off, and again denied the request for
23 additional depositions. The argument essentially
24 is we got a small smattering of additional
25 documents. Now, one of the documents that they

1 mentioned is this executive summary. It basically
2 summarizes the financial information that has been
3 produced. It's not any different. So the
4 question is if we had produced something that says
5 this is different and they made a showing that
6 says, hey, you told us that your financial worth
7 was X and here's some document that you've now
8 produced that says it's Y, then you can say, okay,
9 maybe they would want to get the people in a
10 deposition chair, in Mr. Denton's case for the
11 third time and Mr. Kidder's case for the fourth
12 time. Maybe that would be a compelling argument.
13 I still think at some point, you have to say --
14 there are a lot of things I've learned since that
15 last time Mr. Bollea was deposed that I would like
16 to ask him, but I'm not here asking for another
17 deposition.

18 THE COURT: That will be the next hearing.

19 MR. BERLIN: No, Your Honor. I'm done asking
20 Mr. Bollea questions until trial, Your Honor.

21 But the issue is that our -- you know, there
22 is a limit on how much burden can be put on a
23 party for the purposes of answering what is
24 essentially supposed to be a simple question,
25 which is what -- in a rough sense, not down to the

1 penny, but in a rough sense, what are you worth?
2 I think it's fair to say we have, through the
3 discovery that has already been done, exhausted
4 that. Now, I will say that -- they've asked us
5 and we have not balked at this. They said, can
6 you give us updated financials before the trial
7 because the trial would have been in 2015 and now
8 the trial will be in March of 2016. I think we've
9 agreed to give them -- I might have this wrong by
10 a month, but financials through the end of the
11 year, through the end of January. We're not
12 objecting to that. They want a current picture.
13 That's fine. But the question is, do I need to
14 then go and start asking deposition questions
15 about that? Part of that is borne out by the fact
16 that when you do these depositions, Your Honor,
17 there were some questions that were asked like,
18 okay, Mr. Denton, you own the better part of
19 50 percent of the company here. What's that
20 worth? That's a fair question. There were also a
21 lot of questions about, you know, Mr. Denton, on
22 your 2010 tax return, here's an account that shows
23 you made \$300 in interest. We spent a lot of time
24 going through that. It's not really material to
25 the overall value of the fellow.

1 Same thing is true with Gawker. Here's an
2 investment you made that was \$5,000. It's a
3 significantly size company that has tens of
4 millions of dollars in revenue. It's not really
5 relevant to this question. I allowed them to go
6 down the road where you sort of think maybe it's a
7 good idea to ask a few questions and then we're
8 asked all sorts of frivolous questions and then
9 we're back in the same situation. I would like to
10 just say, I think we have done enough. In
11 particular, to the extent that the two documents
12 that are new or -- I say "new" in quotes because I
13 don't think either one of these is new but are
14 newly raised in this motion, these trust documents
15 which we don't have, and this piece of privileged
16 advice which is privileged, even if those were --
17 I don't think those need to be produced, but
18 producing two additional documents could not be
19 cause for reconvening depositions. There has not
20 been any showing that the stuff that we
21 produced -- it wasn't that much because most of it
22 had already been produced. There were a few
23 straggler documents. They haven't made the case
24 that there's any sort of different thing in there.
25 If they want to come and make that case, I would

1 suggest that the first order of business is let's
2 come and make it to us so we can try to work it
3 out. Maybe it's a question that could just be
4 explained rather than the subject of a huge
5 process, but I would think that would need to be
6 shown before they could get those.

7 Unless Your Honor has any questions, I'll sit
8 down.

9 THE COURT: I do.

10 MR. BERLIN: Okay.

11 THE COURT: On the plaintiff's motion, at the
12 bottom of page 6, importantly, the shares in the
13 trust were originally owned by Mr. Denton and were
14 transferred by him into the trust which ostensibly
15 benefits his own family members, and it goes to
16 a -- it refers to a transcript of the deposition.

17 I think you just said that that wasn't true.

18 MR. BERLIN: That was not true.

19 THE COURT: So is the transcript being
20 misquoted or what?

21 MR. BERLIN: To be honest, Your Honor, we
22 objected when this question was put because there
23 was a question about the grantor, a legal term of
24 art that people who deal with trusts, like
25 lawyers, would know, but he really was not up on.

