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TESTIMONY

TO: SENATE JUDICIARY COMMITTEE
FROM: KANSAS ASSOCIATION OF DEFENSE COUNSEL (KADC)
RE: SB 54
DATE: FEBRUARY 10, 2025

Madame Chair, members of the Committee, thank you for the opportunity to provide this written testimony of SB 54 relating to the discovery of litigation funding by non-attorney third parties. My name is Samantha Woods, and I am the President of the Kansas Association of Defense Counsel (KADC). At the outset, we support SB 54, but strongly object to the limiting language in Section 1 (b)(3)(B)(ii), and request it be stricken from the bill.

Third party litigation agreements are significantly relevant to the defense in civil litigation disputes, but defendants in civil lawsuits have not always successfully obtained these agreements through their discovery efforts. Plaintiffs commonly object to the production of these agreements claiming they are not relevant to the issues and allegations asserted in the case. Under the current discovery rules, disputes regarding litigation funding agreements, which are relevant and should be produced, result in increased litigation costs. When left to judicial discretion, decisions on these disputes lead to inconsistency across the state.

The relevancy of third-party funding agreements is deeper than their mere existence. The terms of the agreement itself are relevant to the litigation. Third party lenders are not subject to the same limitations, restrictions, or ethics that govern attorneys. The agreement terms could give rise to material conflicts of interest between plaintiffs and their counsel. For example, the agreements may dictate the amounts and circumstances of settlement of claims. The agreements could also be relevant to the statute of limitation calculations, bad faith claims, or even post-trial motions for fees. Defendants need to know the extent of influence, if any, that the third-party lender has over the litigation to effectively evaluate the case and develop a litigation strategy, much like what currently exists for plaintiffs when defendants disclose insurance coverage.

We appreciate that the legislature is looking into this issue. SB 54 provides for disclosure of non-attorney third party agreements in discovery along with an oversight component to further study the issue, which KADC supports. However, in its current form, SB 54 contains limiting provisions on disclosure of such agreements in Section 1 (b)(3)(B)(ii), which we strongly object to. Disclosure of non-attorney third party agreements should be more transparent, without the limitations included in this bill, so as to make the rights of both parties equal (*i.e.* the right of the plaintiff to discover the defendant's insurance agreements and the right of the defendant to discover plaintiff's third-party agreements). Furthermore, the limiting language will encourage more discovery disputes to be decided by judges in their discretion, resulting in increased inconsistency. Removal of the limiting language, will achieve a level of transparency, create a more even playing field for the parties, reduce judicial inconsistency, and limit litigation costs stemming from discovery disputes.

KADC supports SB 54 but strongly objects to the limiting language in Section 1 (b)(3)(B)(ii), and requests it be stricken from the bill. Thank you for the opportunity to provide this testimony.