

are subject to dismissal pursuant to FSM Criminal Rule 12 (b)(1) and (2). It is:

ORDERED, pursuant to FSM Criminal Rule 46(a)(1) that the defendants Captain and Ohkura are released pending trial on their own personal recognizance, and subject only to their presence at all future criminal proceedings;

ORDERED, pursuant to FSM Criminal Rule 28, that the parties to confer, subpoena if necessary, and file with the court the names of qualified candidates as interpreters prior to the hearing. If the parties cannot agree to an interpreter by stipulation, the court may appoint one of its own selection, based on the most competent alternative available.

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FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA,	)	CIVIL ACTION NO. 2014-045
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
TOKIWA MARU NO. 28, a purse-seine	)	
fishing vessel, KAZUHIRO KIMURA (Captain),	)	
and OHKURA GYOGYO CO. LTD. (Owner),	)	
	)	
Defendants.	)	
_____	)	

ORDER

Beauleen Carl-Worswick  
Associate Justice

Hearing: December 2, 2014  
Decided: December 4, 2014

APPEARANCES:

For the Plaintiff: Caroline A. Rugero, Esq.  
Aaron L. Warren, Esq.  
Assistant Attorneys General  
FSM Department of Justice  
P.O. Box PS-105  
Palikir, Pohnpei FM 96941

For the Defendants: Kasio Mida, Jr., Esq.  
Ramp & Mida Law Firm  
P.O. Box 1480  
Kolonia, Pohnpei FM 96941

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HEADNOTES

Civil Procedure – Depositions

Rule 30(b)(1), requires that "reasonable notice" be provided to any witness served with a subpoena. Also, the court may quash or modify the subpoena if it is unreasonable and oppressive. There is no fixed rule as to what constitutes reasonable notice, and in every case individual circumstances must be taken into account. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 624 (Pon. 2014).

Civil Procedure – Depositions

The general rule is that without a showing of special need for haste, less than two days' notice of a deposition is unreasonable. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 624 (Pon. 2014).

Civil Procedure – Depositions

One of the purposes of the two days rule is to give the parties the opportunity to effectively prepare in order to cross-examine the deponent. Significantly, this two-day rule is for full working days and does not include weekends or holidays because it is not reasonable to expect counsel to work on weekends unless a special need for haste is shown. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 625 (Pon. 2014).

Civil Procedure – Depositions

In some circumstances when exigent circumstances are shown, less than one day's notice is not per se unreasonable. This often occurs in pending maritime cases, when deponents will be unavailable because they are about to leave on a voyage at sea and unlikely to return to the jurisdiction. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 625 (Pon. 2014).

Civil Procedure – Depositions

When the typical exigent circumstances in maritime cases – that the deponents would be unavailable if not immediately deposed – were not shown and when an attempt to acquire information in the criminal proceeding must be made in that case, and not by using the discovery process in the parallel civil proceeding, the reason for haste did not justify deviating from the two-day rule and the less than half a working day's notice given was not reasonable notice. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 626 (Pon. 2014).

Civil Procedure – Depositions

It is common to stay the depositions in a civil case when the criminal case is pending and both proceedings involve essentially the same parties and conduct. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 626 (Pon. 2014).

Criminal Law and Procedure – Right to Silence

The right against self-incrimination is a privilege that may be waived by defendants and is a purely personal privilege that may not be claimed by a corporation that is named as a defendant in a criminal case. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 626 & n.9 (Pon. 2014).

Civil Procedure – Discovery; Criminal Law and Procedure – Discovery

A litigant should not be allowed to make use of the liberal discovery procedures applicable to a civil suit as a dodge to avoid the restrictions on criminal discovery and thereby obtain documents he would not otherwise be entitled to for use in his criminal case, but in the absence of substantial prejudice to the rights of the parties involved, parallel proceedings are unobjectionable. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 627 (Pon. 2014).

Civil Procedure – Discovery; Criminal Law and Procedure – Discovery

Attempting to obtain, under the civil discovery rules, either through a deposition or otherwise, discovery materials that the parties could not obtain under the more restrictive criminal discovery process, is one of the primary reasons for granting a stay of the parallel civil case. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 627 (Pon. 2014).

Civil Procedure – Discovery; Criminal Law and Procedure – Discovery

Discovery differs greatly in civil and criminal cases. A party to a civil litigation is presumptively entitled to obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending case, but a criminal defendant is entitled to those documents which are material to the preparation of the defendant's defense or are intended for use by the government as evidence in chief at the trial. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 627 n.10 (Pon. 2014).