1 Originally, if you go back in time, both in terms
2 of years and in terms of steps in the process,
3 it's my understanding that at some point when
4 Mr. Denton started this company, the shares were
5 all his. So, many years ago, long before this
6 case started, he shared some of those with his
7 father. I believe that his father then actually
8 put them -- I'm not a hundred percent, but I
9 believe what happened here is the father then put
10 them into an entity that the father created for
11 this purpose and then they got transferred to the
12 trust. So it's Denton to father to entity to
13 trust.

14 So when the question is, are you -- when he
15 says, were you the grantor of the shares, he
16 answers the question with an answer that is
17 technically right, but not legally right, which
18 is, they were originally my shares, yes. That's
19 the passage that's quoted here. That's
20 technically correct as I understand, but it's not
21 complete in the sense that there were a series of
22 steps in between. So the question is, who was the
23 grantor of this trust? More importantly for this
24 purpose, would you have documents that relate to a
25 trust that either you were or you're not? If

1 you're not a party, you're not going to have the
2 documents. If he were the grantor, he might still
3 have the documents, but that was not the case
4 here. So that accounts for the confusion.

5 THE COURT: Working backwards from the trial,
6 for whatever purposes either side wants, it's
7 great in my view that the lawyers can try to work
8 some of these issues out. At this point, we're
9 way beyond that. So I think that for purposes of
10 the trial, each side needs verified signed by the
11 client answers. So if you can't rely on
12 deposition testimony of that, then you need
13 something in writing other than just an attorney
14 coming in and explaining it to the Court, which is
15 fine, but you can't use that at trial.

16 MR. BERLIN: Right. I actually believe we
17 submitted a declaration of Mr. Denton. There was
18 a question about this that got raised between the
19 deposition in June and the motion that is now
20 before you. We said, look, we understand and we
21 want to be clear about this. We wrote back and
22 said, look, we will write a declaration that
23 answers some of these questions so that they are
24 clear in plain English. We did that. That
25 declaration, as I understand it, answers this

1 question, not in the vagaries of a deposition
2 where a person that is not a lawyer is being asked
3 technical questions about who is the grantor, who
4 is the trustee, who is the beneficiary, but that
5 says in plain English, I am not a party to this
6 transaction and I don't have these documents as a
7 result. And we did that so it was clear, and
8 that's attached as one of the exhibits to our
9 motion.

10 THE COURT: All right. Thank you.

11 Mr. Vogt, response?

12 MR. VOGT: Yes, Your Honor. I think
13 Mr. Berlin sort of made our point about the
14 reasons why we need the additional depositions
15 when he was just saying about Mr. Denton's
16 testimony, these inconsistencies in his testimony.
17 I have a copy of what he said if Your Honor wants
18 to see it, but he says clear as day, he was the
19 grantor of those shares. Answer: They were
20 originally my shares, yes. I was the original
21 owner of the shares, yes.

22 They were then transferred into a trust; is
23 that correct? They're now in a trust.

24 Do you not have a recollection of when that
25 trust was created? I can look it up.

1 If he can look up information about when it
2 was created, he can certainly ask someone for it.
3 That's the one thing you didn't hear during any of
4 Mr. Berlin's comments today. If he made a simple
5 request to ask for the trust document, we could
6 avoid all these problems. They seem to know an
7 awful lot about the trust document if they don't
8 actually have it and about the history of how it
9 was set up.

10 It is important for us to have this document.
11 We're entitled to prove the case the way that we
12 see fit. We don't have to take Mr. Denton's words
13 for things. The fact that his testimony was
14 inconsistent on this issue is further proof that
15 we need the document to test his knowledge and
16 veracity of his statements.

17 I think something else has been ignored here
18 so far, which is the fact that you already ordered
19 them to produce this document. If their problem
20 was he didn't have it, you can't order him to
21 produce it, that was the argument they should have
22 made before you entered your July 20th order,
23 which they didn't appeal. So you ordered them to
24 produce the document regardless of whether he had
25 it, and he didn't do it. He ignored a court

1 order. Rule 1.310 is extremely clear on what you
2 have a right to do when that happens. You have
3 the right to establish those facts as true.

4 The articles that we're talking about, I want
5 to quote them because it's pretty important what
6 they say. Personally and through a family trust,
7 Denton says he owns 68 percent of his
8 privately-held Cayman Islands registered company
9 that press reports have valued in the neighborhood
10 of 300 million dollars. That's what they say in
11 the press reports.

