No. 23-1159

IN THE

Supreme Court of the United States

ROLAND HUFF,

Petitioner,

v.

BP CORPORATION NORTH AMERICA, INC.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ALISON M. HOWARD
Counsel of Record
CROWE & DUNLEVY
A PROFESSIONAL CORPORATION
324 North Robinson, Suite 100
Oklahoma City, Oklahoma 73102
(405) 235-7700
alison.howard@crowedunlevy.com

Counsel for Respondent

116815

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Respondent, BP Corporation North America, Inc. ("Respondent" or "BP"), respectfully responds in opposition to the request of Petitioner, Roland Huff ("Petitioner" or "Mr. Huff"), for a writ of certiorari (the "Petition") to the United States Court of Appeals for the Tenth Circuit (the "Court of Appeals"). The question presented by the Petition was not answered on appeal, and the Petition otherwise fails to present a compelling reason for review.

A. PETITIONER'S QUESTION PRESENTED WAS NOT ANSWERED ON APPEAL[1]

Petitioner misstates that the Court of Appeals answered the question he presents to this Court—whether he has a right under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.* ("ERISA"), to obtain information explaining increases in group life insurance rates under BP's employee benefit plan (the "Plan"), in particular pursuant to a purported request

1. Respondent has an obligation to identify perceived misstatements in the Petition. *See* Sup. Ct. R. 15(2) ("In addition to presenting other arguments for denying the petition, the brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted. Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition. Any objection to consideration of a question presented based on what occurred in the proceedings below, if the objection does not go to jurisdiction, may be deemed waived unless called to the Court's attention in the brief in opposition.").

for plan instruments required to be furnished under 29 U.S.C. § 1024(b)(4) ("Section 1024(b)(4)"). As is evident from its opinion, the Court of Appeals ***did not*** answer this question. Pet. App. A. That is because Petitioner did not ask it, certainly not adequately. Petitioner concedes the Court of Appeals' opinion "was not exactly on point to the Question Presented herein," thus he claims to seek this Court's review on the basis the Court of Appeals denied his petition for rehearing. Pet. 9. But the Court of Appeals did not answer Petitioner's question presented herein simply by declining to rehear his appeal. *See* Pet. App. D.

Petitioner also suggests the Court of Appeals implicitly adopted the ruling of the district court determining Petitioner failed to state a plausible ERISA claim pursuant to 29 U.S.C. § 1132(c) ("Section 1132(c)"), which provides a remedy for a plan administrator's failure to comply with a plan participant's request for information required to be furnished under Section 1024(b)(4). Pet. 9-16, n.10; Pet. App. 15-17. It did not. Petitioner did not challenge the district court's ruling in this regard. Petitioner does not reference Section 1132(c) or Section 1024(b)(4) in any of his appellate briefing, or even in his petition for rehearing. Likewise, the Court of Appeals' opinion is silent on the issue. Pet. App. A.

On appeal, Petitioner primarily challenged the district court's multiple rulings that his state law claims are preempted by ERISA. Petitioner pursued a state law putative class action for compensatory and punitive damages, based on speculation about increases in the cost of life insurance under the Plan. The district court ruled—four times—that ERISA applies, in response to Petitioner's repetitious insistence otherwise. Pet. App.

2-4. The Court of Appeals affirmed that the lawsuit is governed by ERISA. Pet. App. 5-7.

Petitioner barely allowed for the idea the Court of Appeals would agree with the district court that ERISA governs his lawsuit. In a concession to this possibility, Petitioner argued he has a right to litigate and discover information in search of potential mismanagement of the Plan—irrespective of whether he states a plausible claim under ERISA's remedial provisions—in the spirit of ERISA's purpose and on the ground otherwise he will be without a remedy in the face of ERISA preemption. The Court of Appeals rejected the contention, explaining "even if ERISA provides fewer remedies than would otherwise be available under state law, its preemption provision 'evidences Congress's policy choices and intent to provide only the remedies it specified, and this court is not in a position to second-guess Congress simply because the facts of a particular case might be sympathetic.'" Pet. App. 9 (quoting *Coldesina v. Estate of Simper*, 407 F.3d 1126, 1139 (10th Cir. 2005)).

