

No: 17-7884

In the Supreme Court of the United States

Abdul Salam Badmus **(Pro Se)**

Petitioner.

v.

Mutual of Omaha Insurance Company **(MOOIC)**

Respondent.

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

REPLY BRIEF

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BACKGROUND

DEFINITION OF ABBREVIATIONS:

1. Mutual of Omaha Insurance Company (Respondent) (MOOIC)
2. Abdul Salam Badmus or Badmus (Petitioner)
3. Lagos State University Teaching Hospital (LASUTH)
4. Lagos State University College of Medicine (LASUCOM)
5. United States Postal Service (USPS)
6. Selem B Badmus (Late) (Insured)

INTRODUCTION

This case merit review in order to enhance equal justice for all under law. Issues in this case involve both Federal and Texas laws, specifically **Summary Judgment Standard** and Texas Insurance Contract and other related laws, any suggestion that Federal law is not involve is baseless. (**Hanna v Plumer, 380 U. S. 460 (1965)**). The decision of the Fifth Circuit Court conflict with the following: (1) Fed. R. Civ. P. 56, (2) Decisions of other US Circuit Courts, and most importantly, (3) decisions and precedents of this Court regarding Summary Judgment Standard. It is wicked for Mutual of Omaha to make me to go through all these, my brother is not alive, he died in the Accident of January 24, 2014 and I am not the same as my brother

The Fifth Circuit Court disagree with the District Court findings that the late insured is alive and is same as the Petitioner Abdul Salam Badmus. (**Appendix A Page 5**) The Fifth Circuit states in pertinent part that “**The evidence Badmus**

claims the District Court ignored may be relevant to the issue of whether he and the insured are different individuals"

The District Court cannot exercise discretion to grant summary judgment when there is evidence on record, submitted by both Petitioner and MOOIC which creates "**genuine issue of material fact**" **precluding the grant of summary judgment**, including documents produced by Mutual of Omaha. Specifically, the Fake Policy Application Form E42ADR**42 (ROA 638)** fraudulently inserted by MOOIC creates genuine issue of material fact for trier of fact to determine. The Fake Policy Application Form E42ADR**42**, also creates ambiguity in the contract of Insurance, the general rule is that "Ambiguity if any in Insurance Contract, the decision must be for the Insured against the Insurer who is the drafter.

Regarding **The Fake Policy Application** fraudulently inserted by the Respondent, the principle of "**Res Ipsa Loquitur**" applies, as the document speaks for itself. If the "**essential terms**" on the Policy Schedule page of **The Policy** E42ADR**41-197023-28M (ROA 626)** are compared with the "**Fake Policy Application Form E42ADR42 (ROA 638)**", it will be clear beyond any reasonable doubt that the Fake Policy Application Form E42ADR**42** does not belong to the Policy/File number E42ADR**41-197023-28M** which is the underlying policy in this case.

The Fake Policy Application Form was inserted by MOOIC as foundation to claim that the insured is alive and that the Petitioner is same as the insured so as to deny legitimate claims. MOOIC is displaying extreme conflict of interest and bad

faith by wanting to get Petitioner jailed through series of lies and fraudulent acts so as to avoid payment of genuine claim.

PETITIONER REPLY TO RESPONDENT STATEMENT OF THE CASE

Law Basis of Petitioner Writ of Certiorari

SUMMARY JUDGMENT STANDARD: Fed. R. Civ. P. 56, Anderson v Liberty Lobby Inc. 477 U. S. 242 (1986) and Celotex Corp. v Catrett. 477 U. S. 317, 327 (1986)

Judges are duty bound to resolve legal disputes, no matter how close the call, but when facts or inference are conflicting, judges are duty bound at summary judgment not to decide them. This demands a balanced approach, requiring a grant of Summary Judgment when there is no material **factual** dispute and a trial when there is one. In this case there is genuine issue of material fact

Fake Policy Application Form E42ADR42 (ROA 638)

