

No. 17-7884

In the Supreme Court of the United States

ABDUL SALAM BADMUS,

Petitioner,

v.

MUTUAL OF OMAHA INSURANCE
COMPANY,

Respondent.

*On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit*

BRIEF IN OPPOSITION

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**CORPORATE DISCLOSURE STATEMENT
UNDER SUPREME COURT RULE 30.6**

Respondent Mutual of Omaha Insurance Company is a mutual insurance company and thus has no shareholders. Accordingly, Mutual of Omaha Insurance Company does not have any parent corporation and there is no publicly traded corporation which owns 10% or more of Mutual of Omaha Insurance Company's stock.

Respectfully submitted,

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By: /s/*Linda P. Wills*
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OF OMAHA INSURANCE COMPANY**

QUESTIONS PRESENTED

1. Whether the court of appeals correctly determined that the district court did not abuse its discretion in granting summary judgment to Mutual of Omaha Insurance Company, Respondent here, because no genuine issue of material fact supported Petitioner's claim for breach of a contract for accidental death benefits under Texas state law where the alleged decedent was not dead?
2. Whether the record on appeal includes any evidence supporting Petitioner's claims for breach of contract, statutory or common law bad faith under Texas state law, violations of the Texas Prompt Payment Statute, or misrepresentation under the Texas Insurance Code?

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INTRODUCTION

This case does not merit review. The decision of the court of appeals is not in conflict with the case law of any other circuit or state. There are no questions of federal law. This is a claim under Texas law for accidental death benefits under an insurance contract. The district court found there was no genuine issue of material fact that the alleged decedent was alive and was actually Abdul Salam Badmus, Petitioner here. Therefore, summary judgment was granted in favor of Mutual of Omaha Insurance Company, Respondent here. The court of appeals correctly held, in a per curium decision, that the district court did not abuse its discretion in granting summary judgment and affirmed. There is no error. There is no evidence in the record to support Petitioner's argument that the claims file contained a "fake" policy application. Many of Petitioner's other contentions are likewise unsupported. Additionally, review should be denied because Petitioner has not paid the Court's fees and does not qualify to proceed *in forma pauperis*.

STATEMENT OF THE CASE

Petitioner Abdul Salam Badmus a/k/a Selem Babatunde Badmus faked his own death and then sought three-quarters of a million dollars in accidental death benefits from Respondent Mutual of Omaha Insurance Company ("Mutual of Omaha"). Petitioner claims he is entitled payment of benefits under Mutual of Omaha Accidental Death Insurance Policy No. E42ADR41-197023-28M (the "Policy") issued on August 10, 2009 to Selem Babatunde Badmus (the "Insured"). Petition (Pet.) at 3, ROA 626-638. The Insured designated Abdul Salam Badmus as

the beneficiary of the Policy in July 2013. ROA 639. Seven months after the change of beneficiary became effective, a person identifying himself as Abdul Salam Badmus (the “Claimant”) sent Mutual of Omaha a claim letter stating the Insured had passed away on January 24, 2014 in Lagos, Nigeria, as a result of a “ghastly” automobile accident involving a taxi cab he was riding in and a tanker truck. ROA 642, 643. Mutual of Omaha sent the Claimant forms to complete and asked for documentation to support the claim, but the Claimant provided only a limited response and refused to provide much of the requested information. ROA 650-662, 663-686, 687-731. Mutual of Omaha then retained an investigator in Lagos. *See* ROA 733, 734, 810. The investigator obtained a statement from the hospital where the Insured had purportedly died, stating that the Medical Certificate Cause of Death submitted by Claimant “did not emanate from our hospital” and “is not authentic.” ROA 784-785. The investigator also uncovered many other inconsistencies in the Claimant’s story, all of which, taken together, led the insurance company to decline payment for the claim. *See* ROA 778-805, 807, 810, 824. Claimant then filed suit in the United States District Court for the Southern District of Texas on May 1, 2015, making claims against Mutual of Omaha under Texas common law for breach of contract, unfair settlement practices, and bad faith, and also alleging violations of the Insurance Code. ROA 9-70.

During the course of the litigation, Mutual of Omaha discovered that “Selem Babatunde Badmus” of Houston, Texas, had applied for, and received, a name change to “Abdul Salam Badmus” in May 2015, three weeks after this case was filed

in the district court and over two years after Selem Babatunde Badmus had allegedly died in Nigeria. ROA 896-903. Subsequently, the State of Texas arrested Abdul Salam Badmus for felony insurance fraud in connection with the underlying claim for benefits. *See* ROA 624.

