

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

THE FEDERAL DEPOSIT INSURANCE CORPORATION, )  
Plaintiff, )  
v. ) ) Civ. Action No. 2:13-cv-350-WHA  
HARRY BROWN & CO., LLC, et al., ) (WO)  
Defendants. )  
HARRY BROWN & CO., LLC, et al., )  
Counterclaimants, )  
v. )  
THE FEDERAL DEPOSIT INSURANCE CORPORATION, )  
Counterclaim– )  
Defendant. )

## **MEMORANDUM OPINION AND ORDER**

This case is before the court on Defendants' Motion to Dismiss (Doc. # 33) and responses thereto.

The case has been complicated by several factors—a first amendment to the complaint, not complete unto itself, being filed in state court before removal; a second amendment to the complaint, not complete unto itself, filed in this court adopting all prior allegations in the complaint and attempting to split the count from the first amendment to the complaint into three separate counts; an attempt to obtain a waiver of service on an estate from the wrong person,

rather than simply perfecting correct service; and vague allegations as to the legal basis for claims against different Defendants.

Rather than attempting to unravel these procedural complexities, the court has determined that the most efficient course at this time is to require repleading within the requirements of the *Federal Rules of Civil Procedure*, the Local Rules of this court, and the decisions of *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). *See Paylor v. Hartford Fire Ins. Co.*, 2014 WL 1363544, at \*7–8 (11th Cir. Apr. 8, 2014) (encouraging district courts to order repleader in cases such as this).

Therefore, it is hereby ORDERED that the First Amendment to the Complaint (Doc. # 1-9) is DISMISSED without prejudice. Further, it is hereby ORDERED that the Motion (Doc. # 33) is GRANTED, and the Second Amendment to the Complaint (Doc. # 30) is DISMISSED without prejudice, subject to the following:

1. The Plaintiff is DIRECTED to file an Amended Complaint **no later than May 28, 2014**, complete unto itself as required by Local Rule 15.1, with a complete style, and clearly setting out in separate counts the specific Defendant or Defendants against whom relief is claimed in the count, the specific relief sought against that Defendant or those Defendants, the legal theory relied on as the basis for that claimed relief, and a short and plain statement of facts showing a plausible claim entitling the Plaintiff to the relief sought against that Defendant or those Defendants without incorporating any previous allegations of fact that do not pertain to the claim for relief in the count.

2. The Defendants are DIRECTED to file a responsive pleading to the Amended Complaint **no later than June 11, 2013**. The court finds that by virtue of the Motion to Dismiss (Doc. # 33), filed on March 7, 2013, on behalf of the original Defendants and John M. Brown, as

personal representative of the Estate of Harry I. Brown, Sr. (the Estate), the Estate has submitted to the jurisdiction of the court, so that service of the Amended Complaint on counsel shall be sufficient service.

Done this 14th day of May, 2014.

/s/ W. Harold Albritton  
W. HAROLD ALBRITTON  
SENIOR UNITED STATES DISTRICT JUDGE