The Accidental Death Insurance which MOOIC issued to my late brother **(the Insured)** is File and Policy Number E42ADR**41**-197023-28M. **(ROA 626-36)** This was confirmed by MOOIC in its response to Request for Admission **(ROA 262)**. The Fake Policy Application Form number E42ADR**42** **(ROA 638)** fraudulently inserted by MOOIC does not belong to this policy and also for the following reasons: **(a)** Petitioner knows his late brother (Insured) hand writing. The hand writing on the Fake Policy Application is not that of my late brother.**(b)** A valid insurance contract must have an Offer (Policy Application Form) with essential terms stated in the offer and an Acceptance (The Policy) in strict compliance with the terms of the Offer. Policy Application Form (the Offer) and The Policy

(Acceptance) together constitute an insurance contract. 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 Farmers Co-op v Valley Co-op oil Mill 572 S. W. 2d 726, 737. (Tex.-App. Corpus Christi 1978).** (c) Compare essential terms on first page of The Policy (Policy Schedule) **(ROA 626)** with the terms on The **Fake** Policy Application Form **(ROA 638)**; **(1)** Amount of Premium **\$18.95** monthly or **\$113.70** semiannually on Policy Schedule, while it is stated as higher **\$28.95** monthly or **\$173.70** semiannually on the **Fake** Application Form. **(2)** Number of persons Insured on Policy Schedule is **one** person while they are **two** persons on the **Fake** Application Form. **(3)** Plan Type is **Individual Life Plan** on Policy Schedule while it is **Family Life Plan** on the **Fake** Application Form. **(4)** Date on the Policy Schedule was **not altered** while date on **Fake** Application Form was **altered**. **(5)** The Address on the Policy Schedule is **Texas** while the Address on **Fake** Application Form is **Michigan**. **(d)** The first part of a File and Policy Number in Mutual of Omaha Insurance Company Accidental Death Insurance is Policy Application Form Number it is either E42ADR41 for **Individual Life Plan** or E42ADR42 for **Family Life Plan**. **(e)** As an example in **Pepper v Mutual of Omaha Insurance Company, Civil Action No: 15-2830 (W. D. LA)** Mutual of Omaha Insurance Company filed The Policy Number E42ADR41-928667-27M **(Doc 32-5)** The Application Form Number is E42ADR41 **(Doc 32-5 at 10)** this is **an Individual Life Plan**. The first line (top line) reads "Application to Mutual of Omaha Insurance Company for Accidental Death Insurance available under Policy

Form E42ADR**41**. When the Policy Schedule (**Doc 32-5 at 1**) is compared with Policy Application form (**Doc 32-5 at 10**) all the Essential Terms are the same. **(f)** The first line (top line) on **Fake** Application Form (**ROA 638**) reads "Application to Mutual of Omaha Insurance Company for Accidental Death Insurance available under Policy form E42ADR**42**" this is **Family Life Plan**. **(g)** The first line (top line) on the Application Form that belong to The Policy in this case must be "Application to Mutual of Omaha Insurance Company for Accidental Death Insurance available under Policy Form E42ADR**41**" **since this is Individual Life Plan**. **(h)** The Policy in this case is **Individual Life Plan**, no wonder the employees of MOOIC assigned to this claims are designated as follows: (1) Nicki L Showalter, Senior Claim Analyst, **Individual Life Claims (ROA 733,592)** and (2) Kevin Breeling, Senior Specialist. **Individual Life Claims (ROA 536-537,590)**

All Petitioner Factual Statements are supported by record

Petitioner complied with Supreme Court **Rule 15** as all statements in the petition are supported by the record, and any suggestion otherwise is not based on fact.**(1) (ROA1218-1219)**This is first and second pages of Mutual of Omaha Investigation Report, in which; (i) Petitioner signature was forged as Petitioner did not sign the investigation report; (ii) Investigation type is stated to be "**Limited Pointed**" this implies that Mutual of Omaha decided ab initio to limit the scope of investigation; and (iii) The Policy/File Number on the Investigation Report is E42ADR**42**-197023-28M, this is not the same as The Policy/ File Number in dispute E42ADR**41**-197023-28M, this was the foundation for the inclusion of the Fake

