



NATIONAL ASBESTOS LITIGATION CONFERENCE

Charleston, SC | September 16-17, 2025

Trial Attorney Perspectives: Trying Cases, Staying Sane and the Teams that Make that Possible



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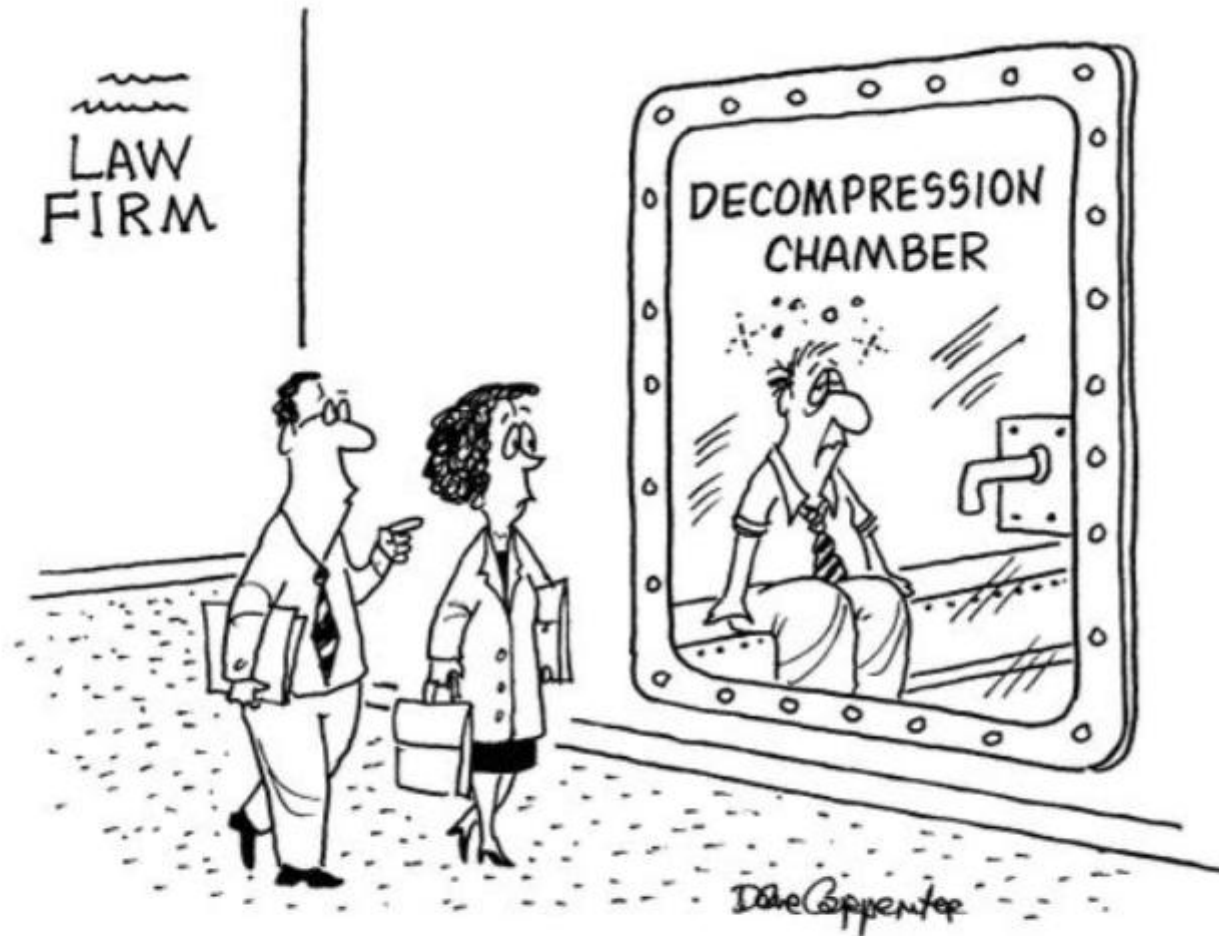
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Dickinson*



"He's coming off a long tough trial."

"He's coming off a long tough trial."

Dave Carpenter

Navigating Trial Stressors

1. Alternative Exposures

3. Trial Teams

Tangible Stressors



Intangible Stressors

2. Damages

4. Mental Health

Alternative Exposures

The Mechanics of Apportionment



What percentage of fault will the jury apportion to the trial Defendant?

AKA How big is the Trial Defendant's piece of the pie?

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FILED
ALAMEDA COUNTY
JUN 20 2025
CLERK OF THE SUPERIOR COURT
By Alencar
Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

ALVARINO F. DASILVA and DIANNA J. DASILVA,
Plaintiffs,
vs.
ARVINMERITOR, INC., et al.,
Defendants.

Case No. 23CV036124
VERDICT FORM
Complaint Filed: June 15, 2023
FAC Filed: September 15, 2023
Trial Date: December 2, 2024

We, the jury in the above-entitled action, find the jury verdict on the questions submitted to us as follows:

GENERAL

QUESTION NO. 1: Did Alvarino DaSilva live in the same household as Joe Silva during a time that Joe Silva came into contact with asbestos-containing cement pipe sold or supplied by P.E. O'Hair?

Yes _____ No

Irrespective of your answer, answer the next question.

