COMMONWEALTH OF KENTUCKY
SUPREME COURT
CASE NO. 2019-SC-232

JEFFERY C. MAYBERRY, ET AL.		APPELLANTS
v.	On Appeal from the Kentucky Court of Appeals Case Nos. 2019-CA-000043-OA and 2019-CA-000079-OA (consolidated)	
HON. PHILLIP J. SHEPHERD, JUDGE, FRANKLIN CIRCUIT COURT		APPELLEE
and		
PRISMA CAPITAL PARTNERS, ET AL.		APPELLEES/ REAL PARTIES IN INTEREST

***AMICUS CURIAE* BRIEF ON BEHALF OF AMERICAN ASSOCIATION FOR JUSTICE AND KENTUCKY JUSTICE ASSOCIATION**

CERTIFICATE OF SERVICE

My signature below certifies that a true copy of this AMICUS BRIEF, was served on this 17 day of June, 2019: BY REGULAR U.S. MAIL, postage prepaid, to Clerk of the Franklin Circuit Court, 214 St. Clair Street, P. O. Box 378, Frankfort, Kentucky 40601; Clerk of the Kentucky Court of Appeals, 360 Democrat Drive, Frankfort, Kentucky 40601; and Hon. Phillip J. Shepherd, Franklin Circuit Judge, 48th Judicial Circuit, 214 St. Clair Street, P. O. Box 378, Frankfort, Kentucky 40601; and BY ELECTRONIC SERVICE as specified pursuant to CR 5.02 to the persons further listed below:

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STATEMENT OF POINTS AND AUTHORITIES

PURPOSE AND INTEREST OF *AMICUS CURIAE*

The American Association for Justice ("AAJ") is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world's largest trial bar. AAJ's members primarily represent plaintiffs in personal injury actions, employment rights cases, consumer cases, and other civil actions, including in Kentucky. Throughout its more than 70-year history, AAJ has served as a leading advocate of the right of all Americans to seek legal recourse for wrongful injury.

Founded in 1954, the Kentucky Justice Association ("KJA") is a non-profit organization dedicated to protecting the health and safety of Kentuckians, enhancing consumer protection, and preserving every citizen's right of access to the courts.

This case is of substantial interest to both the AAJ and KJA as Kentucky courts, like the courts of the United States and the vast majority of states, have adopted the "final judgment rule" to limit appellate review to final judgments. With rare exceptions – and none applicable in this case – a party aggrieved by a pre-trial ruling of the trial court may not obtain appellate review of it until a final decision in the case is entered. Interlocutory appeals are disfavored; they are recognized as imposing costs and delays, and are permitted (typically by statute) only in specific and narrow circumstances. Denials of pre-trial motions to dismiss on jurisdictional grounds are not among those circumstances.

Although styled as a request seeking a "writ of prohibition," Defendants' claim for appellate relief is, in substance, nothing more than a pre-trial appeal of a routine interlocutory order denying a routine motion to dismiss. Under well-established and mainstream principles,

this pre-trial order is not subject to pre-trial appellate review. Labeling the requested relief a writ of prohibition does not change the substance of the legal issue (a routine order related to standing) or its pre-trial interlocutory context. Permitting review of the trial court's constitutional standing order by means of a writ of prohibition disregards the Kentucky legislature's adoption of the "final judgment rule" and this Court's admonition to narrowly limit the process through which interlocutory orders are challenged.

The fact that the issue for which the defendants sought appellate relief allegedly implicates subject matter jurisdiction changes nothing. When a trial court denies a motion to dismiss – whether that motion involves the sufficiency of a claim, statute of limitations, or any among the numerous potential jurisdictional challenges to a Complaint – the defendant is required to proceed with the litigation. If the defendant does not prevail at trial, they may pursue on appeal the trial court's rulings with which they disagree. This is the well-established process across the federal courts, across the majority of state courts, and in Kentucky. There is nothing in this case that sets it apart from this procedural structure so as warrant the Court of Appeals considering (let alone granting) Defendants' petitions for a writ of prohibition on constitutional standing grounds.