EVSAD341-181053-58W. This was the conclusion for the inclusion of the fake EVSAD345-181053-58W. This is not the same as the Policy file number in dispute investigation and (iii). The Policy file number on the investigation report is pointed. This implies that Mutual of Omaha decided at this to limit the scope of not scan the investigation report (iii) investigation type is stated to be limited investigation report in which: (i) Petitioner signature was forged as Petitioner did not (1) (BOA 1318-1318) This is first and second pages of Mutual of Omaha are supported by the record and any suggestion otherwise is not based on Petitioner complied with Supreme Court rule 12 as all statements in the petition All Petitioner factual statements are supported by record

Kevin Breeding, Senior Specialist, Individual Life Claims (BOA 232-232,280)

Shawna, Senior Claims Analyst, Individual Life Claims (BOA 133,285) and (5) of WOIC assigned to this claim are designated as follows: (1) Nicki T. Blum. (ii) The Policy in this case is Individual Life Plan no wonder the employees insurance available under Policy form EVSAD341, since this is Individual Life Application to Mutual of Omaha Insurance Company for Accidental Death (Job line) on the Application form that belong to the Policy in this case must be available under Policy form EVSAD345, this is Family Life Plan. (a) The first line Mutual of Omaha Insurance Company for Accidental Death Insurance the first line (Job line) on fake Application form (BOA 232) reads Application to Policy Application form (Doc 33-2 at 10) all the essential terms are the same. (i) form EVSAD341. When the Policy schedule (Doc 33-2 at 1) is compared with

Policy Application form. **(2)** Emails sent to Petitioner by Mutual of Omaha was hacked by Mutual of Omaha through removal from Petitioners email. **(ROA 494,524).** **(3)** MOOIC cannot claim it did not receive Proof of Loss when it confirmed in pertinent part of its letter **(ROA 733)** of **May 15, 2014** it received it **"Thank you for returning to our office Completed Proof of Accidental Death Claim Forms along with Certified Copy of your brother's Death Certificate"** This letter was signed by Nicki L Showalter, Senior Claims Analyst **Individual Life Claims.** **(4)** In May 2014, MOOIC appointed APT Chambers, Legal Consultants in Lagos Nigeria to investigate the claim. **(ROA 1243).** **(5)** MOOIC Investigation Report stated that it confirmed from National Population Commission of Nigeria that the Certificate of Death is authentic. **(ROA 1220,1221,1222).** **(6)** MOOIC Investigation Report stated that it confirmed from the Registrar of High Court of Lagos State that the Accident Eye Witness and the Affidavit are authentic.**(ROA 1226,1228,1229)** There is nothing on Record to show that MOOIC investigator seek to interview the Accident Eye Witness. **(7)** MOOIC Investigation Report stated that the Investigator presented a letter to the Office of The Chief Medical Director LASUTH and the Investigators were instructed to report to the Head of Division, Medical Records **(ROA1223, 1224).** At the top right side of the letter presented to the Chief Medical Director, there is an endorsement **"HOD Medical Records dated 15/5/2014"** Petitioner personal finding reveals that MOOIC Investigator reported at the Medical Record unit. Medical Record Official told the Investigator that because of the Nationwide Strike of January 22-24, 2014

