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TESTIMONY

TO: HOUSE JUDICIARY COMMITTEE
FROM: KANSAS ASSOCIATION OF DEFENSE COUNSEL (KADC)
RE: HB 2510
DATE: JANUARY 31, 2024

Madame Chair, members of the Committee, thank you for the opportunity to provide this written testimony in support of HB 2510 relating to the discovery of litigation funding by non-attorney third parties. My name is Ryan Meyer, and I am President of the Kansas Association of Defense Counsel (KADC).

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 results in increased litigation costs. And, when left to judicial discretion can lead to inconsistency across the state.

The relevancy of the third-party funding agreements is deeper than their mere existence that signals a plaintiff's financial backing. The terms of the agreement itself are relevant to the litigation. Third-party lenders are not subject to the same limitations, restrictions, or rules of professional conduct that govern attorneys. The agreement's terms could give rise to material conflicts of interests 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 statute of limitations 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 similar to what currently exists for plaintiffs when defendants disclose insurance coverage.

The amendments to this bill would make clear non-attorney third-party lending agreements are discoverable to prevent needless discovery disputes over what is clearly relevant to the foundation of litigation. This bill will lead to greater transparency, a more even playing field for the parties, and avoidance of litigation costs over these discovery disputes.

KADC is in support of the amendments to HB 2510. Thank you for the opportunity to provide this testimony.