Civil Procedure; Criminal Law and Procedure

In deciding whether to stay a civil proceeding parallel to a criminal case, the decision maker should consider 1) the plaintiff's interest in proceeding expeditiously with the litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay, 2) the burden which any particular aspect of the proceedings may impose on defendants; 3) the court's convenience in the management of its cases, and the efficient use of judicial resources; 4) the interests of persons not parties to the civil litigation; and 5) the public's interest in the pending civil and criminal litigation. Notably, the judicial economy factor in not duplicating the efforts in both the civil and criminal case is frequently used to justify a stay. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 627 (Pon. 2014).

Civil Procedure; Criminal Law and Procedure

When a civil matter and a criminal matter are inextricably interwoven, when the parties are the same; when both cases are based on the same alleged conduct; when both are alleged violations of the same FSM fisheries law; when the only distinction is that the civil action seeks civil penalties while the criminal action seeks criminal penalties; and when the defendants admitted to trying to use civil depositions to acquire discovery information, but that what they really seek is the fishery observer's report and not only is this report not privileged in the criminal matter but also must be disclosed under Criminal Rule 16, there is no reason why this particular discovery material should be stayed or withheld in the civil proceeding. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 628 (Pon. 2014).

Civil Procedure – Depositions; Criminal Law and Procedure

When civil depositions would trigger a variety of procedural prejudices; when the defendants cannot use the more lenient rules of civil procedure to depose the witnesses before the criminal case; when the depositions raise significant conflicts with the defendants' own constitutional right against self-incrimination; and when the depositions will likely not be needed following the criminal hearing and thus potentially a duplicative waste of judicial resources, there is good cause to stay the depositions until after the criminal probable cause hearing, but a full stay is not warranted. Due to the vessel's significant value and business losses that are occurring in the civil matter, the substantial prejudice to the defendants outweighs granting a complete stay in the civil action until the criminal case's conclusion. In the interest of justice and judicial economy, the court will exercise procedural flexibility to stay only those matters, such as depositions, that would cause conflicts with the criminal proceeding. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 628 (Pon. 2014).

Civil Procedure – Depositions

When the parties were not given reasonable notice for the depositions, those depositions will be quashed. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 628 (Pon. 2014).

Civil Procedure – Discovery; Criminal Law and Procedure – Discovery

When the prejudice to the defendants in the civil proceedings is too great to allow for a complete stay, and those proceedings will continue in tandem with the criminal procedures, but certain procedures may be delayed based on the court's own sua sponte initiative or by motion of the parties. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 629 (Pon. 2014).

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## COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

On November 28, 2014, at 12:30 PM, the defendants, through attorney Kembo Mida (Mida), filed a Notice of Deposition Duces Tecum requiring the presence of Francisco Sigrah, Baron Mendiola, and Akiny Martin, on December 1, 2014, for depositions. On November 28, 2014, at 4:30 PM, the FSM Department of Justice (Government), through Assistant Attorney General Caroline Rugero (Rugero) filed Plaintiff's Motion to Quash Defendants' Subpoenas Duces Tecum and Notices of Deposition. On December 1, 2014, at 8:30 AM, the Government filed a Plaintiff's Motion for Emergency Hearing on its Motion to Quash, or in the Alternative Plaintiff's Motion to Stay Proceedings, and later that same day at 12:20 PM, a Plaintiff's Supplement to Motion for Emergency Hearing on its Motion to Quash or in the Alternative Stay Proceedings. On December 2, 2014, at 9:20 AM, the Government filed a Supplemental Brief in Support of Motion to Stay. By previous court order, this Court scheduled a hearing on the Motion to Quash for December 2, 2014, at 9:30 AM. Present at this hearing was Mida, Rugero, and Assistant Attorney General Aaron Warren. Oral arguments were made and both sides were heard on three main issues: 1) Motion to Quash; 2) Motion to Stay; and 3) Motion to Amend.