Ultimately, the Court of Appeals affirmed that Petitioner failed to plead a plain and plausible ERISA claim in compliance with Rules 8(a) and 12(b)(6) of the Federal Rules of Civil Procedure. The Court of Appeals determined that non-compliance with Rule 8(a) alone warranted dismissal. "[T]he burden to plead an intelligible claim in compliance with Fed. R. Civ. P. 8 was his, and he failed to meet it." Pet. App. 9 (citing *In re ZAGG Inc.*, 826 F.3d 1222, 1231 (10th Cir. 2016)). The district court had assessed that Petitioner's amended complaint, which is 35 pages in length and attaches 13 exhibits, makes "seemingly incompatible allegations," including

by "continu[ing] to posit that this matter is not governed by ERISA"; "confusingly" seeks to discover claims; is "rife with legal exposition, both as to what the law is and plaintiff 's counsel's opinions on what the law should be"; and "includes questions regarding the numerous exhibits attached to his Amended Complaint and discussions of what those exhibits may or may not show." Pet. App. 8, 18-20. "In both its length and form, the document is difficult to interpret." *Id.*

On appeal, Petitioner did "not defend the intelligibility of the amended complaint in his opening brief." Pet. App. 8. The Court of Appeals held, "[t]his alone constitutes sufficient grounds to affirm the dismissal." *Id.* Independently, the Court of Appeals held, to the extent Petitioner "seeks to challenge the rate increases under the Plan, his admission that he needs an expert actuary to review certain information 'to determine whether the huge premium increases are justified' establishes that—as pled—the allegations in the amended complaint" do not cross the threshold of plausibility necessary to avoid dismissal under Rule 12(b)(6). Pet. App. 8-9 (internal cites omitted).

CORPORATE DISCLOSURE STATEMENT

Respondent is wholly owned by BP America, Inc., which is wholly owned by BP Holdings North America Limited, which is wholly owned by BP plc (a British publicly held company). No other company owns 10% or more of the stock of Respondent.

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Page

CASES

Page

STATUTES AND RULES

Cited Authorities

JURISDICTION

Petitioner's only question to this Court was not pressed and passed on by the Court of Appeals. A grant of certiorari is precluded "when the question presented was not pressed or passed upon below." *United States v. Williams*, 504 U.S. 36, 41 (1992) (internal quotes and cite omitted). "Where issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them." *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 147 n.2 (1970).

STATUTORY PROVISIONS INVOLVED

Petitioner misstates that 29 U.S.C. § 1024(b)(4), which requires a plan administrator to furnish copies of plan instruments upon request of an ERISA plan participant, was involved in the decision of the Court of Appeals. Petitioner did not appeal, and the Court of Appeals did not answer, the question whether he stated a claim for relief based upon a request seeking plan instruments within the meaning of Section 1024(b)(4). Pet. App. A. Petitioner did not even cite Section 1024(b)(4) in his briefing on appeal.

STATEMENT OF THE CASE

A. The District Court Proceedings: *Huff I* and *Huff II*

Petitioner, Mr. Huff, "worked for BP until he retired in 1998." Pet. App. 2. "While employed with BP, he enrolled in the BP Group Universal Life Plan, which provides group universal term life insurance benefits to current and former BP employees." *Id.* Metropolitan Life Insurance Company ("MetLife") is the Plan claims administrator.

Id. "Upon his retirement, Mr. Huff elected to maintain coverage under the Plan and pay the premiums directly to MetLife. He alleged that, until 2012, his monthly premiums were approximately $200 but that, by 2021, when he had reached the age of 78, his monthly premiums had risen to more than $1,900." *Id*.

"Mr. Huff sued MetLife in the Northern District of Oklahoma in *Huff v. Metropolitan Life Insurance Company*, No. 21-CV-284-CVE (*Huff I*), alleging state law causes of action including breach of contract and breach of the implied duty of good faith and fair dealing." Pet. App. 2-3. His complaint against MetLife also sought discovery of information to present to his actuary to determine whether MetLife's premium increases under the Plan were justified. Pet. App. 3. The district court "dismissed *Huff I*, concluding that ERISA preempted Mr. Huff's state law claims and that he did not state a claim under ERISA." *Id*. "The court stated it would 'allow [Mr. Huff] to file an amended complaint if he wishe[d] to allege a claim under ERISA[ ] and name the correct defendant as to [his] employee benefit plan.'" *Id*. (internal cites omitted).

