GROUNDS FOR TRANSFER

I. The Court of Appeals opinion ("Opinion") changed the law by allowing Insurers to deprive the Trust of its right to choose a forum as to a subset of the policies in this case, based on an outbound forum selection clause that on its face permits the parties to litigate in England or Wales ("England") but does not require them to litigate exclusively there. The Opinion contradicts precedent that plaintiffs have the "right to choose any forum where there is proper jurisdiction and venue", and that "choice of forum is not to be disturbed except for 'weighty reasons.'" *State ex rel. Wyeth v. Grady*, 262 S.W.3d 216, 219–220 (Mo. banc 2008) (citation omitted). The Opinion also changed the law on insurance contract construction by supplying a key term (exclusivity) not in the policy, *see Hughes v. Davidson-Hues*, 330 S.W.3d 114, 120 (Mo. App. W.D. 2010) (courts do "not create a contractual right or limitation"), and by construing arguably ambiguous language against the insured rather than the insurer, *see Seeck v. Geico Gen. Ins. Co*., 212 S.W.3d 129, 132 (Mo. banc 2007) (ambiguous policy language "must be construed against the insurer").

II. The question on appeal is of compelling general interest. The issue is whether an insurer-drafted forum selection clause stating that parties "agree submit to the jurisdiction" of an English court requires them to submit *exclusively* to the jurisdiction of that court although the clause does not say so (for example, it does not say "exclusive jurisdiction"). Because the clause consists of standard-form language used by the insurance industry for decades in innumerable policies, whether the language mandates exclusive jurisdiction in England will be of far-reaching interest to countless Missouri insureds.

III. The question on appeal is important for three additional reasons. First, the Opinion puts Missouri at odds with the overwhelming majority of courts around the country, which deny motions to dismiss based on clauses lacking express exclusivity. Second, the Opinion effectively eliminates permissive forum selection clauses in Missouri by treating all clauses as exclusive ones. Third, the Opinion will force the Trust to litigate a parallel, duplicative coverage action in England, dissipating assets that otherwise could be used to compensate opioid victims and fund opioid abatement efforts in Missouri and elsewhere.

Statement of Facts

In the wake of the nationwide opioid crisis, individuals, as well as state, county, municipal and tribal governments and private entities, began to bring claims against Mallinckrodt plc and certain related companies ("Mallinckrodt"), along with other pharmaceutical companies, seeking to hold them liable for damages incurred because of opioid-related bodily injuries. Facing an avalanche of litigation, on October 12, 2020, Mallinckrodt filed for bankruptcy in a case captioned *In re: Mallinckrodt plc*, No. 20-12522 (JTD) (Bankr. D. Del.). The Trust was created by the 2022 Fourth Amended Plan of Reorganization of Mallinckrodt (the "Plan"). Under the Plan, Mallinckrodt was discharged from its opioid-related liability and suffered a loss on the effective date of the Plan in the full amount of that liability; and opioid mass tort claims against Mallinckrodt were channeled to, and Mallinckrodt's opioid liabilities were transferred to and assumed by, the Trust and various separate trusts described in the petition. Among other assets, the Plan transferred to the Trust all of Mallinckrodt's rights to insurance coverage for Mallinckrodt's liability for opioid mass tort claims, and the Trust was empowered by the Plan to pursue and recover the proceeds of Mallinckrodt's insurance coverage. Trust assets, including any proceeds of the insurance policies at issue here, will be used to compensate individuals and entities harmed by Mallinckrodt's role in the opioid crisis and to pay for resulting opioid abatement efforts.

On June 16, 2022, the Plan's effective date, the Trust filed its petition in this action, which it amended on July 28, 2022 (*see generally* D2). The Trust is seeking a declaratory judgment that each of the defendant insurers is obligated, under each of the insurance policies they issued, to provide coverage for Mallinckrodt's liability for opioid mass tort claims, and an award of damages (D2 ¶ 141 and p. 60).

