THE SUPREME COURT OF THE

FEDERATED STATES OF MICRONESIA

TRIAL DIVISION-STATE OF PONAPE

MANUEL MANAHANE and FLORA MANAHANE, individually and as the personal representatives of FLOMINA MANAHANE, Deceased Plaintiffs, vs. THE FEDERATED STATES OF MICRONESIA, et. al. Defendants.	CIVIL ACTION NO. 1981-002 DENIAL OF MOTION FOR CORRECTION OF MISJOINDER

This medical malpractice case requires us to consider the allocation of responsibilies for health care, and particularly the potential liability for injuries or death from improper provision of health care, between the National Government of the Federated States of Micronesia and the State of Ponape.

Plaintiifs are the parents of an infant, Flomina Manahane, who died on July 15, 1981, allegedly of bacterial meningitis, while under care at the Ponape Hospital. The plaintiffs assert that medical personnel who examined and treated Flomina were negligent.

The Federated States of Micronesia National Government and the State of Ponape are named as defendants. Two doctors,

one Ponapean and one expatriate, are named as individual defendants.

The National Government has filed a motion for an "order correcting...misjoinder." In essence, the motion claims that suit against the National Government is barred by the doctrine of sovereign immunity. Maintaining that it can only be liable under the Sovereign Immunity Act, Public Law No. 1-141 (1st Cong., 3rd Spec. Sess.), for claims arising out of the negligence or wrongful act of its "employee", the National Government asserts that the medical personnel in question were not National Government employees. The State of Ponape neither supports nor opposes the National Government's position but the State's Personnel Officer, Alenson Solomon, has executed an affidavit, filed in this case by the National Government, acknowledging that the State of Ponape, without involvement by the National Government, recruited, hired and controls the employment status of these doctors.

Governing Procedure

First a word about the procedure employed here. A motion for misjoinder is authorized by Rule 21 of this Court's Rules of Civil Procedure. The appropriate purpose of such a motion is to correct misjoinder or nonjoinder of parties. Along with Rules 19 and 20, Rule 21 is one of our three rules aimed at assuring that the appropriate combination of parties is before the Court so that a particular claim may be resolved. Rule 21 must be read with Rules 19 and 20

and Rule 21's standards are derived from those set out in Rules 19 and 20.[1] A Rule 21 motion should not be granted where, as here, the claims against the joined parties arose out of the same occurrence and there are common questions of law and fact.

The National Government here is not really claiming that these Rule 21 standards are not met but instead is attempting to assert that the defendants have no substantive claim against the National Government. This is an issue properly raised under Rules 12 or 56, not Rule 21. Rule however, plaintiffs have recognized the true nature of the National Government's motion and, despite mislabeling, have regarded this as a motion for summary judgment. Both parties have supplemented their briefs with affidavits or exhibits. This Court will therefore treat this as a Rule 56 motion for summary judgment.

A motion for summary judgment may be granted only if the National Government shows that there is no genuine issue as to any material fact and that the National Government is entitled to judgment as a matter of law.

Those standards have not been met here and the motion must be dismissed.

Possible National Government Liability

The Sovereign Immunity Act conditions liability of the

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[1]There exist no previous cases in this Court construing Rule 21, but the construction set out here is by no means novel. See, e.g., Pan American World Airways, Inc. v. United States District Court, Central District of California, 523 F.2d 1073 (9th Cir. 1975)

National Government upon a requirement that the act upon which the claim is based must have been the act of an "employee of the National Government while acting within the scope of his office or employment...", under circumstances where a private person would be liable. Public Law 1-141, Section 2(4). The National Government insists that neither individual defendant is or was an employee of the National Government. In addition to the Solomon affidavit, the National Government emphasizes that it is not a party to the contract under which the expatriate doctor agreed to work at the hospital and that the contract was signed by Mr. Solomon, Ponape's Personnel Officer. Unfortunately, this personnel contract, executed on various forms, apparently all prepared by the Government of the Trust Territory of the Pacific Islands, is quite unreliable as a guide to the relationship between the doctor and any particular government.[2] The "Prime Employment Contract" specifically recites that it is between the Government of the Trust Territory of the Pacific Islands and the employee. The employee agrees to be a "loyal employee of the Government of the Trust Territory of the Pacific Islands" and assures that he will "not engage in any strike against that Government." In the "Conditions of

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[2]The contract package consists of four Trust Territory forms: (1) "Notification of Personnel Action", TT-P-900 (Revised April 1977); (2) "Prime Employment Contract", TT Form 1125A (Rev. 06-15-77); (3) "Conditions of Employment-Prime Employment Contract" 1125C (Rev. 06-14-77); and (4) "Election or Waiver of Life Insurance Coverage Trust Territory Group Live Insurance Program." TT-Form 1223. The doctor's signatures are all dated December 18, 1980 and Mr. Solomon signed in January, 1981.