they have no record for those days, and was asked to go and interview Dr. A. O. Olawale who at **LASUCOM**, the investigator failed to go and interview Dr. **Olawale**, the Physician who issued the Medical Certificate, instead investigator went to Mrs. O. A. Akinlawon. Medical Records is a clinical unit under Health Information Management Department a clinical Department, headed by Mr. E. S. Ayeni. **(8)** Departments and Divisions in LASUTH are either clinical units or non-clinical units.**(ROA 480-482, 483-486)** Clinical units are those that are directly health related and non-clinical are those not directly health related. That is why for instance, there are two information technology departments, Health Information Management clinical unit, headed by Mr. E. S. Ayeni and another Information & Communication Technology a non-clinical unit. **(9)** The letter **(ROA 1225)** purportedly signed by Mrs. O. A. Akinlawon the then Head of Administrative (Human Resource) a non-clinical unit is suspect and not authentic. The Chief Medical Director did not direct the Investigators to Department of Administrative (Human Resource) nor to Mrs. O. A. Akinlawon. Investigators were directed to Medical Records. Mrs. O. A. Akinlawon although a Senior Officer, had no authority to sign such letter. Ruling or Order signed by a Court Head of Human Resource will not be held authentic just because the person is a senior officer. **(10)** Medical Certificate is medical record not administrative/personnel record. Medical Records is a unit within Health Information Management Department headed by Mr. E. S. Ayeni. Medical Records Officers are paramedical Professionals in their own right. It is a universal

standard that only paramedical and medical professional (Clinical) professionals should be allowed access to confidential medical records and information of individual patients for privacy reasons. Common sense dictates that Head of Human Resource has nothing to do with patient medical records and information. **(11)** Recently after the retirement of Mrs. O. A. Akinlawon, her successor Mrs. Adio Olatokunbo O. (Jp) was clearly designated Director Hospital Administration Human Resource, a non-clinical unit. This can be confirmed from the website of Lagos State University Teaching Hospital **(12) January 24, 2014**, the day of the Accident resulting in the death of the Insured, there was Nationwide Strike action by Healthcare Workers throughout Nigeria including workers at LASUTH excluding Physicians who volunteered to attend to emergencies. **(ROA 430-436)** These are Newspapers coverage of the Strike Action and are self-authenticating. **(13)** In addition to the fact that Petitioner personally witnessed the strike action and its effect, as it was total, mortuary and medical records units were under lock and key, two other witnesses confirmed the strike action by their affidavits. **(ROA 419-423)** Petitioner like others who lost loved one had to carry away the body of his brother as the Mortuary unit workers were on strike also. **(14)** July 10, 2014 MOOIC in a letter **(ROA 525)** written in bad faith and signed by Nicki L Showalter Senior Claims Analyst, **Individual Life Claims**, denied the claim," **claiming no proof of loss was received**". Nicki L Showalter is the same person who signed the letter **(ROA 733)** of May 15, 2014 stating **"Thank you for returning to our office Completed Proof of**

Accidental Death Claim forms along with Certified Copy of your brother's Death Certificate" (15) "There is nothing on record nor on MOOIC Investigation Report, to show that any document sent to MOOIC was deemed invalid by any entity"

July 24, 2014 MOOIC in an email **(ROA 523)** also written in bad faith sent by Kevin Breeling, Senior Specialist, **Individual Life Claims**, the claim was denied, claiming that **"Essentially all documents were deemed to be invalid by the various governing entities that control these documents"** January 24, 2015 MOOIC sent a letter **(ROA 536-537)** denying the claim, this letter was signed by same Kevin Breeling, now claiming that **"some documents are deemed invalid"**. **(16)** The Fifth Circuit **did not** agree with the District Court finding that the Petitioner is same as the insured and that the insured is alive See **Appendix A Page 5**. The District Court would have concluded that Petitioner and the late insured are separate individual if it did not ignore the following: (1) separate work authorization cards issued to the Petitioners late twin brother (The Insured) **(ROA 1478)** and the Petitioner **(ROA1481)** by United States Department of Homeland Security (2) **Cultural and Traditional imperatives regarding twins (ROA 1488-1492)** (3) National Identity Card) **(ROA 1485)** issued to Petitioner by National Identity Management Commission of Nigeria on **September 30, 2014** after name change due to Tradition and Culture (separation of the dead twin from the living twin)

(17) ROA 1675-1684 or App. 23. Mutual of Omaha do not want to mention this, possibly because this document is the source of The Fake Policy Application

Form. This Policy was issued to the Petitioner and ran parallel with the one issued to the late Insured, but was allowed to lapse in 2012 when Petitioner determined that MOOIC was not consistence.