The Trust brought this action in Missouri due to the impact the nationwide opioid epidemic has had on Missouri and its citizens, and because Mallinckrodt has had "a continuous and significant corporate presence in Missouri since the original Mallinckrodt entity . . . was founded in St. Louis in 1867" (D2 ¶ 16). The opioid-related risk was located primarily in Missouri because, among other reasons, Mallinckrodt's opioid-related

business was located here (D2 ¶ 86). Many Missouri residents suffered bodily injuries for which Mallinckrodt was responsible, and state, county, municipal, and tribal governments throughout Missouri, among others, sustained substantial losses because of those bodily injuries (D2 ¶¶ 98, 102).

The Insurers filed motions to dismiss as to a subset of their policies, asserting that actions concerning those policies must be brought in England based on an insurer-drafted "Choice of Law and Jurisdiction" provision that they included in the policies (D16 p. 1; D2 ¶ 121).

The Choice of Law and Jurisdiction provision has three clauses.

- The first clause addresses choice of law: **"any dispute concerning the interpretation of the terms, conditions, limitations and/or exclusions contained herein is understood and agreed by both the Insured and Insurers to be subject to the laws of England and Wales."** The Trust does not dispute that English law applies to substantive coverage issues, but it is well established that Missouri courts apply Missouri law to procedural questions such as choice of forum. The fact that English law applies to substantive coverage issues does not dictate or even imply an English forum, as Missouri courts are fully capable of applying non-Missouri law and indeed do so all the time.

- The second clause requires the parties to submit to the personal jurisdiction of an English court if an action is brought there: **"Each party agrees to submit to the jurisdiction of any court of competent jurisdiction within England . . . and to comply with all requirements necessary to give such court jurisdiction."** The Trust contends that this provision does not limit jurisdiction to England because it does not state that jurisdiction in England is exclusive, because the Insurers used language of exclusivity elsewhere in their policies where they intended it, and because insurers have argued successfully that the very same language is merely permissive when they wanted to litigate elsewhere than the designated forum.

- The third clause is procedural, stating that for all matters litigated in an English court under the foregoing clause, English law and procedure applies: **"All matters arising hereunder shall be determined in accordance with the law and practice of such court."** That English law and practice applies does not mandate or

> even imply an English forum, however, because English courts recognize that non-English courts can apply English law and practice.

(D16 p. 7).

The trial court granted the motions to dismiss on March 22, 2023 (D32–34, App 1–3), and later amended its orders to certify such orders as final judgments pursuant to Rule 74.01(b) (D35 p. 2; App 5). The Trust appealed the Circuit Court's decision granting the Insurers' motion to dismiss (Op., at 2). The Court of Appeals affirmed the Circuit Court's order. On April 9, 2024, the Court of Appeals denied the Trust's application for transfer. *Opioid Master Disbursement Trust II v. Ace American Insurance Company*, No. ED111765 (Mo. App. E.D. Apr. 9, 2024). The Trust now makes this application for leave to appeal the Court of Appeals' ruling on the motions to dismiss.

Questions Involved in the Case

The central question on appeal is whether the Trust's choice of a Missouri forum may be disturbed based on an outbound forum selection clause that by its plain meaning permits the parties to litigate in England but does not require them to do so.

The forum selection clause states that the parties agree to submit to the jurisdiction of English courts, but it does not state that such jurisdiction is exclusive. The natural reading of the clause is that the parties will submit to the jurisdiction of an English court if a party brings litigation in that court. Otherwise, there is nothing to submit to. Here, the Insurers have not brought a coverage action in England. They are not seeking to resolve the parties' coverage disputes there; they merely want to stop the Trust from seeking resolution of those disputes in this action in Missouri, along with identical disputes regarding other policies in Mallinckrodt's coverage portfolio (including some issued by one of the Insurers that lack a forum selection clause).