12 THE COURT: In the what?

13 MR. VOGT: In the press reports. I have a
14 copy, Your Honor.

15 THE COURT: That's not one of the issues in
16 this case. Everybody wants me to hear all these
17 press reports, both sides. And really -- it's
18 hard enough just to see the veracity of the client
19 much less what somebody else reported. I don't
20 really care about what's been press reported for
21 both sides. I try to stick right to the lawsuit
22 and the facts of the lawsuit without getting into
23 all the other stuff that's out there. It's really
24 a moving target and makes it hard to follow the
25 bouncing ball along the way. So I'm trying to

1 stay focused on the trial rather than all these
2 other things. But thank you for bringing that up.

3 MR. VOGT: I agree. That's why we want the
4 document. The document is the best evidence.

5 THE COURT: I understand that.

6 MR. VOGT: And they had that chance, and they
7 didn't do it.

8 I already commented on the depositions
9 briefly. This argument that we're imposing some
10 sort of additional burden on them by sitting for
11 additional brief depositions, that was all in
12 their own control, Your Honor. If they had
13 produced these documents originally, we wouldn't
14 need to go back again. That was a choice that
15 they made. So they kind of put that on
16 themselves.

17 The transfer pricing study, the only thing
18 I'm going to say on that, Your Honor -- and,
19 again, we think it should be reviewed in camera
20 just to see what we're talking about. It isn't
21 just about understanding how much they paid. We
22 do know that. We can see that.

23 What we're trying to understand is the
24 legitimacy of that payment. Is it really valid?
25 When this company -- we're in a lawsuit where

1 they're wrapping themselves in the American flag
2 and hiding behind the shield of the First
3 Amendment. When they're transferring every bit of
4 their profit overseas to avoid paying taxes in the
5 U.S., is that legitimate? That's why we want this
6 study. We don't have any information yet. So we
7 think at a minimum, Your Honor should review it in
8 camera and determine whether or not we should get
9 it.

10 THE COURT: So you think that the Court has
11 the ability to make an in camera inspection and
12 make a financial analysis or make some kind of
13 legal determination about that?

14 MR. VOGT: No. I think what the law says,
15 Your Honor, is legally you're required -- when a
16 party is served -- what they've done in this case
17 is they said this entire document is
18 attorney/client privilege. Once they do that and
19 we challenge that privilege, by law, they have to
20 get that document to you so that you can review it
21 in camera to review, to determine whether or not
22 that privilege assertion is valid. If that
23 doesn't happen, it's reversible error. So that's
24 what we're asking you to do, not to do an economic
25 analysis, just look and see whether it's actually

1 privileged.

2 THE COURT: Let me give you an analogy to
3 that. There's a request for FaceBook -- FaceBook
4 photos. There are four young thin blonde women in
5 a picture. I say, which is the plaintiff? Well,
6 I'm not really sure. So unless you have the
7 information and unless you have the context of how
8 the event took place and more information about
9 it, it's hard to know -- I would imagine it's hard
10 to know attorney/client privilege in that kind of
11 setting.

12 MR. VOGT: And that's where you get into the
13 backup. The law says the burden of establishing
14 the privilege is on the party asserting it. So if
15 they have maintained that this document is
16 privileged, then they have the burden of coming
17 forward with an explanation to you that you can be
18 looking at as you're looking at the document as to
19 why this document is privileged. It's their
20 burden. It's not ours. We can't do it because we
21 don't know what's in it.

22 THE COURT: All right. As far as -- the
23 Court will rule as follows. As far as the
24 depositions, that will be denied without
25 prejudice. Mr. Berlin has agreed to provide

1 updated financial -- I took from that, Mr. Berlin,
2 when you said December to January, you're talking
3 about year-end financials.

4 MR. BERLIN: I believe we've already had some
5 exchange -- I'm a little fuzzy on exactly what the
6 details were. I believe we've had some exchange
7 with plaintiff's counsel about providing updated
8 financials. We understand there was a lag between
9 our last financials and the trial. I don't
10 remember exactly what the period was, but we do
11 agree to it.

12 THE COURT: So based on that representation,
13 I'm going to agree that the plaintiff is entitled
14 to updated financials.

