



Scot Kibbe
Vice President, State Government Relations
11407 Jim Thorpe Lane
Austin, Texas 78748

January 31, 2023

The Honorable Kellie Warren
Chair, Senate Judiciary
300 W. 10th, Room 419-E
Topeka, KS 66612

RE: SUPPORT of SB74, Third Party Litigation Financing Disclosure – WRITTEN TESTIMONY ONLY

Dear Madame Chair Warren and members of the Committee,

Representing nearly 60 percent of the U.S. property casualty insurance market, the American Property Casualty Insurance Association (APCIA) promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. In Kansas, APCIA's members write more than \$4.2 billion in property and casualty insurance premiums. We respectfully submit the following comments in **SUPPORT** of **SB74**.

Third-party litigation financing (TPLF) is a growing and extremely concerning trend in our judicial system. Lawsuits are increasingly being viewed as investment vehicles, degrading our civil justice system. TPLF is when an investor helps to finance a lawsuit or medical services related to a liability claims in which the investor has no personal stake, utilizing outside resources instead of the litigant's own funds. It is typically structured as a non-recourse investment by a funder in a lawsuit or arbitration in exchange for an agreed-upon payment by the litigant to the funder from the proceeds of the legal proceeding – at an exorbitantly high interest rate or as a significant portion of the proceeds from the legal proceeding. Parties to TPLF agreements are not required to disclose TPLF, so defendants and courts do not know the presence or identity of the funders as real parties in interest. Nonetheless, civil defendants' insurance is disclosed under KSA 60-226. We are not sure why Kansas businesses and citizens who are defendants would be treated differently or inferiorly?

TPLF is an estimated \$11-12 billion industry in the United States.¹ To ensure a high rate of return on its investment, the funder seeks to increase the likelihood of trial, thus enhancing the possibility of frivolous and misguided litigation. By turning the civil justice system into a money-making machine, TPLF discourages amicable settlement of disputes and encourages aggressive and prolonged litigation of marginal or frivolous claims. This adds to the state's already significant "tort tax" on households and drives up the costs of products,

¹ Estimates are difficult given lack of transparency amongst financiers and hedge funds in the space. Recently Westfleet Advisors surveyed 46 U.S. based funders and found that "they have a combined \$11.3 billion in assets under management in 2020, an 18% increase from the previous year.

services, and insurance. TPLF also redirects monetary damages awards -- intended to compensate claimants for injury -- away from the injured parties and towards unrelated financiers.

As if hidden money in civil litigation was not enough of a concern, there are serious national security concerns with this practice as it is well known foreign nations are investing in these enterprises. A recent report examining this, *A New Threat: The National Security Risk of Third Party Litigation Funding*, can be found at <https://institutelegalreform.com/research/ilr-briefly-a-new-threat-the-national-security-risk-of-third-party-litigation-funding/>. This is a significant enough concern that US Senator John Kennedy wrote Attorney General Garland and Chief Justice Roberts in January regarding the need for disclosure of this practice based on the national security implications of foreign sovereign wealth investment in US civil litigation. See <https://www.kennedy.senate.gov/public/2023/1/kennedy-urges-roberts-garland-to-take-action-to-protect-national-security-from-foreign-actors-meddling-in-u-s-courts>.

States and courts are beginning to act. Both West Virginia and Wisconsin have statutory law requiring disclosure and legislation is pending elsewhere. Courts have begun to require disclosure via local rules and standing orders, including the US District Courts in Delaware, New Jersey, and the North District of California. Now is the time to act to prevent this hidden money from distorting our civil justice system in Kansas.

APCIA supports disclosing third-party litigation financing in Kansas and across the country to facilitate transparency in litigation and limiting the damage the unregulated world of TPLF has on the fair and efficient administration of civil justice. By requiring disclosure of TPLF to parties in litigation and the courts, balance can be restored to the legal system and the related increased product, service, and insurance costs to society reduced.

We appreciate the opportunity to express our support and urge the committee to vote "YES" on **SB74**. Please contact me directly at (512) 461-1964 or via e-mail at scot.kibbe@apcia.org or APCIA's local counsels Larrie Ann Brown at (785) 640-2747 via e-mail at larrieannbrown@gmail.com and Brad Smoot at 785-224-1200 or via e-mail at bradsmoot@smootlawoffice.com with any questions.

Sincerely,

N. Scot Kibbe

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