In affirming the Circuit Court's dismissal of the Trust's claims against that subset of the Insurers' policies that contain forum selection clauses, the Opinion effectively rewrote the forum selection clause to include expressly exclusive language not actually in the policies. The Opinion states that "[t]he language is clear and unambiguous that the parties

'agree to submit,' to an England or Wales court, and 'all matters' arising out of the insurance policies 'shall' be litigated in that forum" (Op., at 7). But this reading is mistaken. The clause does not say that all matters arising out of the insurance policy shall be litigated in England. Instead, the clause includes a permissive forum selection clause requiring only that the parties agree to "submit to the jurisdiction" of an English court and "comply with all requirements necessary to give such court jurisdiction"—if an action is brought there (D16 p. 7). The clause does not say that such jurisdiction is exclusive—rather, it provides for a safe-harbor forum where the parties have agreed in advance not to contest personal jurisdiction if one of them brings a coverage action there (which the Insurers have not done in the nearly two years since the Trust filed this action). Then it provides that "[a]ll matters arising hereunder"—all matters arising in an English court by way of the permissive clause—"shall be determined in accordance with the law and practice of such court" (Op., at 7). The latter procedural agreement does not determine the forum because non-English courts can and do apply the law and practice of English courts, and English courts sometimes apply the law and practice of foreign courts. *See, e.g.*, *Aizkir Navigation Inc v. Al Wathba National Insurance Co* [2011] EWHC 3940 (Comm); *Al Mana Lifestyle Trading LLC v. United Fidelity Insurance Co PSC* [2023] EWCA Civ 61.

The absence of any express words of exclusivity is meaningful, and makes the clause permissive, for three reasons. First, permissive forum selection clauses are common and useful and should be given effect. *See, e.g.*, *Dunne v. Libbra*, 330 F.3d 1062, 1064 (8th Cir. 2003) (permissive forum selection clauses are a common "risk management tool" that helps parties avoid "the need to rely solely on the traditional minimum contacts analysis by providing a second, stronger basis for jurisdiction", and thereby allows parties to avoid frivolous challenges to jurisdiction in a designated court).

Second, insurers successfully have argued for decades that substantially identical language is permissive because it lacks express language of exclusivity—exactly the same argument that the Trust is making here and that the Court of Appeals rejected. *See, e.g.*, *Brooke Grp. Ltd. v. JCH Syndicate 488*, 663 N.E.2d 635 (N.Y. 1996) (agreeing with London insurers and holding that a service of suit clause requiring insurers to "submit to the

jurisdiction of [any] court of competent jurisdiction within the United States" did not preclude them from bringing a dispute in London because it was a permissive forum selection clause); *see also Weitz Co., LLC v. Lloyd's of London*, No. 4:04-CV-90353, 2004 WL 3158070, at *7 (S.D. Iowa Dec. 6, 2004) (interpreting provision with same language as in the Insurers' policies as permissive). It is simply a bridge too far for the Court of Appeals to have ruled that a clause that does not use any words indicating exclusivity, and that insurers have argued is non-exclusive, clearly and unambiguously provides that all matters shall be litigated in the designated forum.

And third, the Insurers used express words of exclusivity elsewhere in these very same policies to ensure that other clauses would not be interpreted permissively, but they chose not to do so here (*see, e.g.*, D21 p. 20) (citing HDI Policy No. B0509DR557413) (using "only" and "solely" to signify exclusivity multiple times). Courts routinely apply the "doctrine of meaningful-variation cannon" and presume that when a drafter uses different terms in the same statute or document, they have different meanings. *See, e.g.*, *Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 457 (2022). The absence of any express words of exclusivity in the forum selection clause must be considered intentional and given effect.

Moreover, if the Insurers wished to limit their insureds' choice of forum, they were obligated to make that clear. They did not. At best for them, the forum selection clause is ambiguous, and under fundamental rules of insurance contract construction, ambiguous language must be construed against the insurer and in favor of the insured. *Seeck v. Geico Gen. Ins. Co.*, 212 S.W.3d 129, 132 (Mo. banc 2007). This is particularly true on a momentous issue such as choice of forum, where the plaintiff's preference cannot be disturbed except for "weighty reasons."

Legal Basis for Transfer

The Court should grant the Trust's application because the Opinion changed Missouri law and because the questions involved in this case are of general interest and important. Mo. Sup. Ct. R. 83.04; 83.02.

