IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

OPIOID MASTER DISBURSEMENT TRUST II, A/K/A OPIOID MDT II, Plaintiff/Appellant, v. ACE AMERICAN INSURANCE COMPANY, ET AL., Defendants/Respondents.	Case No. ED111765 Unpublished Opinion Date: March 5, 2024 Author: Michael Wright Concurring: James Dowd John Torbitsky

APPLICATION FOR TRANSFER

Plaintiff/Appellant Opioid Master Disbursement Trust II, a/k/a Opioid MDT II ("Appellant" or "Trust"), respectfully requests transfer of this case to the Missouri Supreme Court pursuant to Rule 83.02 of the Missouri Rules of Civil Procedure.

Grounds for Transfer

For the following reasons, as discussed more fully below, transfer is appropriate pursuant to Rule 83.02 due to the general interest and importance of the questions involved in this case.

The central question in this case that the Trust seeks to appeal is whether an insurer-drafted forum selection provision that provides that the parties agree to submit to the jurisdiction of certain foreign courts but does not state that litigation is limited to those courts nonetheless should be treated as mandating litigation exclusively there, rather than as a permissive clause that provides advance consent for litigation in the designated fora—that is, a safe harbor where personal jurisdiction cannot be disputed—but permits litigation elsewhere—here, in the Missouri courts selected by the plaintiff.

This question is of general interest because it is a significant question of first impression in Missouri that is likely to arise in many future cases in and out of the insurance context; and because resolution of this question will determine whether innumerable Missouri insureds and others will have access to Missouri courts to litigate their insurance coverage and other disputes.

Resolution of this question is important for the same reasons, and for several others: First, resolution of this question will determine whether Missouri, uniquely among the U.S. jurisdictions to have considered the matter, effectively will ban permissive forum selection clauses in insurance policies and many other contracts, instead treating them all as mandatory and exclusive. Second, resolution of this question will determine whether a plaintiff's choice of a Missouri forum will be given effect and the scope of Missouri courts' jurisdiction to resolve disputes centering in Missouri. Third, resolution of this question will determine whether Missouri courts have jurisdiction to resolve a major coverage dispute brought by the Trust 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 these injured parties and to abate the opioid crisis and compensate injured parties. Fourth, resolution of this question will determine whether the Trust must pursue its claims against this subset of insurers in a duplicative coverage case in England or Wales (hereinafter "England"), dissipating assets that otherwise could be used to compensate opioid victims and fund opioid abatement efforts in Missouri and elsewhere. Fifth, resolution of this question turns on whether fundamental rules of insurance contract construction long recognized in Missouri will be given effect.

Statement of Facts in Support of Transfer

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 and 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 plc filed a petition commencing a voluntary case under chapter 11 of the Bankruptcy Code, captioned *In re: Mallinckrodt plc*, No. 20-12522 (JTD) (Bankr. D. Del.).

On March 2, 2022, the bankruptcy court confirmed the Fourth Amended Plan of Reorganization of Mallinckrodt (the "Plan") (*see* D2 ¶¶ 5, 113), which resolved the liability of Mallinckrodt and related debtors (the "Debtors"[1]) for Opioid Mass Tort Claims, as defined in the Plan. Pursuant to the Plan, the Debtors were discharged from liability for Opioid Mass Tort Claims, and their opioid liabilities were transferred to the Trust and certain related trusts (*see* D2 ¶¶ 7, 115). The Plan also transferred the Debtors' rights to insurance coverage arising out of, relating to, or in connection with any Opioid Mass Tort Claims, which include the policies providing for insurance coverage that are at issue in this appeal (D2 ¶¶ 7, 115).

