

# KANSAS VOICES, KANSAS SOLUTIONS NEWSLETTER

[WWW.KANSASBR.ORG](http://WWW.KANSASBR.ORG)



August 2024

## In This Issue

- Nuclear Jury Verdicts
- Issues Summit
- Member Spotlight
- Member Benefits

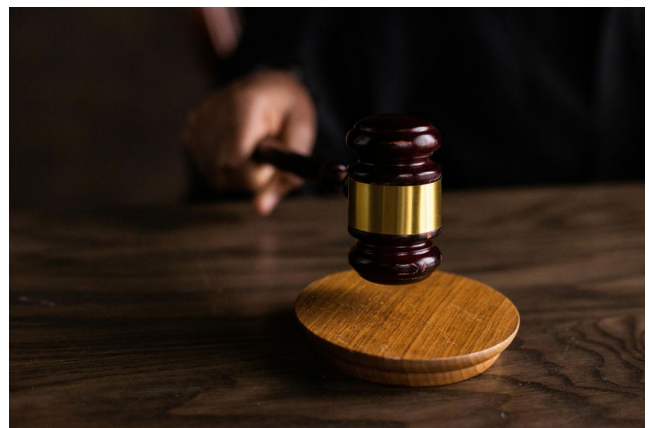
## Nuclear Jury Verdicts

On June 3, 2024, the Kansas Business Roundtable convened corporate counsels representing a variety of Kansas businesses to inform several key state legislators that their help is needed to prevent excessive jury verdicts from driving up the costs of doing business in Kansas.

## What?

Just a few short years ago, a jury might award non-economic damages of \$10 million (in addition to medical bills, lost wages, and any actual costs incurred) for "pain and suffering."

*Continued on p. 2*



## Nuclear Jury Verdicts Continued

Now, juries routinely award **damages of more than \$100 million**. For example, in 2023, a Harris County, Texas jury awarded Mary Johnson \$557 million in a case she filed against the Union Pacific Railroad. In that case, Ms. Johnson was sitting on the railroad tracks - having just left a drinking establishment - when she was struck by a train, which resulted in a number of injuries, including a brain injury and amputation of a leg.

These types of verdicts are on the rise. From 2015 to 2019, the average verdict more than tripled from \$64 million to \$214 million (National Law Journal). In the decade following the Great Recession, the median number of verdicts greater than \$10 million against corporate defendants grew 55% (Marathon Strategies). In the five years leading up to the COVID-19 pandemic, both the sum of such verdicts increased (178%), as did their median amount (41%).

If that was not bad enough, corporate nuclear verdicts rose again from \$4.9 billion in 2020 to \$18.3 billion in 2022. Not only did the number of verdicts double from 2020 to 2022, but their median amount increased 95% from \$21.5 million in 2020 to \$41.1 million in 2022 (Chubb Liability Limit Benchmark & Large Loss Profile by Industry Sector 2024).



## Why?

**Advertising by attorneys** is more prolific than ever before, as is their use of **Reptile tactics**. This litigation strategy tries to anger the jury, feeding on their emotions to get them to believe the defendant put all of society in danger, and a large verdict is the only way to make the world safer.

Increased use of **third-party litigation financing** (TPLF) is also contributing to larger verdicts. Using this financing method, entities advance money to plaintiffs or law firms to cover litigation costs in exchange for a portion of any proceeds from a settlement or verdict.

Certainly, the **lack of a cap** on tort claims in Kansas is a contributing factor, as are the **anchoring tactics** used to get higher judgments. Determining what is a fair and reasonable amount of non-economic damages is difficult for jurors. The amounts awarded by juries are routinely influenced by the amount demanded (the anchor). Often jurors are not informed of “normal” amounts or of mitigating circumstances (like the driver wasn’t wearing his seatbelt).

*Continued on p. 3*





## *Nuclear Jury Verdicts Continued*

The **demographics** of jury pools are also changing. As more Millennials and GenZ citizens get called to jury duty, they bring with them their values, which differ in substantive ways from those of Baby Boomers and earlier generations.

In addition, Americans of all ages and demographics experienced pandemic trauma (2020-22) in ways that changed their thinking about financial matters, work/life balance, equity, personal responsibility, and their regard for companies.