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APPORTIONMENT

QUESTION NO. 25: If 100% represents the total responsibility that was the cause of Alvarino DaSilva's mesothelioma, what percentage of responsibility, if any, do you assign to each the following:

- P.E. O'Hair _____%
- J-M transite pipe _____%
- Don Chapin _____%
- Friebel Trucking _____%
- Gold Bond Talc Powder _____%
- Johnson & Johnson Shower to Shower Talc Powder _____%
- Bendix brakes _____%
- NAPA Rayloc brakes _____%
- Ford brakes _____%
- Wizard brakes _____%
- EIS brakes _____%
- Paco joint compound _____%
- Hamilton joint compound _____%
- _____ 100%

MALICE AND OPPRESSION

QUESTION NO. 26: Is there clear and convincing evidence that P.E. O'Hair acted with malice or oppression in the conduct upon which you base your finding of liability?

Yes _____ No _____

If YES, answer the next question. If NO, the presiding juror should sign and date this form and return it to the Court Attendant.

FILED
Superior Court of California
County of San Francisco
MAR 14 2024
CLERK OF THE COURT
BY: *Rosalia X. Hernandez*
Deputy Clerk

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SUPERIOR
COUNTY

LISA CASTILLO, as Successor-in-interest
and as Wrongful Death Heir of ABRAHAM
CASTILLO, Deceased, and ABRAHAM
CASTILLO, JR., OSCAR CASTILLO, as
Wrongful Death Heirs of Abraham Castillo
Deceased,

Plaintiffs,

v.

JOHN CRANE INC.,

Defendant.

We, the jury, find the following Spec

GOVERN

1. Did the U.S. Navy contract with J

ANSWER: Yes

If you answered yes, then answer the

If you answered no, then skip to Que

Castillo v. John Crane Inc. CGC-16-276540 Special

APPORTIONMENT

23. If 100% represents the total fault that was the cause of Plaintiffs' damages, what percentage
of this 100% is the fault of the following:

John Crane Inc.	_____ %
U.S. Navy	_____ %
All Others	_____ %
TOTAL	100%

Answer the next question.

MALICE OR OPPRESSION

24. Do you find by clear and convincing evidence that John Crane Inc. acted with malice or

APPORTIONMENT

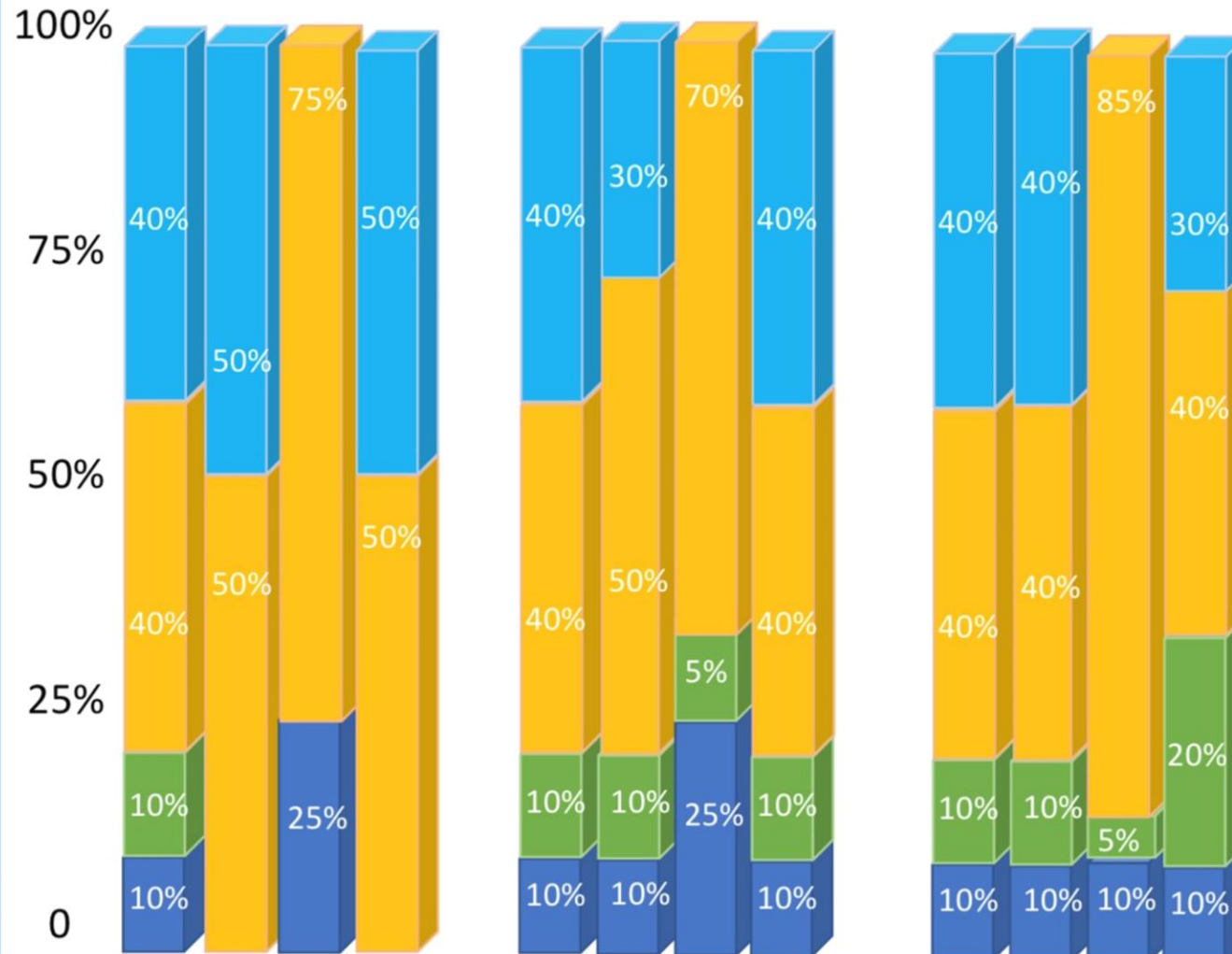
23. If 100% represents the total fault that was the cause of Plaintiffs' damages, what percentage
of this 100% is the fault of the following:

