

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA ex rel.;
CORI RIGSBY; AND KERRI RIGSBY

RELATORS/COUNTER-DEFENDANTS

v.

CASE No. 1:06-cv-433-LTS-RHW

STATE FARM MUTUAL
INSURANCE COMPANY

DEFENDANT/COUNTER-PLAINTIFF

and

FORENSIC ANALYSIS
ENGINEERING CORPORATION;
EXPONENT, INC.;
HAAG ENGINEERING CO.;
JADE ENGINEERING;
RIMKUS CONSULTING GROUP INC.;
STRUCTURES GROUP;
E. A. RENFROE, INC.;
JANA RENFROE;
GENE RENFROE; AND
ALEXIS KING

DEFENDANTS

RELATORS' BENCH MEMORANDUM RE: JUDICIAL NOTICE

Federal Rule of Evidence 201 permits the Court to take judicial notice of facts only where the facts are “not subject to reasonable dispute in that [they are] either (1) generally known . . . or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b).

Judicial notice must be used cautiously; it can be taken to establish the existence of other litigation, but “not for the truth of the matters asserted in the other litigation.” *Int’l Star Class Yacht Racing Ass’n v. Tommy Hilfiger U.S.A., Inc.*, 146 F.3d 66, 70 (2d Cir. 1998). Indeed, the Fifth Circuit expressly held that even judicial findings of fact from other proceedings cannot be presented for the truth asserted therein “because these are disputable and usually are disputed.”

Taylor v. Charter Med. Corp., 162 F.3d 827, 832 (5th Cir. 1998) (citing *Gen. Elec. Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1082 n.6 (7th Cir. 1997)). Accordingly, although pleadings in another case may be used against the party that pled them as an admission, statements in regards to a non-party in the other case are “hearsay and without probative force.” *Century ‘21’ Shows v. Owens*, 400 F.2d 603, 609-10 (8th Cir. 1968).

This 21st day of May, 2009.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Maison Heidelberg, attorney for Cori Rigsby and Kerri Rigsby, do hereby certify that I have this day caused a true and correct copy of the foregoing instrument to be delivered to the following, via the means directed by the Court's Electronic Filing System or as otherwise set forth below:

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