

**THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

EDDIE L. ANDREWS, <i>et al.</i>	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No. 06CV-460TCK-PJC
	)	
UNITED STATE’S STATE JUSTICE	)	
INSTITUTE, <i>et al.</i>	)	
	)	
Defendants.	)	

**DEFENDANT, CNA SURETY’S, MOTION TO DISMISS WITH PREJUDICE**

\_\_\_\_\_ Defendant, CNA Surety, hereby moves this court to dismiss Plaintiffs’ claims with prejudice for failure to state a claim upon which relief can be granted.

**BACKGROUND**

CNA Surety (“CNA”) is a Delaware corporation in the business of writing commercial, contract and fidelity surety bonds. On September 18, 2006 plaintiffs served CNA with a summons and a 56 page document entitled “DUE PROCESS.” There was no document with the title “Complaint” served upon this defendant. The “Due Process” document is simply a list of grievances that the plaintiffs assert against the licensed legal profession. There are no specific allegations against CNA asserted.

**STANDARD OF REVIEW**

- I. A motion to dismiss with prejudice for failure to state a claim upon which relief can be granted, Fed.R.Civ.P. 12(b)(6), should be granted when plaintiffs fail to allege any facts in their pleadings.**

A plaintiff’s complaint must, at a minimum, contain a short and plain statement of his claim showing that he is entitled to relief. *See* Fed. R. Civ. P. 8(a). The purpose of a motion to dismiss is to test the legal sufficiency of a plaintiff’s pleadings. The court may grant a motion to dismiss under

rule 12(b)(6) where the complaint does not allege any set of facts that would entitle the plaintiff to relief. Conley v. Gibson, 355 U.S. 41, 45 (1957). In addition, the Tenth Circuit Court of Appeals, in an unpublished opinion, recently held:

[A] district court may dismiss with prejudice a complaint that fails to comply with Federal Rule of Civil Procedure 8(a)(2)'s requirement of a 'short and plain statement of the claim' if there appears to be no set of facts on which the plaintiff may state a claim for relief.

Monroe v. Owens, 38 Fed. Appx. 510, 513 (10<sup>th</sup> Cir. 2002); citing Monument Builders of Greater Kansas City, Inc. v. American Cemetary Association, 891 F.2d 1473 (10<sup>th</sup> Cir. 1989).

Courts should only consider facts that appear on the face of the complaint. Sutton v. Utah State School for the Deaf and Blind, 173 F.3d 1226, 1236 (10<sup>th</sup> Cir. 1999). "Conclusory allegations unsupported by factual averments within the complaint will not save an otherwise insufficient claim from dismissal." Hall v. Bellmon, 935 F.2d 1106, 1110 (10<sup>th</sup> Cir. 1991). "This is so because a *pro se* plaintiff requires no special legal training to recount the facts surrounding his alleged injury, and he must provide such facts if the court is to determine whether he makes out a claim on which relief can be granted." Id.

### **ARGUMENT AND AUTHORITY**

#### **PROPOSITION I: PLAINTIFFS' CASE AGAINST CNA SHOULD BE DISMISSED WITH PREJUDICE SINCE IT CONTAINS NO FACTS THAT WOULD ENTITLE THE PLAINTIFFS TO RELIEF**

In Monroe, *supra*, the plaintiffs' were *pro se* and their cases were consolidated. In each of the actions, the plaintiffs failed to conform to the precepts of rule 8(a). In one of these, the 10<sup>th</sup> Circuit held that "factual pleading is required only insofar as it is necessary to place a defendant on notice as to the type of claim alleged and the grounds upon which it rests, thereby enabling a defendant to

prepare a responsive pleading.” 38 Fed.Appx. at 515. Since it was “impossible to tell from the face of the complaint which defendants were accused of which violations, or when alleged violations occurred,” the court held “that the district court did not err in dismissing the complaint for failure to state a claim.” Id.

In Hall, supra, the 10<sup>th</sup> Circuit found that courts should grant some latitude to *pro se* litigants as to the form of their pleadings, but should not allow that latitude to progress into advocacy by the court. The decision went on to hold that even though *pro se* litigants are given such latitude, they are not relieved of their duty to provide facts sufficient to establish a recognizable legal claim. Mr. Hall was a prisoner who sued The State of Oklahoma on First Amendment grounds to complain that his religious observances were interfered with by the jail where he was incarcerated. The 10<sup>th</sup> Circuit affirmed the district court’s dismissal of his case for failure to state a claim, stating: “[A] court may dismiss *sua sponte* ‘when it is patently obvious that the plaintiff could not prevail on the facts alleged, and allowing him an opportunity to amend his complaint would be futile.’” Hall, 932 F.2d at 1110, citing McKinley v. Oklahoma, 925 F.2d 363 (10<sup>th</sup> Cir. 1991).

In the present case, the plaintiffs’ pleadings contain no specific facts, only a list of general grievances. What are primarily lacking are any facts that link CNA to the plaintiffs. Other than in the lists of defendants, there are no references whatsoever to CNA in the plaintiffs’ pleadings.