But Mr. Huff did not file an amended complaint in *Huff I*, nor did he appeal the dismissal. *Id*. "Instead, he brought a new complaint, in Oklahoma state court, against BP (*Huff II*). This complaint alleged similar causes of action under state law as the ones he brought against MetLife." *Id*. BP removed the case to federal court and moved to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, on the grounds of (1) res judicata, and/or (2) ERISA preemption. Pet. App. 3 & n.2. The district court granted the motion on the second ground and extended to Mr. Huff yet another opportunity to amend to try to state an ERISA claim. Pet. App. 3.

Mr. Huff accepted the district court's invitation in *Huff II* and filed an amended complaint therein, purporting to assert claims under ERISA. *Id.* But the amended complaint merely "sought 'answers to questions and documentation' regarding his premium increases and alleged that '[w]hen obtained, the information and documentation will be handed over for review and analysis by an expert life insurance actuary to determine whether the increases were justified, reasonable and fair,'" including for purposes of assessing the viability of state law claims against MetLife. Pet. App. 3-4, 19 (internal cites omitted). BP moved to dismiss under Rule 12(b)(6), "once again, arguing the amended complaint failed to state a claim for relief under ERISA." Pet. App. 4.

"The district court granted the motion." *Id.* It found that the amended complaint, in the first instance, "runs afoul" of Rule 8(a) of the Federal Rules of Civil Procedure, which requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a)(2). Pet. App. 18. "'Rule 8 serves the important purpose of requiring plaintiffs to state their claims intelligibly so as to inform the defendants of the legal claims being asserted.'" *Id.* (quoting *Mann v. Boatright*, 477 F.3d 1140, 1148 (10th Cir. 2007)). "The Rule 'requires parties to make their pleadings straightforward, so that judges and adverse parties need not try to fish a gold coin from a bucket of mud.'" *Id.* (quoting *United States ex rel. Garst v. Lockheed-Martin Corp.*, 328 F.3d 374, 378 (7th Cir. 2003)).

As the district court observed, Mr. Huff 's amended complaint in *Huff II* "is thirty-five (35) pages in length and attaches thirteen (13) separate exhibits, totaling forty-eight (48) pages." *Id.* "In both its length and form, the

document is difficult to interpret." Pet. App. 19. The "task of determining whether Mr. Huff has stated a plausible claim" sufficient to survive Rule 12(b)(6) dismissal "is rendered more difficult by the seemingly incompatible allegations contained therein." *Id.* The amended complaint "includes allegations and argument against MetLife, despite the fact that Judges in this court had twice previously concluded that no plausible claim could be asserted against MetLife because the Plan was subject to ERISA and MetLife was not the Plan Administrator." *Id.* "Likewise, Mr. Huff continues to posit that this matter is not governed by ERISA. It is. ERISA applies. Mr. Huff 's allegations to the contrary serve only to confuse the issues and put more mud in the proverbial bucket." *Id.*

Further, the district court found Mr. Huff did not state "'claims intelligibly so as to inform the defendants of the legal claims being asserted.'" *Id.* (quoting *Mann*, 477 F.3d at 1148). "Confusingly, the pleading includes argument and allegations directed to claims *not asserted* in this case because Mr. Huff " has not yet discovered them. *Id.* (emphasis in original). He alleges information and documentation about life insurance rate changes under the Plan "'are needed before the . . . allegation[ ] of wrongdoing will be made'" and so that he "'might then have evidence'" to assert a claim for "'fraudulent, unjustified, price gouging, and unjust self-enriching insurance rate increases.'" Pet. App. 19-20 (internal cites omitted). "Neither the court nor BP should be required to guess as to which claims Mr. Huff presently asserts." *Id.* "Further, compounding the problems in Mr. Huff 's pleading, the Amended Complaint is rife with legal exposition, both as to what the law is and plaintiff 's counsel's opinions on what the law should be" and "includes questions regarding the

numerous exhibits attached to his Amended Complaint and discussions of what those exhibits may or may not show." Pet. App. 20.

The district court also found Mr. Huff did not otherwise state a plausible Section 1132(c) claim for penalties for a plan administrator's failure to comply with a request for information required to be furnished under Section 1024(b)(4). As the district court explained, "[p]ursuant to 29 U.S.C. § 1024, '[t]he administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated.'" Pet. App. 15 (quoting 29 U.S.C. § 1024(b)(4)). "A generalized request for documents related to an increase in premiums, as alleged in the Amended Complaint, does not satisfy the standard." *Id.* at App. 17. Moreover, an attorney's request for information on behalf of a plan participant must be "'clear and put[ ] the administrator on notice of the information sought.'" *Id.* (quoting *Moothart v. Bell*, 21 F.3d 1499, 1503 (10th Cir. 1994)).