Upon CONSIDERATION of the representations of the parties, and based on the file and record contained herein, that the Motion to Quash is GRANTED in favor of the Government, the Motion to Stay the proceedings is partially GRANTED and the depositions will be STAYED until after the probable cause hearing, but other discovery matters in the civil proceeding will not be delayed, based on the following conclusions of fact and law:

## I. MOTION TO QUASH

Pursuant to FSM Civil Rule 30(b)(1), requires that "reasonable notice" be provided to any witness served with a subpoena. Additionally, pursuant to FSM Civil Rule 45(b)(1), the court may "quash or modify the subpoena if it is unreasonable and oppressive." There is "no fixed rule" as to what constitutes reasonable notice, and in every case individual circumstances must be taken into account. 8A CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2111, at 69 (2d ed. 1996). However, the general rule is that without a showing of special need for haste, less than two days is unreasonable. *Id.* Our courts have previously adopted this standard in People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM Intrm. 64, 67 (Yap 2010). In M/C Jumbo Rock Carrier III, the court held that reasonable notice is that which gives the parties time to "prepare for the deposition, make travel arrangements and arrive." *Id.* (citation omitted).<sup>1</sup> In those circumstances, the parties had to travel from off-island, and four days' notice was not sufficient for the deponents to prepare and arrive from the Philippines. Additionally, in Mongkeya v. Kosrae, this court excluded the use of a deposition at trial

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<sup>1</sup> In M/C Jumbo Rock Carrier III, the court based its decision on the U.S. case *Llyod v. Cessna Aircraft Co.*, 430 F. Supp. 25 (E.D. Tenn. 1976). Llyod is the case most frequently cited as having established the not less than "two full working days" rule. *Id.* at 26.

taken with only two days' notice taken in the absence of counsel. slip op. at 3 (Kos. Civ. No. 2010-2002 May 21, 2013) (Order Granting Motion to Exclude). In Mongkeva, the FSM government attorneys did not have time to prepare and arrive from off-island to attend, and the deponents were without counsel. One of the purposes of the two days rule is to give the parties the opportunity to effectively prepare in order to "cross examine the deponent." 8A CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2106, at 56 (2d ed. 1994). Significantly, this two day rule is for "full working days" and does not include weekends or holidays. M/C Jumbo Rock Carrier III, 17 FSM Intrm. at 67 (citation omitted).<sup>2</sup> This court agrees; it is not reasonable to expect counsel to work on weekends unless a special need for haste is shown.

Notably, in some circumstances exigent circumstances are shown, and several U.S. cases have held that even less than one day's notice is not per se unreasonable.<sup>3</sup> This often occurs in pending maritime cases, when deponents will be unavailable because they are about to leave on a voyage at sea and unlikely to return to the jurisdiction. See 8A CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2106, at 55 (2d ed. 1994).<sup>4</sup> Typically, however, it is the prosecution that requests the depositions to occur on short notice, not the defendants.<sup>5</sup>

In this case, the defendants filed the subpoenas on Friday afternoon requiring the presence of the deponents to appear in the morning of the next working day. The subpoenas technically do provide the parties with two days' notice, however, these are weekend days and the court finds that it is not reasonable to expect the parties to prepare for the depositions during that time, absent a showing of special haste. At the hearing, the defendants represented that this is a maritime case, and that the vessel has been seized and held by the state for almost 28 days. The business losses accrue daily as a result of the seizure. The defendants further represented that the Government had not been responding to requests to release the vessel on a bond, nor to discovery requests for National Oceanic Resource Management Authority (NORMA) observer's report prior to the probable cause hearing

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<sup>2</sup> "Although many lawyers do work on Saturdays- and Sundays too for that matter- the ordinary business of the law takes place during the week-days." *Miller v. International Paper Co.*, 408 F.2d 283, 293 (5th Cir. 1969).

<sup>3</sup> See *Natural Organics Inc. v. Proteins Plus Inc.*, 724 F. Supp. 50 (E.D.N.Y. 1989) (only one day notice); *Radio Corp. of Am. v. Rauland Corp.*, 21 F.R.D. 113, 114 (N.D. Ill. 1957) (counsel were all in Oslo for the taking of the foreign depositions, and it was understood that Zenith was to proceed with its depositions at the time); *State v. Superior Court of Pima County*, 416 P.2d 435, 436 (Ariz. Ct. App. 1966) (twenty-four hours is not necessarily unreasonable).

<sup>4</sup> Known as the Rule 30(b) exception, there is a long history of permitting depositions without notice under the *De Bene Esse* statutes codifying the admiralty rules of procedure. These codes were formally replaced in 1970 in the United States with the Federal Rule of Civil Procedure 30(b) exception that allowed an attorney to certify that a deposition needed to happen because the witness was about to be bound at sea, go out of the country, or be more than 100 miles from the place of trial. See 8A CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2106, at 55 (2d 1994).