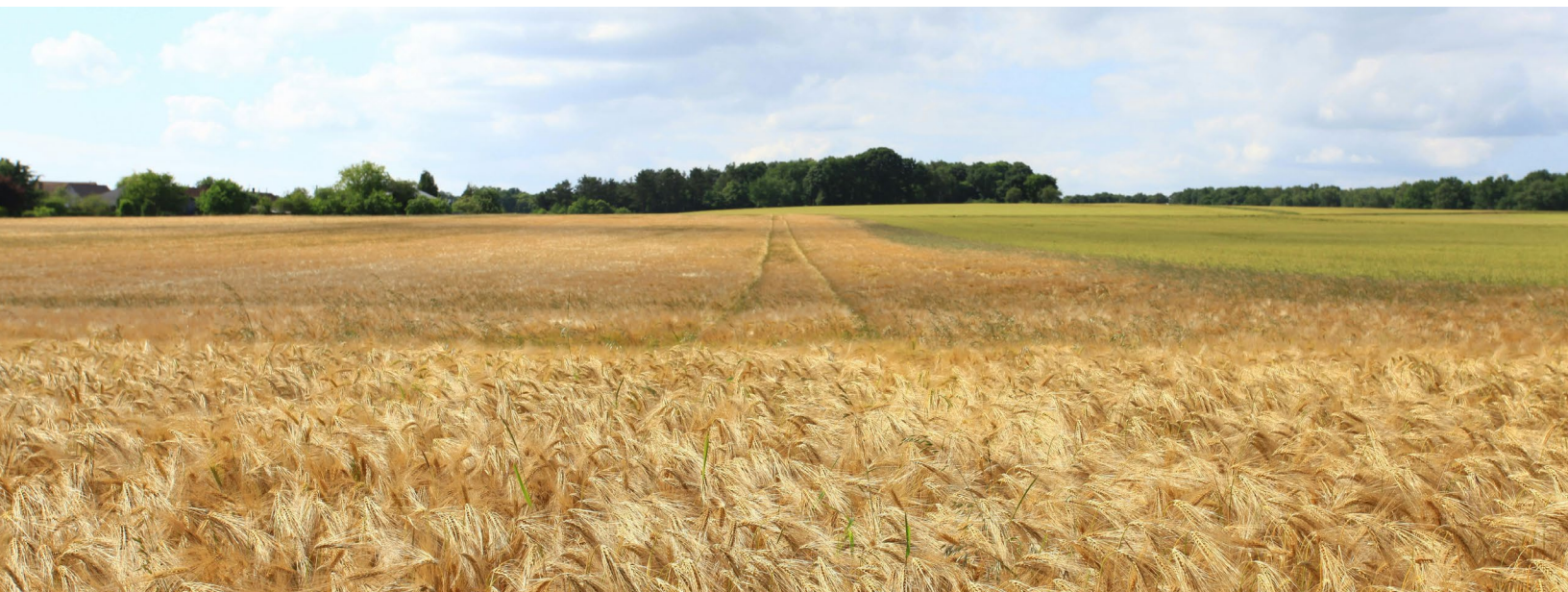
All these factors influence the mix of perspectives in a jury pool and make now the time to consider updating Kansas laws governing jury trials.

## Implications for Kansas

While a third-party litigation bill was considered in 2023, it did not pass and did not resurface during the 2024 legislative session. That bill should be updated and re-introduced in 2025 to ensure the business climate in Kansas remains healthy.

Excessive judgments are driving **exposure and uncertainty** for businesses to new extremes. As a result, insurance premiums are rising, and self-insured companies are increasingly put in a “bet the company” category of risk.

The Kansas Business Roundtable intends to work with other key stakeholders to bring back a balanced and fair approach to jury verdicts.



# Annual Issues Summit

September 24, 2024

9 a.m. – 2 p.m.

Register now for the Roundtable's annual event at Wichita State University as we discuss and hear from thought leaders on complex issues, including:

**9:15 a.m. Healthcare and Insurance in Kansas after 10 years of the ACA**

-Sam Antonios, MD, Chief Medical Officer, Ascension Via Christi St. Francis

**10:30 a.m. Can Childcare be Made More Accessible to the Kansas Workforce?**

-Wendy Doyle, President & CEO, [United WE](#)

**11:45 a.m. How Kansas Governments Invest and Fund Essential Services**

-Alex Orel, SVP Government Relations, Kansas Bankers Association

**1:00 p.m. Economic Costs to Kansas Businesses of Increased Homelessness**

-Ryan Baty, Chairman, Board of Sedgwick County Commissioners

"These topics and speakers address the Roundtable's core pillars of Infrastructure, Innovation, Workforce, Healthcare, and Civil Society," said Scott Schneider, KBR Executive Director. "I'm excited to hear diverse perspectives on these important issues."

Seating is limited. Contact [Kathy.Sexton@wichita.edu](mailto:Kathy.Sexton@wichita.edu) to register or for more information.



## Bruce Witt

**Kansas Chief Advocacy Officer**

Ascension Via Christi Health

**Board Chair**

Kansas Business Roundtable (KBR)

### **Why did you help start KBR?**

My organization felt there was a need for a statewide organization to convene a diverse group of business entities to have open dialogue around developing data-driven, bipartisan public policy solutions to make Kansas an attractive place to live and work.