The implications of permitting the Court of Appeals to review the trial court's order denying the defendant's motion to dismiss on constitutional standing grounds under the guise of a "writ of prohibition" are obvious and profound. Assuming that the substance of the Court of Appeals' decision was wrong – which it is[1] – the decision of the Court of Appeals to look at and

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[1] We address procedure and not the merits in this Brief, except in this footnote, and note the Court of Appeals erred on substance grounds as well. In ordering dismissal for lack of standing, the Court of Appeals misconstrued fundamental, long-established, principles associated with representational standing, including, *inter alia*, black letter principles that trust beneficiaries

address the standing issue has injected significant delay and disruption into the orderly process of this case. It takes little imagination to foresee the precedential consequence of permitting appellate review by writ of pre-trial jurisdictional rulings if the Order is allowed to stand.[2] It would create an incentive for competent defense counsel to raise every conceivable jurisdictional challenge pre-trial, and thereafter seek appellate review (including an appeal as a matter of right to this Court) by means of a motion for a writ whenever such "jurisdictional challenges" are denied by the trial court.

The Court of Appeals erred and abused its discretion in addressing and granting the Defendants' Petitions for a writ of prohibition, and its Order granting the writ should be reversed.

ARGUMENT

I. Under the "Final Judgment Rule," Pre-Trial Interlocutory Review of Denials of Motions to Dismiss is Not Permitted

The granting of the writ of prohibition in this case is contrary to mainstream principles of the "final judgment rule," as applied and interpreted throughout the federal courts, nearly all the state courts, and Kentucky.

A. Federal Courts

Starting first with the federal system – from which Kentucky courts take guidance as to the scope of Kentucky's "final judgement rule"[3] – the Supreme Court has described the "final judgment rule" as follows:

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have the right to seek redress on behalf of the trust for frauds or other misconduct that victimizes the trust. *See, e.g.*, Restatement (Third) of Trusts (2012), § 107(2)(b).

[2] The Court of Appeals' Order Granting Petitions for Writ of Prohibition is referred to herein as the "Order."

> [The final judgment rule] emphasizes the deference that appellate courts owe to the trial judge as the individual initially called upon to decide the many questions of law and fact that occur in the course of trial. Permitting piecemeal appeals would undermine the independence of the district judge, as well as the special role that individual plays in our judicial system. In addition, the rule is in accordance with the sensible policy of "avoid[ing] the obstruction to just claims that would come from permitting the harassment and cost of a succession of separate appeals from the various rulings to which a litigation may give rise, from its initiation to entry of judgment."

Firestone Tire & Rubber Co. v. Risjord, 449 U.S. 368, 374 (1981) (quoting *Cobbledick v. United States*, 309 U.S. 323, 325 (1940)). Accordingly, "[a] party is entitled to a single appeal, to be deferred until final judgment has been entered." *Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 868 (1994). A "final decision" is typically one "by which a district court disassociates itself from a case." *Swint v. Chambers County Comm'n.*, 514 U.S. 35, 42 (1995). "Our admonition [against piecemeal litigation] reflects a healthy respect for the virtues of the final-judgment rule. Permitting piecemeal, prejudgment appeals, we have recognized, undermines 'efficient judicial administration' and encroaches upon the prerogatives of district

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[3] For example, in *Breathitt Co. Bd. of Education v. Prater*, 292 S.W.3d 883, 887 (Ky. 2009), the Kentucky Supreme Court looked to the United States Supreme Court in recognizing immunity cases as an exception to the "final judgment rule." In *Tax Ease Lien Investments 1, LLC v. Brown,* 340 S.W.3d 99 (Ky. Ct. App. 2011), at issue was the interpretation of Kentucky Civil Rule [CR] 54.02, which relates to appeals from final judgments that affect less than all the parties or all the issues. The Court of Appeals noted that "federal case law is instructive on the rule" and cited federal law to support its interpretation. *Id.* at 101-02. Kentucky's final judgement rule itself is embodied in Kentucky's Civil Rule 54.01, which provides in part: "A final or appealable judgment is a final order adjudicating all the rights of all the parties in an action or proceeding." The federal counterpart. Fed. R. Civ. Pro. 54(b), defines what is not appealable (that is, what is not a final judgment) but uses the same essential language: "[A]ny order … that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties …."

court judges, who play a 'special role' in managing ongoing litigation." *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 106 (2009) (citing *Firestone Tire & Rubber Co.*, 449 U.S. at 374).[4]

Consistent with these principles, the law in the federal courts provides that rulings on pre-trial motions to dismiss – including motions based on jurisdiction – are not subject to interlocutory appellate review: "[D]enial of a motion to dismiss, even when the motion is based upon jurisdictional grounds, is not immediately reviewable." *Catlin v. U.S.*, 324 U.S. 229, 236 (1945).