<sup>5</sup> Special notice is required by the prosecution to take a deposition on short notice, and the reason must be certified according to FSM Civil Rule 11. See FSM Civil R. 30(b). The advisory committee note to the 1970 amendment to the Federal Rule of Civil Procedure 30(b), authorizes an early deposition on special notice when: "1) it will be impossible or very difficult to depose him before trial or 2) his deposition can later be taken but only with substantially increased effort and expense." Essentially, the deponent must be unavailable, as defined by FSM Evidence Rule 804(a). See 8A CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE: § 2106, at 53 nn.8-9 (2d 1994).

scheduled for Friday, December 5, 2014, and as required under the rules of discovery in the parallel criminal proceeding.<sup>6</sup> The defendants represented that they would ordinarily schedule the depositions at least two weeks in advance, but felt compelled to subpoena the witnesses earlier because of the Government's stonewalling and delay in providing the requested discovery. In response, the Government represented that they were not consulted with regard to the date and time of depositions, nor given any advance notice of the subpoenas. Additionally, although discovery can occur "in any sequence" it is highly irregular to hold depositions prior to a motion for a Rule 26 scheduling conference. FSM Civ. R. 26(d). Finally, the Government represented that it is in fact the defendants who are not making the effort to consult and work with them.<sup>7</sup> In short, both sides accuse the other of non-cooperation.

The Court notes, that two of the deponents, officer Baron Mendiola, and officer Akiny Martin, were on island, and present for the deposition scheduled for 9:00 AM on Monday, December 1, 2014.<sup>8</sup> Further, the Court notes that the attorneys for the Government did not need to travel from off-island and were likewise present. Thus travel is not a consideration in this case. Nevertheless, due process also requires adequate time for both parties to prepare for the depositions.

In conclusion, the court finds that the typical exigent circumstances in maritime cases were not shown: that the deponents would be unavailable if not immediately deposed. The court further finds that the reasons given for haste were understandable, but that the attempt to acquire information in the criminal proceeding must be made by motion, filed in that case, not by using the discovery process in the parallel civil proceeding. We find the reason for haste, therefore, did not justify deviating from the two day rule and that under these circumstances less than half a working days' notice was not reasonable notice.

## II. MOTION TO STAY

It is common for federal courts to stay the depositions in a civil case when the criminal case is pending and both proceedings involve essentially the same parties and conduct. 23 AM. JUR. 2D *Depositions and Discovery* § 112, 467 (1983). Our court has considered this question before in FSM v. Zhong Yuan Fishery Co.,<sup>9</sup> FSM Intrm. 351 (Kos. 2000). In that maritime case, the court held that it would be a "substantial prejudice" to the defendant to delay the civil proceeding pending the criminal matter. *Id.* at 353. That court further held that the right against self-incrimination is a privilege that may be waived by the defendants. *Id.*<sup>9</sup> That three page decision focused on the right against self-incrimination, but did not fully explore other related procedural issues raised at the hearing. We do so now.

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<sup>6</sup> The parallel proceeding is Criminal Case No. 2014-503. FSM Criminal Rule 16(a) entitles a defendant to any discovery that is "material to the preparation of the defendant's defense" or "intended for use by the government as evidence in chief at the trial."

<sup>7</sup> In the motion to quash the Government indicates that this is a surprise tactic designed to catch them off guard and that in the typical sequence of events an initial conference is set, a discovery plan is created, and a pretrial timetable based on the convenience of the parties is mutually agreed upon before holding depositions.

<sup>8</sup> The Government represented that they were not able to contact the third deponent, Francisco Sigras, in time, due to the short nature of the notice.

<sup>9</sup> In Zhong Yuan Fishery Co., the court further found that this is a "purely personal privilege" that may not be claimed by a corporation who is named as a defendant in a criminal case. 9 FSM Intrm. at 353.