15 I said the depositions without prejudice
16 because in the review of those updated financials,
17 at that point in time, if the plaintiffs believe
18 that they need a deposition for the updated
19 financial aspect of it, we'll address that at a
20 future hearing.

21 As far as the trust document, the discovery
22 of the trust document, I'm going to grant the
23 plaintiff's motion as to discovery of the trust
24 document, including if they need to go acquire
25 those trust documents through nonparties.

1 As far as the transfer pricing study, the
2 Court is going to deny the plaintiff's motion to
3 compel the transfer pricing study.

4 Any questions about any of that?

5 MR. VOGT: When you said they acquire from
6 third parties, are you saying you're going to
7 order Mr. Denton to acquire the trust documents or
8 we can go get them?

9 THE COURT: No. You can go get them so that
10 we're avoiding any kind of objection from the
11 defense that if they want to get the nonparty
12 trust document from a nonparty, they're entitled
13 to go get that.

14 MR. BERLIN: So I understand, you're
15 authorizing potentially, even though discovery is
16 over, for them to send a subpoena?

17 THE COURT: Yes.

18 MR. BERLIN: Okay.

19 THE COURT: And from you, exactly. We'll see
20 how all of that plays out.

21 MR. TURKEL: Judge, at the risk of
22 overstepping my bounds on the transfer pricing
23 study issue, I just want to provide the Court an
24 anecdote on the in camera aspect of it.

25 I had a case in front of Judge Baird -- it's

1 a reported decision, so I can provide it to the
2 Court -- where the privilege characteristic of a
3 document was painfully apparent to him as not
4 being privileged. In other words, we were talking
5 about one term of a redacted portion. He ruled on
6 the face of the document that it was not
7 privileged, and they took it up. It came back
8 solely on the grounds that he didn't look at it
9 in camera. Literally when it came back, we handed
10 it to him in camera and it was what everybody had
11 agreed -- we all knew it was just this one pricing
12 term, but the language in the opinion -- it's 1221
13 Palm Harbor vs. Summitbridge. It's a reported
14 Second District actual opinion where there was
15 extremely strong language that literally when
16 there is an assertion of privilege, you're
17 almost -- even if you come back and deny our
18 motion, I don't want to have to vet that. What I
19 can do perhaps -- I know this has been briefed. I
20 know everybody briefs everything. I just --
21 again, this isn't something meant to create
22 tension with the result, but I think the procedure
23 has to be done. I don't know that there is a way
24 to avoid doing the procedure even if it doesn't
25 change the result.

1 I would like at least a chance to send that
2 case over because I lived through something very
3 similar to this. We were on for appeal six months
4 or eight months.

5 THE COURT: It sounds like what you were
6 talking about was a one-page document.

7 MR. TURKEL: It was the words of a purchase
8 agreement. It was actually a multi-page document,
9 but there was pricing information in it and they
10 claimed it was confidential, trade secret,
11 proprietary privilege. The cases don't really
12 distinguish between privilege assertions whether
13 it be work product, attorney/client, trade secret.
14 I can just submit the case, no long letter, let
15 you read it, or even just give you the cite before
16 we leave today. I just don't want to be in the
17 posture where going through the procedure doesn't
18 happen regardless of whether it changes the
19 result, Judge.

20 THE COURT: So you're representing, I
21 think -- let me make sure I'm right -- is that
22 this case that you're citing stands for the
23 proposition that when there is a privilege raised
24 that it is -- it is the party's burden then to
25 argue that and that the Court has to take at least

1 an in camera review?

2 MR. TURKEL: The context in which it normally
3 comes up is a privilege log is done. If you can't
4 tell facially from the privilege log that the
5 document is privileged, then the in camera has to
6 happen. Again, this isn't sort of the way we ring
7 the bell other than the fact that we don't know if
8 it's privileged because we have no idea what the
9 document is. The only way to tell if the
10 privilege is valid is to ask the Court to look at
11 it. If it's not facially apparent, they haven't
12 sustained the burden other than coming to court
13 and saying a tax lawyer did an analysis. Within
14 that analysis, there could be nonprivileged
15 information, privileged. We don't know.

16 THE COURT: Refresh my memory. This comes
17 about in a PowerPoint presentation? There's
18 something about a PowerPoint presentation where
19 this either came about or this is in a PowerPoint
20 presentation or something.