Employment-Prime Contract" the employee is advised that he can be "transferred to any duty station in the Trust Territory during the life of the contract." These "conditions" are replete with references to the relative rights of the employee and the Government of the Trust Territory of the Pacific Islands but not one word is said about either the State of Ponape or the National Government of the Federated States of Micronesia.

The documents are signed in several places by Alenson Solomon. We learn from the affidavit that he is the State of Ponape Personnel Officer but the contract itself gives only the barest hints of that fact. Mr. Solomon is identified as the "Appointing Officer" in the "Notification of Personnel Action" but there is no indication that he holds that position with any government other than the Trust Territory. On page 3 f the "Prime Employment Contract," and page 10 of the Conditions of Employment we find Mr. Solomon's signature again, both times under the words "Government of the Trust Territory of the Pacific Islands" and on a line indicating that the Government is signing "by" him. The only alteration of any kind to bring these forms into line with the National Government's contention that the contract is between the doctor and the State of Ponape is the fact that under Mr. Solomon's signature, in the two forms last mentioned, one word of each is deleted and replaced by the word "Governor" so that Mr. Solomon is shown as "Contracting Officer for the Governor." There is though, no indication as to which Governor. For aught that appears, Mr. Solomon has signed as

the contracting officer for the Governor of the Trust Territory of the Pacific Islands. Even if we could surmise that Mr. Solomon was attempting to sign on behalf of the State of Ponape, as he presumably was, we are still left with the fact that the doctor's recited obligations run to the Trust Territory Government, not the State of Ponape. Nowhere is there a suggestion in these documents that the doctor owes any obligation to the State of Ponape or that he is subject to the State's control.

The Court does not mean to suggest by this review of the contract documents that the Trust Territory Government is or was at any time the actual employer of the doctor. That would be entirely at odds with the positions of all the parties in this case. What is obvious from the contract document however is that the contract words were not taken seriously and did not comport with anybody's conception of reality. The documents are therefore singularly unpersuasive evidence of the relationships among the doctor, the State of Ponape and the National Government.

Transfer of Functions

Plaintiffs for their part emphasize another set of agreements, those providing for the transfer of executive functions from the Government of the Trust Territory of the Pacific Islands to the Federated States of Micronesia.[3]

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[3]There could have been alternative ways, perhaps more consistent with pure legal theory, to envision the assumption of powers by the national and state governments, so that "transfer" of functions from the Trust Territory Government to the new governments would have been seen as wholly unnecessary. For example, standard constitutional analysis holds that the powers and functions outlined in constitutions

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Those suggest a general understanding on the part of the National Government and the States that the States will control administration of the hospitals. Yet they do not establish that this intention has been implemented in such a way as to shield the National Government from all possible liability arising out of the operation of the hospitals.

A core document concerning the transfer of functions is the Memorandum of Understanding signed by Federated States of Micronesia President Nakayama on December 27, 1979 and by former High Commissioner Adrian P. Winkel of the Trust Territory on January 2, 1980, with an effective date of December 31, 1979. The Memorandum calls for and apparently was accompanied by various functions agreements detailing

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derive from the people and, upon inception of constitutional government, vest by operation of law in the new constitutional governments. While this would be a pure, and technically proper, analysis for considering the assumption of functions, the "operation of law" analysis will not be employed here, for two reasons.

First, that analysis would not be helpful in addressing the practical realities of government during these years of transition. On May 10, 1979, when constitutional self-government began, neither the States nor the National Government seemed to consider themselves sufficiently organized and developed to accept in one gulp all governmental functions theretofore handled by the Trust Territory Government.

This leads to the second reason. The new governments rejected the "operation by law" analysis in favor of a "transfer and transition" approach. Public Law 1-65 contemplated the transfer of Trust Territory Government functions first to the National Government, with re-transfer of some functions to the State Governments. Infra, at 10. Likewise, the Memorandum of Understanding is a commitment of the governments of the Trust Territory and the Federated States of Micronesia to a step-by-step transfer, instead of immediate assumption of all functions by the new governments pursuant to operation of law.

Trust Territory transfer and Federated States of Micronesia acceptance of particular functions.

Functions Agreement No. 3, signed by President Nakayama and High Commissioner Winkel on the same day as the Memorandum of Understanding, pertains to the transfer of functions which were to fall within the responsibilities of the Department of Social Services of the Government of the Federated States of Micronesia. It recites that the Government of the Federated States of Micronesia would, on July 1, 1980, assume from the Trust Territory Government the health services functions outlined by the draft Presidential Order attached to the Memorandum of Understanding.

The draft Presidential Order provides that the Federated States of Micronesia's Department of Social Services, Division of Health Services, "is responsible for supporting and regulating the national systems of education and health services and other related activities, to the extent that functions in this area are of the competence of the national government, and for advising the President and other officials on social development policies."