The Opinion changed a key tenet of Missouri law holding that plaintiffs have the right to select a forum where jurisdiction and venue are proper, and their choice "is not to be disturbed except for 'weighty reasons.'" *Grady*, 262 S.W.3d at 220. Defendants have not challenged the Circuit Court's personal jurisdiction nor argued that venue is lacking. Instead, they moved to dismiss based on an outbound forum selection clause. The Opinion affirms the Circuit Court's dismissal on this basis. But because the forum selection clause at issue does not expressly require litigation exclusively in another forum, it is not a reason to deny the Trust its chosen forum, let alone a weighty reason. *See Luebbering v. Varia*, 637 S.W.3d 366, 372 (Mo. App. E.D. 2021), *reh'g and/or transfer denied* (Nov. 8, 2021), *transfer denied* (Feb. 8, 2022) (finding a forum selection clause was not "specific enough to encompass" the claims at issue, and held that, "[b]ecause the forum selection clause does not apply to the claim at issue" and require dismissal, the court "need not address whether it would be unfair or unreasonable to enforce that clause.").

The Opinion also is contrary to fundamental rules of insurance contract construction in Missouri, and indeed of contract interpretation more broadly. First, Missouri courts do not supply missing terms to "create a contractual right or limitation." *Hughes*, 330 S.W.3d at 120. The forum selection clause does not contain any words expressing exclusivity. Missouri law does not allow the Insurers to ask a court to add those missing words at the point of claim. *See Cheek v. Cheek*, 669 S.W.3d 155, 159 (Mo. App. E.D. 2023) ("Where a contract is clear and unambiguous, the Court may not supply additional terms."). Second, Missouri courts construe ambiguous language against the insurer. *Seeck*, 212 S.W.3d at 132. This rule has particular force where the issue being decided is a fundamental one, such as where an insured plaintiff may bring litigation, a choice that this Court has held should not be disturbed absent weighty reasons. Further, at best for the insurers, the forum selection clause here is ambiguous and therefore must be construed in favor of the insured, *id.*, but the Opinion effectively does the opposite.

The forum selection issue is of general interest because the Opinion resolved an issue of first impression in Missouri in a way that, if allowed to stand, would determine how future Missouri courts interpret outbound forum selection clauses. The Opinion is the

first Missouri decision dealing with a permissive forum selection clause. Every previous Missouri decision the parties have identified addressed a clause that contained expressly exclusive language. *See, e.g.*, *Reed v. Reilly Co., LLC*, 534 S.W.3d 809, 811 (Mo. banc 2017) ("In the event of a dispute, the Parties agree that the **sole proper jurisdiction and venue** to interpret and enforce any and all terms of the Agreement **shall be** . . . .") (emphasis added).[1] All of these parties, across all these transactions, included express language of exclusivity in their agreements for a reason. They did not consider words like "exclusive", "solely", and "only" to be optional or superfluous. They plainly understood that absent such language, their clauses would be permissive.