21 MR. BERLIN: I think that's a different
22 document, Your Honor. This is referred to --
23 remember, this is Exhibit B in Mr. Harder's
24 confidential declaration. There is a document
25 that refers to this. We disclosed it long ago.

1 Mr. Kidder talked about it. He didn't disclose
2 the substance of the privilege, but he talked
3 about it in his deposition.

4 If I can just address the point that
5 Mr. Turkel is making, it cannot -- I won't pretend
6 that I've read the case that he cited or that I
7 participated in it, although from his description
8 of it, it's a different case because in that case,
9 the question was -- the judge was basically saying
10 I'm finding this not to be privileged and there is
11 a serious allegation that a trade secret was going
12 to be leaked, and the court above is saying you
13 probably ought to look at that document before you
14 call it privileged. Here they're doing the
15 opposite, which is finding something is
16 privileged.

17 It is not the law that when a privilege is
18 raised that the Court always has to conduct in
19 camera review. If that was the law, you could
20 spend all day every day reviewing documents that
21 one side or another in any number of cases had
22 asserted a privilege.

23 THE COURT: I do.

24 MR. BERLIN: Well, you may, but my point is,
25 if -- Mr. Turkel admits this. You can tell from

1 the document -- the document itself is prepared by
2 a -- it's listed in the privilege log as Mayer
3 Brown preparing it. There is no allegation that
4 the document predates this case. There is no
5 allegation that this was done in response to this
6 case, nor could there be. Your instinct about
7 this, which is that this is privileged, is exactly
8 right. You don't need to -- the notion that you
9 have to sit and look at -- I have a bunch of
10 documents that I challenged the privilege on that
11 the Court didn't review. We just determined, no,
12 those things are privileged. That's totally fine.

13 MR. TURKEL: Judge, perhaps to guide the
14 inquiry a little bit, attorney/client privilege is
15 information that's rendered in the seeking of
16 legal advice. When Mr. Berlin claims it's
17 facially apparent --

18 THE COURT: Does somebody have that -- I
19 think it's somewhere in here that has something
20 about this transfer pricing study. Which notebook
21 is it in? Somebody had it sitting right there on
22 the --

23 MR. BERLIN: I'm looking, but I don't know
24 that I have a copy of what we're talking about,
25 Your Honor.

1 THE COURT: I think Mr. Vogt has it. Is this
2 one of the things that was in the notebook?

3 MR. VOGT: Yes, Your Honor.

4 MR. BERLIN: Is that what you were thinking
5 of, Your Honor?

6 THE COURT: Yes. This is the only thing so
7 far that has been submitted that the plaintiff
8 has, right?

9 MR. VOGT: Correct.

10 MR. BERLIN: Your Honor, they also had a
11 privilege log that listed the document with Mayer
12 Brown as the law firm, which is also attached to
13 the motion as Exhibit 6.

14 Generally, Your Honor, the bottom line is a
15 simple one, which is Mr. Turkel and Mr. Vogt have
16 said it's clear error for you not to look at this
17 document, and that's just wrong. I don't know
18 where that comes from. Maybe there is a case
19 where the court found in the particulars of that
20 case that that was wrong.

21 Here it's clear that this is prepared by a
22 law firm. Their argument is based on a case
23 where -- what the law firm did in that instance
24 was go out and hire a service, which was a
25 different company, and said we're going to hire

1 you for our client instead of the client hiring
2 you directly and then we're going to call that
3 privilege. That's not what is going on here.
4 This is Mayer Brown rendering advice, and the
5 facts are privileged.

6 THE COURT: So I'm going to reverse myself on
7 that issue and I'll review that in camera.

8 MR. BERLIN: Your Honor, we're going to need
9 a stay because we may want to appeal that because
10 it's privileged, and I don't know whether the
11 Second will look at that.

12 THE COURT: You have until December 4.

13 MR. BERLIN: I'm sorry?

14 THE COURT: You have until December 4.

15 MR. BERLIN: I'm not sure that's going to get
16 done between now and Thanksgiving, but if I need
17 to move on that on emergency, I guess I have no
18 choice.

19 THE COURT: Thanks. Let's move to the motion
20 to determine confidentiality of Gawker's financial
21 worth discovery.

22 MR. VOGT: And, Your Honor, we'll defer to --
23 these are their financial documents. So we'll
24 defer to them.

25 THE COURT: But I believe it was your motion.