

No.....

IN THE
SUPREME COURT OF THE UNITED STATES

Abdul Salam Badmus - Petitioner **(Pro Se)**
vs
Mutual of Omaha Insurance Company **(MOOIC)**
Respondent

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

PETITION FOR WRIT OF CERTIORARI

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i.

Questions Presented For Review

Summary Judgment Standard

(a) Whether Fed. R. Civ. P. 56(c), **Anderson v Liberty Lobby Inc. 477 U.S.242 (1986)** and **Celotex Corp, v. Catrett 477 U.S.317(1986)** prohibit a Court from entering a summary judgment findings, that an insurer is not liable to pay benefits, when the Court disbelief the non-movant and record contains uncontroverted, relevant evidence establishing that there is at least a genuine issue of material fact.

(b) Whether the removal of the Original Policy Application Form E42ADR41 (**Individual Plan, Premium \$18.95**) and replacing it with a Fake Policy Application form E42ADR42 (**Family Plan, Premium \$28.95 and altered date**), by Mutual of Omaha Insurance Company (Respondent), a misrepresentation, creates genuine dispute as to material fact for trier of fact to resolve.

(c) Whether US Fifth Circuit opinion on Summary Judgment failed to address evidence that, when viewed in the light most favorable to the non-moving party (Abdul Salam) creates genuine issue of material fact which requires a trial to resolve.

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1.

OPINIONS BELOW

The opinion of the United States Court of Appeals, for the Fifth Circuit, decided by WIENER, DENNIS, and SOUTHWICK, Circuit Judges, filed October 2, 2017 appears at **Appendix A** to the petition and is not published. Order denying a timely filed Petition for Rehearing, signed without a name by the signature and filed November 15, 2017 appear at **Appendix B**.

The opinion of Judge Melinda Harmon, United States District Court, for the Southern District of Texas, Houston Division, appear at **Appendix C**.

JURISDICTION

The date of United States Court of Appeals for the Fifth Circuit decision was October 2, 2017. A timely petition for rehearing was denied by the United States Court of Appeals for the Fifth Circuit on **November 15, 2017** and a copy of the order denying rehearing appear at **Appendix B**. The jurisdiction of this Court is invoked under **28 U.S.C. 1254**.

CONSTITUTIONAL PROVISIONS, STATUTES AND OTHER REGULATIONS INVOLVED.

Federal Rule of Civil Procedure 56(c)
Fourteenth Amendment to US Constitution
Texas Contract Law
Texas Insurance Code

STATEMENT OF THE CASE

A. *Facts giving rise to this case.*

2.

Note:

(1) Policy Form E42ADR**41** is for Individual Life Plan

(2) Policy Form E42ADR**42** is for Family Life Plan

(3) My signature on the Investigation Report of Respondent MOOIC was forged and Coverage File Number was changed from E42ADR**41**-197023-28M to E42ADR**42**-197023-28M **(See App. E p. 1-2).**

(4) Respondent MOOIC never mentioned Policy E42ADR**42**-878565-27M, **(See App. E p 23)** a Family Life Plan, Premium **\$28.95**, not related to the Policy in this dispute, this was issued to Petitioner in Inkster Michigan February 12, 2008, was allowed to lapse February 2012. I hope Respondent is not using documents in this coverage to fake the document in Coverage E42ADR**41**-197023-28M

Before **August 10, 2009** the deceased insured Selem B. Badmus, completed and sent **(the Offer)** Application to Mutual of Omaha Insurance Company for Accidental Death Insurance available under Policy Form E42ADR**41** **just for himself alone, an Individual Life Plan,** monthly premium of **\$18.95**. (Semiannually **\$113.70**) **NOT** Policy Form E42ADR**42**. **Family Life Plan,** monthly premium **\$28.95**. (Semiannually **\$173.70**). Respondent (MOOIC) removed Policy Form E42ADR**41** from the Coverage File it keeps and later replaced it with Policy Form E42ADR**42**, which does not belong to the file

3.

August 10, 2009 Respondent (MOOIC) issued to the deceased insured Selem B. Badmus **(Acceptance)** Policy number E42ADR**41**-197023-28M **(See.App. D)** an individual life plan, monthly premium of \$18.95 (Semiannually \$113.70) **in strict compliance with the terms of the offer.** There is no disagreement that the Policy in dispute is Policy # E42ADR**41**-197023-28M which is an Individual Life Plan **not** Family Life Plan. The Policy Form must be E42ADR**41** **not** E42ADR**42**.

