

**TESTIMONY OF JENNIFER J. ARTMAN
IN SUPPORT OF S.B. 413
ON BEHALF OF THE
AMERICAN TORT REFORM ASSOCIATION
BEFORE THE KANSAS SENATE COMMITTEE ON JUDICIARY
FEBRUARY 5, 2026**

Madame Chair and members of the Committee, thank you for the opportunity to express support for S.B. 413, which provides common-sense limitations on a manipulative tactic used by trial attorneys to influence noneconomic damage awards in jury trials. I am submitting this testimony on behalf of the American Tort Reform Association (ATRA), a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote fairness, balance, and predictability in civil litigation.

I am a partner in the Kansas City office of Shook, Hardy & Bacon L.L.P. My practice focuses on product liability litigation, appellate preservation, and civil justice issues. I received my law degree from the University of Missouri in Columbia and clerked for the Honorable William Ray Price, Jr. of the Supreme Court of Missouri after completing my education. I reside with my family in Prairie Village, Kansas.

S.B. 413 sets out reasonable limitations to limit undue influence on juries in Kansas state trials by trial attorneys. Plaintiffs' lawyers often seek to manipulate jury awards through a tactic called "anchoring," where they implant in the minds of jurors an arbitrary sum, or suggest a mathematical formula, that is designed to lead to extraordinary awards. These lump sum amounts or suggested calculations often have no relationship to the facts of the case at issue. Some suggestions have included an amount per day, per hour, or per mile; others have referred to the cost of an aircraft or a professional athlete's salary.

Trial attorneys use anchoring techniques because it effectively works to return inflated jury verdicts.¹ This is particularly true for noneconomic damages that may be difficult to calculate definitively, such as pain and suffering. Empirical research and trial experience confirm that providing an anchor creates a psychologically powerful baseline for jurors. Once a lawyer provides an anchor, jurors either accept the suggested amount or "compromise" by negotiating up or down. Studies show both the use of a specific lump sum or mathematical formula leads jury to reach a substantially higher award—double² or quadruple³ the amount they would have awarded if left to determine a just and reasonable award on their own.⁴

¹ See, e.g., Gretchen B. Chapman & Brian H. Bornstein, *The More You Ask For, the More You Get: Anchoring in Personal Injury Verdicts*, 10 *Applied Cognitive Psychology* 519, 534 (1996).

² Bradley D. McAuliff & Brian H. Bornstein, *All Anchors are Not Created Equal: The Effects of Per Diem Versus Lump Sum Requests on Pain and Suffering Awards*, 34 *L. & Human Behavior* 164, 167 (2010).

³ John Campbell, et al., *Time is Money: An Empirical Assessment of Non-Economic Damages Arguments*, 95 *Wash. U. L. Rev.* 1, 22 (2017).

⁴ See Mark A. Behrens, Cary Silverman & Christopher E. Appel, *Summation Anchoring: Is it Time to Cast Away Inflated Requests for Noneconomic Damages*, 44 *Am. J. of Trial Advoc.* 321, 327-29 (2021);

Given the effectiveness of anchoring, trial lawyers are being coached to use it. *Plaintiff* magazine explicitly boasts that “once an anchor number has been provided, the number exerts undue influence on the final figure” and “can sway decisions even when the anchor provided is completely arbitrary.”⁵

The effects of anchoring can be seen in courtrooms nationwide. To decide the value of pain and suffering, some plaintiffs’ lawyers have suggested that juries consider the value of a \$71 million fighter jet or \$186 million piece of art, or ask the jury award two cents for each of the 650 million miles a defendant’s trucks drove the year of an accident.⁶ In a 2023 case, a plaintiffs’ lawyer asked for \$15 million after a child was burned by a chicken nugget that dropped on her leg as her family pulled out of a fast food drive-thru—which likely made the jury feel that the \$800,000 it awarded was rational by comparison.⁷ In some states, personal injury lawyers urge juries to return \$40 million, \$80 million, even \$140 million for pain and suffering alone.⁸ Several states have taken action to limit a party’s suggestion of a specific amount, or use of a *per diem* calculation, for noneconomic damage awards.⁹