John Crane Inc.	_____ %
U.S. Navy	_____ %
All Others	_____ %
TOTAL	100%

Answer the next question.

DAILY TRACKING OF JURY

% responsibility





Apportionment in New York

“OTHERS”

CPLR 1601:

“...the culpable conduct of any person not a party to the action shall not be considered in determining any equitable share herein if the claimant proves that with due diligence he or she was unable to obtain jurisdiction over such person in said action”

10. For each of the companies listed below set forth its percentage of fault. (The total percentage must equal 100%).

~~Celotex Corporation/ The Philip Carey
Mfg. Co.~~

% _____

~~Crane Co.~~

% _____

~~Fibreboard Corporation~~

% _____

~~Foster Wheeler~~

% _____

~~General Electric Company~~

% _____

~~H.K. Porter Co., Inc.~~

% _____

Jenkins Bros.

% 90

Johns-Manville Corporation

% 10

~~Keene Corporation~~

% _____

~~National Gypsum Company~~

% _____

~~Owens-Corning Fiberglas Corporation~~

% _____

~~Pittsburgh Corning Corp. (1962 onward)~~

% _____

~~Plibrico Company~~

% _____

~~Union Asbestos & Rubber Co. (1960-62)~~

% _____

~~Westinghouse Electric Company~~

% _____

Trial Defendant Has the Burden

CPLR 1603

A party asserting limited liability pursuant to this article shall have the burden of proving by a preponderance of the evidence its equitable share of the total liability.

The Trial Defendant has to prove:

- 1. Plaintiff was exposed to asbestos from defendant's product**
- 2. Defendant failed to use reasonable care**
- 3. Defendant's failure to warn was a substantial contributing factor in the development of plaintiff's disease**

Justice Shulman's ruling in *McGlynn*

“The question becomes is, in terms of each of the elements of your Article 16, can you, on cross, elicit from this doctor, for your purposes, an identify of a particular product from a particular manufacturer and then proceed with all the other elements, whether that exposure was a substantial factor with this witness? And the answer is, no, you cannot....

It is my understanding that **you cannot use a witness in the affirmative for [the plaintiff's] case and adopt her for your prima facie case for your Article 16 burden.**”

McGlynn v. Aerco International, Inc., Index No. 190219/2016 (Sup. Ct., NY Cty.), Aug. 7, 2017 Trial Transcript at 607, 609.

Appellate Division First Department upheld Judge Shulman's Decision

“The Supreme Court properly precluded defendant from eliciting testimony from plaintiff’s expert regarding exposure to asbestos in the alleged nonparty tortfeasors’ products because the court properly found that defendant failed to establish specific causation against such alleged nonparty tortfeasors.”

Matter of New York City Asbestos Litig., 148 AD3d 233, 238-239 [1st Dept 2017]).

Maffei v. A.O. Smith Water Products Co.

Trial Court Decision

“Rather than pursuing a defense of mitigating damages through apportionment, Burnham attempted to persuade the jury that it was not liable as a cause of Romeo’s cancer at all. **Burnham was not deprived of presenting an apportionment defense, it simply chose not to present that defense.** Without Burnham proving its prima facie case of specific causation against other entities for CPLR Article § 16 purposes, Burnham was not entitled to have these entities placed on the verdict sheet (*Nemeth v Brenntag North America*, 183 AD3d 211, 324 [1st Dept 2020], rev’d on other grounds, 38 NY3d 336 [2022]).”

Maffei 2024 WL 3467412

Damages

Proving and Arguing



ECONOMIC DAMAGES

ADDITIONAL INFORMATION:

Are there any preexisting illnesses that would have had an impact on the plaintiff's normal life expectancy, but for the asbestos / mesothelioma? (Yes / No) If yes, please explain.

Please enclose copies of all documents relating to your retirement income for Social Security, pension records and other income (1099's, tax returns, bank statements, etc.).

- *DaSilva* trial – Alameda County, CA
- Cross-examination of plaintiffs' economist
- Stage IV renal cell carcinoma

What is Mr. DaSilva's lost Teamsters Pension?

Lost Teamsters Pension

Income base ¹: • Starting 7/28/2025 at \$2,520.50/mo.	\$30,246/yr.
Life Expectancy ²:	2043 (Age 82.0)
Present Value :	\$381,813

Assume: Does not die because of mesothelioma \$0

¹ Based on 2023 1099-R and counsel; ² Based on the National Vital Statistics Reports, Vol. 74, No. 2, U.S. Life Tables, 2022, National Center for Health Statistics, April 8, 2025.