January 24, 2014, the insured Selem B. Badmus died as a direct result of an automobile accident involving the Taxi-Cab he hired and was riding in Ogun State Nigeria, along Ibadan-Lagos Expressway.

March 10, 2014 Respondent (MOOIC) received (1) Notice of Claim and Proof of Death; (2) Certified True Copy of Certificate of Death; (3) Accident Eye Witness Affidavit; (4) Certified True Copy of Medical Certificate of Cause of Death.

May 15, 2014, a letter signed by Nicki L. Showalter, Senior Claims Analyst, **(Individual Life Claims)**, Respondent (MOOIC) acknowledged it received the above documents. It states in pertinent part **"Thank you for returning to our office Completed Proof of Accidental Death Claim Form along with Certified Copy of your brother's Death Certificate (See App. E p.3)"**

Sometime in May 2014, Respondent (MOOIC) appointed APT Chambers, Legal Consultants in Lagos Nigeria, **not** Worldwide Resources Inc. to investigate the claims. **(See App. E. p. 4)**

4.

May 8, 2014, APT Chambers wrote a letter to National Population Commission of Nigeria to verify the authenticity of the Certificate of Death of the Insured.

May 14, 2014 National Population Commission confirmed that the Certificate of Death is authentic (**See.App.E p.5**). Pursuant to National Population Commission Act it is the only agency of Nigeria Government vested with the authority to register and certify death in Nigeria. Certificate of Death issued by the Commission is conclusive evidence. Under the law, either the Accident Eye Witness Affidavit or Medical Certificate of Cause of Death is required not both, in this case both were tendered.

May 8, 2014, APT Chambers wrote a letter to the Registrar, High Court of Lagos State Nigeria, to verify the authenticity of both the Accident Eye Witness and the Affidavit Sworn to by the Accident Eye Witness. **May 14, 2014** The Registrar, High Court of Lagos State confirmed that the Accident Eye Witness and the Affidavit are authentic (**See.App. E p. 6**). Respondent MOOIC did not seek to locate and interview the Accident Eye Witness.

May 8, 2014, APT Chambers wrote a letter and presented it to the Office of the Chief Medical Director of Lagos State University Teaching Hospital (**LASUTH**) and APT Chambers was instructed to report to the Head of Division, Medical Records, a clinical unit (**See.App. E. p.7**).

The departments and divisions in LASUTH are either clinical or non-clinical that is why there are

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two information technology departments Health Information Management Department clinical unit (headed by Mr. E. S. Ayeni (**See App E.p 8**) and Information & Communication Technology Department (non-clinical unit). Issues regarding Medical Certificate must be handled only by clinical units.

*The response purportedly signed by Mrs. O. A. Akinlawon, the then Head of Administrative Department (Human Resource) a non –clinical units (**See.App. E. p.9**), is suspect and not authentic.*

*It is universal norm that any question arising from medical certificate, medical report, prescription etc. must be directed to the Physician who issued the document, as it is the professional responsibility of the individual Physician. As a result of similar controversies caused by Mrs. O. A. Akinlawon, she was retired from service and her successor Mrs. Adio .Olatokunbo O. (Jp) was clearly designated Director Hospital Administration/ Human Resource, non-clinical unit. (**See.App. E. p.10**)*

The Chief Medical Director referred the Investigator to the Head of Division Medical Records a clinical unit **NOT** Head of Administrative Department a non-clinical unit. Mr. E. S. Ayeni. is the Head of Department in charge of Medical Records and he is the custodian of Medical Records **NOT** Mrs O. A. Akinlawon.

January 24, 2014, the day of the Accident, there was Nationwide Strike Action by Healthcare Workers throughout Nigeria, (**See.**

App. E.p.11-12) including workers at Lagos State University Teaching Hospital excluding Physicians who volunteered to attend to emergencies. I had personal knowledge of the strike action at Lagos State University Teaching Hospital, as I was there to collect the body of my late brother because the strike was total as mortuary unit and medical records office were closed. Two other individual personally witnessed the strike action and its effects as can be confirmed by their Affidavits. **(See App. E 13-15)** The strike action was in news locally, nationally and internationally as it was covered by both the print and electronic media.