The district court determined that Mr. Huff did not plainly allege that he or his attorney requested ***any*** documents from the Plan Administrator, let alone that he clearly "requested a copy of the latest updated summary, plan description, latest annual report, a terminal report, a bargaining agreement, a trust agreement, or a contract." *Id.* Rather, the amended complaint alleged Mr. Huff's attorney herein, in the midst of the *Huff I* litigation, sent a letter to "Tonya??" seeking answers to six questions about the ERISA nature of the Plan and Mr. Huff's premiums. *Id.* The district court found the letter did "not

specifically request copies of any documents, nor can it be reasonably construed to put BP on notice that Mr. Huff was requesting documents." *Id*. "Because Mr. Huff has not asserted that he requested a document required to be provided by ERISA or the Plan, he has failed to plausibly allege an ERISA claim premised on the failure to provide documents and BP cannot be subject to § 1132(c)'s statutory penalty." Pet. App. 17-18.

B. The Questions Answered (and Not Answered) by the Court of Appeals

Mr. Huff did not challenge on appeal the district court's ruling on the plausibility of his Section 1132(c) claim. He did not argue that he stated a plausible Section 1132(c) claim or that he requested of the Plan Administrator documents required to be furnished under Section 1024(b)(4). Nor did he cite authority or the record relevant to the district court's ruling on this issue. There is no mention of Section 1132(c) or Section 1024(b)(4) or the letter to "Tonya??" in Petitioner's opening brief on appeal, or even in his reply brief or petition for rehearing. Accordingly, the Court of Appeals makes no mention of the same. Pet. App. A.

Rather, first and foremost, Mr. Huff challenged on appeal the district court's rulings on the issue of ERISA preemption of his state law claims. The Court of Appeals affirmed that ERISA governs this case. Pet. App. 5-7. Secondarily, Mr. Huff proposed that he should be allowed to pursue litigation, even if he cannot state a claim within ERISA's remedial framework, because he believes he could have done so under state law and is left without a remedy if his state law claims are preempted by ERISA.

The Court of Appeals rejected this argument, for two reasons.

First, the Court of Appeals explained, "even if ERISA provides fewer remedies than would otherwise be available under state law, its preemption provision 'evidences Congress's policy choices and intent to provide only the remedies it specified, and this court is not in a position to second-guess Congress simply because the facts of a particular case might be sympathetic.'" Pet. App. 9 (quoting *Coldesina v. Estate of Simper*, 407 F.3d 1126, 1139 (10th Cir. 2005)).

Second, the Court of Appeals held Mr. Huff cannot avoid his obligation to state a plain and plausible claim under Rules 8(a) and 12(b)(6). "[T]he burden to plead an intelligible claim in compliance with Fed. R. Civ. P. 8 was his, and he failed to meet it." Pet. App. 9 (citing *In re ZAGG Inc.*, 826 F.3d 1222, 1231 (10th Cir. 2016)). The Court of Appeals determined non-compliance with Rule 8(a) alone warranted dismissal: "Mr. Huff does not defend the intelligibility of the amended complaint in his opening brief. This alone constitutes sufficient grounds to affirm the dismissal." Pet. App. 7-8. Independently, the Court of Appeals held Mr. Huff failed to plead a plausible claim sufficient to avoid dismissal under Rule 12(b)(6): "[T]o the extent Mr. Huff seeks to challenge the rate increases under the Plan, his admission that he needs an expert actuary to review certain information 'to determine whether the huge premium increases are justified'" renders his allegations too speculative to be plausible. Pet. App. 8-9 (internal cites omitted).