What is Mr. DaSilva's lost Social Security Income?

Lost Social Security Income

Income base ¹: • Starting 12/10/2028 at \$3,155.42/mo.	\$37,865/yr.
Reduced Life Expectancy ²:	2043 (Age 82.0)
Present Value :	\$518,449

Assume: Does not die because of mesothelioma \$0

¹ Based on 2023 SSA-1099; ² Based on the National Vital Statistics Reports, Vol. 74, No. 2, U.S. Life Tables, 2022, National Center for Health Statistics, April 8, 2025.

What is the value of household services?

Lost Household Services¹

Married male, Working Full-time, then retired	<u>Per Day²</u> (\$)	<u>Present Value</u> (12/12/2022 - 2041 ³)
TOTAL	\$74.29	\$498,687

Assume:

Four months of no housework in 2023:

Does not die because of mesothelioma

\$6,142

¹ 2023 Dollar Value of a Day Study Adjusted to Local Cost, Table 414; ² Tables 21, 104 and 112;
³ To life expectancy, less two years (2041).



NON-ECONOMIC DAMAGES

ASKING FOR MONEY

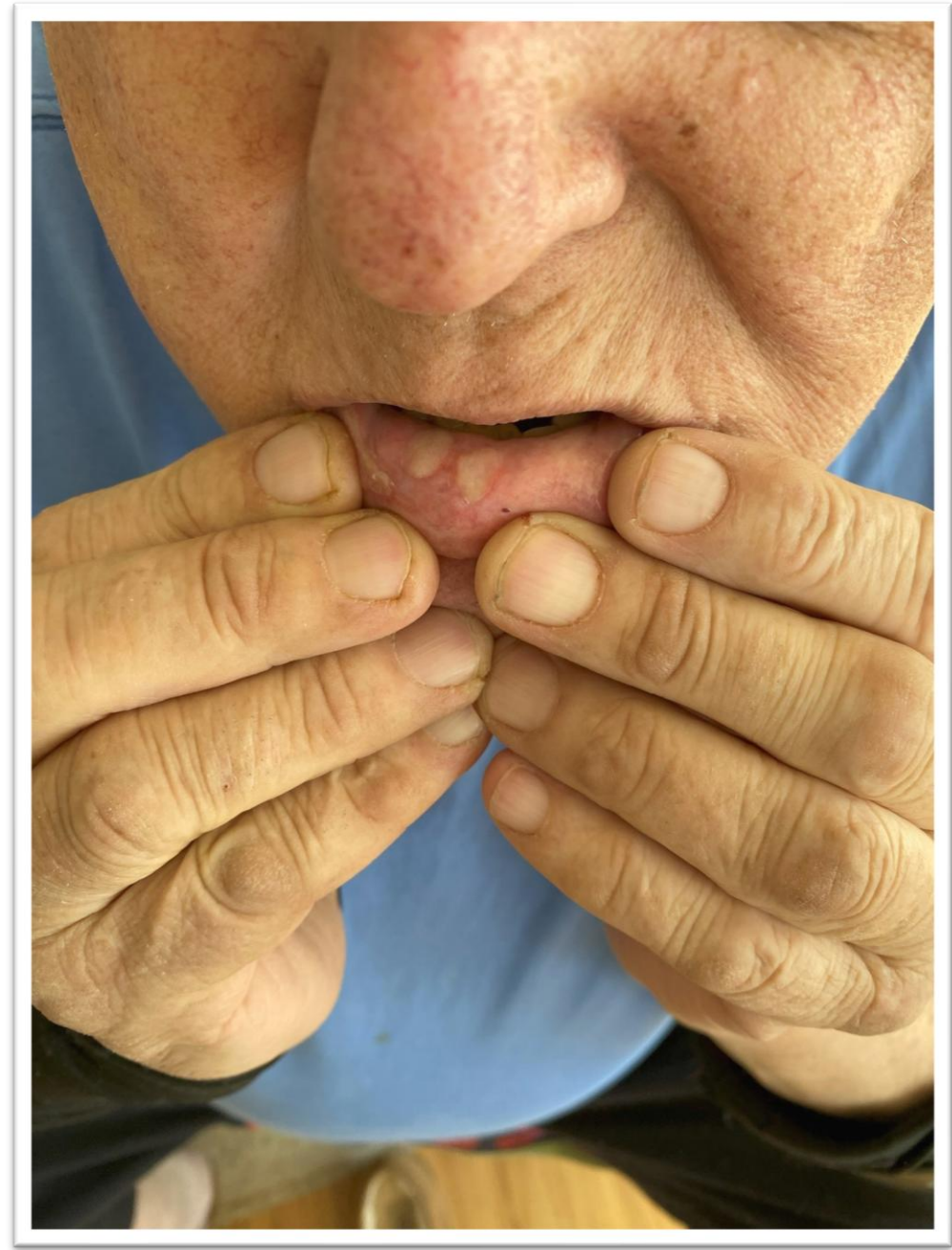
















ADDRESSING THE ASK

- One paper analyzed closing arguments and outcomes:
 - *33 closing arguments*
 - *21 included a specific \$ amount*
 - *15 offered a contingent amount*
 - *86% of jurors referenced the amounts in their deliberations*
- Counter anchor?
 - *One study showed no effect on liability or amount of award*
 - *Another suggested that using a counter in a strong defense case could impact liability*
 - *Yet another simulation suggested that countering actually improved liability outcome*



