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Emerging Toxic Torts

When Strategies Go Awry: Part 2 In A Series On Cognitive Biases And Their Impact

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**A commentary article
reprinted from the
December 5, 2017 issue of
Mealey's Emerging
Toxic Torts**



Commentary

When Strategies Go Awry: Part 2 In A Series On Cognitive Biases And Their Impact

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[Editor's Note: This is part 2 of a series of articles on Cognitive Biases and their impact on Litigation and Negotiation. Laura A. Frase, Of Counsel with Cantey Hanger L.L.P. in Dallas, has over 30 years' experience in insurance defense litigation. She also serves as Negotiation/Settlement Counsel for a number of her clients, having resolved thousands of matters generating significant cost savings. Ms. Frase earned her law degree from St. Mary's School of Law. In 2013 she earned a Master's Degree in Dispute Resolution from Southern Methodist University, concentrating on Negotiation. Ms. Frase is also a trained Mediator and an Adjunct Professor at UNT Dallas College of Law. She is recognized as a Top Woman Lawyer in Texas and AV Peer Preeminent rated. Any commentary or opinions do not reflect the opinions of Cantey Hanger LLP or LexisNexis® Mealey Publications™. Copyright © 2017 by Laura A. Frase. Responses are welcome.]

Anchoring Effect: “Draggin the Line”¹ in Litigation and Negotiation

One of the most well researched cognitive bias is the **Anchoring Effect**; “the human tendency to adjust judgments or assessments higher or lower based on previously disclosed external information – the anchor.”² This mental short-cut involves starting with an initial known number or information (explicitly or implicitly conveyed) and then adjusting to generate the final answer for which we are searching. Once we believe we have reached the realm of a plausible answer, we stop adjusting from the initial reference point. For example, we want to purchase a quart of cream. We know the price of a quart of milk so we adjust from that number to estimate the cost of the same amount of cream. If we want to buy a particular car, we may recall prices for

similar makes and models and use those numbers to estimate the cost of the car we want to purchase. The numbers or information we start with and use as comparisons are *anchors*.

The problem arises when we make more complex judgments or decisions. “There is nothing wrong (in principle) with forming an estimate by starting with one value and then adjusting it successfully as each new piece of information comes to mind. **The mistake (we) make is not adjusting enough**” (emphasis added).³ For example, if we are asked the year George Washington was elected President we might assume the correct answer is near 1776.⁴ If we are asked at what age Gandhi died and are told he was younger than 120 years old, we might be anchored by that implausible age.⁵ Since we start with the anchor, our final estimate is subconsciously biased toward it.⁶ Our guess is literally “dragged” back to that initial number or information.

Behavioral psychologists Daniel Kahneman⁷ and Amos Tversky first named and studied this effect using their famous “Wheel of Fortune” experiment. They created a spinning wheel with seemingly random numbers on the wheel. It was, however, rigged so that anyone who spun the wheel had it land on the numbers 10 or 65. After spinning the wheel, the participants were then asked to guess the percentage of African nations that were members of the United Nations. Participants whose spin landed on the number 10 guessed an average of 25%. Those who got the “wheel-chosen” number of 65 guessed 45%, on average.⁸ Of course, the numbers

on the wheel had no rational relationship to the number of African-member countries in the U.N.⁹ Yet the numbers, irrelevant as they were, pulled the participants in their guesses.

In another study, subjects were asked to guess the thickness of a piece of paper if it was folded 100 times. Rarely did people guess more than a few yards or meters. But, assuming that the paper is the standard thickness of .1 millimeter, if folded 100 times would be approximately 1.27×10^{23} kilometers thick.¹⁰ The participants did not adjust upward enough after they imagined what the first few folds looked like, failing to take into account the doubling effect of the later folds. They were thus pulled to lower estimates.