Mutual of Omaha and the Claimant filed cross-motions for summary judgment. ROA 350-598, 599-905. In support of its motion, Mutual of Omaha submitted the policy and documents from the claims file, the report by the Nigerian investigator, and discovery responses from the Claimant showing he had refused to respond to interrogatories and requests for production requesting information about the Insured's alleged death in Nigeria. ROA 622-853, 864-886. Mutual of Omaha also submitted official State of Texas records reflecting the name change and indictment. ROA 624-625, 887-888, 896-904. The Claimant moved to strike the Texas records, arguing that they were irrelevant to his claim for insurance benefits. ROA 1538-1541. The district court disagreed, holding that the records were highly probative as to whether the Insured was dead and thus, as to whether benefits were owed. ROA 1700-1701.

In an attempt to support his motion for summary judgment, the Claimant submitted purported affidavits from two Nigerian witnesses who claimed to have witnessed the automobile accident, most of which had never been produced in response to Mutual of Omaha's discovery requests. ROA 419-423. The Claimant also attempted to introduce multiple internet and newspaper articles and websites as well as a scholarly article about Nigerian culture. ROA 425-461, 480-486, 490-492,

499-521. The district court granted Mutual of Omaha's motion to exclude the Claimant's exhibits, holding that they were inadmissible hearsay, irrelevant, and not in compliance with the Federal Rules of Civil Procedure. ROA 1700.

After reviewing the competent record evidence, the district court found that Abdul Salam Badmus had not established proof of his performance under the Policy or evidence of any breach by Mutual of Omaha because "there is no question of material fact that the insured is alive." ROA 1701. Therefore, summary judgment was granted to Mutual of Omaha on the claims for breach of contract and alleged violations of the Texas Prompt Payment Statute. ROA 1702. The court also determined the evidence showed Mutual of Omaha had thoroughly investigated the benefits claim and had a reasonable basis to deny coverage. ROA 1702-1703. Therefore, there was no legally sufficient evidentiary basis to conclude that Mutual of Omaha had violated any statutory or common-law duty of good faith and fair dealing, and summary judgment was granted on those causes of action. ROA 1703. Finally, there was no competent evidence to support the Claimant's conclusory allegations that Mutual of Omaha had made any misrepresentations about coverage, and so summary judgment was granted to the insurer on the claim for alleged violation of Texas Insurance Code § 541. ROA 1703.

On appeal, the three-justice panel of the Fifth Circuit unanimously held that the district court had not abused its discretion by admitting the evidence submitted by Mutual of Omaha or by excluding the evidence proffered by the Claimant. Appendix to Petition ("App.") at 3, 4. Additionally, the court of appeals held that Badmus'

evidence was legally insufficient to prove that the insured died “while riding as a passenger in any public land, air or water conveyance provided by a ‘Common Carrier,’” such that payment would be owed under the Policy. App. 6. Nor had the Claimant established any genuine issues of material fact with regard to any of his other claims. *Id.* Notable, and relevant to Petitioner’s request for certiorari, the Fifth Circuit held that the Claimant had failed to “assert anything more than conclusory allegations that [Mutual of Omaha] inserted fake policy documents into its claim file in violation of Chapter 541 of the Texas Insurance Code. He does not present any evidence to support these allegations.” App. 7. For all of these reasons, the judgment of the district court was affirmed. *Id.*

Misstatements of Fact and Law in Petition for Writ of Certiorari

Pursuant to Supreme Court Rule 15, Respondent is obligated to note that the petition contains several statements which are not supported by the record. As noted above, there is nothing to support the wholly fabricated allegations that Mutual of Omaha removed an “Original Policy Application Form” from the claims file and replaced it with a “Fake Policy Application Form.” Pet. i, 2, 8, 11, 15. Specifically, there is nothing to establish that Policy Form E42ADR42 does not belong in the claims file or was altered. Pet. i, 2, 8, 15. Nor is there any evidence in the record that any Application Form E42ADR41 ever existed or should have been in the claims file. Pet. i, 2, 3, 8. Similarly, there is nothing to support that Policy Form E42ADR41 was the form for an Individual Life Plan and that form E42ADR42 was for a group policy. Pet. 2, 3.

Likewise, there is nothing in the record of this case to support the following statements made by Petitioner: (1) that Petitioner's signature on an Investigative Report was forged (Pet. 2); (2) that Mutual of Omaha "did not seek to locate and interview the [purported] Accident Eye Witness" (Pet. 4); (3) that Mutual of Omaha's Nigerian investigator was instructed by the Chief Medical Director of Lagos State University Teaching Hospital ("LASUTH") to report to the Head of Division, Medical Records (Pet. 4, 5, 11); (4) that issues regarding Medical Certificates must be handled only by clinical units of LASUTH (Pet. 5); (5) that the letter to the investigator from Mrs. O.A. Akinlawon of LASUTH was "suspect and not authentic" (*Id.*); (6) any information regarding Mrs. Akinlawon's retirement or other staffing at LASUTH (*Id.*); (7) that there was a strike by Nigerian health care workers on January 24, 2014, the purported date of the Insured's death (Pet. 5-6); (8) that the Nigerian investigator was instructed by any person to interview Dr. A.O. Olawale, or that there was any information available to the investigator regarding the whereabouts of Dr. Olawale (Pet. 6, 12); (9) that Abdul Salam Badmus and Selem Babatunde Badmus were twins (Pet. 9); or (10) that Mutual of Omaha lied about the date that Selem Babatunde Badmus changed his name to Abdul Salam Badmus (*Id.*). (11) And, of course, the key issue in dispute in this case is whether "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." (Pet. 3). It is improper for Petitioner to present any of these bare allegations as fact.

