



***Facts & Figures About  
Asbestos Litigation:  
Highlights from  
the New RAND Study***

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# ***A Profile of Asbestos Litigation***

	<b>1982</b>	<b>Today</b>
<b>Number of claimants</b>	<b>21,000</b>	<b>600,000</b>
<b>Number of defendants</b>	<b>300</b>	<b>8,400</b>
<b>Total costs to date (nominal \$)</b>	<b>\$1 B</b>	<b>\$54 B</b>
<b>Bankruptcies</b>	<b>3</b>	<b>67</b>
<b>Estimated future costs (nominal \$)</b>	<b>\$38 B</b>	<b>\$145–\$210 B</b>



# ***RAND Research Approach***

- **Built on our previous asbestos and mass tort research**
- **Used publicly available data**
- **Obtained internal reports from investment and insurance analysts**
- **Acquired confidential data from litigation participants**
- **Conducted interviews with litigation participants**



# *Outline*

- **What are the numbers behind the profile?**
- **How did we get here?**
- **What are the consequences?**



## ***What Are the Numbers?***

- **How many people have filed claims, from which industries, for what injuries?**
- **How many companies have had claims filed against them, and how are these companies distributed across the economy?**
- **How much is being spent on the litigation?**
- **How much of the money goes to claimants?**
- **How are the dollars allocated across injury categories?**



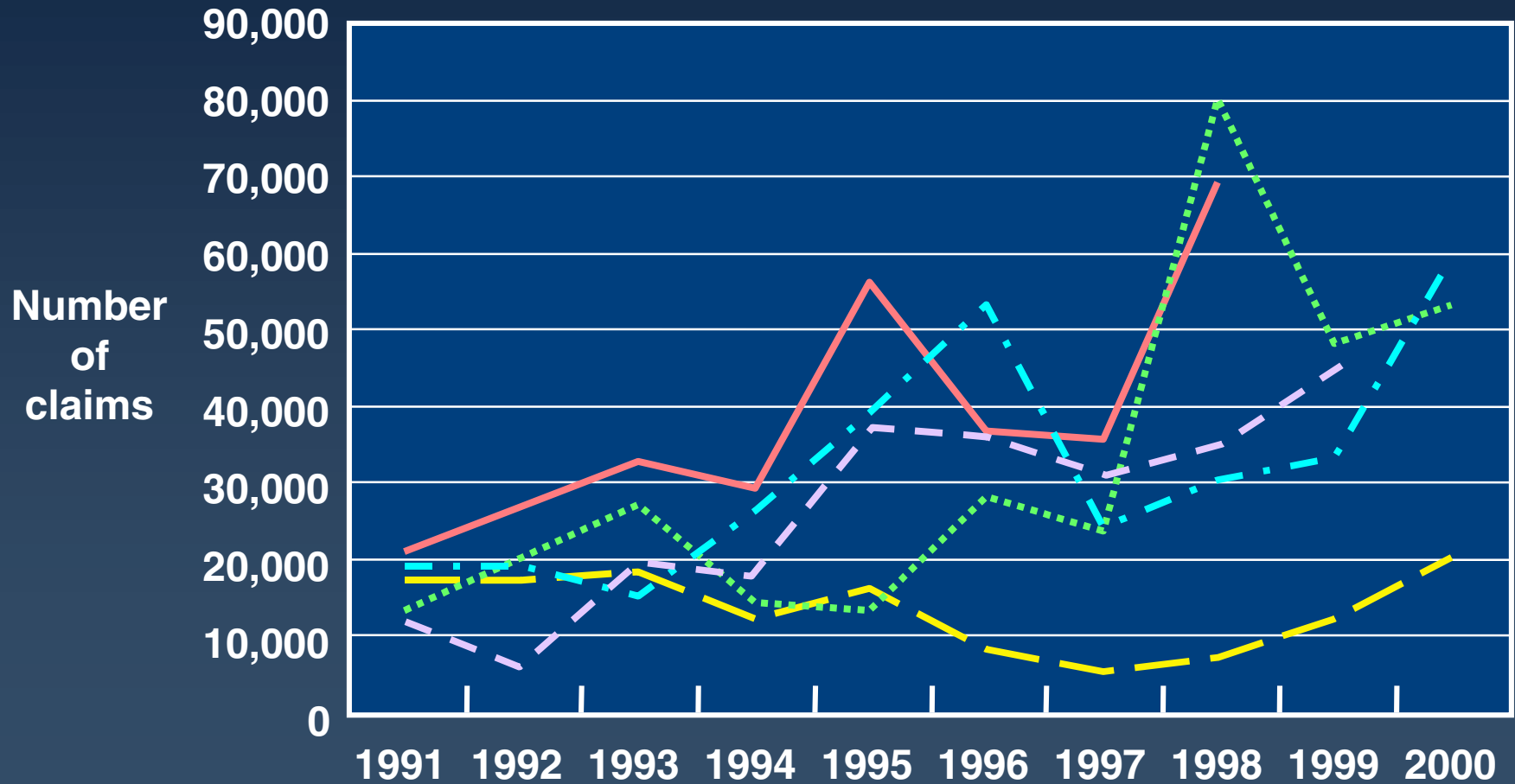
# ***Over 600,000 Claimants Through 2000***

