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1 FOR PUBLICATION

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4 **IN THE SUPERIOR COURT OF THE**  
5 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

6	REN ZHOU,	)	SMALL CLAIM NO. 08-0452
7	Plaintiff,	)	SMALL CLAIM NO. 08-0503
8	v.	)	SMALL CLAIM NO. 08-0504
9	OCEANIA INSURANCE	)	SMALL CLAIM NO. 08-0508
10	CORPORATION,	)	SMALL CLAIM NO. 08-0509
11	Defendant.	)	SMALL CLAIM NO. 08-0632
12	JIANHUA HUANG,	)	SMALL CLAIM NO. 08-0610
13	Plaintiff,	)	SMALL CLAIM NO. 08-0635
14	v.	)	SMALL CLAIM NO. 08-0682
15	ROYAL CROWN INSURANCE CORP.,	)	SMALL CLAIM NO. 08-0683
16	Defendant.	)	SMALL CLAIM NO. 08-0722

(Consolidated Cases)

SUA SPONTE ORDER  
CONSOLIDATING SMALL CLAIM  
CASES FOR PURPOSE OF ISSUING  
GENERAL ORDER

AND

ORDER GRANTING DEFENDANTS'  
MOTIONS TO DISMISS

17	YU LAI WANG,	)
18	Plaintiff,	)
19	v.	)
20	ROYAL CROWN INSURANCE CORP.,	)
21	Defendant.	)

22	JIA MEI ZHANG,	)
23	Plaintiff,	)
24	v.	)
25	ROYAL CROWN INSURANCE CORP.,	)
26	Defendant.	)
27		)
28		)

ENTERED  
DATE: \_\_\_\_\_

1 **SI QIN PENG,** )  
2 **Plaintiff,** )  
3 **v.** )  
4 **ROYAL CROWN INSURANCE CORP.,** )  
5 **Defendant.** )  
6 \_\_\_\_\_ )  
7 **ZHEN HUA GUO,** )  
8 **Plaintiff,** )  
9 **v.** )  
10 **OCEANIA INSURANCE** )  
11 **CORPORATION,** )  
12 **Defendant.** )  
13 \_\_\_\_\_ )  
14 **CHUN YOUN FAN,** )  
15 **Plaintiff,** )  
16 **v.** )  
17 **OCEANIA INSURANCE** )  
18 **CORPORATION,** )  
19 **Defendant.** )  
20 \_\_\_\_\_ )  
21 **LIAN HUA GU,** )  
22 **Plaintiff,** )  
23 **v.** )  
24 **ROYAL CROWN INSURANCE CORP.,** )  
25 **Defendant.** )  
26 \_\_\_\_\_ )  
27 **LEI CHEN,** )  
28 **Plaintiff,** )  
**v.** )  
**ROYAL CROWN INSURANCE CORP.,** )  
**Defendant.** )

1 ZHENG ZIA HE, )  
 )  
2 Plaintiff, )  
 )  
3 v. )  
 )  
4 ROYAL CROWN INSURANCE CORP., )  
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5 Defendant. )  
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6 \_\_\_\_\_ )  
7 BAO WEIHONG, )  
 )  
8 Plaintiff, )  
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9 v. )  
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10 ROYAL CROWN INSURANCE CORP., )  
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11 Defendant. )  
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12 )  
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14 I. INTRODUCTION

15 The Court, *sua sponte*, consolidates the above small claim cases for the purpose of  
16 issuing an order on pending motions to dismiss separately filed therein.

17 Pursuant to Com. R. Civ. P. 12(b)(1) and 12(b)(6), the defendants in these cases have  
18 moved this Court to dismiss the plaintiffs' claims for lack of subject matter jurisdiction and for  
19 failure to state claims upon which relief can be granted. Having considered the arguments of  
20 counsel, the pleadings, materials on record, and the relevant rules and case law, the Court is  
21 prepared to rule.  
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23 II. FACTUAL AND PROCEDURAL BACKGROUND

24 The plaintiffs in these cases separately entered into non-resident worker contracts with  
25 employers in the Commonwealth of the Northern Mariana Islands (CNMI). Pursuant to the  
26 CNMI Nonresident Workers Act (NWA), 3 CMC § 4411, *et seq.*, the employers delivered  
27 labor bonds issued by the defendants to the Director of Labor. These labor bonds named the  
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1 delivered labor bonds issued by the defendants to the Director of Labor. These labor bonds  
2 named the Department of Labor and Immigration, Division of Labor (DOL) as the obligee on  
3 the bonds, and identified the plaintiffs as non-resident employees of their employers.<sup>1</sup>