Trial Teams & Mental Health

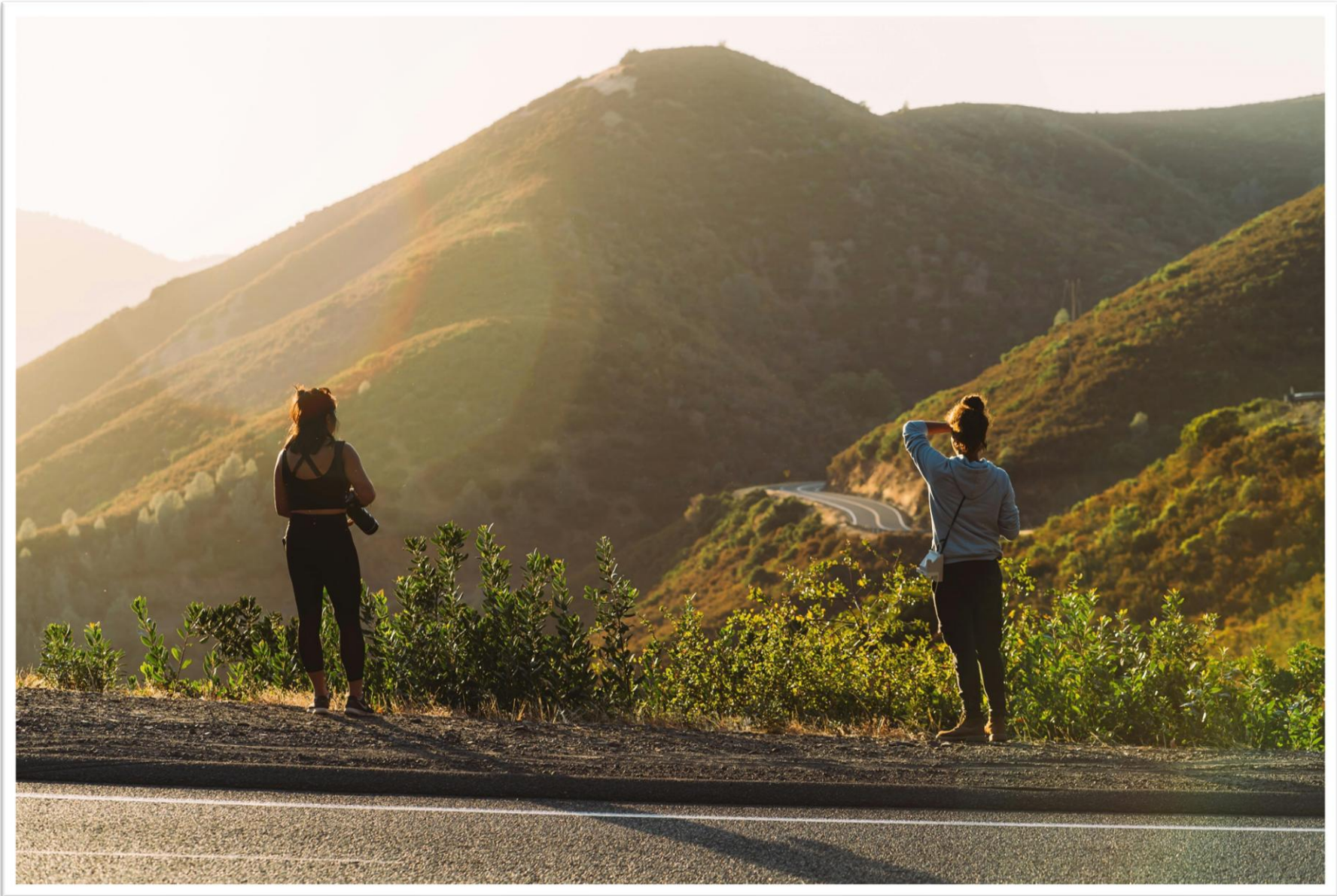
Avoiding Burn Out

AUTHOR OF THE INTERNATIONAL BESTSELLER THE WILLPOWER INSTINCT

KELLY MCGONIGAL, PH.D.

