

**FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION**

**STATE FARM FIRE AND CASUALTY
COMPANY and STATE FARM
MUTUAL AUTOMOBILE
INSURANCE COMPANY**

PLAINTIFFS

V.

CIVIL ACTION NO. 2:07CV188-DCB-MTP

**JIM HOOD, IN HIS OFFICIAL
CAPACITY AS ATTORNEY
GENERAL OF THE STATE OF
MISSISSIPPI**

DEFENDANT

**DEFENDANT'S RESPONSE TO JACKSON
NEW MEDIA'S MOTION TO INTERVENE**

Defendant, Jim Hood, in his Official Capacity as Attorney General of the State of Mississippi (the "Attorney General"), respectfully submits this Response to the Motion of Jackson New Media, Inc. ("New Media") to Intervene (the "Motion"), and in support thereof, states as follows:

1. New Media's Motion is, under controlling Fifth Circuit law, untimely and seeks relief that the Fifth Circuit has deemed beyond the authority of the district courts to grant. Although the Attorney General has no other opposition to the Motion to Intervene, as an officer of this Court, the Attorney General is required by those duties and ethical considerations to apprise the Court of controlling authority. In a case that is closely analogous, if not squarely on point, the Fifth Circuit upheld a district court's refusal to allow a party to intervene to unseal a settlement agreement after entry of a final consent dismissal. In so ruling, the Court held:

We affirm the Court's dismissal of Belth's motion because there is no case in which Belth can intervene. A prerequisite of an intervention (which is an ancillary proceeding in an already instituted suit) is an existing suit within the Court's jurisdiction.

Non Commissioned Officers Ass'n of U. S. v. Army Times Pub. Co., 637 F.2d 372, 373 (5th Cir.), *opinion modified and reinstated*, 650 F.2d 83, 83 (5th Cir. 1981). The Fifth Circuit has recently followed this precedent holding that a “prerequisite of an intervention” is that there be “an existing suit within the Court's jurisdiction.” *Krim v. pcOrder.com, Inc.*, 402 F.3d 489, 502 (5th Cir. 2005); *see also, Ericsson Inc. v. InterDigital Communications Corp.*, 418 F.3d 1217, 1222 (Fed Cir. 2005)(When motion to intervene was filed in December 2003 in a case that was dismissed with prejudice on March 19, 2003, “there did not exist the Fifth Circuit prerequisite for intervention: ‘an existing suit within the court's jurisdiction.’”); *Houston Gen. Ins. Co. v. Moore*, 193 F.3d 838, 840 (4th Cir.1999) (“When Beaumont filed its motion to intervene more than 60 days after the entry of final judgment, there was no pending litigation in which Beaumont could intervene. Therefore, the motion was untimely”).

2. Aside from Fifth Circuit precedent that appears to bar New Media’s Motion for intervention, it is evident that the same bases on which the *in camera* testimony and settlement agreement were sealed are equally applicable now. Because the motion is untimely under Fifth Circuit precedent and because there has been no change in circumstances that would justify unsealing the sealed elements of the record, New Media’s Motion should be dismissed.

Respectfully submitted,

FOR THE DEFENDANT, JIM HOOD, IN HIS OFFICIAL
CAPACITY AS ATTORNEY GENERAL OF THE STATE
OF MISSISSIPPI

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CERTIFICATE OF SERVICE

I, Harold E. Pizzetta, III, Special Assistant Attorney General of the State of Mississippi, do hereby certify that on May 11, 2009, I caused to be electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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