In Forma Pauperis Status Should be Denied

Petitioner has not submitted a fee for docketing this case. He has filed a Motion for Leave to Proceed *In Forma Pauperis* (the “motion”). The motion is not notarized. Although Petitioner claims to reside in Nigeria, the motion does not state that Petitioner declares (or certifies, verifies, or states) under penalty of perjury under the Laws of the United States of America that the allegations therein are true and correct, as required by 28 U.S.C. § 1746(2). Respondent contends that Petitioner has a history of signing documents “under penalty of perjury” which contain false information. For example, the “Proof of Service” submitted by Petitioner states, also “under penalty of perjury,” that he served the motion and Petition for Writ of Certiorari on counsel for Respondent on February 23, 2018. However, that same document is signed on February 13, 2018 and the Court’s records reflect it was received on February 21, 2018, two days prior to the supposed service. Counsel for Respondent aver that Petitioner failed to comply with his duty under Supreme Court Rules 12.4, 18.3 and 29 to notify Respondent promptly of the date of filing, the date the case was placed on the docket, and the docket number of the case. Petitioner never served Respondent or its counsel with either the Petition for Writ of Certiorari or the Motion for Leave to Proceed *In Forma Pauperis*. Instead, Respondent became aware of the current proceeding only because it received a Lexis Nexis e-mail alert on February 26, 2018 about recent Court filings. Furthermore, as set forth herein, the Petition for Writ of Certiorari is frivolous and malicious. Respondent has been indicted by the State of Texas for felony insurance fraud in connection with the claims at issue in this case. Respondent requests that the

honorable United States Supreme Court deny leave to Petitioner to proceed *in forma pauperis* pursuant to Supreme Court Rule 39.8.

REASONS FOR DENYING THE WRIT

Petitioner has not identified any basis for jurisdiction in this Court in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

- (a) The decision of the court of appeals is correct.
- (b) The per curium decision of the United States Court of Appeals for the Fifth Circuit in this case is not in conflict with the decision of another United States court of appeals on the same important matter. Indeed, no matter of national importance has been identified. This is a fact-based dispute over whether payment of accidental death benefits was owed under an insurance policy. While Petitioner contends that the opinion of the Fifth Circuit conflicts with the opinion of the D.C. Circuit (Pet. 11), this is not so. The only D.C. Circuit opinion cited by Petitioner is *Green v. Dalton*, 164 F.3d 671, 674 (D.C. Cir. 1999), which he cites for the proposition that credibility determinations are functions of the jury. Pet. 13. But *Green* also stands for the rule that conclusory statements and unsubstantiated allegations that are not supported by facts cannot be used to defeat a motion for summary judgment. *Id.* at 675. And the Fifth Circuit here held that Petitioner had “fail[ed] to assert anything more than conclusory allegations” in support of his claims. This holding is wholly consistent with the opinion of the D.C. Circuit as set forth in *Green*.

- (c) The Fifth Circuit has not decided an important federal question in a way that conflicts with a decision by a state court of last resort. There is no federal question at issue. The case does not involve any federal constitutional provision, treaty, statute, ordinance or regulation. This case was in federal court based on diversity jurisdiction only.
- (d) The decision of the Fifth Circuit has not 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. The decision was well within the accepted and usual course of judicial proceedings.
- (e) This is not an appeal from a state court decision, so no state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.
- (f) The Fifth Circuit has not 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. Again, this case does not implicate any questions of federal law whatsoever.
- (g) The only error asserted is allegedly erroneous factual findings and the misapplication of a properly stated rule of law. Petitioner contends only that

the decision of the Fifth Circuit is “inconsistent with evidence on record” regarding an allegedly fake Policy Application Form. Pet. 11. As discussed above, there is absolutely no record evidence of any “fake” forms. And, even if there were, a dispute over factual findings will not support acceptance of a writ under Rule 10.

(h) The Petition is frivolous. Petitioner maliciously concealed the filing of the Petition from Respondent and has submitted falsehoods under penalty of perjury. The Motion for Leave to Proceed *In Forma Pauperis* is not accompanied by a notarized affidavit of declaration in compliance with 28 U.S.C. § 1746(2). Therefore, leave to proceed *in forma pauperis* should be denied. Because Petitioner did not timely submit a fee for docketing this case, and for all the reasons set forth above, the writ should be denied.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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