Several United States courts have analyzed these other issues at length, and while our court is not bound by those decisions, we can and do look to them for guidance. In Campbell v. Eastland, the United States Court of Appeals held that a judge should not "ignore the effect discovery would have on a criminal proceeding that is pending or just about to be brought." 307 F.2d 478, 487 (5th Cir. 1962). Furthermore that court held that a "litigant should not be allowed to make use of the liberal discovery procedures applicable to a civil suit as a dodge to avoid the restrictions on criminal discovery and thereby obtain documents he would not otherwise be entitled to for use in his criminal suit." *Id.* The Constitution, however, does not "require a stay of civil proceedings pending the outcome of criminal proceedings. In the absence of substantial prejudice to the rights of the parties involved, parallel proceedings are unobjectionable under our jurisprudence." Keating v. Office of Thrift Supervision, 45 F.3d 322, 324 (9th Cir. 1995) (citations omitted). "A court must decide whether to stay civil proceedings in the face of a parallel criminal proceeding in light of the particular circumstances and competing interests involved in the case." Federal Sav. & Loan Ins. Corp. v. Molinaro, 889 F.2d 899, 902 (9th Cir. 1989) (citation omitted). "The noncriminal proceeding, if not deferred, might undermine the party's Fifth Amendment privilege against self-incrimination, expand rights of criminal discovery beyond the limits of Federal Rule of Criminal Procedure 16(b), expose the basis of the defense to the prosecution in advance of criminal trial, or otherwise prejudice the case." Securities & Exch. Comm'n v. Dresser Indus., Inc., 628 F.2d 1368, 1376 (D.C. Cir. 1980). Thus attempting to obtain discovery materials, either through a deposition or otherwise, under the civil discovery rules that the parties could not obtain under "the more restrictive criminal discovery process," is one of the primary reasons for granting a stay. Twenty First Century Corp. v. LaBianca, 801 F. Supp. 1007, 1010 (E.D.N.Y. 1992).<sup>10</sup> Additionally, the decision maker should consider the following non-exhaustive factors:

- (1) the interest of the plaintiffs in proceeding expeditiously with this litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay,
- (2) the burden which any particular aspect of the proceedings may impose on defendants;
- (3) the convenience of the court in the management of its cases, and the efficient use of judicial resources;
- (4) the interests of persons not parties to the civil litigation; and
- (5) the interest of the public in the pending civil and criminal litigation.

Molinaro, 889 F.2d at 903. Notably, the judicial economy factor in not duplicating the efforts in both the civil and criminal case is frequently used to justify a stay. See Chronicle Publ'g v. National Broad. Co., 294 F.2d 744, 747 (9th Cir. 1961) (duplication of effort); United States v. Mellon Bank, N. A., 545 F.2d 869, 872 (3d Cir. 1976) (judicial economy). Often a "stay will streamline the later civil discovery since transcripts from the criminal case will be available to the civil parties." LaBianca, 801 F. Supp. at 1011. It might even be that "resolution of the criminal case would moot, clarify, or otherwise affect the various contentions in the civil case." Mellon Bank, N.A., 545 F.2d at 871 (citation omitted).

Alternatively, the court may stay certain proceedings to the extent that delaying disclosure would avoid conflicts in the criminal case. In re Ivan F. Boesky Sec. Litig., 128 F.R.D. 47, 49 (S.D.N.Y. 1989). Thus, complete disclosure might be "temporarily deferred" because of possible prejudice to the

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<sup>10</sup> Discovery differs greatly in civil and criminal cases. FSM Civil Rule 26(b)(1) provides that a party to a civil litigation is presumptively entitled to "obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending case." FSM Criminal Rule 16(a)(1) is more restrictive: the defendant is entitled thereunder to those documents "which are material to the preparation of the defendant's defense or are intended for use by the government as evidence in chief at the trial." See In re Ivan F. Boesky Sec. Litig., 128 F.R.D. 47, 48-49 (S.D.N.Y. 1989).

criminal proceedings, but only with respect to documents and information not discoverable in the criminal case. *Id.* Ultimately, when faced with parallel proceedings "judicial discretion and procedural flexibility should be utilized to harmonize the conflicting rules and prevent the rules and policies applicable to one suit from doing violence to those pertaining to the other." Campbell, 307 F.2d at 487.

