

**IN THE CIRCUIT COURT FOR THE COUNTY OF ST. LOUIS
STATE OF MISSOURI**

OPIOID MASTER DISBURSEMENT
TRUST II, AKA OPIOID MDT II,

Plaintiff,

v.

ACE AMERICAN INSURANCE
COMPANY, et al.,

Defendants.

Case No. 22SL-CC02974

Div. No. 2

**CERTAIN UK INSURERS' MOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED PETITION FOR DECLARATORY RELIEF**

Defendants Allianz Global Corporate & Specialty SE, incorrectly sued as “Allianz Global Risks US Insurance Company,” HDI Global SE, Lloyd’s of London Syndicate #1218 a/k/a Newline Syndicate 1218, and SJ Catlin Syndicate SJC 2003 (respectively, “Allianz UK,” “HDI UK,” “Newline UK” and “Catlin UK,” and, collectively, “Certain UK Insurers”), for their Motion to Dismiss Plaintiff’s First Amended Petition for Declaratory Relief (“FAP”) Pursuant to Missouri Supreme Court Rules 55.26 and 55.27, state as follows:

This motion involves straightforward choice-of-law principles, as well as the necessary consequences of the application of the parties’ chosen law. Here, Certain UK Insurers issued policies in the UK that included the following clause in the policies’ declarations: “CHOICE OF LAW AND JURISDICTION: England and Wales.” In addition, a more detailed clause in the body of the policies generally states as follows:

Any dispute concerning the interpretation of the terms, conditions, limitations and/or exclusions contained [in the policies], is understood and agreed by both the Named Insured and the Insurers to be governed by the laws of England and Wales. Each 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. All

matters arising hereunder shall be determined in accordance with the law and practice of such court.¹

See Ex. 1 (Declaration of Gavin Kealey K.C., an English barrister and King’s Counsel). This Court should enforce and apply the law chosen by the parties² to interpret the policies, which is the law of England and Wales. As further set forth below, and supported by the Declaration of Gavin Kealey, under English law the forum selection clause is mandatory and reflects the parties’ decision to litigate all disputes arising under their policies in the UK. Accordingly, this Court should dismiss Certain UK Insurers from this action on jurisdictional grounds, with prejudice.

I. FACTUAL BACKGROUND

A. The UK Insurers and Their Named Insureds

The Allianz policies identified in Exhibit A to the Plaintiff’s FAP were issued by Allianz Global Corporate & Specialty AG, now known as Allianz Global Corporate & Specialty SE (“Allianz UK,” as noted above), a UK-based insurer with its principal business address in London, not by Allianz Global Risks US Insurance Company, the U.S.-based insurer that the Plaintiff sued. HDI UK, Newline UK and Catlin UK also are UK-based insurers with their principal business addresses in London.

Each of Certain UK Insurers’ policies was issued to either “Covidien plc.” or to “Mallinckrodt plc.” as the policies’ “Named Insured” (collectively, the “Named Insureds”), and,

¹ There is a slight difference in the wording of this provision in certain primary policies vs. excess policies, but that difference is not substantive and does not affect the legal analysis or result sought in this motion.

² As discussed below, the Plaintiff Trust alleges that it stands in the shoes of the original insureds and therefore is bound by the terms of the policies negotiated by and agreed to by those insureds. For sake of convenience, with respect to this motion, the Trust is considered one of the “parties” to the policies.

in either instance, each of the policies identifies the Named Insured's business address in Dublin, Ireland.³

Thus, all of the policies at issue were issued by a UK insurer to an Irish Named Insured. In addition, the Trust alleges that its rights are derivative of the Irish Named Insured, as an assignee, and notably the Trust itself is a Delaware entity. None of the parties are Missouri entities.

B. The Plaintiff Trust Alleges That It is an Assignee With Respect to “Assigned Insurance Rights” Under the Insurance Policies, Including the Policies at Issue.