4 After the employers breached their employment contracts with the plaintiffs, the  
5 plaintiffs all filed labor complaints with DOL. These complaints led to administrative hearings  
6 pursuant to 3 CMC § 4444. At the hearings, the Hearing Officer separately awarded each  
7 plaintiff specified back wages and other relief against their respective employers. DOL did  
8 not, however, institute separate proceedings against the defendants, though the defendants were  
9 each served with a Notice of Claim concerning the plaintiffs' awards.

10 Presently, the defendants have made no payments on the labor bonds and DOL has not  
11 commenced an action to enforce any of its claims on the bonds. The plaintiffs have therefore  
12 attempted to recover the awards granted to them by DOL against their employers by filing  
13 complaints in the Small Claims Division of the Superior Court of the CNMI against the  
14 defendants directly.

## 15 II. STANDARDS

### 16 A. Standard for dismissal under Com. R. Civ. P. 12(b)(1)

17 Under Com. R. Civ. P. 12(b)(1), a claim may be dismissed for lack of subject matter  
18 jurisdiction. *Atalig v. Commonwealth Election Comm'n*, 2006 MP 1. In other words, dismissal  
19 is appropriate if the plaintiff has no right to be in a particular court. *Id.* When ruling on a  
20 motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), the court must  
21 accept as true the complaint's undisputed factual allegations and construe the facts in the light  
22 most favorable to the plaintiff. *See Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 40

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28 <sup>1</sup> The Department of Immigration and Labor no longer exists. The Department of Labor is the successor agency for purposes of the surety bonds.

1 L.Ed.2d 90 (1974) (interpreting the Federal Rules of Civil Procedure after which the  
2 Commonwealth Rules are modeled). If the court lacks jurisdiction, it has no power to enter  
3 judgment and may only dismiss. *Atalig*, 2006 MP1 citing *Dassinger v. S. Cent. Bell Tel. Co.*,  
4 505 F.2d 672, 674 (5<sup>th</sup> Cir. 1974), 10 WRIGHT & MILLER § 2713 at 404-05.  
5

6 **B. Standard for dismissal under Com. R. Civ. P. 12(b)(6)**

7 Under Com. R. Civ. P. 12 (b)(6), a complaint may also be dismissed for failure to state  
8 a claim upon which relief can be granted. The Court follows the standard for Rule 12(b)(6)  
9 described in *In re Adoption of Magofna*, 1 N.M.I. 449 (1990). To avoid dismissal, a claim  
10 must pass either part of *Magofna's* two-pronged test: "A complaint must contain either direct  
11 allegations on every material point necessary to sustain a recovery on any legal theory . . . or  
12 contain allegations from which an inference fairly may be drawn that evidence on these  
13 material points will be introduced at trial." *Id.* at 454.  
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15 **III. ANALYSIS**

16 The primary reason the plaintiffs are unable to recover the awards granted to them by  
17 DOL is because DOL has thus far not attempted to enforce the defendants' obligations under  
18 the labor bonds. Although there were administrative proceedings that preceded these actions,  
19 the plaintiffs have not filed petitions for judicial review or for mandamus to compel DOL to  
20 take action.<sup>2</sup> Instead, the plaintiffs' claims are apparently based on the theory that they are  
21 third-party beneficiaries of the labor bonds and therefore possess a right to enforce the bonds  
22 independent of the statutory scheme embodied in the NWA, 3 CMC § 4411, *et seq.* The  
23 jurisdiction to enforce bonds issued pursuant to 3 CMC § 4411, *et seq.*, however, is vested  
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28 <sup>2</sup> This Court is not considering the administrative record beyond what is necessary for it to determine its own  
jurisdiction, and is not ruling on the legal effects or sufficiency of the actions and decisions that were part of the  
administrative proceeding.

1 solely with DOL. *Smith & Williams v. Royal Crown Ins. Co.*, Small Claims Nos. 06-0676, 06-  
2 0677, 06-0678 (N.M.I. Super. Ct. Feb. 5 2007) (Findings of Fact and Conclusions of Law).