REASONS FOR DENYING PETITION

I. Petitioner's Question Presented Was Not Answered on Appeal.

This Court's "traditional rule . . . precludes a grant of certiorari . . . when the question presented was not pressed or passed upon below." *United States v. Williams*, 504 U.S. 36, 41 (1992) (internal quotes and cite omitted). As such, this Court has declined to review questions not answered by a Court of Appeals. *See*, *e.g.*, *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 147 n.2 (1970) ("[P]etitioner never raised any issue concerning the 1875 statute before the Court of Appeals. Accordingly, the Second Circuit did not rule on these contentions. Where issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them. We decline to do so here.") (internal cites omitted); *F.T.C. v. Travelers Health Ass'n*, 362 U.S. 293, 298 n.4 (1960) ("The Court of Appeals gave no consideration to the effect of 'regulation' by any State other than Nebraska. In accord with accepted principles, we decline to consider these issues on the present record[.]"); *G. D. Searle & Co. v. Cohn*, 455 U.S. 404, 413 (1982) (declining to review whether tolling provision violates the Commerce Clause—the Court of Appeals did not "address[ ] the question directly"; indeed "[t]here is no mention of the Commerce Clause in the opinion of the Court of Appeals").

Likewise, "[a]lleged errors not of a fundamental or jurisdictional character, which were not presented to the appellate court for consideration, and which were waived, either expressly or by implication, will not be regarded as before this [C]ourt." *Magruder v. Drury*, 235 U.S. 106,

113 (1914). In the Court of Appeals, "[i]ssues not raised in the opening brief are deemed abandoned or waived." *Tran v. Trs. of State Colls. in Colo.*, 355 F.3d 1263, 1266 (10th Cir. 2004) (internal quotes and cites omitted). "Further, [a] litigant who fails to press a point by supporting it with pertinent authority, or by showing why it is sound despite a lack of supporting authority or in the face of contrary authority, forfeits the point." *Id.* (internal quotes and cites omitted).[1]

The only question Petitioner asks this Court to review is one that was not pressed and passed on by the Court of Appeals; indeed, the question was waived because it was not adequately, if at all, raised in Petitioner's opening brief on appeal. Petitioner concedes that the Court of Appeals' opinion "was not exactly on point to the Question Presented herein," Pet. 9. That is because Petitioner did not explore the question on appeal. The question Petitioner now presents to the Court is based upon a ruling of the district court that was not effectively challenged on appeal, either directly or with citation to authority.

As Petitioner notes, "only section A, pages 4-6 of the District Court's Order, is truly applicable to the Question Presented." Pet. n.10. Therein, the district court addressed Petitioner's Section 1132(c) claim that the Plan Administrator failed to furnish documents required to

1. *See, e.g., Adler v. Wal–Mart Stores, Inc.*, 144 F.3d 664, 679 (10th Cir. 1998) ("In her opening brief, Plaintiff makes only two assertions, without citation to authority or the record, that the doctrine of respondeat superior should not protect Wal–Mart. She also makes just one assertion, again without citation to authority or the record, that a question of fact remains on this issue. Arguments inadequately briefed in the opening brief are waived.").

be provided in accordance with ERISA. Pet. App. 15-18. Petitioner's attorney had sent a letter to "Tonya??" in the Plan Administrator's office asking general questions about the Plan and premiums thereunder, but he did not request any documents, let alone clearly request any of the documents required to be furnished under Section 1024(b)(4). Pet. App. 16-17. The district court ruled that "[a] generalized request for documents related to an increase in premiums, as alleged in the Amended Complaint," does not come within the scope of Section 1024(b)(4) and that, because Petitioner "has not asserted that he requested a document required to be provided by ERISA or the Plan, he has failed to plausibly allege an ERISA claim premised on the failure to provide documents and BP cannot be subject to § 1132(c)'s statutory penalty." Pet. App. 17-18.

The Court of Appeals did not review the district court's ruling in this regard. To be sure, Petitioner did not adequately, if at all, raise the issue. He did not ask the Court of Appeals, as he does by this Petition, to decide whether he requested of the Plan Administrator documents required to be furnished under Section 1024(b)(4) so as to state a plausible Section 1132(c) claim. Nor did he cite authority or the record relevant to the district court's ruling. There is no mention of Section 1132(c) or Section 1024(b)(4) in Petitioner's opening brief on appeal, or even in his reply brief or petition for rehearing. Dispositive herein, the opinion of the Court of Appeals and its order denying rehearing are silent on the issue. Pet. App. A & D.

The Petition should be denied, if only because the question Petitioner presents to the Court was not answered by the Court of Appeals.