According to the Plaintiff's FAP, the Plaintiff is “a statutory trust created by the Fourth Amended Plan of Reorganization of Mallinckrodt plc, et al.” (the “Plan”), “[t]he The Trust was established for the benefit of individuals and entities harmed by the Debtors' role in creating, perpetuating, and contributing to the nationwide opioid crisis,” “the Debtors' rights to insurance coverage for claims arising out of, relating to, or in connection with ... the “Opioid Mass Tort Claims” ... have been transferred to the Trust, and the Trust has been granted sole authority to pursue those coverage rights.” *See* FAP, pp. 1-2 (unnumbered, introductory paragraphs). “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.” *Id.* at p. 2, note 3. More specifically, the Plaintiff alleges that, pursuant to the Plan, “the Debtors' rights to insurance coverage for Opioid Mass Tort Claims— the ‘Assigned Insurance Rights,’ as defined in the Plan—among other assets, are transferred to the [Plaintiff],” and “the [Plaintiff] is

³ Moreover, Mallinckrodt is incorporated in Ireland, and has its principal executive offices and global external manufacturing operations in Dublin, Ireland. *See, e.g.*, <https://www.sec.gov/edgar/browse/?CIK=0001567892> (Form 10-K SEC filing for the fiscal year ended Dec. 31, 2021, pp. 1 and 4).

empowered, obligated, and has the sole authority to, among other things: (1) preserve, hold, collect, manage, maximize, and liquidate the Assigned Insurance Rights, and (2) enforce, initiate, pursue, prosecute, defend, compromise, and/or resolve the Assigned Insurance Rights.” *Id.* at ¶ 7.c. and d.

C. The Insurance Policies at Issue

1. Allianz UK’s Insurance Policies

Exhibit A to the Plaintiff’s FAP identifies Allianz UK’s insurance policies as follows:

Defendant Insurer(s)	Insurer(s) that Issued Policy	Policy Number	Policy Period Start Date	Policy Period Start Date
Allianz Global Risks US Insurance Co.	Allianz Global Corporate & Specialty	B0509DR539612	11/15/2012	6/28/2013
Allianz Global Risks US Insurance Co.	Allianz Global Corporate & Specialty	B0509DR539812	11/15/2012	6/28/2013
Allianz Global Risks US Insurance Co.	Allianz Global Corporate & Specialty AG	B0509DY063611	11/15/2011	11/15/2012
Allianz Global Risks US Insurance Co.	Allianz Global Corporate & Specialty AG	B0509DY063711	11/15/2011	11/15/2012
Allianz Global Risks US Insurance Co.	Allianz Global Corporate & Specialty AG	B0509DY063911	11/15/2011	11/15/2012
Allianz Global Risks US Insurance Co.	Allianz Global Corporate & Specialty AG	B0509DR552212	11/15/2012	6/28/2013
Allianz Global Risks US Insurance Co.	Allianz Global Corporate & Specialty AG	B0509DR558013	6/28/2013	6/28/2014

In fact, as stated above, each of the foregoing Allianz UK policies was issued by Allianz UK, and none were issued by “Allianz Global Risks US Insurance Co.” or by “Allianz Global Corporate & Specialty.” Further, as noted above, Allianz UK is a UK-based insurer with its principal business address in London, England. In addition, the policies were issued to either

“Covidien plc.” or to “Mallinckrodt plc.” as the policies’ sole “Named Insured,” and the policies provide their address in Dublin, Ireland.

2. HDI UK, Newline UK and Catlin UK’s Insurance Policies

Exhibit A to the Plaintiff’s FAP identifies the HDI UK and Catlin UK insurance policies—for some of which, Newline UK and Catlin UK are participating insurers—as follows:

Defendant Insurer(s)	Insurer(s) that Issued Policy	Policy Number	Policy Period Start Date	Policy Period Start Date
HDI Global SE	HDI-Gerling Industrial Insurance Company, UK Branch	B0509DY062911	11/15/2011	11/15/2012
HDI Global SE; Lloyds of London Syndicate #2003, a/k/a Certain Underwriters at Lloyds, SJ Catlin Syndicate SJC 2003; Lloyds of London Syndicate #1218, a/k/a Newline Syndicate 1218	HDI-Gerling Industrial Insurance Company, UK Branch; Certain Underwriters at Lloyds (SJC 2003/Catlin); Newline Syndicate 1218	B0509DY063811	11/15/2011	11/15/2012
HDI Global SE; Lloyds of London Syndicate #2003, a/k/a Certain Underwriters at Lloyds, SJ Catlin Syndicate SJC 2003; Lloyds of London	HDI-Gerling Industrial Insurance Company, UK Branch; Certain Underwriters at Lloyds (SJC 2003/Catlin); Newline Syndicate 1218	B0509DR539712	11/15/2012	11/15/2013