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 the Debtors' 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 the Mallinckrodt entities have 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

[1] The Debtors principally responsible for developing, manufacturing, promoting, and distributing branded and generic opioid pharmaceuticals, and active pharmaceutical ingredients that were included in opioid pharmaceuticals, are Mallinckrodt LLC, Mallinckrodt APAP LLC, Mallinckrodt Enterprises LLC, SpecGx LLC, and SpecGx Holdings LLC. All were located in Missouri at all relevant times (D2 ¶¶ 19–24).

because, among other reasons, Debtors' opioid-related business was located here (D2 ¶ 86). Missouri residents suffered bodily injuries, and Missouri state, county, municipal, and tribal governments, among others, sustained substantial losses because of those bodily injuries (D2 ¶¶ 98, 102).

The respondent insurers (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 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 mandatory and exclusive, and because insurers have argued successfully that this 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."**

(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. The Court of Appeals affirmed the Circuit Court's order. First, the Court of Appeals held that Missouri courts must consider the language in an outbound forum selection clause to determine whether it requires all litigation to occur exclusively in the selected forum. Opinion ("Op."), at 6 (agreeing with the Trust that the Court must interpret the language to determine whether it "mandate[s] a specific outbound venue"). Second, the Court of Appeals held that the particular clause at issue was an unambiguous, mandatory, and exclusive outbound forum selection clause—that is, that it mandated exclusive jurisdiction in England—even though it lacked express words of exclusivity.

The Trust now seeks to bring its appeal to the Missouri Supreme Court.

Questions Involved in the Case

Although the forum selection clause states only that "[e]ach party agrees to submit to the jurisdiction of any court of competent jurisdiction within England and Wales and to comply with all requirements necessary to give such court jurisdiction" (Op., at 6), the Court of Appeals paraphrased the forum selection clause as including mandatory language: "[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 with respect, the provision does not say that all matters arising out of the insurance policy must be litigated in England. Instead, it includes a permissive forum selection clause requiring only that the parties "submit to the jurisdiction" of an English court and "comply with all requirements necessary to give such court jurisdiction" (D16 p. 7). It 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 "all 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.

In addition to the plain language argument, the absence of any express words of exclusivity in this forum selection clause renders the clause permissive, for at least 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) (holding a clause without expressly exclusive language was permissive, and explaining that 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. *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). Therefore, it is reasonable to conclude that insurers that used the very same standard-form language, and failed to add express language of exclusivity, intended it to be construed in the same way.

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. (*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 (2002). The absence of any express words of exclusivity in the forum selection clause must be considered intentional and given effect.

If the Insurers wished to limit their insureds' choice of forum, they were obligated to make that clear. But they patently did not. At best for them, the forum selection clause is ambiguous for the reasons discussed above. 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).

Legal Basis for Transfer

Rule 83.02 states that a case may be transferred to the Missouri Supreme Court by the Missouri Court of Appeals, on application of a party, "because of the general interest or importance of a question involved in a case or for the purpose of reexamining existing law." Mo. R. Civ. P. 83.02. The Court should grant this transfer application because both bases apply.

The issues involved in this case are of general interest because the Court of Appeals' ruling resolved a novel question of law in Missouri that, if followed, would determine how all courts in the state should interpret outbound forum selection clauses. The Court of Appeals' ruling is the

first reported Missouri decision dealing with a permissive forum selection clause. Every previous Missouri decision 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); *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).[2] 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.

[2] *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 Technology, LLC v. Fly-N-Hog Media Group, 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).

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, the same language commonly has been included in 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 parties provide for non-exclusive jurisdiction in a particular forum.

As a practical matter, the Court of Appeal's 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 innumerable Missouri insureds and other insureds the fundamental right to select the forum of their choice 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, or else would consign them to foreign courts—here, English courts. Treating these clauses as mandatory and exclusive would uniquely disadvantage Missouri courts over the courts of other U.S. jurisdictions that recognize permissive clauses and would unduly constrain the reach of Missouri courts.