3 In *Smith & Williams v. Royal Crown Ins. Co.*, this Court ruled that it lacked jurisdiction  
4 to enforce labor bonds issued pursuant to 3 CMC § 4411, *et seq. Id.* In that case, the plaintiff  
5 was a law firm to which several non-resident workers had assigned portions of the proceeds  
6 from awards granted to them by DOL against their former employers. *Id.* at 4. As alleged in  
7 the instant case, the employers of the non-resident workers had delivered labor bonds issued by  
8 the defendants to the Director of Labor pursuant to the NWA, 3 CMC § 4411, *et seq. Id.* at 2.  
9 When the law firm attempted to enforce the labor bonds as a third-party beneficiary under  
10 common law principles of contract and suretyship, this Court ruled that DOL has exclusive  
11 jurisdiction over a nonresident worker attempting to collect on labor bonds issued pursuant to  
12 the NWA, 3 CMC § 4411, *et seq. Id.* at 9-10. This Court stated that,

15 [T]he bonds in question are statutory bonds governed by the  
16 provisions of 3 CMC §§ 4411, *et seq.*, and by regulations  
17 promulgated pursuant to the Secretary of Labor's authority under 3  
18 CMC § 4421. These bonds would not even exist but for the  
19 provisions of the NWA. The bonds, therefore, may not be  
20 construed outside of their statutory context and may not be  
21 enforced to the extent that their enforcement would be in  
22 contravention of the statutory scheme that mandated their issuance.  
23 RESTATEMENT (THIRD) OF SURETYSHIP & GUARANTY § 71 (1996);  
24 *State ex rel. Pope v. U.S. Fire Ins. Co.*, 145 S.W.3d 529, 534  
25 (Tenn. 2004); *Carlson Auction Services, Inc. v. Lopez*, 61 P.3d  
26 117, 119 (Kan.App. 2003); *also, Jasper v. Smith*, *supra*, 540  
27 N.W.2d at 403, ("a statutory bond must be construed for the  
28 purposes contained in that statute").

Although there is no express statutory provision either permitting  
or prohibiting third-party suits against a surety on a labor bond  
issued in compliance with the NWA, the fact that the authority for  
the enforcement of the bond obligations has been legislatively  
vested with the Director of Labor and that the procedures regarding  
the issuance, content, and enforcement of such bonds are supplied  
by an extensive statutory and regulatory scheme lead this Court to

1 conclude that the legislature has not intended to allow such suits.  
2 *Gardner v. First Escrow Corporation*, 696 P.2d 1172, 1179-80  
3 (Or.App. 1985). Third-party suits of this nature would interfere  
4 with the duty of the Director to collect and administer the proceeds  
5 of labor bonds and disrupt the administrative procedures put in  
6 place by the Act. *Id.* Accordingly, this court concludes that it  
7 must dismiss such suits.

8 *Id.*

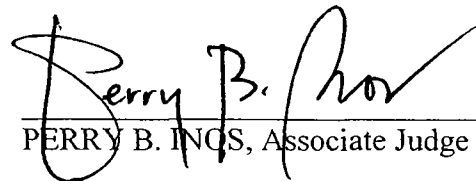
9 As in *Smith & Williams v. Royal Crown Ins. Co.*, the plaintiffs in these cases are  
10 attempting to collect on labor bonds issued pursuant to the NWA, 3 CMC § 4411, *et seq.* based  
11 on common law principles of contract and suretyship. Although the plaintiffs might make  
12 persuasive arguments concerning their rights to bring these actions as third-party beneficiaries  
13 under common law principles, the fact that DOL has exclusive jurisdiction over these  
14 particular labor bonds makes such arguments irrelevant. The NWA's extensive statutory and  
15 regulatory scheme regarding the enforcement of these bonds again leads this Court to conclude  
16 that "the legislature has not intended to allow such suits." *Id.* at 10. Therefore, the plaintiffs'  
17 claims must be dismissed for lack of subject matter jurisdiction and for failure to state claims  
18 upon which relief can be granted.

#### 19 IV. CONCLUSION

20 For the foregoing reasons, the defendants' motions to dismiss pursuant to Com. R. Civ.  
21 P. 12(b)(1) and 12(b)(6) are GRANTED.

22 SO ORDERED this 5<sup>th</sup> day of February 2009.

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PERRY B. INGS, Associate Judge