

FILED
 5/21/13
 DATE: _____ TIME: _____ am/pm
 By: CW
 CLERK, FSM SUPREME COURT
 KOSRAE
 TRIAL DIVISION

IN THE SUPREME COURT OF THE
 FEDERATED STATES OF MICRONESIA
 TRIAL DIVISION — STATE OF KOSRAE

BETSY ROSE MONGKEYA et al.,)	CIVIL ACTION NO. 2010-2002
as personal representative of)	
JODAI MONGKEYA, deceased,)	
)	
Plaintiffs,)	
)	
v.)	
)	ORDER GRANTING MOTION TO
KOSRAE STATE GOVERNMENT,)	EXCLUDE
KOSRAE STATE HOSPITAL, DR.)	
WINSTON LIKIAKSA, in his)	
official capacity, DR. JAMES)	
REESE, DR. JAMAL MUSTAFA, and)	
CANVASBACK MISSIONS, INC.,)	
)	
Defendants.)	
_____)	

This comes before the court on 1) Defendants' Dr. James Reese, Dr. Jamal Mustafa, and Canvasback Missions, Inc. Motions to Suppress Depositions, filed March 26, 2013; 2) Submission in Response to Defendant Canvasback Missions' Motion to Suppress Depositions, filed April 22, 2013; and 3) Defendants' Dr. James Reese, Dr. Jamal Mustafa, and Canvasback Missions, Inc. Reply to Response to Motion to Suppress, filed May 6, 2013. The motion is granted to the extent and in the manner described below.

The movants (collectively "Canvasback") seek to suppress any evidentiary use of the August 2012 depositions of Dr. Livingston Taulung, Dr. Tholman Alik, Sepe Palsis, Jocelyn Nedlic, Dr. Winston Likiaksa, Betsy Rose Mongkeya, and Marcia J. Sigrah because their counsel, the FSM Department of Justice, was not given reasonable notice that the depositions

would be taken and were not present when conducted and did not learn that they had been conducted until February 2013.

Canvasback contends that their attorneys never received notice that the depositions were scheduled or would be taken except for Dr. Likiaksa's August 30, 2012 deposition, the notice for which was received on August 28, 2012. Canvasback contends that this was not reasonable notice. Canvasback support their position with affidavits and exhibits, including pages of the FSM Department of Justice logbook for incoming documents for the relevant time period, which does not show the receipt of any deposition notices. The plaintiffs contend that they gave reasonable notice by mail and that the FSM Department of Justice clerical staff must have misplaced them and that suppression of the depositions would be highly prejudicial to them because of the time and expense that they expended on taking the depositions. The court therefore finds that the Canvasback parties have proven that they were not given notice of any of the depositions other than Dr. Likiaksa's two days before his was taken.

Two days' notice given to the FSM Department of Justice on Pohnpei for a deposition to be taken on Kosrae is not reasonable notice, especially since August 28, 2012 was a Tuesday and there were no flights from Pohnpei to Kosrae that would arrive by August 30th. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM Intrm. 64, 68 (Yap 2010)

(deposition notice quashed when defense counsel's office is in Greater Manila, Philippines was given written notice on August 21, 2009, for a deposition in Yap on August 25, 2009, since this was not enough advance notice for defense counsel to prepare for the deposition, make travel arrangements, and arrive in Yap, thousands of miles away on the opposite side of the Philippine Sea and where, given the flight schedules, he might not have been able to get to in time for the scheduled deposition).


Under Rule 32(a), a deposition or part thereof may be used at trial so far as admissible under the evidence rules against any party who was present or represented at the deposition's taking or who had reasonable notice thereof. Amayo v. MJ Co., 13 FSM Intrm. 242, 245 (Pon. 2005).

NOW THEREFORE IT IS HEREBY ORDERED that the seven August 2012 depositions of Dr. Livingston Taulung, Dr. Tholman Alik, Sepe Palsis, Jocelyn Nedlic, Dr. Winston Likiaksa, Betsy Rose Mongkeya, and Marcia J. Sigrah may be used only against the plaintiffs or the Kosrae defendants who are represented by the Kosrae Attorney General's Office since those were the parties represented at the August 2012 depositions. They may not be used against the Canvasback parties.

So ordered the 20th day of May, 2013.


Dennis K. Yamase
Associate Justice

Entered this 21th day of May, 2013.



Linson Waguk
Assistant Clerk of Court