

Anchoring in Voir Dire and Opening Statements Precluded by Federal Court

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DRI published our article “The Big Problems With Mini-Openings” in the [July/August edition](#) of *The Brief Case*. The article focused on the problems presented by mini-opening statements and included an example where asbestos plaintiffs’ counsel sought to ask potential jurors in voir dire if they were open to awarding non-economic damages of “**over 34 million dollars**” to the adult heirs of a sixty-seven-year-old man who “**had various medical issues such as being severely obese and having two heart attacks**” prior to his death. (*Wennerholm v DAP Products Inc.*, JCCP4674, Los Angeles Superior Court, Case No. 19STCV15874 [1/31/23].)

In response, counsel for plaintiffs in the *Wennerholm* case defended their claimed right to mention particular dollar amounts in voir dire in a Commentary titled “The Right to Liberal and Probing Examination of Jurors for Bias Against Large Verdicts,” which was published in the June 2023 edition of *COLUMNS- Asbestos*. In turn, the DRI published our reply, “Voir Diring for Dollars,” in the [September 2023 edition](#) of *The Brief Case*, where we pointed out that:

Plaintiffs’ counsel’s Commentary failed to address any of the numerous studies regarding the psychological effects of anchoring on jurors. See, e.g., J. Campbell et al., *Countering the Plaintiff’s Anchor: Jury Simulations to Evaluate Damages Arguments*, 101 *Iowa L. Rev.* (2016); see also Mollie W. Marti & Roselle L. Wissler, *Be Careful What You Ask For: Anchoring Effects in Personal Injury Damage Awards*, 6 *J. EXPERIMENTAL PSYCHOL. APPLIED* 91, 91–103 (2000); Gretchen B. Chapman & Brian H. Bornstein, *The More You Ask For, the More You Get: Anchoring in Personal Injury Verdicts*, 10 *APPLIED COGNITIVE PSYCHOL.* 519 (1996); Verlin B. Hinsz & Kristin E. Indahl, *Assimilating to Anchors for Damage Awards in a Mock Civil Trial*, 25 *J. APPLIED SOC. PSYCHOL.* 991 (1995); John Malouff & Nicola A. Schutte, *Shaping Juror Attitudes: Effects of Requesting Different Damage Amounts in Personal Injury Trials*, 129 *J. SOC. PSYCHOL.* 491 (1989); Edward (Ted) L. Sanders, et al., *Reptiles, Picassos, and Stealth Bombers: Combating Inflated-Non-Economic Tort Damages*, *MUNICIPAL LAWYER: THE JOURNAL OF LOCAL GOVERNMENT LAW*, 19-23 (Vol. 60, No. 6, Nov./Dec. 2019). **Instead, they renamed anchoring “preconditioning” and attempted to sweep the associated science under the rug.**

With the competing Commentaries complete, the debate moved into reality as fate paired opposing counsel against each other in *Patrick W. Dennis v. Air and Liquid Systems Corporation, et.al.*, Case No. 2:19-cv-09343-GW-KS, United States District Court for the

Central District of California. On behalf of a defendant, we filed various motions in limine, including #10, TO PRECLUDE REFERENCE TO TENS OF MILLIONS (OR MORE) OR SPECIFIED DAMAGES AMOUNTS. As supporting exhibits, we attached our articles, “The Big Problems With Mini-Openings” and “Voir Dire for Dollars,” as well as the mistrial motion in *Wennerholm*. On September 15, 2023, the court issued the following tentative ruling:

Initially, as to voir dire, the Court agrees that referencing that “tens of millions of dollars” are potentially at stake risks prejudicing the jury by anchoring them to such sums. Likewise, as an opening statement is simply to orient the jury as to what the expected evidence will be, a reference to tens of millions of dollars is argumentative and will not be permitted. The Court is therefore inclined to grant Defendants’ request as to the voir dire and opening statement. Tentative Rulings on Motions in Limine, *Patrick W. Dennis et al. v. Air and Liquid Systems Corporation et al.*, Case No. 2:19-cv-09343-GW-(KSx), United States District Court for the Central District of California, Sept. 15, 2023 (ECF No. 462).

That tentative ruling became the order of the court after oral argument on September 18, 2023. Civil Minutes – General, Proceedings: Pretrial Conference, *Patrick W. Dennis et al. v. Air and Liquid Systems Corporation et al.*, Case No. 2:19-cv-09343-GW-(KSx), United States District Court for the Central District of California, Sept. 18, 2023 (ECF No. 463).

The psychological effects of anchoring are real and prejudicial, and counsel must be proactive in precluding such tactics.



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Bina Ghanaat is a Partner with experience in toxic torts, insurance coverage, bad faith, habitability, and personal injury cases. She manages her cases from inception to resolution, handling discovery, depositions, law and motion, and trial preparation in state and federal courts. Ms. Ghanaat has defended a wide range of clients, including manufacturers, suppliers, contractors, insurance carriers, building owners, and trucking companies. She has drafted numerous motions for summary judgment that have resulted in dismissals of her clients or significantly reduced demands. She has also drafted and argued successful motions for summary adjudication as to punitive damages and various causes of action in asbestos matters venued in San Francisco and Alameda. For those cases in which a dispositive motion has not been viable, Ms. Ghanaat has prepared them for trial in an efficient manner with an emphasis on achieving optimal results

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