Upon personal investigation, Petitioner (Badmus) confirmed from officials of the Medical Records Office that Respondent (MOOIC) Investigators were directed to go and interview Dr. A. O. Olawale, the Physician who issued the Medical Certificate of Cause of Death, because they have no records for the duration of the strike action. Respondent (MOOIC) investigators failed to interview Dr. A. O. Olawale, instead went to collect a letter from someone who has no authority to issue such letter.

Dr. A. O. Olawale could have been located for interview at the Lagos State University College of Medicine (**LASUCOM**), although a separate entity, it is located in the same complex as Lagos State University Teaching Hospital. (**LASUTH**). High Court of Lagos State, Ikeja Division where Mr. Okebukola the Principal Investigator claimed to

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be practicing law can be seen from the gate of LASUTH.

Respondent MOOIC subsequently sent three (3) letters of denials, stating conflicting reasons that are in contradiction with Respondent MOOIC Investigation Report and Letters,

July 10, 2014, in a letter (**See.App.E.p.16**) signed by Nicki L Showalter, Respondent MOOIC denied the claim, **falsely** claiming no proof of death was received. This is in contradiction to the letter signed by her (Nicki L. Showalter) the same person who confirmed that Completed Claims Forms with Proof of Death was received in the letter of May 15, 2014 (**See App. E-3**)

July 24, 2014, Kevin Breeling Senior Claims Specialist, an employee of Mutual of Omaha Insurance Company sent second denial of the claim in an email (**See.App. E.p. 17**) **in bad faith, falsely** claimed in pertinent part of the email, that "Essentially all documents were deemed to be invalid by the various governing entities that control these documents"

January 24, 2015, the same Kevin Breeling sent the third letter of denial (**See.App. E.pp 18-19**) in contradiction to his letter of July 24, 2014 above, **falsely** claimed that "some documents are deemed invalid.

January 2015 I filed a complaint with Texas Department of Insurance and all I got was acknowledgement and nothing more, it was at that stage I filed this suit against Mutual of Omaha the Respondent, five months later.

8.

Petitioner Abdul Salam discovered the **fraudulent** act by Respondent Mutual of Omaha, it had removed from its Coverage file, Original and relevant Policy Application Form **E42ADR41 Individual Plan**, Monthly Premium **\$18.95** and replaced it with a fake one **E42ADR42 Family Plan**, Monthly Premium **\$28.95 (App. F)** which **does not belong to the Policy in dispute**. Offer and an Acceptance (**in Strict Compliance with the Terms of the Offer**) are some essential elements **of a valid contract**. Premium and Plan Type are essential terms in a contract of Insurance. The premium and Plan Type must be the same on both the Application Form and the Policy. In this instance the terms are not the same

	<u>Policy</u> <u>Schedule</u> (App D)	<u>Fake Policy Form</u> (App F)	<u>Remark</u>
Policy			
Form #	E42ADR41	E42ADR42	Different
Policy#	197023-28M	Don't Belong	Different
Premium	\$18.95	\$28.95	Different
Plan	Individual	Family	Different
Address	Houston TX	Wixom MI	Different
Date	August 10, 2009	Date Altered	Different

It is clear from this analysis that Fake Policy Form E42ADR42 does not belong to the Policy in dispute E42ADR41-197023-28M.

Soon after Petitioner raised the issue of Fake Policy Application Form, Respondent embark on a fishing expedition, falsely claiming in a nutshell that the Petitioner and the late insured is one and

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same person just because they are twins, share similar names due to cultural and religious reasons. Respondent MOOIC passed this false narratives to Texas Department of Insurance hence the indictment. As proof that Petitioner is not the same as the late insured, identity cards issued to both brothers by US Department of Homeland Security were presented and addressed in the Fifth Circuit Opinion (**See App. A pp. 4-5)(App. E. p. 20-21)** Name change has nothing to do with this case, it is part of religious rite to separate the spirits at age 60 or when one of the twin pass away. It was done first in Nigeria **September 30, 2014 (See App. E. p 22)** and later here in Texas. Respondent MOOIC claim that name change was done May 21, 2016. two years after the insured died is not true and part of the culture of lies.

B. The District Court Proceedings.

May 1, 2015, Petitioner Abdul Salam filed this suit in Federal District Court in Houston Texas for (1) Breach of Contract; (2) Unfair Settlement Practices and Statutory Bad Faith; (3) Violations of Prompt Payment Statute and other provisions of the Texas Insurance Code; (4) Misrepresentation of Insurance Policy; Common Law Bad Faith. After discovery Respondent MOOIC filed Motion for Summary Judgment.