**THE
UPSIDE
OF
STRESS**

**WHY STRESS IS GOOD FOR YOU,
and HOW TO GET GOOD AT IT**





Trial Team

LEAGUE

DRAFT BOARD

DATE

TEAM 1

TEAM 2

TEAM 3

TEAM 4

TEAM 5

TEAM 6

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TEAM 12

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WELCOME TO THE

OFFICE

DRAFT PARTY



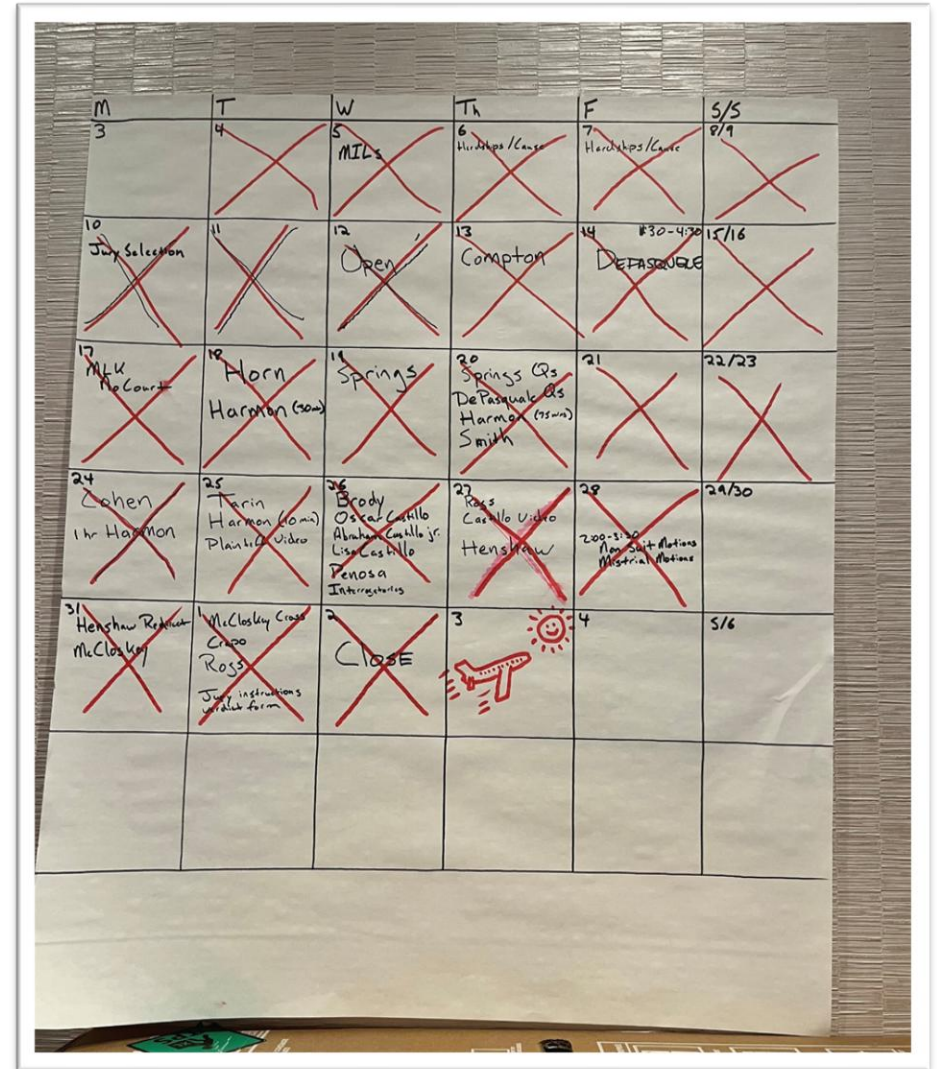
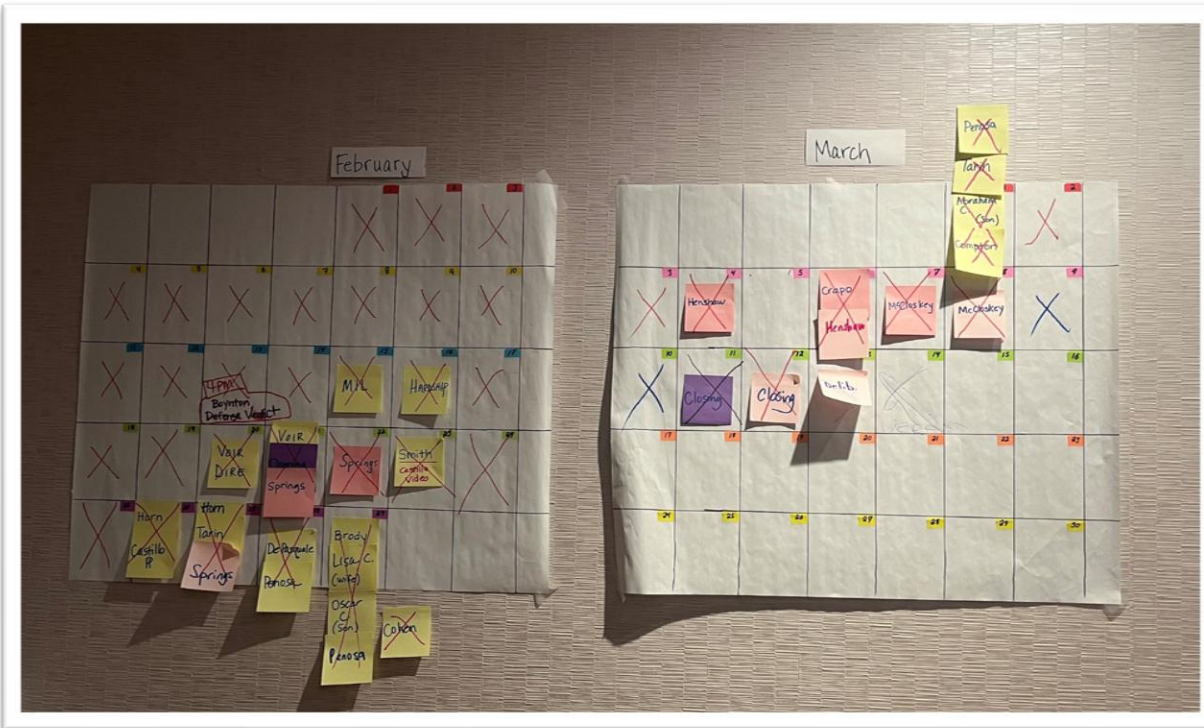
Burnout and Mental Health