Defendant Insurer(s)	Insurer(s) that Issued Policy	Policy Number	Policy Period Start Date	Policy Period Start Date
Syndicate #1218, a/k/a Newline Syndicate 1218				
HDI Global SE	HDI-Gerling Industrial Insurance Company, UK Branch	B0509DR539912	11/15/2012	6/28/2013
HDI Global SE	HDI-Gerling Industrial Insurance Company, UK Branch	B0509DR557413	6/28/2013	6/28/2014
HDI Global SE	HDI-Gerling Industrial Insurance Company, UK Branch	B0509DR595113	6/28/2013	6/28/2013
Lloyds of London Syndicate #2003, a/k/a Certain Underwriters at Lloyds, SJC 2003/Catlin	Certain Underwriters at Lloyds (SJC 2003/Catlin)	B0509DR557913	6/28/13	6/28/14

HDI UK, Newline UK and Catlin UK are UK-based insurers with their principal business addresses in London, England and, as with Allianz UK, the HDI UK and Catlin UK policies were issued to either “Covidien plc.” or to “Mallinckrodt plc.” as the policies’ sole “Named Insured,” and the policies provide their address in Dublin, Ireland.

3. Choice of Law and Forum Selection

The “Choice of Law and Jurisdiction” clause in each of Certain UK Insurers’ “primary” policies states:

Notwithstanding anything to the contrary contained in this Policy, 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.

Each 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.

All matters arising hereunder shall be determined in accordance with the law and practice of such court.

All other terms, definitions, conditions, and exclusions of this policy remain unchanged.⁴

The “Choice of Law and Jurisdiction” clause in each of Certain UK Insurers’ “excess” policies states:

Any dispute concerning the interpretation of the terms, conditions, limitations and/or exclusions contained [in the policies], is understood and agreed by both the Named Insured and the Insurers to be governed by the laws of England and Wales. Each 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. All matters arising hereunder shall be determined in accordance with the law and practice of such court.

D. The Underlying Opioid Claims

According to the Plaintiff’s FAP, “[b]y early 2020, the Debtors had been named in over 3,000 Opioid Mass Tort Claims,” “[b]etween 2017 and October 12, 2020 ...[,] the Debtors spent more than \$100 million defending Opioid Mass Tort Claims,” and “[t]he Debtors also spent \$30 million pre-petition to settle just two Opioid Mass Tort Claims.” *See* FAP, ¶ 3.

⁴ The insurance policies are voluminous, and therefore have not been attached as exhibits, but more detailed information about the policies and their relevant provisions is set forth in Gavin Kealey’s Declaration, and copies of any or all of the policies are available at the Court’s request.

E. The Plaintiff's Assignment-Based Claim

As discussed in greater detail below, the Plaintiff's FAP alleges that certain Mallinckrodt-related "Debtors" commenced a chapter 11 bankruptcy in U.S. Bankruptcy Court, that the Plaintiff is a statutory trust created by a Plan of Reorganization filed in that bankruptcy, that the Plaintiff is the assignee with respect to certain "Assigned Insurance Rights," that those Assigned Insurance Rights" include the Debtors' right to pursue insurance coverage for claims arising out of, relating to, or in connection with the "Opioid Mass Tort Claims," and that those "Assigned Insurance Rights" include the Debtors' right to pursue insurance coverage under insurance policies listed in Exhibit A to the FAP, including insurance policies issued by Certain UK Insurers or in which they are a participating insurer (that is, as a participating insurer, they insure some of, but not all of, the risk insured by a particular policy). The Plaintiff's FAP requests, among other things, that this Court "[d]eclar[e] the rights and obligations of the [Plaintiff] and the Defendants under or with respect to the Insurance Policies and Assigned Insurance Rights with respect to the Debtors' liability for [the] Opioid Mass Tort Claims," and "[a]ward[] money damages that have accrued as of the time of trial as a result of the Court's declaration of the [Plaintiff's] entitlement to coverage under or with respect to the Insurance Policies and Assigned Insurance Rights with respect to the Debtors' liability for the Opioid Mass Tort Claims." See FAP, Prayer for Relief, ¶¶ a and b.

II. ARGUMENTS AND AUTHORITIES

A. Motion to Dismiss Pursuant to Missouri Supreme Court Rules 55.26 and 55.27

A motion to dismiss based on a forum selection clause is generally treated as an issue of personal jurisdiction. *Scott v. Tutor Time Child Care Sys., Inc.*, 33 S.W.3d 679, 682 (Mo. App. W.D. 2000). On motions to dismiss for lack of personal jurisdiction, the court may consider

matters outside the pleadings. *Smith v. City of St. Louis*, 573 S.W.3d 705, 712 (Mo. App. E.D. 2019); *see also* Mo. Sup. Ct. Rule 55.27(a). Once a defendant raises the issue of lack of personal jurisdiction, the burden shifts to the plaintiffs to show that personal jurisdiction exists over the defendant. *Noble v. Shawnee Gun Shop, Inc.*, 316 S.W.3d 364, 369-70 (Mo. App. W.D. 2010).