### **What do you value about the Roundtable?**

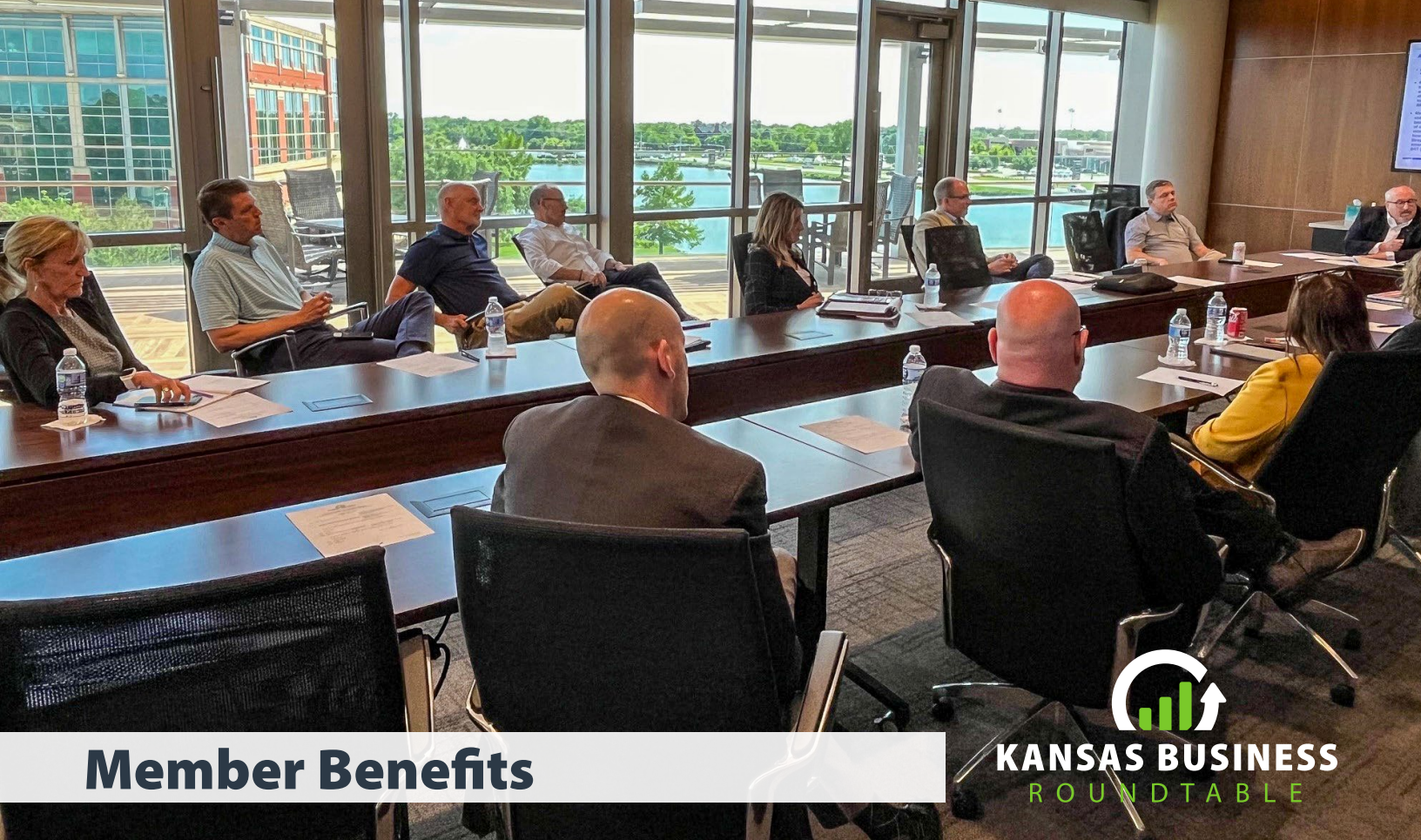
Ascension Via Christi knows the financial stability and success of our healthcare organization depends on a strong and vibrant Kansas economy.

### **What do you hope to achieve?**

Ascension Via Christi hopes to broaden relationships with a diverse group of business organizations with the goal of the KBR being a trusted source of information and advisor to elected officials on key public policy issues that will move Kansas to an even better place economically and from a quality of life standpoint.

Learn how to get involved in the Kansas Business Roundtable by contacting [Bruce.Witt@ascension.org](mailto:Bruce.Witt@ascension.org) or [Kathy.Sexton@wichita.edu](mailto:Kathy.Sexton@wichita.edu).





## Member Benefits

The Kansas Business Roundtable celebrated a successful first year by adopting a strategic plan in October 2023. The plan includes action items to position the new organization to achieve its mission to **convene leaders to create Kansas solutions** that strengthen our communities and our state.

During the 2024 Legislative session, members participated in four online Legislative Updates primarily to gain understanding of policy issues of concern in legislative committees. In June, general counsels of Kansas companies met with Roundtable members to examine issues in the legal arena of most concern to businesses.

This newsletter is a key strategy to engage with members across the state. Other strategies include online discussions and in-person discussions with business leaders and key public officials about issues affecting the economic future of Kansas.

In June 2024, the Roundtable adopted a menu of membership options to ensure businesses of all sizes and from all corners of the state can join the founding members in their efforts to have healthy, nonpartisan discussions about important issues. Associate membership begins at \$500 per year. Higher levels of investment bring additional member benefits.

Learn more from any Roundtable member or reach out to KBR Executive Director Scott Schneider at [scott@sjschneider.law](mailto:scott@sjschneider.law) or [Kathy.Sexton@wichita.edu](mailto:Kathy.Sexton@wichita.edu). Instead of hiring full-time staff, the Roundtable engaged the Public Policy & Management Center at Wichita State University in February 2024 to perform administrative and event planning services.