Petitioner (Abdul Salam) filed Response in Opposition to Respondent (MOOIC) Motion for Summary Judgment stating genuine issues of material fact. The District Court ignored in its

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entirety Petitioner's (Abdul Salam) Response in Opposition to Respondent (MOOIC) Motion for Summary Judgment and did not address issues raised by Petitioner. Contrary to Summary Judgment Standard and preponderance of the evidence on record in favor of Petitioner (non-movant) District Court believed the movant (MOOIC) not the non-movant (Petitioner) and all inferences were passed in favor of movant (MOOIC) and order and opinion was issued based solely on the narratives of movant (MOOIC) with all the contradictions and inconsistencies.

C. The Appellant Court Proceedings.

Petitioner filed a timely notice of appeal from the District Court's Opinion and Order. October 2, 2017, the Fifth Circuit issued an unpublished opinion, wherein the Order and Opinion of the District Court was affirmed and a timely filed motion for rehearing was denied on November 15, 2017. Like the District Court, the Fifth Circuit did not address the Statement of Issues presented for Review in the Petitioner's Appellant Brief. Fifth Circuit covered in detail the Appellee Brief. Appellant is entitled to equal and impartial justice under the law (**See Cooper v Aaron 358 U. S. 1(1958)** protections guaranteed by the **Fourteenth Amendment to United States Constitution**. Conclusions reached by the Fifth Circuit are clearly inconsistent and contradictory to evidence on record. (1) Petitioner Badmus responded to MOOIC with Fully Completed forms

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Certified Death Certificate which was confirmed by MOOIC in the letter of May 15, 2014 (**See App. E. p. 3**); (2) All information submitted by Badmus to MOOIC are genuine as all documents properly investigated by Respondent were confirmed authentic by the governing agencies. (**See App. E. pp. 5-6**).

REASONS WHY CERTIORARI SHOULD BE GRANTED

I

Review Is Warranted Because The Opinion of Fifth Circuit Conflicts With the Opinion of D.C. Circuit As Well As Affirmations Contained in Opinions of This Court.

On October 2, 2017 Fifth Circuit issued an opinion (See Appendix A) affirming the grant of summary judgment by the District Court. In reaching this decision Fifth Circuit impliedly found that Summary Judgment is proper when there is genuine issue of material fact which requires trial to resolve. Conclusions reached by the Fifth Circuit are clearly inconsistent with evidence on record which shows; (1) Respondent (MOOIC) inserted a fake Policy Application Form; (2) **MOOIC letter of May 15, 2014** confirming it received **Completed Claim forms and Death Certificate of the insured (See App. E p.3)**; (3) Evidence from **Mutual of Omaha Investigation Report** confirming as authentic, the Death Certificate (**See App. E p.5**) and Accident Eye Witness Affidavit (**See App. E p. 6**), but Mutual of Omaha Investigator did not follow the instruction of The Chief Medical Director and the Medical

Records Official, for it refused and failed to seek interview with the Physician who issued the Medical Certificate of Cause of Death. Duty to reasonably investigate insurance claim is imposed on the insurer, failure to investigate, deficient investigation, outcome oriented investigation exposes the insurer to liability ***State Farm Fire & Casualty Co. v Simmons* 96, S. W. 2d 42 (Tex.1998)**. Respondent (MOOIC) cannot claim that Petitioner provided insufficient evidence to support the claims when it failed to interview the Physician who issued the Medical Certificate of Cause of Death, the Accident Eye Witness and other witness. The importance of a reasonable claim investigation based on all available information prior to denial was affirmed in ***Santacruz. v Allstate Texas Lloyds Inc.* 13-10786 (5th Cir. 2014)** In addition compliance with the provision requiring a proof of loss is a condition precedent to coverage ***Rogers v Aetna Cas. Sur. Co.* 601 F.2d 840,844 (5th Cir. 1979)** Substantial compliance is all that is required to satisfy the condition, and an unverified proof of loss containing information about the circumstances of the loss constitute substantial compliance. ***Henry v Aetna Cas. Sur. Co.* 633 S. W. 2d 583 (Tex. App-Texarkana 1982)**

Review is appropriate since the Fifth Circuit findings conflicts with a decision of the Federal Circuit and also conflicts with affirmations of this Court regarding Summary Judgment Standard. Moreover because this Fifth Circuit error is so clear, Petitioner respectfully submit that the court

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may wish to summarily reverse this Fifth Circuit's decision.

