**TESTIMONY OF ZACH CHAFFEE-MCCLURE**

**ON BEHALF OF KANSAS ASSOCIATION OF PROPERTY CASUALTY INSURANCE COMPANIES**

**ON BEHALF OF AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION**

**KANSAS HOUSE COMMITTEE ON JUDICIARY**

**HB 2351**

**JANUARY 29, 2026**

Chairwoman Humphries, Vice Chair Williams, and Members of this distinguished Committee, thank you for the opportunity to share my experiences with pre-dispute arbitration agreements as they relate to HB 2351. My name is Zach Chaffee-McClure, and I am a partner in the Kansas City office of Shook Hardy & Bacon, L.L.P. I am appearing today on behalf of the Kansas Association of Property Casualty Insurance Companies ("KAPCIC") and the American Property Casualty Insurance Association ("APCIA"). For more than ten years, a substantial and growing part of my practice has involved the representation of companies in arbitration, mostly involving consumer arbitration agreements.

KAPCIC's mission is to support the Kansas insurance industry in meeting the needs of our public through market stability and the success of its membership. APCIA is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in Kansas, throughout the U.S., and across the globe.

Pre-dispute arbitration agreements in insurance contracts are important to insurers and consumers and must be preserved. A prohibition on the use of such agreements would

deny policy holders and carriers an efficient and fair forum for dispute resolution that eases the burdens on courts, reduces costs, and increases access to justice.

**Arbitration is efficient**

Arbitration provides a simpler, more convenient method of dispute resolution than civil litigation. The U.S. Supreme Court has observed: "The advantages of arbitration are many: it is usually cheaper and faster than litigation; it can have simpler procedural and evidentiary rules; it normally minimizes hostility and is less disruptive of ongoing and future business dealings among the parties; it is often more flexible in regard to scheduling of times and places of hearings and discovery devices."[1] The Court has also recognized that "the informality of arbitral proceedings is itself desirable, reducing the cost and increasing the speed of dispute resolution."[2]

Most of my consumer arbitrations are adjudicated in less than a year. Some go from first conference to final hearing in six months. A claimant pursuing arbitration may never need to take time away from family or work to sit for a deposition or even make a personal appearance in a matter to obtain a recovery. State courthouses, on the other hand, are overburdened with civil litigation relative to their limited resources, which – among other things – delays trial settings.

The efficiencies of arbitration are not offset by any unique costs. Many companies provide in their arbitration agreements that they will pay the arbitrator's fees. And arbitration services themselves have established rules that reduce expense to consumers. For example, JAMS issued consumer arbitration standards capping the amount consumer claimants are obligated to pay at $250.[3]

**Arbitration is fair**

[1] *Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 280 (1995) (quoting H.R. Rep. No. 97-542, at 13 (1982)).

[2] *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 345 (2011).

[3] https://www.jamsadr.com/consumer-minimum-standards/ (updated May 1, 2024).

Although arbitration is less formal than court, the independence of arbitrators is in no way relaxed. Arbitrators are legal professionals who take an oath to render objective decisions, not unlike a judge or other court officer. Many arbitrators are, in fact, former judges. The nation's leading arbitration providers, such as the American Arbitration Association and JAMS, also have comprehensive rules and procedures to ensure independence among arbitrators and due process for claimants.

Numerous studies show that claimants receive even-handed justice in arbitration proceedings.[4] As a study published in the Stanford Law Review explained, one commonality in its analysis of reports that suggested otherwise was that "the assertions of many arbitration critics were either overstated or simply wrong."[5] The study concluded "there is no evidence that plaintiffs fare significantly better in litigation" than arbitration, and "[i]n fact, the opposite may be true."[6]

Arbitration agreements entered into before any dispute arises are particularly fair because both parties at that time cannot predict the relative strength of their future positions. Once a dispute has arisen, parties will insist on either arbitration or litigation where it provides the greatest expected benefit to them and them alone. Adversarial parties also are less likely to agree on the method of dispute resolution. Post-dispute arbitration agreements are thus rarely encountered in practice.

I thank you for the opportunity to testify, and I look forward to your questions.

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[4] *See, e.g.,* Christopher R. Drahozal & Samantha Zyontz, *An Empirical Study of AAA Consumer Arbitrations*, 25 Ohio St. J. on Disp. Resol. 843 (2010); Michael Delikat & Morris M. Kleiner, *An Empirical Study of Dispute Resolution Mechanisms: Where do Plaintiffs Better Vindicate Their Rights?*, 58 Disp. Resol. J. 56 (Nov. 2003 - Jan. 2004); Theodore Eisenberg & Elizabeth Hill, *Arbitration and Litigation of Employment Claims: An Empirical Comparison*, 58 Disp. Resol. J. 44, 45, 47-50 (Nov. 2003-Jan. 2004); Elizabeth Hill, *AAA Employment Arbitration: A Fair Forum at Low Cost*, 58 Disp. Resol. J. 9, 13 (May/July 2003).

[5] David Sherwyn, et al., *Assessing the Case for Employment Arbitration: A New Path for Empirical Research*, 57 Stan. L. Rev. 1557, 1567 (2005).

[6] *Id.* at 1578.