- **Typical claimant files against several dozen defendants**
- **Number of claims filed annually has risen sharply**
- **Average severity of claimed injuries is declining**
  - **Little change in frequency of seriously ill claimants**
  - **Increasing proportion of claims for less serious injuries**



# Annual Claims Filings Have Risen Sharply Since 1990

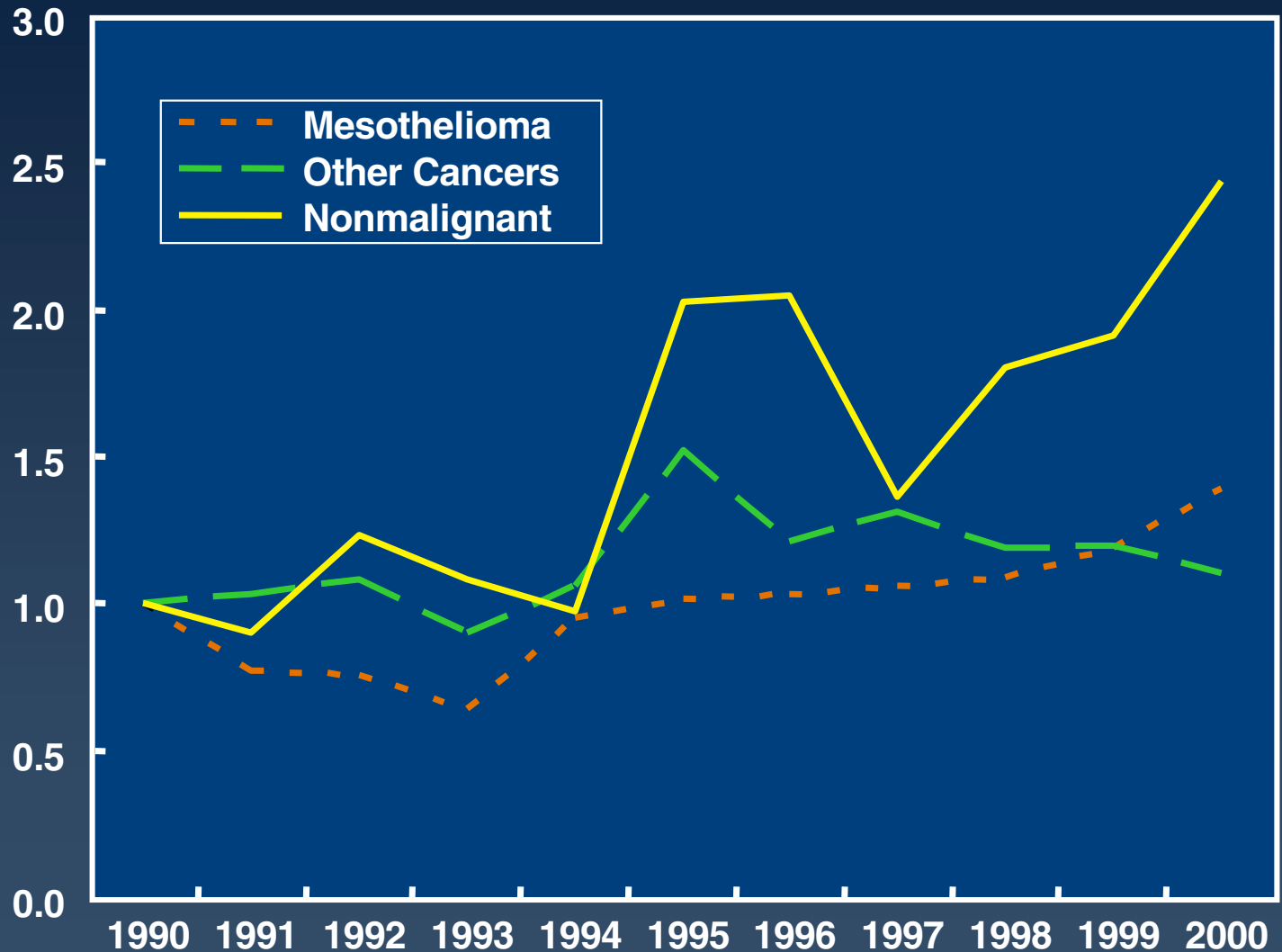
## Asbestos claims against five major defendants