The National Government contends that the meaning of the draft Presidential Order's phrase, "to the extent that functions in this area are of the competence of the national government" is to be determined by reference to yet another document, an agreement signed by the heads of the Executive and Legislative Branches of all four State Governments and the National Government at the conclusion of the State-National Leaders Conference held in Ponape on September 25

to 27, 1979. This document recites that during the conference the state and national representatives reached agreements as to various matters. Concerning the division of state and national responsibility for health and education this document says:

> BE IT RESOLVED that there should be uniform minimum standards in Health and Education in the Federated States of Micronesia. Because of the technical and administrative aspects involved in developing such minimum standards, it is further recommended that a meeting or meetings of the Directors of Education and the Directors of Health from all the States and the National Director of Social Services be called for the purpose of developing such uniform standards in their respective areas which will be submitted to the next State-National Leadership meeting for deliberation and decision.
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> Furthermore, it is in the best interest of the Nation and States if certain responsibilities involving nationwide coordination could be assigned to the National Government. These would include compiling vital statistics, providing epidemiological services, licensing of physicians and certain professionals and technicians, and negotiating with outside institutions.
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> The States would be responsible for the organization, implementation, and administration of Health-Services in their respective areas. The States would order pharmaceuticals and critical general supplies from direct sources and may order equipment, parts, and non-critical general supplies from a centralized source to take advantage of savings derived from standardization and bulk purchasing.

The National Government contends that this State-National Leaders Conference document, dated September 28, 1979, serves as an implied limitation upon the powers transferred to the National Government from the Trust Territory pursuant to the Memorandum of Understanding.

That argument however, encounters several difficulties. More than two months after the State-National Leaders Conference agreement and several weeks before execution of the Memorandum of Understanding, the Congress of the Federated States of Micronesia enacted Public Law No. 1-65, authorizing the President to accept and perform executive functions transferred from the Trust Territory. That legislation included the following section:

> Section 4. Transition. Executive functions transferred from the Government of the Trust Territory to the Federated States of Micronesia which are within the powers of the states may be performed pursuant to this act until such functions are transferred to state governments. Such functions shall be transferred to state governments upon their request to the President.

It is difficult to reconcile this language with the National Government's present claim that it received from the Trust Territory Government only those powers contemplated in the State-National Leader Conference. Section 4 of Public Law No. 1-65 seems plainly to contemplate that powers beyond those ultimately to be exercised by the National Government would be received and might be performed temporarily by the National Government. The transition section further contemplates that ultimate transfers of functions would subsequently occur upon the request of State Governments.

The Memorandum of Understanding was signed after the September 28, 1979 State National Leaders Conference and after enactment of Public Law 1-65. The Memorandum contains a specific provision for "Assumption of Functions by State Governments."

> The parties agree that all functions now performed by the State Governments of the Federated States of Micronesia, and which are not within the scope of the functions to be assumed by the National Government in accordance with this Memorandum, shall be assumed pursuant to agreements between the High Commissioner, the respective State Governors and the President. Likewise, funding and property to carry out these functions may be transferred to the States in accordance with agreements between the High Commissioner, each State Governor, and the President of the Federated States of Micronesia.

This language, like that of Public Law 1-65, contemplated another set of agreements spelling out the assumption of functions by State Governments. No such agreements have been brought to the Court's attention.

In absence of those agreements, it is not self-evident, or apparent from the state of the record that the National Government is immune from all possible liability arising out of the activities of hospital staff in providing medical care.

The Constitution of the Federated States of Micronesia makes clear that the National Government has power to act concerning health care[4] and seems even to place some affirmative health care obligations on the National Government.[5]

It is not beyond debate that the National Government has divested itself of all responsibility for operation of

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[4]Under Article IX, § 3(c) of the Constitution of the Federated States of Micronesia, the power "to promote...health..." "may be exercised concurrently by Congress and the states".

[5]Article XIII, § 1 of the Constitution states that: "[t]he national government of the Federated States of Micronesia recognizes the right of the people to education, health care, and legal services and shall take every step reasonable and necessary to provide these services".

the state hospitals through the documents thus far presented to the Court concerning transfer and assumption of functions. If the National Government retains some responsibility, it is not relieved of that responsibility by the mere fact that in reality the State of Ponape carries out and controls administrations of the hospitals, including hiring, compensating and supervising of all hospital staff.

Conclusion

There remain questions of fact concerning the possible legal liability of the National Government in this case. Therefore the National Government's motion for misjoinder, regarded here as a motion for summary judgment, is denied. A final pre-trial hearing is hereby scheduled for 9 A.M., August 24, 1982 and trial is set for Wednesday, September 15, 1982 at 9 A.M.

So ordered this 14th day of July, 1982.

Edward C King
Chief Justice
Supreme Court of the Federated
States of Micronesia
Trial Division