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[1] *See also State ex rel. J.C. Penney Corp. v. Schroeder*, 108 S.W.3d 112, 113 (Mo. App. E.D. 2003) ("The parties submit to the **exclusive jurisdiction of and venue in** . . . .") (emphasis added); *Burke v. Goodman*, 114 S.W.3d 276, 279–80 (Mo. App. E.D. 2003) (the "**exclusive venue** for the resolution of disputes shall be in . . . .") (emphasis added); *Jitterswing, Inc. v. Francorp, Inc.*, 311 S.W.3d 828, 831 (Mo. App. E.D. 2010) ("**[A]ny dispute** arising under this Agreement **shall** be resolved in . . ., and each party expressly consents to jurisdiction therein.") (emphasis added); *GP&W Inc. v. Daibes Oil, LLC*, 497 S.W.3d 866, 868, 871 (Mo. App. E.D. 2016) ("Both parties consent to the **exclusive jurisdiction of** . . . .") (emphasis added); *Luebbering v. Varia*, 637 S.W.3d 366, 368–69 (Mo. App. E.D. 2021), *reh'g and/or transfer denied* (Nov. 8, 2021), *transfer denied* (Feb. 8, 2022) ("**Any dispute** arising under or in connection with this Rider . . . **shall be** resolved **exclusively** by . . . .") (emphasis added); *Scott v. Tutor Time Child Care Sys., Inc.*, 33 S.W.3d 679, 682 (Mo. App. W.D. 2000) (". . . **shall be the venue and exclusive forum** in which to adjudicate **any dispute** . . . .") (emphasis added); *Major v. McCallister*, 302 S.W.3d 227, 229 n.2 (Mo. App. S.D. 2009) ("You agree to submit to jurisdiction in . . . and . . . **any claim** arising under these Terms and Conditions **will be** brought **solely** in a court in . . . .") (emphasis added); *Peoples Bank v. Carter*, 132 S.W.3d 302, 305 (Mo. App. W.D. 2004) ("**the exclusive forum, venue and place of jurisdiction shall** be in the State of KANSAS.") (emphasis added); *Raydiant Tech., LLC v. Fly-N-Hog Media Grp., Inc.*, 439 S.W.3d 238, 239 (Mo. App. S.D. 2014) ("[A]ll actions or proceedings arising in connection with this Agreement **shall** be tried and litigated **exclusively** in . . . ." This "**choice of venue** is intended by the parties to be **mandatory and not permissive** in nature, **thereby precluding the possibility of litigation** between the parties with respect to or arising out of this Agreement **in any jurisdiction other than** that specified in this paragraph.") (emphasis added); *Thieret Family, LLC v. Delta Plains Services, LLC*, 637 S.W.3d 595, 600 (Mo. App. E.D. 2021) ("Any lawsuit . . . shall be brought in the courts of . . . which courts shall have **exclusive jurisdiction** over any such lawsuit . . . .") (emphasis added).

The question at the heart of the Court of Appeal's ruling is of general interest because it is likely to arise in many future cases. The forum selection clause at issue uses standard-form language drafted by the insurance industry that provides for personal jurisdiction in English courts. For decades, insurers have included the same language in innumerable third-party-liability insurance policies issued by, among others, the London insurance market, a major source of coverage for U.S. insureds. This language is the chief means by which insurers provide for non-exclusive jurisdiction in a particular forum.

As a practical matter, the Court of Appeals' ruling would transform all of these permissive forum selection clauses into mandatory and exclusive ones. Because policies containing these clauses are legion, the ruling would deny countless Missouri insureds (and other insureds) the fundamental right to select a Missouri forum to resolve their coverage disputes. As here, it would deprive insureds whose disputes center in Missouri from litigating in the state. It would force these insureds into another U.S. forum that recognizes permissive clauses, if such a forum is even available, or else would consign them to foreign courts—here, English courts. Treating these clauses as mandatory and exclusive would unduly constrain the reach of Missouri courts and would uniquely disadvantage Missouri insureds who, unlike insureds in other states that recognize permissive forum selection clauses, would be deprived of their right to litigate disputes in their home state if they choose to do so.

The question on appeal is important. While the Court of Appeals acknowledged that the plain language of the clause controls, the Opinion held the clause here to be mandatory and exclusive even though it lacks express limiting language such as the use of unambiguous words like "exclusive", "only", or "solely". The Opinion is at odds with the overwhelming majority of state and federal court decisions applying United States law. *See, e.g.*, *Dunne*, 330 F.3d at 1064 (holding clause stating "[t]his agreement shall be governed by and construed and enforced in accordance with the laws of the State of Illinois, and the parties consent to jurisdiction to [sic] the state courts of the State of Illinois" was

permissive because it lacked express words of exclusivity.).[2] If allowed to stand, the Court of Appeals ruling effectively would prevent parties from securely entering into permissive