In *Van Cauwenberghe v. Biard*, the Supreme Court noted that generally, "litigants must abide by the district court's judgments, and suffer the concomitant burdens of a trial, until the end of proceedings before gaining appellate review." 486 U.S. 517, 523 (1988). the Court warned of the "ease with which certain pretrial claims for dismissal may be alleged to entail the right not to stand trial[.]" *Id.* at 526. The Court concluded nonetheless: "Because the right not to be subject to a binding judgment may be effectively vindicated following final judgment, we have held that the denial of a claim of lack of jurisdiction is not an immediately appealable collateral order." *Id.* at 528 (citing *Catlin*).

Similarly, in *Cassirer v. Kingdom of Spain*, the Ninth Circuit declined to review the denial of pre-trial motion to dismiss for lack of a case or controversy (*i.e.*, a matter of constitutional standing similar to the issue in this case): "Although we have not previously

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[4] See also, 4 Am. Jur. 2d *Appellate Review* § 81 ("[T]he purpose of the rule that generally precludes appeals from interlocutory orders is to prevent fragmentary and premature appeals that unnecessarily delay the administration of justice and to ensure that the trial courts fully and finally dispose of the case before an appeal can be heard. The requirement that a final order or judgment be entered before an appeal of right may be taken has the two-fold purpose of protecting trial proceedings by avoiding unnecessary interruptions and delays caused by multiple appeals and reducing the burden on the appellate courts by limiting the number of appeals to one per case, allowing piecemeal appeals in only the limited cases specified by statute."

addressed whether denial of a motion to dismiss for lack of a case or controversy is an immediately appealable collateral order, other circuits have indicated that questions of standing, case or controversy, and ripeness are, like the question of personal jurisdiction, not immediately appealable. [citing cases]. We routinely consider these issues on appeal from a final judgment, . . . and are not persuaded that the district court's order refusing to dismiss this action for lack of a case or controversy should be immediately appealable." 616 F.3d 1019, 1025-1026 (9th Cir. 2010).

And, in *Ashmore v. CGI Group, Inc.*, the Second Circuit declined to hear an interlocutory appeal of a denial of a motion to dismiss on jurisdictional grounds: "We have held, however, that 'denial of a motion to dismiss, even when the motion is based upon jurisdictional grounds, is not immediately reviewable.'" 860 F.3d 80, 85 (2d Cir. 2017) (quoting *Wabtec Corp.*, 525 F.3d 135, 137 (2d Cir. 2008) (internal quotation marks omitted)). *See also Harrison v. Nissan Motor Corp. in U.S.A.*, 111 F.3d 343, 347 (3d Cir. 1997) ("[t]he denial of a motion to dismiss for lack of subject matter jurisdiction is not appealable").[5]

B. Kentucky Uniformly and Consistently Applies the "Final Judgment" Rule to Narrowly Limit the Circumstances Where a Party May Appeal Pre-Trial Rulings.

The Kentucky appellate courts have similarly been vigilant in limiting their role to the review of "final and appealable judgments," that is, "final order[s] adjudicating all the rights of all the parties in an action or proceeding...." CR 54.01. There is no ambiguity in this concept. "[T]he finality of an order is determined by whether it grants or denies the ultimate relief sought

[5] *See also, In re Imaging3 Inc.*, 2013 WL 12155694 at *1 (C.D. Cal. Sep. 16, 2013) ("[T]he issue of jurisdiction is saved for review when the final judgment is reviewed on appeal." (citing *Catlin*)); *Soler v. Yip*, 2014 WL 1669961 at *2 (S.D. Fl. April 28, 2014) ("[E]ven if the Orders were properly characterized as jurisdictional, such a conclusion would not necessarily entitle Soler to immediate appellate relief." (quoting *Catlin*)).

in the action." *State Farm Mut. Ins. Co. v. Caudill*, 136 S.W.3d 781, 783 (Ky. App. 2003); *see also Wright v. Cornish*, 2019 WL 102276 (Ky. Ct. App. Jan. 4. 2019) (no appeal from interlocutory order not final in CR 54.01); *Tax Ease Lien Investments 1, LLC v. Brown,* 340 S.W. 3d 99, 101 (Ky. Ct. App. 2011) (same); *Mutual Service Cas. Ins. Co. v. Hines*, 2008 WL 2696134 at *1 (Ky. Ct. App. July 11, 2008) (same).