B. The Policies at Issue are Governed by the Law of England and Wales.

As noted above, the policies' "Risk Details" pages state, in relevant part, that the policies' "Choice of Law" is "England and Wales," and their "Choice of Law and Jurisdiction" clause unequivocally states that any dispute concerning the interpretation of the terms, conditions, limitations and/or exclusions contained in the policies, is understood and agreed by both the Named Insured and Certain UK Insurers to be governed by the laws of England and Wales. "[G]enerally, parties may choose the state whose law will govern the interpretation of their contractual rights and duties." *Sturgeon v. Allied Prof'ls Ins. Co.*, 344 S.W.3d 205, 210 (Mo. App. E.D. 2011); *State ex rel. McKeage v. Cordonnier*, 357 S.W.3d 597, 600 (Mo. banc 2012); *see also Restatement (Second) Conflict of Laws*, §187 ("The law of the state chosen by the parties to govern their contractual rights and duties will be applied if the particular issue is one which the parties could have resolved by an explicit provision in their agreement directed to that issue").

Likewise, "[a] valid choice of law provision in a contract binds the parties." *Cordonnier*, 357 S.W.3d at 600. Missouri courts will honor the parties' choice of law clause if the application of the law is not contrary to a fundamental policy of Missouri. *Sturgeon*, 344 S.W.3d at 210. And there is nothing contrary to Missouri public policy in the policies' choice of law clause. Further, "where, as here, the case turns on the enforcement of a forum-selection clause, and the contract includes a choice-of-law provision, the law chosen by the parties controls the interpretation of

the forum-selection clause.” *Raydiant Tech., LLC v. Fly-N-Hog Media Grp., Inc.*, 439 S.W.3d 238, 240 (Mo. App. S.D. 2014) (quoting *Hope’s Windows, Inc. v. McClain*, 394 S.W.3d 478, 482 n.3 (Mo. App. W.D. 2013)).⁵

C. **The Parties, Including the Plaintiff in This Action, are Bound by the Forum Selection Clause in Certain UK Insurers’ Policies.**

1. **Under English Law, the Forum Selection Clause Is Mandatory and Dictates Exclusive Jurisdiction in the UK.**

The Declaration of English-law expert Gavin Kealey reinforces that Certain UK Insurers’ insurance policies are governed by English law and provide for the courts of England to have exclusive jurisdiction over all disputes which arise in connection with those policies, that the Trust’s claims against the insurers are within the scope of those policies’ choice of law and jurisdiction clauses, and that the choice of law and exclusive choice of forum would be treated under English law as binding on the Plaintiff. For example, his Declaration states:

I am of the firm opinion that the Policies are governed by English law and that they provide for the English courts to have exclusive jurisdiction over all contractual disputes which arise in connection with the Policies and their terms. I consider that the claims brought by the Trust in the present proceedings are within the scope of the relevant choice of law and jurisdiction provisions in the Policies, and that the Plaintiff is bound to comply with these provisions in respect of such claims. As such, I believe that the Plaintiff is obliged under English law to submit all such claims to the exclusive jurisdiction of the courts of England and Wales, to be resolved in accordance with English law.

See Ex. 1, ¶ 8; *see also id.*, ¶¶ 48-57.⁶

⁵ As discussed in detail below, *TH Agric. & Nutrition, L.L.C. v. Ace European Group, Ltd.*, 416 F. Supp. 2d 1054, 1076 (D. Kan. 2006), *aff’d*, 488 F.3d 1282 (10th Cir. 2007), also provides strong support for this conclusion.

⁶ English-law expert Kealey also makes the point in his Declaration, citing English law, that “the choice of English law in conjunction with [a] reference to English jurisdiction is a powerful factor in favour of construing the choice of English jurisdiction as exclusive.” *Id.* at ¶ 52.3 (italics in original omitted; footnote omitted).