# *Nonmalignant Claims Account for the Growth in Claims*

Ratio of the  
number of  
claims in each  
year to the  
number of  
claims in 1990





# ***Claims from Workers in Nontraditional Industries Are Growing Most Rapidly***

	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>% increase</b>	
				<b>'99-00</b>	<b>'00-01</b>
<b>Traditional</b>	<b>16,997</b>	<b>31,496</b>	<b>43,397</b>	<b>85</b>	<b>54</b>
<b>Nontraditional*</b>	<b>11,420</b>	<b>23,582</b>	<b>40,453</b>	<b>107</b>	<b>71</b>

**\*Food and beverage, textiles, paper, glass, iron/steel/nonferrous, durable (metal) goods, etc.**

Source: Claims Resolution Management Corporation, 2001.



## ***The Number and Range of Defendants Have Also Increased Sharply***

- **Our list of defendants includes more than 8,400 firms**
  - **Increasing number of defendants outside the asbestos and building products industry**
  - **Both large and small businesses**
- **At least one company in nearly every U.S. industry (at the two-digit SIC level), now involved in litigation**
- **By 1998, nontraditional defendants account for more than 60% of asbestos expenditures (confidential study)**

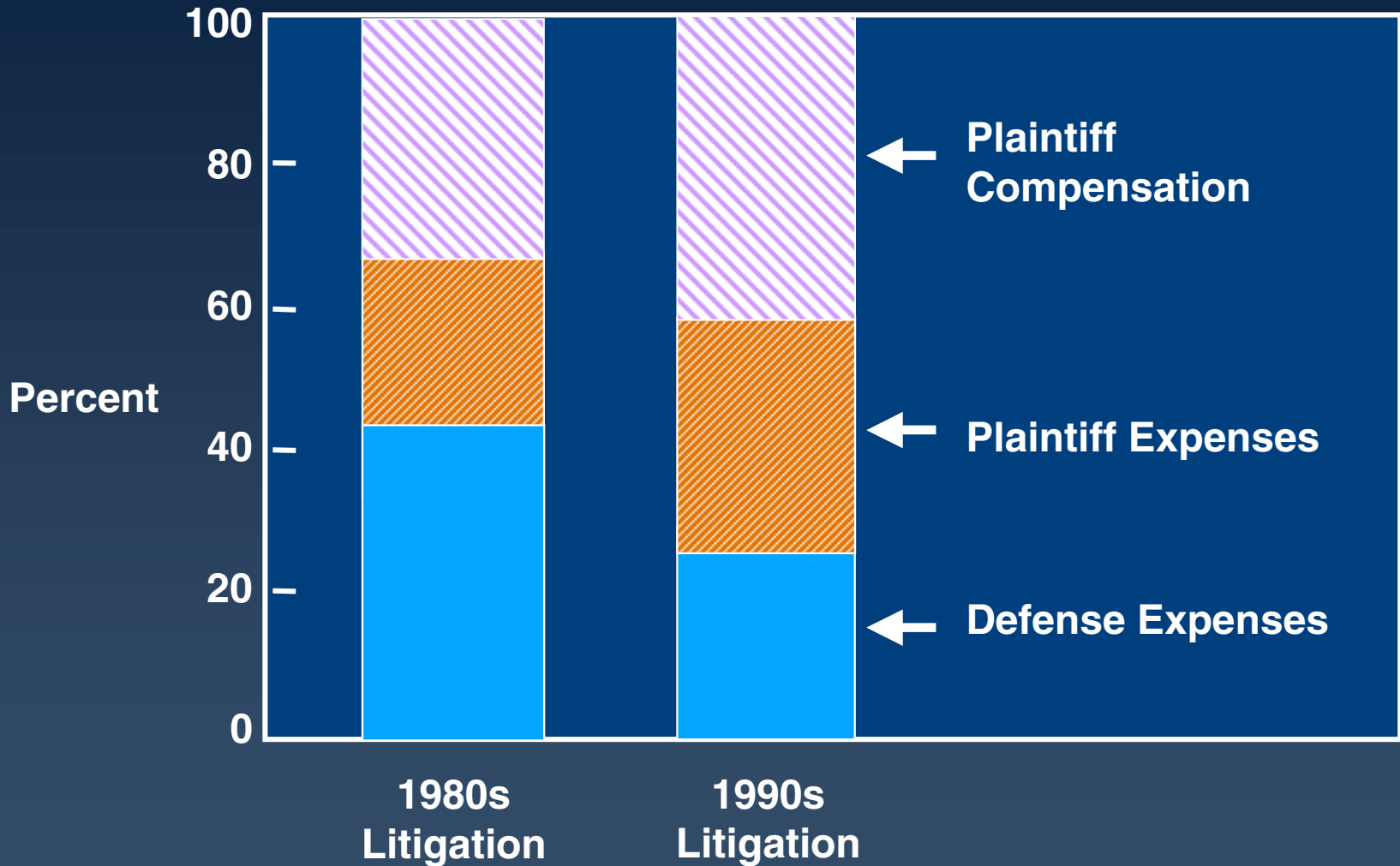


# ***Estimated Total Costs of Resolving Asbestos Claims Through 2000: \$54 B***

- Publicly available data are very limited
- We estimate total outlays of \$54 B through 2000
  - U.S. insurers \$22 B
  - Insurers outside U.S. \$8–\$12 B
  - Defendants \$20–\$24 B
- At least 5 major companies have each spent more than \$1 B on asbestos litigation



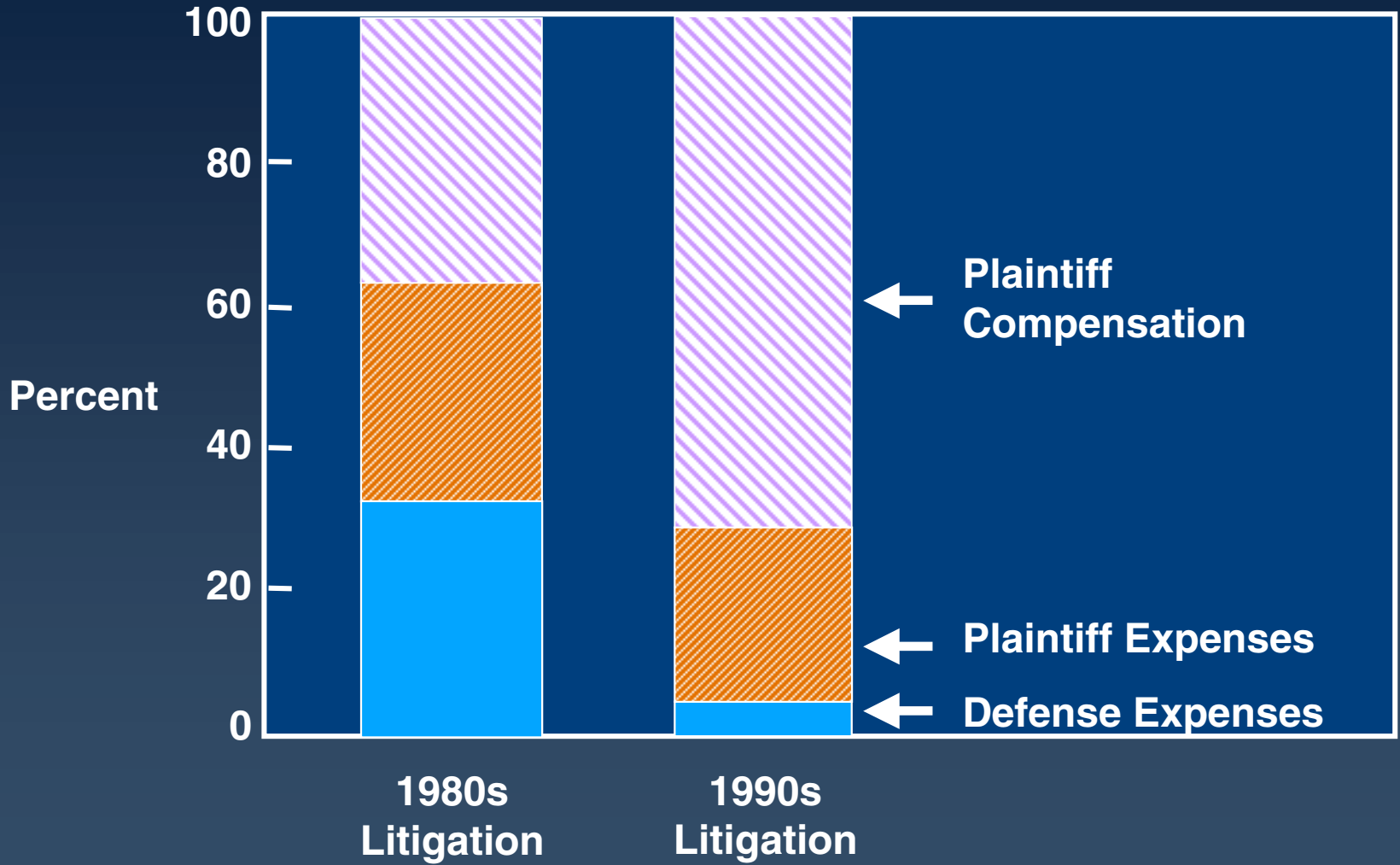
# Transaction Costs Have Consumed More Than Half of Total Spending