A pre-trial order denying a motion to dismiss, such as the one at issue in this case, does not constitute a "final and appealable judgment" under Kentucky law and hence is not reviewable. *See, e.g.*, *Bell v. Harmon*, 284 S.W.2d 812, 814 (Ky. 1955) ("An order denying a motion for summary judgment ordinarily does not finally adjudicate anything, as the party whose motion was denied may still prevail at trial."); *Chen v. Lowe*, 521 S.W.3d 587, 589 (Ky. Ct. App. 2017) ("It is a well-settled principle that an order denying a dispositive motion is interlocutory and therefore generally not appealable." (citing, inter alia, *Gooden v. Gresham*, 6 Ky. Op. 560 (Ky. 1873)); *Medcom Contracting Services, Inc. v. Shepherdsville Christian Church Disciples of Christ, Inc.*, 290 S.W. 3d 681, 686 (Ky. Ct. App. 2009) (declining to review denial of motion to dismiss); *Sanders v. Commonwealth*, 2019 WL 102279 at *1 (Ky. Ct. App. Jan. 4. 2019) (denial of motion to dismiss not an appealable final order); *Roman Catholic Bishop of Louisville v. Burden*, 168 S.W.3d 414, 419 (Ky. Ct. App. 2004) (declining to review denial of summary judgment).

Given their uniform and consistent application, it is not surprising that these principles likewise apply in connection with appellate courts' declining review of denials of motions to dismiss for lack of subject matter jurisdiction. In *Sexton*, the Kentucky Supreme Court noted that "a nationwide review of relevant case law reveals a trend that parties, themselves, may not raise the issue of standing by interlocutory appeal." *Commonwealth Cabinet for Health and*

Family Services v. Sexton, 566 S.W.3d 185, 190 (Ky. 2018). The court concluded that interlocutory appeals of standing determinations were not proper in Kentucky, either:

> The rare use of interlocutory appeals in Kentucky, the absence of legal precedent in Kentucky allowing an interlocutory appeal of a trial court's ruling on the issue of standing, the uniform federal legal precedent prohibiting an interlocutory appeal on the issue of standing, this Court's "compelling interest in maintaining an orderly appellate process," and the general rule that a nonfinal order cannot be immediately appealed, all converge to satisfy us of the value of a rule that prohibits an interlocutory appeal of a trial court's decision regarding the plaintiff's standing to sue.

Id. at 191 (footnoted omitted).[6]

Sexton is consistent with a long body of Kentucky cases that have held that trial courts' jurisdictional orders are not subject to interlocutory appeal. *See, e.g.*, *Hook v. Hook*, 563 S.W.2d 716 (Ky. 1978) (reversing Court of Appeals' affirming appeal of the trial court's order as to jurisdiction: "We now hold that the circuit court's 'jurisdiction order' was not reviewable by direct appeal and that the decision of the Court of Appeals should be vacated and the appeal dismissed."). In *Druen v. Miller*, the defendant (Druen), as here, filed a motion to dismiss with the trial court claiming that the plaintiff lacked standing. 357 S.W.3d 547 (Ky. Ct. App. 2011). The trial court, as here, denied the motion to dismiss, finding that the plaintiff (Miller) had standing, and when Druen attempted to appeal, the Court of Appeals held that the trial court's standing order was not a "final or appealable judgment" as defined by CR 54.01. *Id.* at 548-49.[7]

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[6] The Court explained that it was only looking at the standing issue on interlocutory appeal in that case because it emerged in connection with another issue (sovereign immunity – one of the few exceptions to the final judgment rule) that it was appropriately considering. *Id.* at 192.

