

**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

**JACKSON NEW MEDIA, INC.; WLBT,
LLC; WDAM, LLC; and WLOX, LLC**

INTERVENORS

**ATTORNEY GENERAL'S RESPONSE TO
INTERVENORS' MOTION FOR PARTIAL RELIEF FROM JUDGMENT**

COMES NOW, Jim Hood, Attorney General of the State of Mississippi, Defendant herein, by and through the undersigned counsel, and respectfully submits this Response to Intervenor's Motion for partial Relief from Judgment in this cause, and in support thereof would show unto this Honorable Court the following.

1. Before the Court is the Motion of Intervenor's for Partial Relief from Judgment, or in the Alternative, for an Order to Appear and Show Cause Why Settlement Agreement Should Not Be Unsealed, filed in this cause on April 20, 2010. Therein, Jackson New Media, Inc.; WLBT, LLC; WDAM, LLC and WLOX, LLC, Intervenor's herein, ask this Court to unseal and allow "free access to the settlement agreement, deposition transcripts, *in camera* testimony transcripts and any related documents or materials now maintained under seal by the Court" in this matter. It is the Intervenor's position that they have a right of access to these materials,

currently under seal, based on their free press and speech rights and the right to access to court and public records.

2. Upon consideration of the arguments by the Plaintiffs and the Defendant, this Court determined that good cause existed to order that testimony presented *in camera* to the Court be placed under seal until further Order of the Court. Similarly, pursuant to agreement of the Plaintiffs and the Defendant, and upon a showing of good cause, the Court ordered as a material aspect of the settlement that the confidential settlement agreement in this matter be placed and remain under seal.

3. Now, over two years later, despite the absence of any new considerations or any change in material circumstances, the Intervenors ask this Court to reverse its prior decisions and to unseal these materials. The Attorney General is compelled to oppose the relief sought by the Intervenors for multiple reasons.

4. “[T]he right of access enjoyed by the press is generally no greater than that of the public at large.” *Belo Broadcasting Corp. v. Clark*, 654 F.2d 423, 427 (5th Cir. 1981). Although the courts have recognized a common law right of the public to inspect and copy judicial records, that right is not absolute. *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978). “Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes.” *Id.* at 598. The decision whether to allow access based on a balance between the public’s right and any interests favoring nondisclosure is left to the sound discretion of the trial court. *Id.* at 599.

5. This Court acted well within its discretionary supervisory power over its own records when it made the decision to seal certain portions of the record in this case. The

privileges and policy interests contemplated by the Court when initially placing the seal on these records remain in full force and effect. *See, e.g., Douglas Oil Co. of Cal. v. Petrol Stops Northwest*, 441 U.S. 211, 222 (1979) (interests in grand jury secrecy are not eliminated merely because the grand jury has ended its activities); *Siedle v. Putnam Investments, Inc.*, 147 F.3d 7, 11 (1st Cir. 1998) (interest in preserving attorney-client privilege is shared by litigants and the general public, and is “precisely the kind of countervailing concern that is capable of overriding the general preference for public access to judicial records”); *United States v. Gonzales*, 150 F.3d 1246, 1265-66 (10th Cir. 1998) (interests in protecting from public speculation persons interviewed and investigated and in protecting attorney-client privilege and work-product doctrine do not terminate when proceedings are concluded). There has been no waiver of these interests and privileges, and no change in the circumstances that formed the basis for the seal. As a result, there is no legitimate reason to alter the Court’s judgment as requested by the Intervenors.

6. In making its decision to seal the *in camera* testimony, this Court inherently made a determination that the Plaintiffs lacked sufficient interest to pierce the privileges and immunities applicable to the information in question. It stands to reason, then, that the Intervenors, as non-interested third parties, lack sufficient interest to challenge those same judicial determinations underlying the order sealing that same *in camera* testimony.

7. In addition, confidentiality was an essential and material term of the settlement agreement reached by the parties in this matter. “Once a confidentiality order has been entered and relied upon, it can only be modified if an ‘extraordinary circumstance’ or ‘compelling need’ warrants the requested modification.” *Fed. Deposit Ins. Corp. v. Ernst & Ernst*, 677 F.2d 230,

232 (2nd Cir. 1982). This legal standard extends to cases in which a government agency is one of the parties to the settlement. *Id.* Based on the agreement of the parties, and upon determination of good cause, the Court ordered that the confidential settlement agreement remain under seal. If the Court were to now lift the seal, that fundamental confidentiality would be waived, potentially opening the door for one or both parties to challenge the validity of the entire settlement agreement. There simply is no overriding public interest in this case to warrant that the confidentiality be waived, *see id.*, potentially rendering void the remainder of the agreement.

8. In the alternative and without waiver of the foregoing position, should the Court be inclined to lift the seal as to any of the undisclosed records, the Attorney General would strongly urge the Court to remove the seal in its entirety, allowing complete public disclosure of both the settlement agreement and the *in camera* testimony. If, as the Intervenors suggest, there is an overriding interest in allowing the public to know what happened in this case, then that interest may only be fulfilled by allowing access to all of the records in this case.

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, Mary Jo Woods, Special Assistant Attorney General of the State of Mississippi, do hereby certify that on, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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THIS the 4th day of May, 2010.

/s Mary Jo Woods

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