**A. The plaintiffs’ grievances lack specific facts which link CNA to the allegations.**

Grievance No. 1: CNA Surety, among the other defendants, conducts crimes from a position of authority.

Response: CNA cannot have perpetrated crimes from a position of authority without some

established basis for it to have authority. CNA is a corporation, not an agency of the government. It is in the business of writing surety bonds for contracts, commerce, and employee fidelity. The plaintiffs' pleadings lack any mention of any contract or bond that exist involving any of the plaintiffs and CNA.

Grievance No. 2: CNA Surety, among the other defendants, can perpetrate its crimes due to the presence of an "extra-legal system" in which constituent members obtain judicial preferences.

Response: Plaintiffs' pleadings lack any facts which would indicate that CNA has received preferential treatment by judges, or that CNA participates in an "extra-legal system" in which it could have received such preferential treatment. Furthermore, the plaintiffs' pleading is simply a general statement of belief that the system is unfair because represented parties generally prevail over *pro se* litigants. While such a belief may be true, it is not a fact which supports a claim for relief.

Grievance No. 3: CNA Surety, among the other defendants, is by nature a lying, rule-breaking and criminal entity.

Response: Plaintiffs provide no facts to support their claims that CNA has lied, broken rules, or committed crimes.

Grievance No. 4: CNA Surety, among the other defendants, routinely violates state and federal laws concerning fraud, false statements, false pretenses, and racketeering.

Response: There are no factual allegations that CNA has engaged in any of those acts.

Grievance No. 5: These crimes are perpetrated by the bar associations in this country with the participation of bar licensed attorneys and judges.

Responses: Plaintiffs identify that bar licensure provides access to a criminal community and maintaining such a license is evidence of a participation in a criminal enterprise. CNA is listed in the

plaintiff's documents along with all the other defendants who are individuals. However, since it is a corporation it cannot possibly maintain the necessary bar license that would be prerequisite to participation in the crimes described. In addition, the pleadings provide no factual instances during which any crimes were committed. Moreover, Plaintiff's fail to provide instances when any plaintiff was a victim of any crime perpetrated by CNA.

The absolute lack of facts in the plaintiffs' pleadings make it impossible for CNA to answer because CNA does not know what it did to the plaintiffs to create the need for a lawsuit. Furthermore, the suppositions and vague allegations cannot be answered because they appear to be a list of beliefs rather than assertions of facts. These beliefs are insufficient to require CNA to answer to a court of law.

Just like Monroe and Hall, these plaintiffs are *pro se* litigants who served pleadings that lacked sufficient facts to enable the defendants to know why they were being sued. This case should be dismissed.

#### **PROPOSITION II: ADDITIONAL DEFENSES**

CNA asserts these other defenses so that they are not waived:

1. Lack of jurisdiction over the person,
2. Improper venue,
3. Insufficiency of process, and
4. Insufficiency of service of process.

Based on the lack of clarity in pleadings that were served upon it, CNA lacks sufficient knowledge to provide arguments for these additional defenses. However, CNA asserts them in this motion so that they are not waived if additional information becomes available.

**CONCLUSION**

The plaintiffs have failed to allege even the most basic facts related to their claims. In addition, the plaintiffs fail to show any connection between the plaintiffs and CNA, and have not shown that they were damaged in any way. The lack of supportive facts is a violation of Rule 8(a), which empowers this court to dismiss the plaintiffs' suit with prejudice in accordance with the provisions of rule 12(b)(6).

Wherefore, premises considered, Defendant CNA Surety respectfully requests that this court grant this Motion To Dismiss With Prejudice for failure to state a claim upon which relief can be granted.

s/ Evan B. Gatewood

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Evan B. Gatewood, OBA #13412  
HAYES MAGRINI & GATEWOOD  
1220 N. Walker (73103)  
Post Office Box 60140  
Oklahoma City, Oklahoma 73146-0140  
Telephone: 405/235-9922  
Facsimile: 405/235-6611  
Attorneys for defendant, CNA Surety

**CERTIFICATE OF MAILING**

This is to certify that on the 19th day of October, 2006 a true and correct copy of the foregoing was mailed via first class mail, postage prepaid to the following:

Eddie Andrews  
P.O. Box 1132  
Catoosa, OK 74015

Rod Class  
P.O. Box 435  
High Shoals, NC 28077

Angela S. Andrews  
P.O. Box 1132  
Catoosa, OK 74015

Richard L. Andrews  
P.O. Box 1132  
Catoosa, OK 74015

Dwight L. Class  
1200 Hospital Drive, Apt. 13  
Angleton, TX 77515

Maria Janet Moffit  
c/o P.O. Box 4036  
Bremerton, WA 98132

Carl Weston  
2851 N. Hwy 66 #18  
Catoosa, OK 74015

Sherwood T. Rodrigues  
c/o 1610 Shenandoah Court  
Petaluma, CA 94954

s/ Evan B. Gatewood  
Evan B. Gatewood