[7] In *Hensley v. Haynes Trucking, LLC*, 549 S.W.3d 430 (Ky. 2018), this Court reviewed pre-trial a class certification in a class action case (a recognized statutory exception to the final judgment rule), but refused at the same time to consider the subject matter jurisdictional claim that the defendants sought to insert in the mix of issues: "A defendant cannot challenge a trial court's subject-matter jurisdiction over a claim, in and

Kentucky law as to the unavailability of appellate review of interlocutory rulings – including those that involve jurisdiction – is consistent with the practices of the several states. *See, e.g.*, *Callanan v. Walsh*, 743 S.E.2d 686, 688 (N.C. App. 2013) ("no immediate appeal exists from a motion to dismiss for lack of subject matter jurisdiction" (citation omitted)); *Shaver v. N.C. Monroe Const. Co.*, 283 S.E.2d 526, 527 (N.C. App. 1981) (same); *American Health Ass'n, Inc. v. Helprin*, 357 So.2d 204, 205 (Fl. Dist. Ct. 1978) (same); *Gruber v. Gruber*, 801 A.2d 1013, 1017 (Md. 2002) (same); *Woodard v. Westvaco Corp.*, 460 S.E.2d 392 (S.C. 1995) (same), *over'd on other grounds by Sabb v. South Carolina State University*, 567 S.E.2d 231 (2002); *Pa. Higher Ed. Assistance Agency v. Di Massa*, 442 A.2d 1177, 1178 (Pa. Super. Ct. 1982) (same); *Healy v. Vaupel*, 549 N.E.2d 1240, 1246 (Ill. 1990) (interlocutory review of decision denying personal jurisdiction appealable by statute; however "an appeal under that rule was not available to the defendants, whose dismissal motions contested subject matter jurisdiction.").

In short, Kentucky law is unambiguous that the appropriate means for a party to seek appellate review of pre-trial rulings – including rulings that would be dispositive or implicate jurisdiction – is to appeal from the final judgment. This is the well-developed legal landscape on which civil litigation – with its predictable set of pre-trial motions (including motions to dismiss based on jurisdiction) and associated pre-trial orders – has been conducted for well over a century. *See, e.g.*, *Gooden v. Gresham*, 6 Ky. Op. 560 (Ky. Ct. App. 1873) (no appeal except from final judgment). Nothing about this case warrants the Court of Appeals' deviation from

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of itself, on interlocutory appeal. Opening the door to such a challenge on interlocutory appeal today would encroach upon the very narrow field of issues we have recognized as acceptable to present via interlocutory appeal." *Id.* at 438-39.

this well-defined procedural path or justifies the Court of Appeals' review of the trial court's interlocutory order denying Defendants' motion to dismiss.

II. The Court of Appeals Erred in Considering and Granting Defendants' Petition for a Writ of Prohibition

A. Kentucky Courts Have Repeatedly Cautioned that Writs May Not Be Used to End Run the Normal Appellate Process

While the Order at issue involved granting a writ of prohibition rather than an interlocutory appeal, that distinction does not impact the applicability of the final judgment rule in the context of this case.

To the contrary, the Kentucky Supreme Court has repeatedly cautioned that the writ process should not be used to end-run the normal appellate processes, and has repeatedly recognized the potential for abuse if writ applications were used to circumvent the final judgment rule or used as "de facto interlocutory appeals." As stated in *Cox v. Braden*, 266 U.S. S.W.3d 792, 795-96 (Ky. 2008):

> Because they fall outside the regular appellate process, especially when they are used as de facto interlocutory appeals (an increasing, undesired trend), writ petitions also consume valuable judicial resources, slow down the administration of justice (even when correctly entertained), and impose potentially unnecessary costs on litigants. Thus, to say that writ petitions should be reserved for extraordinary cases and are therefore discouraged is an understatement.

Id. at 795-96 (quoted in *Allstate Property & Casualty Ins. Co. v Kleinfeld*, 568 S.W.3d 327, 331-32 (Ky. 2019)).

In *Purdue Pharma L.P. v. Combs*, the Court of Appeals summarized these principles as follows: "Our Supreme Court has looked upon writs of prohibition and mandamus with disfavor. Kentucky courts 'have always been cautious and conservative both in entertaining petitions for and in granting such relief.'" 506 S.W.3d 337, 340 (Ky. Ct. App. 2014) (citation

omitted). The Court of Appeals further noted that such caution "'is necessary to prevent short-circuiting normal appeal procedure and to limit so far as possible interference with the proper and efficient operation of our circuit and other courts.'" *Id.* (citation omitted). Similarly, in *Ison v. Bradley*, plaintiffs sought a writ of prohibition to prohibit the trial judge from quashing a subpoena. 333 S.W.2d 784 (Ky. Ct. App. 1964). In denying the requested writ, the Court of Appeals roundly criticized the plaintiffs' attempt to circumvent the final judgment rule and "[seek] premature appeal and … a precipitate decision of this Court on an interlocutory order." *Id.* at 786. The Court of Appeals expressed blunt warning of the consequences of granting such relief: "It takes a minimum of imagination to envision the utter confusion and chaos in the trial of cases if this Court should entertain original proceedings in cases of this character." *Id.*

The message from these cases is clear and unmistakable. The writ process is looked on "with disfavor," should not be used to "short-circuit[] normal appellate procedure" so as to interfere with the "proper and efficient operation of the [courts]." Permitting writs to be used in this way threatens "utter confusion and chaos," yet that is precisely what the Court of Appeals did here.