It logically follows, then, that the Trust, as a voluntary assignee, “stands in the shoes” of the Debtors—that is, the alleged insureds—and is bound by the terms, conditions, limitations and exclusions of the policies that the Trust seeks to enforce.⁷ *See, e.g., Indian Harbor Ins. Co. v. Zucker*, 860 F.3d 373, 376 (6th Cir. 2017); *Burkhardt v. Bailey*, 680 N.W.2d 453, 462 (Mich. Ct. App. 2004). Again, this conclusion is reinforced—with reference to English law—by the Declaration of English-law expert Gavin Kealey. *See* Ex. 1, ¶¶ 73-87.

Finally, under Missouri law, forum selection clauses are *prima facie* valid. *See, e.g., Cygnus SBL Loans, LLC v. Hejna*, 584 S.W.3d 324, 330 (Mo. App. W.D. 2019). “Freely negotiated” forum-selection clauses will be enforced, “so long as doing so is neither unfair nor unreasonable.” *Corel Corp. v. Ferrellgas Partners, L.P.*, 633 S.W.2d 849, 853 (Mo. App. E.D. 2021); *see also High Life Sales Co. v. Brown–Forman Corp.*, 823 S.W.2d 493, 497 (Mo. banc 1992); *accord M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 18 (1972). “The party resisting enforcement of the forum selection clause bears a heavy burden in convincing the court that he or she should not be held to the bargain because it is unfair or unreasonable.” *GP&W Inc. v. Daibes Oil, LLC*, 497 S.W.3d 866, 869 (Mo. App. E.D. 2016); *accord Cygnus*, 584 S.W.3d at 330; *Major v. McCallister*, 302 S.W.3d 227, 229 (Mo. App. S.D. 2009). Respectfully, the Plaintiff cannot meet this heavy burden here.

2. There Is Relevant Precedent From a Sister-State With a Near-Identical Forum Selection Clause Further Supporting Dismissal.

The most directly on-point case appears to be *TH Agric. & Nutrition, L.L.C. v. Ace European Group, Ltd.*, 416 F. Supp. 2d 1054 (D. Kan. 2006) (“*THAN*”), *aff’d*, 488 F.3d 1282

⁷ Also, it logically follows that if the Plaintiff Trust did not “stand in the shoes” of the alleged insureds, then the Plaintiff would have no legal standing to pursue coverage for the Opioid Mass Tort Claims under Certain UK Insurers’ policies via the Plaintiff’s FAP.

(10th Cir. 2007). In *THAN*, the insured plaintiff, a Delaware limited liability company that had its principal place of business in Kansas, filed a declaratory judgment action against defendant insurers seeking coverage under primary and excess general liability insurance policies in connection with tens of thousands of asbestos lawsuits. In relevant part, the insurers' policies contained a "Jurisdiction" clause that provided:

JURISDICTION

Any dispute concerning the interpretation of the terms, conditions, limitations and/or exclusions contained in this Policy is hereby understood and agreed by both the Insured and the Insurers to be subject to the law of the Netherlands. Each party agrees to submit to the jurisdiction of any court of competent jurisdiction within The Netherlands and to comply with all requirements necessary to give such Court jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such Court.

416 F. Supp. 2d at 1074. Notably, but for the references to "The Netherlands" in the policies at issue in *THAN*, and the reference to "England and Wales" in Certain UK Insurers' policies, the three sentences that comprise this clause are materially identical.

In *THAN*, the insurers filed a motion to dismiss the insured's declaratory judgment action or, in the alternative, to stay the action. The court found that it could not exercise jurisdiction over the defendant insurers, but that even if it could it would dismiss this case for improper venue because Dutch law governs the interpretation of the forum selection clause "and, under Dutch law, the clause is mandatory and enforceable." *Id.* at 1063, 1074.

The court, sitting in diversity, applied Kansas' choice-of-law rules. *Id.* at 1075. "Kansas," the court stated, "is the forum state and, as to contract-based claims, Kansas choice of law rules honor an effective choice of law by contracting parties." *Id.* (citations omitted).

