

**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MARYLAND**

VERNON EVANS, JR.	:	
Plaintiff,	:	
	:	
v.	:	Civil No. L-06-149
	:	
MARY ANN SAAR, et al.	:	
Defendants.	:	

ORDER

Now pending are (i) defendants’ Motion *in Limine* to Bar Plaintiff’s Use at Trial of Deposition Testimony in Plaintiff’s Case in Chief, and (ii) Vernon Evans’s (“Evans”) request for leave to amend his Complaint. For the following reasons, the Court GRANTS the motion *in limine* in part, DENIES it in part, and DENIES the request for leave to amend.

I. Motion *in Limine*

In the proposed pretrial order, Evans indicated that he would present the videotaped depositions of the following individuals at trial: Commissioner Frank Sizer, Contractual Team A, Contractual Team B, Contractual Team F, Execution Commander, Execution Team Commander, Injection Team A, Injection Team C, Injection Team E, Past Team Member M, and Past Team Member Z. The defense then filed a motion *in limine* asking the Court to bar the deposition testimony of nine¹ of these witnesses,

¹ The State did not object to the use of the deposition testimony of Commissioner Sizer and Past Team Member M. Commissioner Sizer’s deposition testimony is allowed under Rule 32(a)(2) because he is named as a party in the Complaint, and Past Team Member M’s deposition testimony is allowed because he or she lives and works over 100 miles from Baltimore and therefore is unavailable under Rule 32(a)(3). Def.’s Mot. In Limine 4-5.

arguing that because these witnesses are non-parties who are available to testify, Federal Rule of Civil Procedure 32 limits the use of their deposition testimony. Evans responded that the witnesses are John Doe defendants and that their deposition testimony is, therefore, admissible for any purpose under Rule 32(a)(2).²

At the pretrial conference on September 12th, defense counsel stipulated that the witness known as Execution Team Commander is identified by name as a party in the Complaint. The Court mooted the motion as to the eight remaining witnesses because defense counsel agreed to secure their presence at trial, thereby eliminating the need for deposition testimony. On September 13th, however, Evans re-asserted that, despite the availability of the eight witnesses to testify at trial, he still wished to introduce the depositions and that he is entitled to do so because the witnesses are in fact parties to the case.

The Court finds that Evans has failed to establish that these individuals are indeed parties for the purposes of Rule 32. They are not listed by name in the Complaint. The Complaint merely describes a number of John Doe defendants as follows: “Defendants, John Does, are employed by or under contract with the DOC to make preparations for, and carry out, Evans’s execution. They include, but are not limited to, physicians, EMTs, physician’s assistants, the ‘execution commander,’ and the ‘execution team.’ Their identities are not yet known, and as a matter of policy, Defendants will not reveal the identities of these persons. These persons are sued in their official capacity.” Pl.’s Complaint ¶ 9.³

² “The deposition of a party . . . may be used by an adverse party for any purpose.” Fed. R. Civ. P. 32(a)(2).

³ Notably, Past Team Member Z does not fall into this description of the John Does because, as a past team member, he or she presumably will not “make preparations for and carry out” Evans’s execution.

The Complaint was filed on January 19, 2006. Today, nearly eight months later and only a few business days before trial is to begin, Evans has not amended the Complaint to identify the John Doe defendants or to assert specific claims against them. Although the Complaint names jobs held by the John Doe defendants (e.g. “physicians” and the “execution team”), he has cited no authority for the proposition that mention of broadly-described positions in the Complaint is sufficient to treat the persons holding those positions as parties to the case. Moreover, the John Doe defendants have not participated in the litigation as parties, and no counsel has entered an appearance specifically on their behalf. Accordingly, the Court hereby (i) DENIES the motion as to the Execution Team Commander, and (ii) GRANTS the motion as to the eight other witnesses.

II. Leave to Amend the Complaint

Evans has also requested leave to amend the Complaint to name the John Doe defendants individually.⁴ Although Evans has known the identities of the John Doe defendants for four months, he waited until one week before trial to request leave to amend. This request is untimely, and the Court will deny it.

III. Conclusions

The Court hereby:

- (i) DENIES the defense’s Motion *in Limine* with respect to the Execution Team Commander;
- (ii) GRANTS the defense’s Motion *in Limine* with respect to Contractual Team A, Contractual Team B, Contractual Team F, Execution Commander, Injection Team A, Injection Team C, Injection Team E, and Past Member Z; and

⁴ Pl.’s Opp. Defs.’ Motion in Limine 7.

(iii) DENIES Evans's request for leave to amend.

It is so ORDERED this 14th day of September, 2006.

 /s/
Benson Everett Legg
Chief Judge