Reverse Extension of Time to File Brief Granted to Respondent

Pursuant to Supreme Court **Rule 30.2** and **30.4** the grant of MOOIC request for extension of time to file Brief should be reversed. Petitioner complied with Supreme Court Rules **12.4, 18.3** and **29**. February 13, 2018 Petitioner mailed copy of Petition for Writ of Certiorari and Motion for Leave to Proceed in Forma Pauperis to Respondent Attorney of Record Ms. Linda P. Wills 909 Fannin # 3300 Houston Texas via USPS First Class Mail. March 5, 2018, Petitioner received filing and deadline notification from the Office of Clerk of this court and immediately mailed copies of same to Ms. Linda P. Wills, via USPS First Class and Certified Mail, which she received March 7, 2018. (See USPS Tracking **70162710000010831568**. Respondent is aware of the filing since February 2018, March 7, 2018 Respondent got notification that Deadline to file brief based on the docket date is March 26, 2018, waited till March 23, 2018, three days to the deadline to seek extension, The Request was made less than Ten days to the deadline and it is not based on most extraordinary circumstance. The claim that Petitioner mailed a flyer the same date is not true. In this case Petitioner had sent series of documents to MOOIC at both District and Circuit Court levels without any dispute whatsoever. For these reasons, the extension of time granted MOOIC to file its brief should be reversed.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Petitioner will be grateful if this Honorable Court grant this motion and Writ of Certiorari in the interest of justice. Petitioner has serious heart problem, continuous high blood pressure, enlarged heart, hence he cannot secure a job.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

Petitioner properly invoked the jurisdiction of this Court under **28 U. S. C. 1254(1)**. MOOIC claim that Petitioner did not identify any basis for jurisdiction make no sense. Contrary to MOOIC statement, **Rule 10** of the Supreme Court of the United States does not provide basis for this Court jurisdiction, what it does is stipulate "**Considerations Governing Review on Writ of Certiorari**"

- (a) The decision of the Fifth Circuit is not correct
- (b) The decision of the Fifth Circuit in this case is in conflict with **DC Circuit opinion in Green v Dalton 164, F.3d 671** and the statements by the Petitioner are facts supported by documentary evidence on record. MOOIC confirmed it received proof of loss, confirmed the authenticity of proof of loss from relevant authorities, insert Fake Policy Application Form, lied and continue to lie. Summary Judgment should not have been granted at all as there is genuine dispute of material fact for the jury not the Judge to decide.
- (c) The decision of the Fifth Circuit conflict with the decisions of this Court in the following cases: (1) **Anderson v Liberty Lobby Inc. 477 U. S. (1986)**,

Celotex Corp v Catrett 477 U.S. 317 (1986), and Tolan v Cotton, 134 S. Ct, 1861, 1863 (2014)

(d) As of May 8, 2018, there are 147491 insurance cases in Federal Dockets out of which the 5th Circuit alone has 42204 9th Circuit with larger coverage and population has 23341. While Texas alone has 15267, California with larger population has 10557. Cases involving Insurance dispute is a national issue and should be area of judicial focus to reduce the burden on Courts.

CONCLUSION

The Petition for writ of certiorari should be granted.

Respectfully Submitted



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In the Supreme Court of the United States

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Mutual of Omaha Insurance Company, (**MOOIC**)

Respondent

CERTIFICATE OF COMPLIANCE WITH RULE 33

This reply brief complies with the type-volume limitation of Supreme Court Rule 33(d) and 33(g)(iii) because this reply contains 2969 words, excluding the parts of the reply brief exempted by the rule.

Respectfully Submitted



Abdul Salam Badmus (**Pro Se**)

Petitioner

May 8, 2018