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TRIAL DIVISION--POHNPEI STATE  
SUPREME COURT OF THE  
FEDERATED STATES OF MICRONESIA

STATE OF CHUUK, STATE OF KOSRAE, )	Civil No. 1995-085
STATE OF POHNPEI, and STATE OF )	
YAP, Plaintiffs, )	PLAINTIFFS' MOTION
vs. )	THAT THIS HONORABLE
)	COURT TAKE JUDICIAL
)	NOTICE OF THE FOREIGN
)	FISHING
SECRETARY OF THE DEPARTMENT OF )	AGREEMENTS OF THE
FINANCE, Federated States )	MICRONESIAN MARITIME
of Micronesia, and the )	AUTHORITY; MEMORANDUM
National Government of the )	IN SUPPORT OF MOTION;
FEDERATED STATES OF MICRONESIA, )	CERTIFICATE OF SERVICE
Defendants. )	

PLAINTIFFS' MOTION THAT THIS HONORABLE COURT  
TAKE JUDICIAL NOTICE OF THE FOREIGN FISHING AGREEMENTS  
OF THE MICRONESIAN MARITIME AUTHORITY

Plaintiffs hereby respectfully request this Honorable Court to take judicial notice of the foreign fishing agreements entered into by the Micronesian Maritime Authority, which are public documents.

MEMORANDUM IN SUPPORT OF MOTION

On November 1, 1995, Plaintiffs filed an Affidavit of Fredrick L. Ramp which attached a fishing agreement between the Micronesian Maritime Authority and the Ting Hong Oceanic Enterprises Co., Ltd. This agreement contains a provision in Paragraph 7 stating that the license fees of the Ting Hong vessels are "based upon five percent (5%) of the weighted average of the estimated landed value of the estimated catch." The affidavit further stated "[b]ased on information and belief, the Micronesia Maritime Authority routinely uses this or very similar formulations to calculate license fees for all classes of vessels."

This affidavit and fishing agreement were submitted to establish that the license fees paid to the Micronesia Maritime Authority are determined as a percent of revenue collected just like other taxes. The claim of the four Plaintiff States in the present case is thus "for recovery of any tax alleged to have been erroneously or illegally collected," and the National

Government cannot claim sovereign immunity from this claim because of the waiver found in 6 FSM Code sec. 702(1).

This Honorable Court ruled that Mr. Ramp's affidavit was inadmissible because his representations regarding the other agreements were based on information and belief rather than on actual knowledge. Because these fishing agreements are public documents "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned," Plaintiffs respectfully request this Honorable Court to take judicial notice of these agreements under Rule 201(b) of the FSM Supreme Court Rules of Evidence. This Court has taken similar action in Doone v. Federated States of Micronesia, 2 FSM Intrm. 103, 106 (App. 1985), where the Appellate Division ruled that the Trial Division was authorized to take judicial notice of an agreement regarding shared police responsibilities between the National Government and the Pohnpei State Government entitled "Joint Administration of Law Enforcement Agreement Between the National Government of the FSM and the State of Pohnpei."

Because this Court's Rules of Evidence are based on those of the United States' Federal Courts, it is appropriate to examine U.S. cases for analogous holdings. The decision of the U.S. Supreme Court in Commonwealth of Massachusetts v. Westcott, 431 U.S. 322 (1977), provides strong guidance for the present situation. The Court ruled in that case that the license held by defendant to be employed in the mackerel fishery, which was ascertained from the records of the Merchant Vessel Documentation

Division of the Coast Guard, was a proper subject of judicial notice because the evidence of the license was capable of accurate and ready determination and its accuracy could not reasonably be questioned.

For these reasons, Plaintiffs respectfully request this Honorable Court to take judicial notice of the foreign fishing agreements entered into by the Micronesian Maritime Authority.

Respectfully submitted:

Date: May 31, 1996

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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the above document on the following person by hand delivery to the Office of the person identified below on \_\_\_\_\_, 1996.

Carole Rafferty  
Chief, Division of Litigation  
Office of the Attorney General  
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DATE: \_\_\_\_\_