II. No Compelling Reason Exists for Review.

Assuming the question presented was the one answered by the district court—rejecting the plausibility of Petitioner's Section 1132(c) claim—and further assuming the Tenth Circuit had reviewed and affirmed this ruling, the Petition yet should be denied because there is no compelling reason for review. "Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons." Sup. Ct. R. 10.

Petitioner does not contend that any of the circumstances considered by the Court compels review. He does not assert the Court of Appeals "entered a decision in conflict with the decision of another United States court of appeals on the same important matter" or "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power[.]" Sup. Ct. R. 10(a). Nor does Petitioner posit that the Court of Appeals "has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10(c).[2]

---

2. Petitioner references this Court's decision in *Fort Halifax v. Coyne*, 482 U.S. 1 (1987), rejecting an ERISA preemption challenge to a Maine severance pay statute, and the decisions of the U.S. Court of Appeals for the First Circuit in *Belanger v. Wyman-Gordon*, 71 F.3d 451 (1st Cir. 1995), relying upon the rationale in *Fort Halifax* to hold that a series of early retirement offers did not constitute an "employee benefit plan" within the meaning of ERISA, and *Demars v. Cigna Corp.*, 173 F.3d 443 (1st Cir. 1999),

Rather, the hypothetical error in question is purported misapplication of Rule 12(b)(6) in concluding Petitioner failed to state a plausible claim under Section 1132(c). "A petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law." Sup. Ct. R. 10.

Rule 12(b)(6), properly stated by the Court of Appeals, requires dismissal of a complaint that does not "'contain sufficient factual matter . . . to state a claim to relief that is plausible on its face.'" Pet. App. 5 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "To meet this standard, the plaintiff must 'plead[ ] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Id.* "'The plausibility standard . . . asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.*

At the outset, the district court, affirmed by the Tenth Circuit, held the amended complaint is not "intelligible" and that such noncompliance with Rule 8(a) complicates the assessment of plausibility. Pet. App. 7-9, 18-20. With respect to Petitioner's Section 1132(c) claim in particular, the district court assessed that the factual content of the amended complaint did not allow the court to draw the

---

holding an insured's "conversion policy" was not an "employee benefit plan" within the meaning of ERISA. Pet. 10-11, n.9. But these decisions merely recite the purpose of ERISA in reasoning that the state laws addressed therein did not implicate ERISA's regulatory concerns. They do not conflict with the district court's decision dismissing Petitioner's Section 1132(c) claim.

reasonable inference that Petitioner requested documents from the Plan Administrator required to be furnished under Section 1024(b)(4). Petitioner generally alleged that he sought documents related to premium increases, and he pointed to a letter from his attorney herein to "Tonya??" generally inquiring about the ERISA nature of the Plan and increases in premiums. Pet. App. 15. The district court determined that a generalized request for documents related to premium increases, even assuming such request for documents was made, does not trigger an obligation under Section 1024(b)(6). Pet. App. 17. In any event, the district court found, the letter from Petitioner's attorney did "not specifically request copies of any documents," let alone the documents required to be furnished under Section 1024(b)(4), "nor can it be reasonably construed to put BP on notice that Mr. Huff was requesting documents." *Id*. For this reason, the district court ruled, Petitioner "failed to plausibly allege an ERISA claim premised on the failure to provide documents and BP cannot be subject to § 1132(c)'s statutory penalty." Pet. App. 17-18.

Assuming Petitioner questions the district court's assessment of the plausibility of Petitioner's Section 1132(c) claim, and that the Court of Appeals had answered the question by affirming the district court's ruling, such would not warrant review. The district court merely applied the plausibility standard of Rule 12(b)(6) (to an amended complaint that the Court of Appeals agreed was not intelligible enough to satisfy Rule 8(a) and which intelligibility Petitioner did not defend in his opening brief on appeal). Correct or not, the application of Rule 12(b)(6) to determine Petitioner failed to state a plausible claim under ERISA Section 1132(c) does not present a compelling reason for review by this Court.

CONCLUSION

Respondent respectfully requests that the Court deny the Petition on the ground it seeks review of a question that was not answered by the Court of Appeals and otherwise does not present a compelling reason for review.

Respectfully submitted,

ALISON M. HOWARD
Counsel of Record
CROWE & DUNLEVY
A PROFESSIONAL CORPORATION
324 North Robinson, Suite 100
Oklahoma City, Oklahoma 73102
(405) 235-7700
alison.howard@crowedunlevy.com

Counsel for Respondent