

J. Philip Davidson  
Direct Dial: 316-660-6205  
Fax: 316-264-1556  
Email: [pdavidson@hinklaw.com](mailto:pdavidson@hinklaw.com)

The Honorable Kellie Warren  
Chair Senate Judiciary Committee  
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Proponent Testimony SB 54  
Philip Davidson, Hinkle Law Firm

Chair and members of the committee, I am Philip Davidson and I lead the litigation department at Hinkle Law Firm. I have been practicing law in Kansas since 1990. Throughout my career, I have represented clients in litigation, arbitration, and mediation in more than 30 states, and I have tried numerous civil jury trials, including complex, high-exposure personal injury and wrongful death cases.

The reason I am here today is because I am concerned our processes that have provided Kansans lawful relief are out of balance. I support SB 54 because it maintains the equitable efficiency we all need during the litigation process.

Last summer I participated in a meeting of corporate legal counsel hosted by the Kansas Business Roundtable. We had a dozen in-house general counsels, as well as, executive and legislative leaders who discussed why we need our judicial processes to work well. Kansans, both plaintiffs and defendants, need a fair process to seek legal redress. When the scales of justice become unbalanced, it can be difficult to make changes to return the system to equilibrium. Maintaining this sense of balance means one side of the litigation process cannot lean on the other to the point the process is fundamentally changed, because such a change will negatively affect all Kansans.

It was the view of many of the individuals who participated in the roundtable that we are nearing such an inflection moment with the introduction of third-party litigation funding. From a practical standpoint, third-party funding can have a significant impact on the strategy of both plaintiffs and defendants when it comes to settlement. These issues were discussed at length in an article published in the August 2017 issue of Advocate. The article was authored by Barbara A. Reeves, a mediator and arbitrator that was affiliated at that time, and is included with this testimony.

The article concludes by stating, “A skilled mediator can understand the impact of a third-party funder and can factor that impact into the settlement negotiations – if the mediator is fully

informed.” That is what SB 54 seeks to accomplish. At present, a mediator (or opposing counsel) may never know of the presence of a third-party funder. When the issue does arise, it is often at mediation when the party receiving the funding rejects what otherwise appears to be a reasonable offer, or when the funding party actually participates in the mediation and starts exerting its influence in the process.

SB 54 corrects this issue by allowing the parties to learn, through discovery, of the presence of such funding early in the case and certainly well before any settlement conference. This is analogous to the defendants in civil cases being required to identify the insurers who are providing a defense, and disclosing any reservation of rights by the insurers that may affect the plaintiff’s ability to collect a judgment. Certainly, plaintiffs’ counsel and mediators would say that this information is necessary for them to understand the dynamics at play when trying to resolve a claim or case. The same can be said for disclosure of third-party funding agreements. This does not mean that this information is admissible at trial – SB 54 specifically addresses this issue – but it allows the parties to be in a better position to resolve cases when they enter into a mediation or other settlement conference. This makes the time and expense related to mediation more effective and serves the purpose of judicial economy, particularly when considering that the vast majority of civil claims resolve prior to trial.

Thank you for the opportunity to support SB 54. Disclosing third party funding allows both parties the opportunity to retain the litigation efficiencies that best serve our processes.