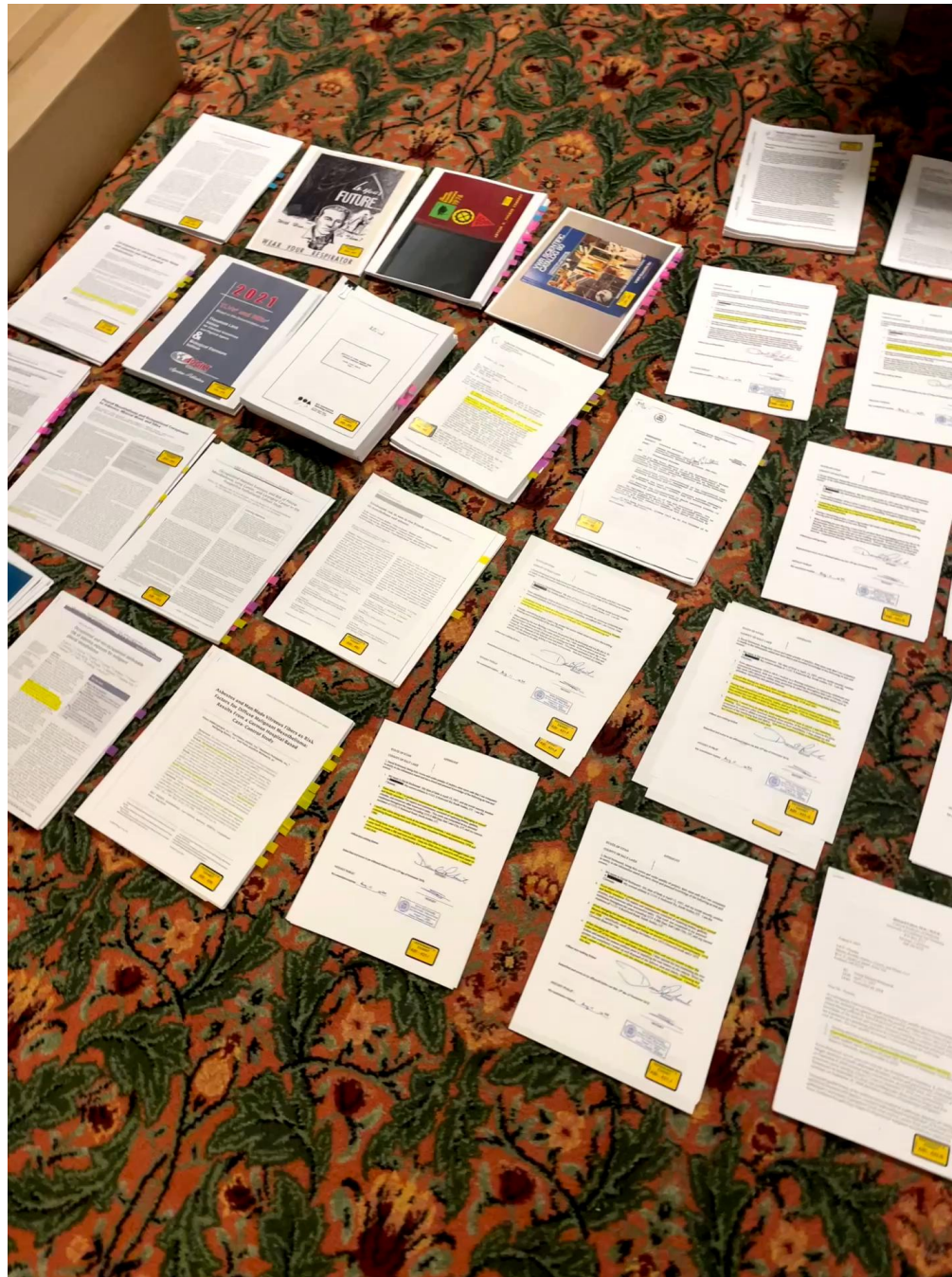
- Bloomberg Law's 2021 Attorney Workload and Hours—more than HALF of attorneys reported burn out

- 2023 Mental Health Survey of the Legal Profession—majority of attorneys report:



- Increasingly cynical outlook
- Lost motivation
- Decreased satisfaction
- Moody or irritable
- Mental overwhelm
- Trouble concentrating
- Exhausted