[2] *See also Rivera v. Kress Stores of Puerto Rico, Inc.*, 30 F.4th 98, 103–04 (1st Cir. 2022) (holding clause stating that the parties "agree to voluntarily submit to the jurisdiction" of a selected court was permissive because it lacked words expressly indicating exclusivity); *Glob. Seafood Inc. v. Bantry Bay Mussels Ltd.*, 659 F.3d 221, 226 (2d Cir. 2011) (holding forum selection clause was permissive because it "does not contain any specific language of exclusion . . ."); *Dawes v. Publish Am. LLLP*, 563 F. App'x 117, 118 (3d Cir. 2014) (holding clause stating parties "irrevocably submit to the jurisdiction" of selected courts to be permissive because it lacked words making it expressly mandatory and exclusive); *BAE Sys. Tech. Sol. & Servs., Inc. v. Republic of Korea's Def. Acquisition Program Admin.*, 884 F.3d 463, 470, 472 (4th Cir. 2018), *as amended* (Mar. 27, 2018) (holding a forum selection clause was permissive in absence of "specific language of exclusion"); *Caldas & Sons, Inc. v. Willingham*, 17 F.3d 123, 128 (5th Cir. 1994) (same); *Advanced Critical Devices, Inc. v. Boston Sci. Corp.*, No. 1:21-CV-02227, 2022 WL 1266117, at *4 (N.D. Ohio Apr. 28, 2022) (explaining that courts in the Sixth Circuit have found that, "mandatory forum selection clauses contain clear language indicating that jurisdiction and venue are appropriate exclusively in the designated forum"); *Paper Express, Ltd. v. Pfankuch Maschinen GmbH*, 972 F.2d 753, 757 (7th Cir. 1992) (same); *In re 1250 Oceanside Partners*, 652 F. App'x 588, 589–590 (9th Cir. 2016) (same); *K & V Sci. Co., Inc. v. Bayerische Motoren Werke Aktiengesellschaft* ("BMW"), 314 F.3d 494, 496, 500 (10th Cir. 2002) (holding clause permissive because it "refers only to jurisdiction, and does so in non-exclusive terms"); *Cardoso v. Coelho*, 596 F. App'x 884, 886 (11th Cir. 2015) (holding clause that selects a forum "to have jurisdiction" was permissive because it does not "eliminate alternative fora, nor does it state that [the selected forum] is the exclusive forum"); *D & S Consulting, Inc. v. Kingdom of Saudi Arabia*, 961 F.3d 1209, 1214 (D.C. Cir. 2020) (recognizing the distinction, and finding clause to be mandatory because it expressly stated exclusivity by requiring "all" disputes to be settled in a specified forum); *Cynergy Sys., Inc. v. Bright Sch., Inc.*, 656 F. Supp. 2d 150, 152 (D.D.C. 2009) (holding forum selection clause that merely stated "parties 'shall submit' to jurisdiction and agree that venue is proper in California if suit should be brought there" to be permissive because it "fails to include any language conferring exclusive venue in the Federal or State courts in California"); *Stevens Ford, Inc. v. BZ Results, LLC*, No. CV005001499S, 2006 WL 3114366, at *3 (Conn. Super. Ct. 2006) (holding a forum selection clause was not mandatory because it did not include express exclusive language); *Rudman v. Numismatic Guar. Corp. of Am.*, 298 So.3d 1212, 1214–1215 (Fla. Dist. Ct. App. 2020) ("forum selection clauses that 'lack mandatory or exclusive language' are generally found to be permissive", and "mandatory choice of law provision and a construction of the venue provision as permissive can co-exist"); *Barshaw v. Allegheny Performance Plastics, LLC*, 965 N.W.2d 729, 759 (Mich. Ct. App. 2020) (adopting test that requires court to "examine the language of the clause for words of exclusivity"); *Phoenix Network Techs. (Europe)*

forum selection clauses in Missouri and would bind unwary insureds to an outcome for which they did not negotiate. Because permissive clauses are common and useful in commercial agreements, it is important to ensure that contracting parties can continue to use them without concern that Missouri courts will supply missing words in order to treat them as if they were exclusive and dismiss duly filed cases.