In United States of America v Seventeen Thousand Nine Hundred Dollars 16-5284 the Federal Circuit. held that Summary judgment turns not on whether a party offers a particular form of evidence, but rather on whether the evidence a party does submit creates a genuine issue of material fact ***See Celotex Corp. v Catrett, 477 U.S.317,324 (1986). Fed. R. Civ. P. 56(c)*** permits a proper summary judgment motion to be opposed by any of the following kinds of evidentiary materials listing "depositions, documents, electronically stored information, affidavits or declarations, stipulations, admissions, interrogatory answers, or other materials".

On the issue of whether the evidence is "facially implausible and/or sufficient), it bears repeating that "credibility determinations, weighing of the evidence, and drawing of legitimate inferences from the facts are jury functions, not those of a Judge" and are thus inappropriate at summary judgment. ***Anderson, 477 U.S. at 255.***" This is the standard even when the Court entertains grave doubts about a statement proffered by the party opposing summary judgment" ***Greene v Dalton, 164 F.3d 671, 674 (D.C. Cir. 1999)*** "'Trial by a jury of laymen rather than by the sovereign's judges was important to the Founders because juries represent the layman's common sense" ***Parklane Hosiery Co. v Shore, 439 U.S. 322, 343-44 (1979)***

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II

Review Is Warranted Because Fifth Circuit Decision Conflict With This Court Reinforcement of Summary Judgment Standard.

Fifth Circuit decision is in conflict with this Court ruling in **Tolan v Cotton 572 U.S (2014)** in which this Court vacated the Fifth Circuit decision, stating that in articulating the factual context of the case, the Fifth Circuit failed to adhere to the axiom that in ruling on a motion for summary judgment, "the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor" quoting **Anderson v Liberty Lobby Inc. 477 U. S. 242, 255 (1986)** Just like in **Tolan v Cotton** both the District Court and the Fifth Circuit did not believed the non-movant who is the Petitioner in these case. The Lower Courts in this case believed Respondent (MOOIC) and all inferences were drawn in its favor, justifiability inconsistencies, contradictions notwithstanding. Petitioner respectfully request this Court to vacate Fifth Circuit decision in this case

III

Review Is Warranted Because of the National Importance To the Insuring Public Experiencing Conflicting Verdicts in The Lower Courts.

Research done in preparing for this case show that there are thousands of insurance Claims litigation in Courts around the country involving Mutual of Omaha Insurance Company and other insurance companies disputing legitimate claims. Verdicts are matter of mix

bags, depending on which Circuit is handling the case not necessarily the merit and most of the case does not get to this Court. To restore good faith in the industry, this Court should grant this Petition, so as to set standard, certainty and enhance public confidence in the insurance system.

IV

Review Is Warranted Because Fifth Circuit Decision Failed to Recognize that Under Texas Law Insurance Contract Is Valid Only When There is an Offer and an Acceptance in Strict Compliance With the Terms of the Offer

Texas Contract and Insurance laws are invoked in this case. Fifth Circuit failed to address the clear fact that both the Offer document (Policy Application Form) and the Acceptance (Policy Document) constitute the insurance Contract. The Fake Policy Application Form E42ADR42 which Respondent MOOIC inserted into the Policy File amount to ambiguity in the Contract. The general rule is that ambiguity in an insurance contract must be ruled in favor of the insured against the insurer or drafter. It is also a violation of Texas insurance Code as it is a misrepresentation of the insurance coverage. The Offer must be clear and definite just as there must be a clear and definite Acceptance of all terms contained in the offer **Gulf Coast Rarmars Co-op v Valley Co-op Oil Mill 572 S. W. 2d726,737 (Tex. Civ. App- Corpus Christi 1978)** In the context of insurance , amount of premium and the plan type are material terms **T.O. Stanley Boot v Bank**

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of El Paso 847 S. W. 218, 221 (Tex. 1992) So the fake policy application form cannot validly be the Offer in this case. Petitioner respectfully request this Court to vacate the decision of the Fifth Circuit.

CONCLUSION

Based on the foregoing, Petitioner respectfully submits that this Petition for Writ of Certiorari should be granted.

The Court may wish to consider summary reversal of the decision of the US Fifth Circuit Court of Appeals

Dated February 5, 2018

Respectfully submitted



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