The Anchoring Effect is subtle yet pervades in a variety of judgments we make, “from the trivial . . . to the apocalyptic.”¹¹ The Effect occurs in general knowledge questions, price estimates, the first idea mentioned in a meeting, estimates of self-efficiency, and assessments of probability.¹² This bias is so powerful (and insidious) that the anchor need not be logically connected to what we are trying to determine. Studies have shown that an anchor sways judgments even though it “is incomplete, inaccurate, irrelevant, implausible or random.”¹³

The Effect is reinforced when we choose or self-generate the anchor (such as what first demand to make).¹⁴ Since we chose it, we view the reference point as more rational and reliable. We may even cling to its credibility (we did pick it after all) to the point that we then marshal evidence that only ratifies the anchor. “Under-adjustment . . . may result from a failure to look for counterevidence, a failure of actively open-minded thinking.”¹⁵ This form of Confirmation Bias, described previously in this series, further cements the anchor’s power.¹⁶

The anchor can be arbitrary¹⁷ or outrageous and still influence our final estimation.¹⁸ One well known example of the strength of a wild anchor is a study in which the subjects were asked to guess the average annual temperature in San Francisco. Some were first asked whether it was higher or lower than 558 degrees, a completely crazy number, while others were not so “primed”. As you may now guess, those who were “exposed” to the number 558 guessed a higher average temperature than those who were not.¹⁹

In litigation, sentencing guidelines,²⁰ policy limits,²¹ settlement matrixes, jurisdictional limits,²² and damage caps²³ all serve as anchors. For example, studies have shown that when assessing appropriate damage awards, judges are influenced by the numbers discussed during settlement talks to which they are privy.²⁴ Highly relevant, yet inadmissible evidence also affects judges’ decisions.²⁵ Juries are not immune to anchors. In mock personal injury trials, when high compensation was requested, juries not only awarded higher amounts, surprisingly they were also more inclined to find causation in favor of the Plaintiff.²⁶ The Anchoring Effect is particularly persuasive in pain/suffering and punitive damage determinations.²⁷ Even when the Plaintiff was seen as selfish or less than generous when asking for additional money, he was still more likely to win his case.²⁸

Anchoring is particularly prevalent during settlement negotiations. Studies have shown that the higher the first demand, the more likely the bargaining zone is centered around and drawn upward into a negotiation zone more favorable to the offeror.²⁹ The more precise the number (ex. \$19.99 vs. \$20.00) the stronger the anchor’s influences, largely because the offeror appears knowledgeable of the “true value”.³⁰ This Effect is so robust, it impacts even when the demand is so extreme as to be unbelievable.³¹ The anchor literally weighs down negotiations.

I conducted my own Anchoring Effect experiment with my students at UNT Dallas College of Law. I showed them a photo of an unnamed restaurant that I said served American cuisine. I then had them draw slips of paper from an envelope. One half of the class drew slips that asked “How much are you willing to spend for a meal at Bistro 17?” The other half drew slips that asked the same question, except the restaurant name was changed to Bistro 97.³² I literally changed one digit. No other information was given. When the results were tallied, those with the restaurant named Bistro 97 wrote a higher amount, on average, that they were willing to spend (almost 25% higher) than those who had Bistro 17. Their decisions were anchored by the irrelevant numbers 17 and 97.

The Anchoring Effect also impacts how we assess information. The first information collected is often given greater importance merely because it is the first piece of data received. In any subsequent analysis, we

continually harken back to the first information, comparing it to the new information, testing the latter's credibility and weight against the anchor. For example, in mass toxic tort personal injury cases we may initially value a case based on the trade of a particular worker. If information is then generated that shows the Plaintiff worked in other trades that impact exposure levels - perhaps to an even greater extent than the first trade we knew about - we may still evaluate the case based on the initially identified trade. Those new facts may not be given equal weight or equal credibility in comparison.³³

Similarly, the Anchoring Effect plays out in the medical profession. For example, it can occur in any "tendency to perceptually lock onto salient features in the patient's initial presentation too early in the diagnostic process, and failing to adjust this initial impression in light of later information."³⁴ The first impression/diagnosis may overpower later gathered information.