This question is also important because the Court of Appeals' ruling would deprive Missouri courts of jurisdiction to adjudicate the Trust's coverage claims under the policies at issue in this appeal and force the Trust, at great burden and expense, to use its limited resources to bring duplicative litigation in another country. The policies containing the forum selection clauses at issue here are not only a subset of the policies in this action, they are a subset of the *Insurers'* policies in this action. Requiring the Trust to litigate two

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Ltd. v. Neon Sys., Inc., 177 S.W.3d 605, 615 (Tex. App. 2005) (distinguishing exclusive forum selection clause that identified "the venue" for all disputes to be litigated from permissive clause that specified "a" venue for all disputes); *Caperton v. A.T. Massey Coal Co.*, 690 S.E.2d 322, 339 (W. Va. 2009) (finding if the "jurisdiction is not modified by mandatory or exclusive language, the clause will be deemed permissive only"); *St. Paul Surplus Lines Ins. Co. v. Mentor Corp.*, 503 N.W.2d 511, 515–16 (Minn. Ct. App. 1993) (rejecting argument that the clause with substantially identical language was a mandatory forum selection clause that precluded litigation in another forum); *In re Agresti*, Nos. 13-14-00126-CV, 13–14–00149–CV, 13–14–00154–CV, 13–14–00168–CV, 2014 WL 3408691, at *5 (Tex. App. May 29, 2014) (forum selection clause providing that a particular court "shall" have jurisdiction over a controversy may be permissive, even though use of the term "shall" is typically mandatory because it does not foreclose the possibility that other courts may also have jurisdiction); *Irsik & Doll Feed Servs., Inc. v. Roberts Enters. Invs., Inc.*, No. 6:16-1018-EFM-GEB, 2016 WL 3405175, at *10 (D. Kan. June 21, 2016) (applying Kansas law, and using a clause with identical language as an exemplar of a nonexclusive forum selection clause); *Heckler & Koch, Inc. v. German Sport Guns GmbH*, 71 F. Supp. 3d 866 (S.D. Ind. 2014) (applying Indiana law, and finding absence of language manifesting intent to rule out other jurisdictions made clause permissive); *Polk County Recreational Ass'n v. Susquehanna Patriot Com. Leasing Co., Inc.*, 273 Neb. 1026, 734 N.W.2d 750 (2007) (holding forum selection clauses providing for consent and submission to a jurisdiction was merely permissive because it lacked words of exclusivity); *Am. First Fed. Credit Union v. Soro*, 359 P.3d 105, 131 Nev. 737 (2015) (same); *EI UK Holdings, Inc. v. Cinergy UK, Inc.*, 2005-Ohio-1271, 2005 WL 662921 (Ohio Ct. App. 9th Dist. 2005) (requiring express language); *Converting/Biophile Lab'ys, Inc. v. Ludlow Composites Corp.*, 2006 WI App 187, ¶ 30, 296 Wis. 2d 273, 290 (same).

actions to resolve common disputes with Mallinckrodt's liability insurers not only would be wasteful, it would risk inconsistent, even contradictory, rulings. The Trust brought this coverage action for the benefit of opioid victims in Missouri and nationwide, including individuals; state, county, municipal, and tribal governments; and other entities. The recovered funds will be used to compensate victims of the opioid crisis that Mallinckrodt played a central role in creating and perpetuating, and to help abate that crisis. Thus, Missouri has an important interest in ensuring that its courts are not unduly deprived of jurisdiction to hear this dispute.

WHEREFORE, for the above-stated reasons, the Trust respectfully requests that this Court grant its application to appeal the decision of the Court of Appeals and provide for whatever further relief this Court deems just and proper.

Dated: April 24, 2024

St. Louis, MO

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CERTIFICATE OF SERVICE

Pursuant to Missouri Rule of Civil Procedure 55.03(a) and 84.01(a), the undersigned hereby verifies that he signed the original foregoing document.

The undersigned hereby also certifies that on April 24, 2024, a true copy of the foregoing was served upon all parties of record by e-mailing a copy of the same to the below counsel of record, pursuant to Missouri Rule of Civil Procedure 43.01(c)(1)(D).

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