

## Legal Alert

July 19, 2016

Michael R. King  
[mking@gbllaw.com](mailto:mking@gbllaw.com)  
602-256-4405

**QUESTION: DID HULK HOGAN BODY-SLAM GAWKER MEDIA FOR INVASION OF PRIVACY?**

**ANSWER: EVEN THE FIRST AMENDMENT COULDN'T STOP THE HULKSTER FROM PINNING GAWKER FOR A JURY VERDICT OF MORE THAN \$140 MILLION!**

### **I Thought Professional Wrestling and Reality TV Were All Scripted Anyway?**

Remember the 1988 Main Event between Hulk Hogan and Andre the Giant? The Hulkster had pinned the Giant, but the referee was distracted and missed the count. The Giant recovered and the ref three-counted the Hulkster and handed the Championship Belt to Andre the Giant.

Recently, Judge Pamela Campbell was watching more closely when the Hulkster recovered from a take-down, slammed Gawker into the turn-buckles and wrestled the Championship Belt from the jury!

### **Not Gawking at Wrestling Moves!**

According to the Court, Hulk Hogan “engaged in extra-marital sexual relations with a woman in her home.” *Gawker Media, LLC v. Terry Gene Bollea, Professionally Known As Hulk Hogan; et al.*, 129 So.3d 1196 (Fla. 2d DCA 2014). The Hulkster’s 2006 bedroom wrestling was with the wife of his best friend, Tampa disc-jockey Bubba the Love Sponge. The “sexual encounter was videotaped.” (The Court defined the video tape in the opinion as the “Sex Tape.”) Gawker Media posted the Sex Tape on its website in 2012.

Hulk Hogan obtained a temporary injunction preventing Gawker “from publishing and otherwise distributing the video excerpts from the sexual encounter and the complementary written report.” The appellate court said that “an injunction order generally comes to this Court clothed with a presumption of correctness.” (At least something in the case was “clothed.”) Nevertheless, the Court reversed the temporary injunction order and sent the case back for trial.

### **But What About the First Amendment?**

The Court said: “Privacy concerns give way when balanced against the interest in publishing matters of public importance. . . . One of the costs associated with participation in public affairs is an attendant loss of privacy.” The jury apparently thought that Hulk Hogan did not intend the affair to be public, however. The appellate court initially thought that publishing the Sex Tape “was not an invasion of privacy and was protected speech.”

But all of that had to do with whether Gawker would be enjoined from continuing to post the Sex Tape. Whether that conduct was wrongful, was left to the jury. The jury thought it was very wrongful!

## **Invasion of Privacy, Really?**

The Court stated: “Mr. Bollea, better known by his ring name, Hulk Hogan, enjoyed the spotlight as a professional wrestler, and he and his family were depicted in a reality television show detailing their personal lives.” The Court also noted that Hulk Hogan “openly discussed an affair he had while married to Linda Bollea in his published autobiography and otherwise discussed his family, marriage, and sex life through various media outlets.”

## **Hogan Throws Gawker Over the Top Rope!**

In March, 2016, the jury handed Hulk Hogan the Championship Belt! The jury returned a verdict for Hulk Hogan against Gawker and other defendants for claims of:

- (1) Publication of Private Facts;
- (2) Invasion of Privacy Based on Intrusion;
- (3) Violation of the Common-Law Right of Publicity;
- (4) Intentional Infliction of Emotional Distress;
- (5) Violation of Florida’s Security of Communications Act.

The jury awarded \$55 million for economic injuries, \$60 million for emotional distress and \$25,100,000 in punitive damages!

## **The Jury Wasn’t Just Gawking at Championship Wrestling!**

The jury said that Gawker and the other defendants had publicly disclosed private facts about Hulk Hogan “in a manner that a reasonable person would find highly offensive.” Therefore, the jury returned the verdict in favor of Hulk Hogan on the claim for Publication of Private Facts because the Sex Tape “was NOT a matter of legitimate public concern.”

With respect to the Invasion of Privacy Based on Intrusion claim, the jury found that Gawker and the others wrongfully intruded where Hulk Hogan “had a reasonable expectation of privacy.” The jurors also found that the Sex Tape was published in a way that would “cause mental suffering, shame or humiliation to a person of ordinary sensibilities.”

Gawker and the other defendants also violated the Florida Common Law Right of Publicity by using Hulk Hogan’s “name or likeness for a commercial or advertising purpose.” Hulk Hogan had not authorized the posting of the Sex Tape on Gawker’s website.

Posting the Sex Tape was “extreme and outrageous to a person of ordinary sensibilities” and therefore caused Intentional Infliction of Emotional Distress.

The actions were also a violation of Florida’s Security of Communications Act because Gawker posted the Sex Tape intentionally and Hulk Hogan “had a reasonable expectation of privacy in the bedroom” where it was recorded. (Even though it wasn’t his bedroom.)

## **The \$140,000,000 Verdict Put Gawker in a Choke-Hold and Led to Its Bankruptcy!**

Truth is not always a defense and public figures can have protected private affairs. Remember what your mother told you! Mind your own business and don’t gossip!