One of my law students gave a terrific example of how the Anchoring Effect works with information. She had friends who were represented by an attorney. That attorney drafted a litigation plan for them but, unfortunately, did not follow through and eventually ceased returning phone calls. Her friends then hired another attorney who created a totally different litigation plan - a plan he actually implemented - and, for the first time, the case was going well. He regularly apprised his clients of progress in the case and returned their phone calls. Nevertheless, her friends began to worry about the suitability of second attorney's strategy. They kept comparing it to the *ineffectual* plan created by their first (and less responsive) attorney. Even knowing the second attorney was doing a better job, her friends still questioned his judgement because they were anchored to the strategy of the first attorney.

While we know the Anchoring Effect impacts decision-making, scholars still debate how it accomplishes its influence. Some argue the anchor's power comes from our inability to sufficiently adjust from the starting point the anchor sets. Since the adjustment is insufficient, the anchor then has greater influence over the final number than is warranted.³⁵ Others suggest that the anchor serves to subconsciously "prime" or suggest to us the correct information.³⁶ Some blame cognitive laziness as the cause; making a correct estimate or

researching the answer is too much of an intellectual investment to make.³⁷ Still others believe the anchor is powerful because "we treat the anchor as a reliable guide."³⁸ We believe, subconsciously, that the first number or information received is somehow more meaningful or that the anchor implies true value (ex. the MSRP of a car).³⁹ No matter the cause, this cognitive bias is potent in its impact.

Anchor's Away?

Diminishing the power of the Anchoring Effect is difficult. Anchors are inescapable. Awareness alone is not enough to battle against them.⁴⁰ Discussing or disputing the anchors empowers them.⁴¹ Anchors influence us even if we are explicitly told to ignore them.⁴² So what can we do?

- Attempt to replace the anchor with your own well-researched, objective reference point or information. Draft the negotiation or litigation plan using the new reference point. In essence, work within this bias by anchoring yourself to something different. Do not, however, continue to compare your new reference point back to the original anchor.
- For self-generated anchors (the ones we create for ourselves), seek more accurate information. The Effect may be diminished with "incentives to engage in effortful thoughts."⁴³ Be aggressive in your goal for accuracy. Yet, watch out for Confirmation Bias.
- Locate objective information that explains why an anchor is inappropriate or inconsistent with the facts.⁴⁴ Think of features that are different from the anchor (ex: why a certain number doesn't work or why information is inaccurate).⁴⁵ Part of the power of the anchor is that when we compare our own reference point to the anchor, we fail to assess whether the anchor itself is reasonable or based on enough objective criteria to justify our reliance upon it. Why is the anchor inaccurate?
- "Consider the Opposite". Go further than generating information that challenges your anchor. Instead, adopt an opposite perspective and reflect on why your judgment may actually be wrong. If, for example, the negotiator "generates (specific) reasons not to reach agreement on the basis of the terms proposed by his counterpart, the negotiator

may be able to resist the effects of anchoring.”⁴⁶
As suggested in a previous paper in this series,
“Red Team” the anchor.⁴⁷

Anchoring to Advantage

As you may have now concluded, the power of the anchor can also be employed to our advantage. Researchers have shown, for example, that those who open with extreme demands receive higher settlements more often.⁴⁸ Setting lofty goals prior to the negotiation and capitalizing on the anchor directly influences the outcome of settlements. “Negotiators who set high aspirations end up with more of the pie than those who set lower aspirations. And, negotiators whose aspirations exceed those of their opponent’s get more of the bargaining zone.”⁴⁹ Negotiation expert Richard Shell advises that one should open “with the highest (or lowest) number for which there is a supporting standard or argument enabling you to make a presentable case.”⁵⁰ Make your settlement demand or offer precise rather than using a rounded number; it infers a justification for your number and intensifies the power of the anchor.⁵¹ Another effective strategy is to anchor your opponent (or for that matter, the jury) on some extraordinary or dramatic piece of information that allows you to influence the course of a case. Stories of unusual events, for example, are better remembered.⁵² The more vivid or dramatic the anchor the more powerful it becomes.⁵³