The court stated that "[a]lthough Kansas courts have not been squarely confronted with the issue of what law applies to the enforceability of a forum selection clause when a combined

choice-of-law/forum selection clause exists, [it believed] that the Kansas Supreme Court would find persuasive, and hence follow, other cases in which courts have not hesitated to apply the parties' contractually chosen law to determining the enforceability of a forum selection clause." *Id.* (citations omitted). The court therefore concluded that, under Kansas law, the parties' contractually-chosen law, which was Dutch law, governed interpretation of the forum selection clause. *Id.*

Further, the court was persuaded that because the policies' "Jurisdiction" clause included choice-of-law language and forum-selection language, and used the phrase "all matters arising hereunder shall be determined in accordance with the law *and practice* of such Court"—the same phrase employed in Certain UK Insurers' policies—the clause's forum selection language should be interpreted according to the foreign law chosen by the parties:

... [A]nalyzing the enforceability of the forum selection clause under the law of The Netherlands is consistent with the parties' intent, as manifested by the plain language of the provision. It provides that "any dispute concerning the interpretation of the terms [and] conditions ... contained in [the] Policy" shall be subject to the law of The Netherlands. The forum selection clause is such a "term" or "condition" contained in the policies. If that were not enough, the third sentence of the provision further provides that "all matters arising hereunder shall be determined in accordance with the law *and practice* of such Court" (emphasis added), meaning a court in The Netherlands. By its plain terms, then, this clause provides not only that interpretational issues regarding the terms and conditions of the policies are governed by the law of The Netherlands, but also that all matters arising under the policies is to be determined in accordance with the "practice" of the courts in The Netherlands. Thus, this provision unambiguously states that the issue of the enforceability of the forum selection clause is to be determined in accordance with the laws and practices of the courts in The Netherlands. As such, applying the law of The Netherlands to this issue is consistent with the parties' intent.

Id. at 1076.

Next, with respect to the enforceability of the forum selection clause under the Dutch law, the court sided with some of the insurers' experts' foreign law-declarations:

In support of [insurer] Royal's motion to dismiss, it submitted a declaration from Jeroen Fleming. * * * He opines that the Amsterdam Court would be considered to have exclusive jurisdiction to hear any disputes between the parties to the ... policies. He explains that under Article 23(1) of the European Council Regulation No. 44/2001 of 22 December 2000, when one of more parties is domiciled in a European Community member state and the parties have agreed that a court of a European Community member state is to have jurisdiction (criteria which are satisfied here), that court shall have jurisdiction and that jurisdiction shall be exclusive unless the parties have agreed otherwise.

Id. at 1077 (footnote omitted). The court stated that, having considered the parties' views regarding Dutch law, it concluded that under Dutch law there is a rebuttable presumption that the forum selection clause is exclusive unless the parties have agreed otherwise, and that the insured did not effectively rebut that presumption, "[t]hat is, [the insured] has presented no persuasive evidence to suggest that the parties 'agreed otherwise,' *i.e.*, that they agreed the clause would be non-exclusive." *Id.* at 1079. The court therefore concluded that the forum selection clause was mandatory under Dutch law. *Id.*

This Court, as in *THAN*, should look to the law of the forum state, here, Missouri—which holds that, as to contract-based claims, an effective choice of law by contracting parties will be enforced as written. Also as in *THAN*, this Court should find that analyzing the enforceability of the "Choice of Law and Jurisdiction" clause's forum selection language under the law of England and Wales is consistent with the parties' intent, as manifested by the plain language of the policies' "Choice of Law and Jurisdiction" clause, in part, because the forum selection language is a "term" or "condition" contained in the policies, but also because the "Choice of Law and Jurisdiction" clause provides that "all matters arising hereunder shall be determined in accordance with the law and practice of a court in England and Wales—and so, as the court concluded in *THAN*, by its plain terms, this clause provides not only that interpretational issues regarding the terms and conditions of the policies are governed by the law of England and

Wales, but also that all matters arising under the policies is to be determined in accordance with the “practice” of the courts in England and Wales, and so the issue of the enforceability of the forum selection language is to be determined in accordance with the laws and practices of the courts in England and Wales.

III. CONCLUSION

For the foregoing reasons, Certain UK Insurers respectfully request that this Court grant their Motion to Dismiss Plaintiff’s First Amended Petition for Declaratory Relief and dismiss the FAP as to Certain UK Insurers, with prejudice.

Dated: October 11, 2022

Respectfully submitted,

/s/ Jonathan H. Ebner

Jonathan H. Ebner, MOBAR #54187

Ronald L. Ohren, *Pro Hac Vice* Motion to be Filed

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CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2022, the foregoing was filed electronically with the Court's CM/ECF system, which will send electronic notices to all counsel of record. In addition, the undersigned counsel certifies under Rule 55.03(a) of the Missouri Rules of Civil Procedure that he has signed the original of this Certificate and the foregoing pleading.

/s/ Jonathan H. Ebner