Historically, Kansas limited anchoring techniques in trials. Prior to 1968, the Kansas Supreme Court prohibited manipulation of noneconomic jury awards through mathematical formulas, recognizing that *per diem* arguments are “speculation of counsel unsupported by evidence” and “amounted to the giving of testimony by counsel.”¹⁰ The Kansas Supreme Court chipped away at that rule in the late 1960s, and in 1997, abandoned any restriction on anchoring. In *Wilson v. Williams*, 933, P.2d 757, 761 (Kan 1997), the plaintiffs’ lawyer asked the jury to award \$100,000 in future noneconomic damages for an ankle injury, arguing it was “around \$8 a day” for the remainder of plaintiff’s life. The jury returned the precise amount requested.

The effect of anchoring is even more significant post-2019, as the Kansas Supreme Court struck down a statute limiting noneconomic damage awards to a maximum of \$325,000.¹¹ The law limiting noneconomic damages in all personal injury cases had been

Krystia Reed et al., *Accounting for Awards: An Examination of Juror Reasoning Behind Pain and Suffering Damage Award Decisions*, 96 Denv. L. Rev. 841, 864 (2019); Christopher T. Stein & Michelle Drouin, *Cognitive Bias in the Courtroom: Combating the Anchoring Effect Through Tactical Debiasing*, 52 U.S.F. L. Rev. 393, 395-99 (2018);

⁵ Sonia Chopra, *The Psychology of Asking a Jury for a Damage Award*, *Plaintiff* (Mar. 2013), at 1; see also Kathleen Flynn Peterson et al., *Dropping the Anchor*, *Trial* (Apr. 2017).

⁶ *Gregory v. Chohan*, 670 S.W.3d 546, 557-59 (Tex. 2023) (finding such unsubstantiated anchoring impermissible).

⁷ See Gabe Hauari, *\$800,000 Awarded to Family of Girl Burned by McDonald's Chicken Nugget, Florida Jury Rules*, *USA Today*, July 21, 2023.

⁸ See Shaub Ahmuty Citrin & Spratt, *Top NYS Court Pain & Suffering Personal Injury Verdicts & Improper Anchoring (2010-2021 Year End)*, <https://www.sacslaw.com/media/publication/37-Improper%20Anchoring%20Chart%20through%202021.pdf>.

⁹ See Campbell, 95 Wash. U. L. Rev. at 34-48 (surveying state law); see also Ga. S.B. 68, § 1 (2025) (amending Ga. Code Ann. § 9-10-184) (prohibiting certain anchoring practices).

¹⁰ *Caylor v. Atchison*, 374 P.2d 53, 58 (Kan. 1962).

¹¹ *Hilburn v. Enerpipe, Ltd.*, 442 P.3d 509 (Kan. 2019) (invalidating Kan. Stat. Ann. § 60-19a02(b)).

in place since 1988. When in effect, trial lawyers had little motivation to ask for extraordinary noneconomic damage awards. With that statutory maximum gone, plaintiffs' lawyers are free to seek as much as possible—and use any manipulative tactics to get it. Even worse, Kansas courts are unlikely to find a noneconomic damage award excessive. The deference to the jury is significant, even when it is a product of manipulative tactics.

The current system is not workable. Anchoring practices may help a lawyer get an excessive verdict, but these awards are often appealed. The cycle is inefficient and costly. Further, as defendants balk at settlement demands that reflect the chance for multimillion dollar pain and suffering awards, plaintiff recoveries are delayed. And to the extent extraordinary awards are upheld, the social inflation that results may not be beneficial in the long run since consumers will ultimately have to pick up the tab through higher prices for goods and services.

S.B. 413 addresses the anchoring problem by stating that no party or counsel may refer to a specific dollar amount, range, formula, units of time, or objects or values with no connection to the facts of the case to suggest an amount for the jury to award as noneconomic damages. The proposal enables juries to determine an appropriate amount of compensation for noneconomic damages based on their own life experiences and values, free from manipulation by attorneys.