Conclusion

We are creatures of contrast. Anchors provide the base line we use to compare. Anchors not only impact the demand/offer process in which we engage, they sway us the instant we begin our evaluations. Anchors influence whether they are explicitly or implicitly conveyed, when they are self-generated, or even when they are furnished as part of an unrelated discussion.⁵⁴ No matter whether they are irrelevant, extreme, or nonsensical, anchors can distort thus impacting our recommendations and judgement. These external, sometimes extraneous, bits of information can also subconsciously trigger other cognitive biases, leading to inaccurate evaluations. As the anchor weighs us down and we fail to sufficiently adjust, our negotiation and litigation strategy may veer off course. We must recognize and appreciate the full power of the Anchoring Effect. Otherwise, we may become moored by errors in judgment.

Endnotes

1. TOMMY JAMES AND BOB KING, *Dragging the Line* on Church Street Soul Survival (Roulette Records, 1971).
2. Mark W. Bennett, *Confronting Cognitive ‘Anchoring Effect’ and ‘Blind Spot’ Biases in Federal Sentencing: A Modest Solutions for Reforming the Fundamental Flaw* 104 J. OF CRIM. LAW AND CRIMINOLOGY, No. 3 489, 495. (2014).
3. JONATHAN BARON, THINKING AND DECIDING 380 (4th ed. 2008). Tversky and Kahneman referred to the bias as the anchoring-and-adjustment heuristic, focusing on our failure to sufficient adjust away from the anchor. See Nicholas Epley and Thomas Gilovich, *The Anchoring-and –Adjustment Heuristic. Why the Adjustments are Insufficient* 17 PSYCHOLOGICAL SCIENCE NUMBER 4 331 (2005). http://www.psychologicalscience.org/pdf/onlyhuman/anchor_adjustment.pdf?q=perspective-taking-as-egocentric-anchoring-and-adj.
4. George Washing was elected President in 1789, a full 13 years after the founding of the United States. USA.GOV (October 24, 2017). <https://www.whitehouse.gov/1600/presidents/georgewashington>.
5. Mahātmā Mohandas Karamchand Gandhi died at the age of 78 in 1948. Robert Turnbull, “Gandhi is Killed by a Hindu; India Shaken, World Mourns; 15 Die in Rioting in Bombay, Three Shots Fired.” N.Y. TIMES (Jan. 30, 1948). <http://www.nytimes.com/learning/general/onthisday/big/0130.html#article>.
6. Nicholas Epley and Thomas Gilovich, *Anchoring Unbound* 20 J. OF CONS. PSYC. 20-24, 21 (2010). “The anchor brings to mind features of the target that resemble the anchor, thus leading (us) to over-emphasize similarities and underestimate differences. See Linda Babcock et al., *Biased Judgments of Fairness in Bargaining* 85 AM. ECON. REV. 1337, 1339-1340 (1995).
7. Daniel Kahneman received the 2002 Noble Prize in Economics for his pioneering work on his study of heuristics and their impact on decision-making. Amos Tversky died before the award was given. See Daniel Kahneman - Prize Lecture: “Maps of Bounded Rationality”. NOBELPRIZE.ORG. Nobel Media AB 2014.

