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Opponent Testimony to SB 10

Curtis Fifner, Legislative Chair

Senate Judiciary Committee, March 12, 2025

Chair Manning, Vice-Chair Reynolds, Ranking Hicks-Hudson, and Members of the Senate Judiciary Committee, thank you for providing the opportunity to provide opponent testimony to Senate Bill 10.

My name is Curtis Fifner, I am a plaintiff's attorney with Elk&Elk here in Columbus, and I am the legislative chair for the Ohio Association for Justice. Our mission is to protect and defend the inviolate right to a trial by jury guaranteed to us by the Ohio Constitution, and by the Seventh Amendment right to a civil trial by jury guaranteed to us by the US Constitution.

I, and the OAJ, are deeply concerned about the bill's required disclosure of any non-recourse civil funding agreements by a plaintiff under new ORC 1357.04(B), (C), and (D) in lines 331-350. We shared the same concerns with the sponsors and proponents of the bill in 2020 and 2022, and we have opposed the disclosure of these agreements in proposed amendments the Ohio Rules of Civil Procedure.

Wealth is not relevant to the merits of civil case. Both the Ohio and Federal Rules of Civil Procedure govern what can and cannot be disclosed in a lawsuit. In 2004, the General Assembly specifically prohibited discussion of the defendant's wealth or financial resources in civil cases and Civil Rule 26(B)(2) prohibits plaintiffs from inquiring about how the defense is funding its case. Similar prohibitions also apply to discussing a plaintiff's wealth. These prohibitions are in place to ensure case are decided on the facts of liability and damages, not

655 Metro Place S., Suite 140
Dublin, OH 43017

the financial means of defense. For example, in a dispute between Facebook (Meta) and a customer, it is not appropriate for attorneys to disclose market value of the company or the customer's home equity loan. The disclosure of the funding agreements regulated by SB 10 is equally inappropriate.

Arguments have been made that the bill's required disclosure of the funding agreements is similar to the confidential disclosure of insurance policies. However, unlike consumer consumer funding agreements, Federal Rule 26 has long treated insurance policies with special consideration. While insurance policies are disclosed to both parties in a case, the policy, or even the existence of a policy, cannot be mentioned to a jury. As the staff notes to Federal Rule 26 point out:

> *The amendment is limited to insurance coverage, which should be distinguished from any other facts concerning defendant's financial status (1) because insurance is an asset created specifically to satisfy the claim; (2) because the insurance company ordinarily controls the litigation; (3) because information about coverage is available only from defendant or his insurer; and* ***(4) because disclosure does not involve a significant invasion of privacy.*** [emphasis added]"

The language in new ORC 1357.04 would be a new and significant invasion of privacy, create a unique legislative mandate in private disputes and would stray into the Judicial branch's obligation to ensure balance when hearing those disputes. We request this section be deleted from the bill as the disclosure of the consumer legal funding agreement is a unique invasion of their privacy and is irrelevant to the liability and damages in question.

My clients have sought funding to pay for needed medical treatment and surgeries, to pay rent, or even to make up the difference it will take to simply buy a different car if their vehicle was so badly damaged in a crash it is declared a total loss. A perfect example

happened approximately 10 years ago when my client was hit by an uninsured motorist who then fled the scene. She had just started a new job with Anthem after returning to work because her husband had recently become disabled. She was still in her 90 day probationary period and therefore did not have health insurance. Her arm was very badly broken near the elbow and as her surgeon had to put a plate and screws into the bone to fix it, she sustained a nerve injury which gave her almost no use of her hand. She had to take out consumer legal funding to pay for her mounting medical expenses and to make sure she and her husband did not lose their home. Her own auto insurance company waited over a year and a half to make an offer to settle her claim, and finally paid her policy limits. I also had a different client who was very badly injured when she was dropped at a rehabilitation facility. She was out of work for over a year after the incident. After a year of litigation, the insurance company finally approached us to begin settlement negotiations. My client had to take out consumer legal funding because of mounting credit card debt and because she was concerned she would have to declare bankruptcy without any money in the interim.

This is the exact invasion of privacy the Federal Rules Committee contemplated 55 years ago, and this information should not be shared with defendants and their insurance companies.

Thank you again for the time and opportunity to testify. I am happy to address any questions from the Committee.