The issue at the heart of the Court of Appeal's ruling is important for all of the same reasons. It also is important because the ruling impacts other contract disputes that involve forum selection clauses, not just disputes over insurance policies. While the Court of Appeals acknowledged that the plain language of the clause controls, it held the clause here to be mandatory and exclusive even though it lacks express language of exclusivity such as the use of unambiguous words like "only" or "solely". That ruling is at odds with state and federal court decisions applying

United States law on the question.[3] Moreover, it effectively would preclude parties from securely entering into permissive forum selection clauses in Missouri, and worse, bind unwary insureds to

[3] *See, e.g.*, *Dunne v. Libbra*, 330 F.3d 1062, 1064 (8th Cir. 2003) (requiring exclusive and mandatory language, and holding a clause was permissive in its absence); *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. Solution & Servs., Inc. v. Republic of Korea's Defense 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) (holding clause was permissive because its "language does not clearly indicate that the parties intended to declare [the selection forum] to be the exclusive forum for the adjudication of disputes arising out of the contract"); *Gen. Elec. Co. v. G. Siempelkamp GmbH & Co.*, 29 F.3d 1095, 1099 (6th Cir. 1994) (holding that, "[b]ecause the clause states that 'all' disputes 'shall' be at [a selected forum], it selects [that court's] jurisdiction exclusively and is mandatory"); *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) (recognizing the distinction and holding clause dictating where "all disputes" "shall be filed" was mandatory because it included specific language indicating the parties' intent to the exclusive forum); *In re 1250 Oceanside Partners*, 652 F. App'x 588, 589–590 (9th Cir. 2016) (recognizing the distinction and finding clause permissive because it "lacks language clearly designating" the specified court as an exclusive forum); *K & V Scientific 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"); *Berg v. MTC Electronics Technologies*, 61 Cal. App. 4th 349, 71 Cal. Rptr. 2d 523 (2d Dist. 1998); *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);

an outcome for which they did not negotiate. Because permissive clauses are common and useful in insurance contracts and other commercial agreements, it is important to ensure that contracting parties can continue to use them without concern that Missouri courts will interpret them to be mandatory and exclusive and dismiss duly filed cases as a result.

This question is also important because the Court of Appeals' ruling deprives Missouri courts of the opportunity to adjudicate the Trust's coverage claims under the policies at issue in this appeal and forces the Trust, at great expense, to use its limited resources to bring suit in another country. The Trust brought this coverage action for the benefit of opioid victims in Missouri and

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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) 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. Adv. Op. No. 73 (Nev. 2015) (same); *EI UK Holding, 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).

nationwide, including individuals; state, county, municipal, and tribal governments; and other entities. The recovered funds will be used to abate the opioid crisis. Thus, Missouri has an important interest in ensuring that its courts are not unduly deprived of the jurisdiction to hear this dispute.

Further, the result of the ruling is that it would split the Trust's coverage case, requiring it to litigate a duplicative coverage case in England, in addition to the existing case in Missouri involving insurers without forum selection clauses, incurring considerable burden, dissipating assets that otherwise would go to compensating opioid victims in Missouri and elsewhere, and risking inconsistent, even potentially contradictory, coverage rulings.

Finally, the ruling is important because it implicates fundamental principles of insurance contract construction, and indeed of contract interpretation more broadly. This includes the bedrock principle, long recognized by the Missouri Supreme Court, that arguably ambiguous insurance contract language, particularly language of limitation, must be construed against the insurer and in favor of the insured. 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 the Missouri Supreme Court has held should not be disturbed absent weighty reasons.

WHEREFORE, for the above stated reasons, Appellant Opioid Master Disbursement Trust II, a/k/a Opioid MDT II, respectfully requests that this Court order transfer of this case to the Missouri Supreme Court, and grant whatever further relief this Court deems just and proper.

Dated: March 20, 2024
St. Louis, MO

RIEZMAN BERGER, P.C.

By: /s/ P Tyler

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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 March 20, 2024, a true copy of the foregoing was filed with the Court's electronic filing system, which will send notice to all counsel of record pursuant to Mo. Sup. Ct. R. 81.005 and 103.08.

RIEZMAN BERGER, P.C.

By: /s/ P. Tyler Connor
P. Tyler Connor, MBN 69049