- Web. 20 Oct 2017. http://www.nobelprize.org/nobel_prizes/economic-sciences/laureates/2002/kahneman-lecture.html.
8. DANIEL KAHNEMAN, THINKING FAST AND SLOW 119 (2011).
 9. There are 55 countries in Africa, not including Somaliland. Sahrawi Arab Democratic Republic is the only African territory which is not a member of the United Nations. UNITED NATIONS (October 24, 2017). <http://www.un.org/en/member-states/>. Thus the percentage of African countries that are members of the U.N. is over 98%.
 10. SCOTT PLOUS, THE PSYCHOLOGY OF JUDGMENT AND DECISION-MAKING 146 (1993). That figure equates to more than 800,000,000,000,000 times the distance between the sun and earth. *Id.*
 11. Thomas Mussweiler, Birte Englisch, and Fritz Strack, *Anchoring Effect*. COGNITIVE ILLUSIONS: A HANDBOOK ON FALLACIES AND BIASES IN THINKING, JUDGEMENT AND MEMORY 183, 185 (Rüdiger F. Pohl, ed. 2nd ed. 2012).
 12. *Id.*
 13. Mark W. Bennett, *Confronting Cognitive "Anchoring Effect" and "Blind Spot" Biases in Federal Sentencing: A Modest Solution for Reforming the Fundamental Flaw* 104 J. OF CRIM. LAW AND CRIMINOLOGY, No. 3, 489, 495 (2014).
 14. Nicholas Epley and Thomas Gilovich, *Anchoring Unbound* 20 J. OF CONS. PSYC. 20, 21 (2010).
 15. JONATHAN BARON, THINKING AND DECIDING 380 (4th ed. 2008).
 16. Fritz Strack and Thomas Mussweiler, *Heuristic Strategies for Estimation under Uncertainty: The Enigmatic Case of Anchoring* FOUNDATIONS OF SOCIAL COGNITION: A Festschrift in Honor of Robert S. Wyer, JR. 79, 80 (Galen V. Bodenhausen and Alan J. Lambert eds., 2003).
 17. LEIGH L. THOMPSON, THE MIND AND HEART OF THE NEGOTIATOR 190 (2015).
 18. Russell Korobkin and Chris Guthrie, *Heuristics and Biases at the Bargaining Table* 87 MARQ. L. REV. 795, 799 (Spring 2004).
 19. SCOTT PLOUS, THE PSYCHOLOGY OF JUDGMENT AND DECISION-MAKING 146 (1993) (citing an unpublished study by George Quattrone and colleagues).
 20. See *Peugh v. United States*, 133 S. Ct. 2072, 2084 (2013) ("the federal system adopts procedural measures intended to make the Guidelines the lodestone of sentencing. A retrospective increase in the Guidelines range applicable to a defendant creates a sufficient risk of a higher sentence to constitute an ex post facto violation.").
 21. *Susann M. Thoens v. Safeco Insurance Company of Oregon*, 272 Or. App. 512, 356 P.3d 91, 95 (2015) (defendant argued disclosure to jury of amount of plaintiffs UIM coverage was prejudicial because "the amount of the coverage would produce an 'anchoring' effect that would tend to drive the jury's verdict higher than it would be without that evidence.").
 22. *Hodge v. State Farm Mutual Automobile Insurance Company*, 884 N.W.2d 238, 245 (Mich. 2016) (court considered whether litigating circuit court case in district court constitutes an inappropriate anchor, of which Plaintiff may take advantage).
 23. *Kodiak Island Borough v. Joan Roe* 63 P.3d 1009, 1016 (Alaska, 2003) (revealing damage cap to jury produced anchoring effect which limited jury's ability to independently assess damages). Damage caps may also pull the size of smaller jury award upward. DANIEL KAHNEMAN, THINKING FAST AND SLOW 126 (2011).
 24. Andrew J. Wistrich, Chris Guthrie and Jeffery J. Rachlinski, *Can Judges Ignore Inadmissible Information? The Difficulty of Deliberately Disregarding* CORNELL LAW FACULTY PUBLICATIONS, Paper 20, 1251, 1291 (2005).
 25. *Id.* at 1259.
 26. Gretchen B. Chapman and Brian H. Bornstein, *The More You Ask for, the More You Get: Anchoring in Personal Injury Verdicts* 10 APP. COG. PSYC. 519, 537 (1996).