In this case, the civil matter and the criminal matter are inextricably interwoven. The parties are the same; both cases are based on the same alleged conduct; and both are alleged violations of the same FSM Fisheries law.<sup>11</sup> The only distinction is that the civil action seeks civil penalties while the criminal action seeks criminal penalties provided for under that same law. In support of the motion to stay, the Government raised the contention that the defendants are attempting to dodge the more restrictive procedural rules to acquire information that they are not necessarily entitled to. The defendants admitted to trying to use the depositions to acquire discovery information, but that what they are requesting is the NORMA observer's report. The court notes that this information is not privileged in the criminal matter and further must be disclosed under FSM Criminal Rule 16,<sup>12</sup> as well as the Brady Doctrine.<sup>13</sup> Accordingly, this Court sees no reason why this particular discovery material should be stayed or withheld in the civil proceeding. The depositions, on the other hand, would trigger a variety of procedural prejudices and the defendants cannot use the more lenient rules of civil procedure to depose the witnesses prior to the criminal case. Besides, the depositions raise significant conflicts with the defendants' own constitutional right against self-incrimination.<sup>14</sup> Finally, the court believes that the depositions will not likely be needed following the criminal hearing and that this appears to potentially a duplicative waste of judicial economy. Therefore, the court finds good cause to stay the depositions until after the probable cause hearing, however, the court does not find that a full stay is warranted. In fact, due to the significant value of the vessel and business losses that are occurring in this civil matter the court finds that the substantial prejudice to the defendants outweighs granting a complete stay in the civil action pending the conclusion of the criminal case.

In conclusion, in the interest of justice, and judicial economy, the court will exercise procedural flexibility to stay only those matters that would cause conflicts with the criminal proceeding. Accordingly, the court will postpone the depositions.

### III. MOTION TO AMEND

In this hearing the defendants represented that they intended to file a Motion to Release Tokiwa Maru No. 28 on \$3,000,000 Surety in this civil action, but inadvertently filed it in the criminal case.

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<sup>11</sup> 24 F.S.M.C. 101 et seq.

<sup>12</sup> *See supra* note 10.

<sup>13</sup> Brady material is any "information and evidence that is favorable to a criminal defendant's case and that the prosecution has a duty to disclose." BLACK'S LAW DICTIONARY 199 (8th ed. 2004). The prosecution's withholding of such information violates the defendant's due process rights." *Id.* "Irrespective of the good faith or bad faith of the prosecution," the Brady Doctrine precludes "the suppression by the prosecution of evidence favorable to an accused upon request." *Brady v. Maryland* 373 U.S. 83, 87, 83 S. Ct. 1194, 1196-97, 10 L. Ed. 2d 215, 218 (1963).

<sup>14</sup> FSM Constitution article IV, § 7 states: "A person may not be compelled to give evidence that may be used against him in a criminal case, or be twice put in jeopardy for the same offense." The due process right to cross examine a deponent could violate this protection. *See* FSM Civ. R. 30. While this right may be waived, it nevertheless must be considered.

The court understood this statement to be an oral motion to amend pursuant to FSM Civil Rule 7(b). The Government agreed to the motion, and similarly requested that the Plaintiff's Response to Defendants' Motion to Release Tokiwa Maru No. 28 also be so amended and moved to the civil file. The court orally granted this motion and will take judicial notice that as of the date of this order those two filings are now properly within this civil file.

IV. CONCLUSION

First, the court finds that the parties were not given reasonable notice for the depositions scheduled for Monday, December 1, 2014. Those depositions are hereby quashed. Second, the prejudice to the defendants in the civil proceedings is too great to allow for a complete stay, and those proceedings will continue in tandem with the criminal procedures, but certain procedures may be delayed based on the Court's own sua sponte initiative or by motion of the parties. Third, the motions pertaining to the release of the vessel on a bond are to be amended and moved to the civil file. IT IS THEREFORE:

ORDERED that the depositions scheduled for Monday, December 1, 2014, are hereby Quashed;

ORDERED that the depositions in the civil proceedings are STAYED until after the probable cause hearing previously set in the parallel criminal case no. 2014-503. Pursuant to FSM Civil Rule 45, the date for the depositions of the three deponents is now set for Tuesday, December 23, 2014, beginning at 9:30 AM. The parties are encouraged to reach a stipulated agreement regarding the date and time for the depositions and if the parties file that agreement with the court at any time prior to that date, the deposition will be rescheduled accordingly;

ORDERED that the clerk of court to amend the captions on the Motion to Release Tokiwa Maru No. 28 on \$3,000,000 surety and the Plaintiff's Response to Defendants' Motion to Release Tokiwa Maru No. 28 filed in criminal case no. 2014-503, to reflect the civil action no. 2014-045;

ORDERED that the parties confer and engage in discussions regarding the possible settlement and the release of the vessel on bond. Parties are urged to cooperate in the mutual best interest of all parties concerned.

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