B. The Court of Appeals Erred in its Interpretation of the Criteria for Granting the Writ and Abused its Discretion in Doing So.

Notably absent from the Court of Appeals' Order granting the writ is any acknowledgement of the teachings of *Cox*, *Purdue Pharma*, or *Ison*, and the need to respect established appellate procedures in connection with reviewing an order denying a pre-trial motion. In fact, the Court of Appeals did not acknowledge that it was providing appellate review of an issue that even *Sexton* – a case of which it was clearly aware – had concluded was not entitled to such review.

In its Order, the Court of Appeals started its analysis by citing *Hoskins v. Maricle*, 150 S.W.3d 1, 10 (Ky. 2004) for the proposition that a writ of prohibition may be granted upon a showing that "the lower court is proceeding or is about to proceed outside of its jurisdiction and there is no remedy through an application to an intermediate court[.]" Order, *Prisma Capital Partners, LP v. Shepherd*, No. 2019-CA-0043-OA, slip op. at 6-7 (Ky. Ct. App. April 25, 2019). The Court of Appeals then quoted from *Davis v. Wingate*, 437 S.W.3d 720 (Ky. 2014) as to the definition of "jurisdiction:" "Jurisdiction, when used here, refers to subject-matter jurisdiction: the authority not simply to hear 'this case[,] *but this kind of case*.'" Order at 8 (quoting *Davis* at 725) (emphasis in *Davis* as quoted) (brackets in Order) (internal citations omitted in Order).

Davis's understanding of subject matter jurisdiction for purposes of considering the writ is consistent with Kentucky case law. In *Hisle v. Lexington-Fayette Urban County Government*, for example, the Court of Appeals drew the same line between "the kind of case" and the "particular case" in describing how subject matter jurisdiction applied to the former and not the latter. 258 S.W.3d 422, 429 (Ky. Ct. App. 2008). The Court of Appeals described subject matter jurisdiction as "involving authority over the nature of a case and the general type of controversy," as opposed to "jurisdiction over a particular case" which "involved authority to decide a specific case." *Id.* (citations omitted). This is the precise distinction that *Davis* adopted in defining subject matter jurisdiction for purposes of issuing a writ.

Thus, though the Court of Appeals quoted the correct test, it ignored its plain meaning. In this litigation, the "kind of case" at issue involves claims for breach of fiduciary duty and related causes of action in connection with KRS' financial affairs. This "kind of case" is properly heard by the Circuit Court, a court of general jurisdiction with "original jurisdiction of all justiciable causes not exclusively vested in some other court." KRS § 23A.010. "Justiciable"

in this context merely means "a present and actual controversy presented in good faith by parties with adverse interests in the subject to be adjudicated." *Bluegrass Pipeline Co, LLC . Kentuckians United to Restrain Eminent Domain*, 478 S.W.3d 386, 390 (Ky. Ct. App. 2015) (quoting *Appalachian Racking, LLC v. Family Trust Foundation of Kentucky, Inc.*, 423 S.W.3d 726, 735 (Ky. 2014)). The instant case easily meets this test. That should end the inquiry.

The focus on the "kind of case" and not "this case" is fully in accord with the principles and purposes of the "final judgement rule" and this Court's admonitions to exercise restraint in issuing writs. Inquiring into the facts of "this case" and not "this kind of case," on the other hand, improperly provides carte-blanche authority for the Court of Appeals to disrupt the trial court process with pre-trial appeal of garden-variety interlocutory rulings which the Kentucky Supreme Court has repeatedly said may not be reviewed until final judgment.

CONCLUSION

Because the Court of Appeals both misapplied the law and abused its discretion in granting the writ of prohibition, we request this Court restore certainty to the law by reversing the Order and vacating the writ.

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