27. Andrew J. Wistrich, Chris Guthrie and Jeffery J. Rachlinski, *Can Judges Ignore Inadmissible Information? The Difficulty of Deliberately Disregarding* CORNELL LAW FACULTY PUBLICATIONS, Paper 20, 1251, 1287 (2005).
28. Gretchen B. Chapman and Brian H. Bornstein, *The More You Ask for, the More You Get: Anchoring in Personal Injury Verdicts* 10 App. Cog. Psy. 519, 537 (1996). This odd connection of high demands to causation helps explain one of the benefits of bifurcated trials; where different juries determine liability and damages, the connection is weakened. See James K. Hammitt, Stephen J. Carroll, and Daniel A. Relles, *Tort Standards and Jury Decisions* 14 J. of Legal Studies: No. 3, Article 16. 751 (1985).
29. Richard Birke and Craig R. Fox, *Psychological Principles in Negotiating Civil Settlements* 4 HARV. NEGOTIATION L. REV. 1, 40 (1999).
30. Malia F. Mason, Alice J. Lee, Elizabeth A. Wiley and Daniel R. Ames, *Precise Offers Are Potent Anchors: Conciliatory Counteroffers and Attributions of Knowledge in Negotiations* Vol. 49 J. OF EXPER. SOCIAL PSYCH. 759 (July 2013).
31. Gretchen B. Chapman and Eric J. Johnson, *Incorporating the Irrelevant: Anchors in Judgments of Belief and Value*. HEURISTICS AND BIASES: THE PSYCHOLOGY OF INTUITIVE JUDGMENT 120, 124 (Thomas Gilovich, Dale Griffin, and Daniel Kahneman eds., 2002). Daniel Kahneman suggests to his readers that when receiving an outrageous demand, we should “make a scene, storm out or threaten to do so, and make it clear – to yourself as well as to the other side, that you will not continue the negotiation with that number on the table.” THINKING FAST AND SLOW 126 (2011).
32. Experiment suggested by Nicholas Epley and Thomas Gilovich in *Anchoring Unbound* 20 J. OF CONS. PSYC. 20, 22 (2010).
33. Other examples of anchors in litigation involve the impact of multiple erroneous DNA matches (*State Of Ohio v. Chaz Bunch*, 2015 WL 5814014 (Decided Sept. 29, 2015) and the effects of proposing an MBO when the stock price is low making the depressed number an anchor in price negotiations (*In re: Appraisal of Dell Inc.* 2016 WL 3186538 Court of Chancery of Delaware, Decided: May 31, 2016).
34. Pat Croskerry, M.D., *The Importance of Cognitive Errors in Diagnostic and Strategies to Minimize Them* 78 ACADEMIC MED. NO. 8 775, 777 (Aug. 2003). This effect is easily seen when reviewing medical records. The first impression is generally repeated throughout the records, whether correct or not. While it is important for health care providers to see the history of any diagnosis, the repetition could also empower the initial impression anchor.
35. Chris Guthrie and Jeffery Rachlinski, *Insurers, Illusions of Judgment and Litigation* 59 VAND. L. REV. 2017, 2026 (2006).
36. DANIEL KAHNEMAN, THINKING FAST AND SLOW 122 (2011). It should be noted that some of Mr. Kahneman’s theories on the power of priming have been called into question. See Ulrich Schimmack, Moritz Heene, and Kamini Kesavan, *Reconstruction of a Train Wreck: How Priming Research Went off the Rails* REPLICABILITY INDEX, Feb. 2, 2107. <https://replicationindex.wordpress.com/2017/02/02/reconstruction-of-a-train-wreck-how-priming-research-went-off-the-rails/comment-page-1/>.
37. Gretchen B. Chapman and Eric J. Johnson, *Incorporating the Irrelevant: Anchors in Judgments of Belief and Value* HEURISTICS AND BIASES: THE PSYCHOLOGY OF INTUITIVE JUDGMENT 120, 132 (Thomas Gilovich, Dale Griffin, and Daniel Kahneman eds., 2002).
38. Chris Guthrie and Jeffery Rachlinski, *Insurers, Illusions of Judgment and Litigation* 59 VAND. L. REV. 2017, 2026 (2006).
39. Dan Orr and Chris Guthrie, *Anchoring, Information, Expertise, and Negotiation: New Insights from Meta-Analysis* 23 OHIO ST. J. OF DISP. RESOL. 597, 602 (2006).
40. Gretchen B. Chapman and Eric J. Johnson, *Incorporating the Irrelevant: Anchors in Judgments of Belief and Value* HEURISTICS AND BIASES: THE PSYCHOLOGY OF INTUITIVE JUDGMENT 120, 127 (Thomas Gilovich, Dale Griffin, and Daniel Kahneman eds., 2002).