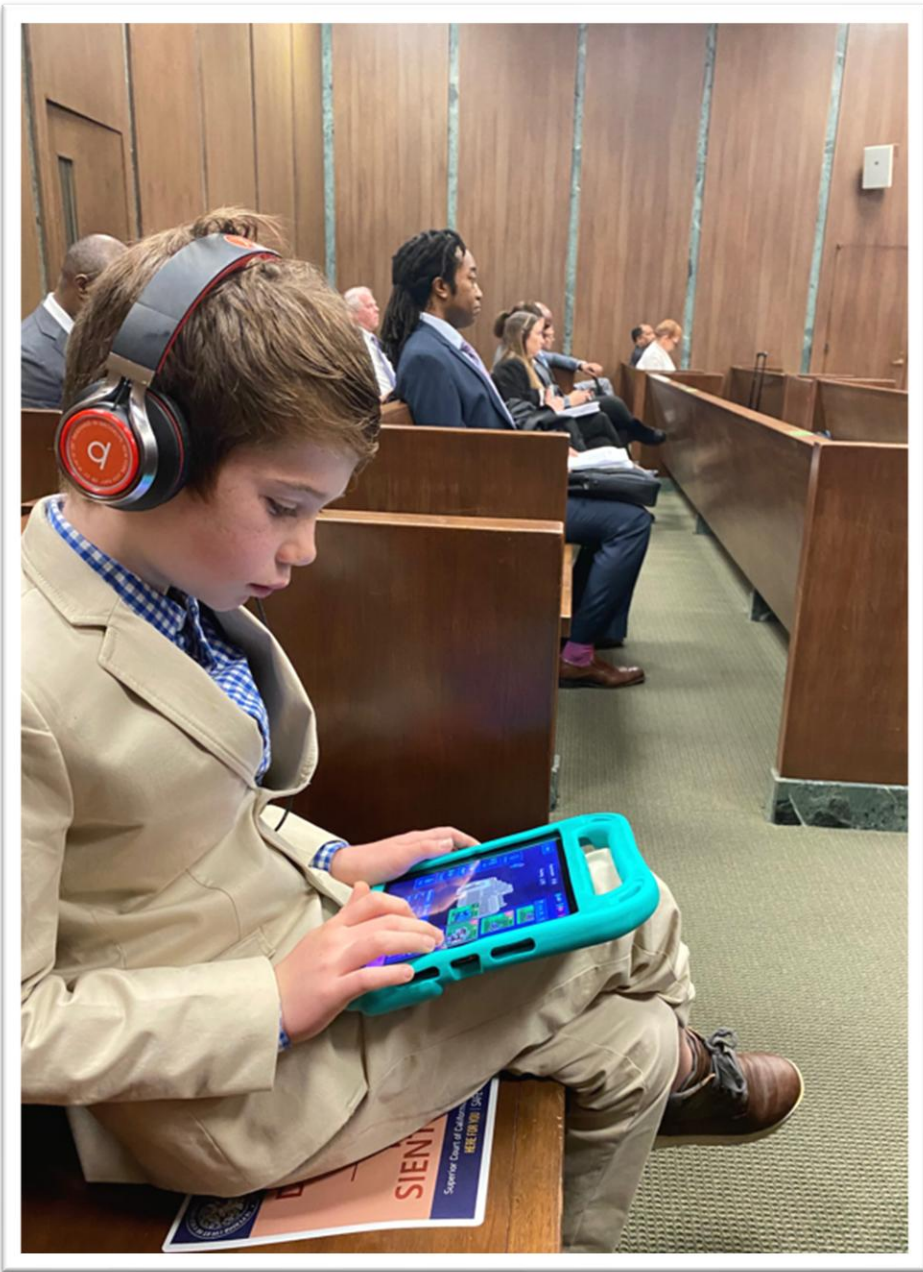














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 2 Claire C. Weglarz (SBN 233609)
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10 Attorneys for Defendant,
 11 JOHN CRANE INC.

12 SUPERIOR COURT
 13 FOR THE COUNTY OF SAN FRANCISCO

14 JULIE BOOTH, Individually and as Successor
 15 Interest to ROY BOOTH and PEGGY BOOTH,
 16 JACOBSEN and DOES 1 to 5,

17 Plaintiffs,

18 v.

19 3M COMPANY, et al.,

20 Defendants.

21 I, Claire C. Weglarz, declare:

22 1. I am an attorney licensed in the State of California and
 23 am a Partner of the law firm of Hawkins Parnell Thackston & Young,
 24 Defendant John Crane Inc. ("JCI") in San Francisco, California.
 25 herein. If called and sworn as a witness, I will testify to the truth of the
 26 foregoing.

27 ///

28 DECLARATION OF CLAIRE C. WEGLARZ IN SUPPORT OF DEFENDANT JOHN CRANE INC.'S EX PARTE APPLICATION FOR AN ORDER CONTINUING TRIAL

1 7. I will be travelling with my dog by car to Phoenix, Arizona, for the Thanksgiving
 2 holiday. My entire family lives in Phoenix and I rarely get to see them throughout the year. I was

3 planning on driving to Phoenix from Los Angeles, where I reside, the Wednesday before
 4 Thanksgiving to be there in time for the holiday. I was planning on driving back to Los Angeles on
 5 the Sunday after Thanksgiving.

6 8. In February 2016, I prepaid for a yoga retreat in Mexico for December 2-7. If the
 7 Booth trial had started as originally set, trial would have most likely finished before this trip. Booth
 8 is not a preference case and there will be no prejudice to Plaintiffs if trial is continued a few more
 9 weeks. I cancelled a vacation in September 2016 to Mexico because I tried the Angus case to
 10 verdict, a San Francisco county asbestos case with a preferential trial date.

11 9. I will be travelling with my dog by car to Phoenix, Arizona, for the Christmas
 12 holiday.

13 case is not yet ready for trial.

14 ///

2018 *Booth* Trial Dog:
Mosley





**KEEP
CALM
— AND —
COURT
ON**

