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TO: SENATE JUDICIARY COMMITTEE

FROM: ZACH CHAFFEE-MCCLURE
KANSAS ASSOCIATION OF DEFENSE COUNSEL

RE: H.B. 2457

DATE: MARCH 8, 2018

Mr. Chairman, members of the Committee, my name is Zach Chaffee-McClure, and I am submitting this testimony on behalf of the Kansas Association of Defense Counsel (KADC). KADC is a statewide non-profit organization of Kansas lawyers who devote a substantial part of their practice to the civil defense of litigated cases, with a membership of approximately 240 attorneys. The goal of KADC is to enhance the knowledge and improve the skills of defense lawyers, elevate the standards of trial practice, and work for the administration of justice.

KADC supports H.B. 2457 because it allows juries to be informed of a plaintiff's entire asbestos-related allegations so juries can make appropriate decisions about how and whether to find fault or award damages. In Kansas, we count on judges and juries to make decisions about who or what may have caused a plaintiff's alleged harm, and how to award damages when the plaintiff alleges multiple defendants substantially contributed to that harm. In asbestos exposure cases, there is no way for judges and juries to do this job if they cannot learn about all of the entities a plaintiff has blamed for his or her asbestos-related harms. This legislation is vital to the pursuit of justice in these cases.

KADC has a direct interest in this legislation. Our members are concerned about a national trend in the past few years of plaintiffs withholding evidence in asbestos cases. In other words, plaintiffs have tried to *prevent* juries from learning about the many different companies' asbestos products a plaintiff was exposed to, in order to make it appear as if greater fault lies with the companies standing trial. Kansas should not allow the suppression of evidence to drive inflated awards.

This problem is common in asbestos litigation. Often, workers who were exposed to asbestos were exposed to numerous products over the course of their lifetime. Many of the companies who made those products filed for bankruptcy years ago. When they emerged from bankruptcy, these companies left dedicated trusts with assets to pay the claims of people who

would become sick from exposure to their asbestos products. More than 100 asbestos defendants have filed for bankruptcy protection, and the U.S. General Accounting Office has estimated that there are roughly 60 trusts in operation today holding some \$25 billion to pay future claims. The average person alleging that asbestos exposure caused mesothelioma will file claims with more than 20 trusts and collect about \$600,000 in compensation through this process.

The other way plaintiffs can be compensated for asbestos-related injuries is to sue companies that have not filed for bankruptcy. These companies, though, are often peripheral to any actual exposure. They may be local plumbing supply companies, hardware stores, auto dealers, or manufacturers of secondary products. Richard Scruggs, a famous plaintiffs' lawyer, once called finding companies to sue in asbestos litigation an "endless search for a solvent bystander." In the lawsuits against the peripheral defendants, plaintiffs who have sought recovery from asbestos trusts should not be allowed to conceal from the jury the fact that they blamed, or recovered from, other companies for their asbestos-related injury. Judges and jurors cannot properly apportion fault or award damages if blindfolded from these other allegations.

This legislation, H.B. 2457, seeks to solve this problem through basic disclosures. It requires the plaintiffs to disclose to the defendants the bankrupt trust claims they can file based on exposure history, to file those trust claims before trial, and to provide the trust claim forms to the defendants so that, at trial, the jury can be aware of all alleged exposures and decide accordingly.

While the House amended the originally proposed version of H.B. 2457, which KADC supported from the outset, KADC continues to support the legislation in its current form. This is largely because the trial court maintains the ability to provide the safeguards that were originally explicitly included in the proposed legislation. For example:

- H.B. 2457 originally included a provision whereby a defendant could request a stay if the plaintiff had failed to comply with the law and disclose the asbestos trust information 60 days before trial. See H.B. 2457 (originally introduced), Sec. 4. This provision ensured that defendants had time to review and evaluate all asbestos trust claims before the wheels of trial were set in motion, and hopefully before the trial court issues its pretrial order. Although KADC members might prefer language specifically authorizing such a stay to protect the interests of our clients, there is no question that courts retain the authority to stay litigation for any time if such action is warranted and serves the ends of justice. *Henry v. Stewart*, 203 Kan. 289, 293, 454 P.2d 7 (1969).
- H.B. 2457 originally included a provision granting the trial court the ability to dismiss the case if a plaintiff or plaintiff's attorney refused to comply with the law and disclose any asbestos trust claims. See H.B. 2457 (originally introduced), Sec. 3(c). Trial courts already are permitted to sanction parties and attorneys who fail to follow the law or the court's orders, even to the point of dismissal. Accord K.S.A. 60-211; K.S.A. 60-226.

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H.B. 2457 facilitates fair and accurate litigation outcomes. Similar legislation has been enacted with broad bi-partisan support in a dozen states in the past few years. We would expect, consistent with the results in other states, this legislation to result in earlier case assessments and streamlined discovery for both sides. The anticipated result is speedier and more efficient litigation. Plaintiffs benefit because they receive compensation from an asbestos trust right away, and defendants can better assess their potential liability and settlement possibilities earlier. Defendants spend less time and resources in expensive discovery battles, and the courts clear their dockets faster.

Thank you for the opportunity to submit this testimony. I would be glad to help with any information needed moving forward. KADC thanks the Committee for considering this important legislation and urges passage of H.B. 2457.

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