41. Dan Orr and Chris Guthrie, *Anchoring, Information, Expertise, and Negotiation: New Insights from Meta-Analysis* 23 OHIO ST. J. OF DISP. RESOL. 597, 625 (2006).
42. Gretchen B. Chapman and Eric J. Johnson, *Incorporating the Irrelevant: Anchors in Judgments of Belief and Value* HEURISTICS AND BIASES: THE PSYCHOLOGY OF INTUITIVE JUDGMENT 120, 125 (Thomas Gilovich, Dale Griffin, and Daniel Kahneman eds., 2002).
43. Nicholas Epley and Thomas Gilovich, *The Anchoring-and –Adjustment Heuristic. Why the Adjustments are Insufficient* 17 PSYCHOLOGICAL SCIENCE NUMBER 4 331 (2005). http://www.psychologicalscience.org/pdf/onlyhuman/anchor_adjustment.pdf?q=perspective-taking-as-egocentric-anchoring-and-adj.
44. Adam Galinsky and Thomas Mussweiler, *First Offers as Anchors: The Role of Perspective-Taking and Negotiator Focus* 81 J. OF PERS. AND SOCIAL PSYCH. 657, 659 (2001).
45. JONATHAN BARON, THINKING AND DECIDING 380 (4th ed. 2008).
46. Dan Orr and Chris Guthrie, *Anchoring, Information, Expertise, and Negotiation: New Insights from Meta-Analysis* 23 OHIO ST. J. OF DISP. RESOL. 597, 626 (2006) citing J.D. Trout, *Paternalism and Cognitive Biases* 24 LAW AND PHIL. 393,420 (2005).
47. Laura A. Frase, *When Strategies Go Awry: Part 1 in a Series on Cognitive Biases and Their Impact* MEALEY'S EMERGING TORTS Vol. 26 No. 15 (November 7, 2017). This commentary may also be found in other Mealey's publications issued during the same month and year.
48. Adam Galinsky and Thomas Mussweiler, *First Offers as Anchors: The Role of Perspective Taking and Negotiator Focus* 81 J. PERSONALITY AND SOC. PSYCHOL. 657, 658 (2001).
49. Dan Orr and Chris Guthrie, *Anchoring, Information, Expertise, and Negotiation: New Insights from Meta-Analysis* 23 OHIO ST. J. OF DISP. RESOL. 597, 624 (2006) citing LEIGH L. THOMPSON, THE MIND AND HEART OF THE NEGOTIATOR (3d. ed.,) 47 (2005).
50. G. RICHARD SHELL, BARGAINING FOR ADVANTAGE: NEGOTIATION STRATEGIES FOR REASONABLE PEOPLE 161 (1999).
51. Malia F. Mason, Alice J. Lee, Elizabeth A. Wiley and Daniel R. Ames, *Precise, Offers Are Potent Anchors: Conciliatory Counteroffers and Attributions of Knowledge in Negotiations* Vol. 49 J. OF EXPER. SOCIAL PSYCH. 759, 761 (July 2013).
52. DANIEL KAHNEMAN, THINKING FAST AND SLOW 347 (2011). Unfortunately, the story need not be true to still influence. *Id.*
53. Richard Birke and Craig R. Fox, *Psychological Principles in Negotiating Civil Settlements* 4 HARV. NEGOTIATION L. REV. 1, 40 (1999).
54. Thomas Mussweiler, Birte English, and Fritz Strack, *Anchoring Effect*. COGNITIVE ILLUSIONS: A HANDBOOK ON FALLACIES AND BIASES IN THINKING, JUDGEMENT AND MEMORY 183, 188 (Rydiger F. Pohl, ed. 2nd ed. 2012). ■

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edited by James Cordrey

The Report is produced twice monthly by



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Telephone: (215)988-7733 1-800-MEALEYS (1-800-632-5397)

Email: mealeyinfo@lexisnexis.com

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ISSN 1089-0882