*And they are likely to go back up in next decade*



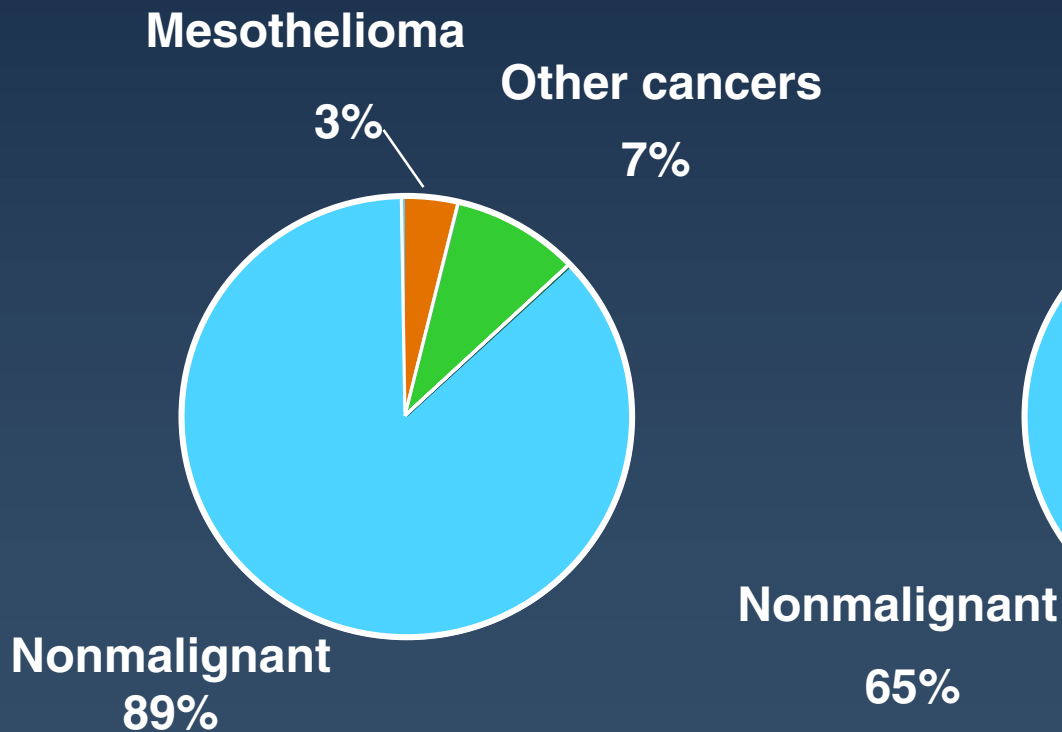
# *Transaction Costs of Bankruptcy Trusts Are Low—But So Are Payouts*



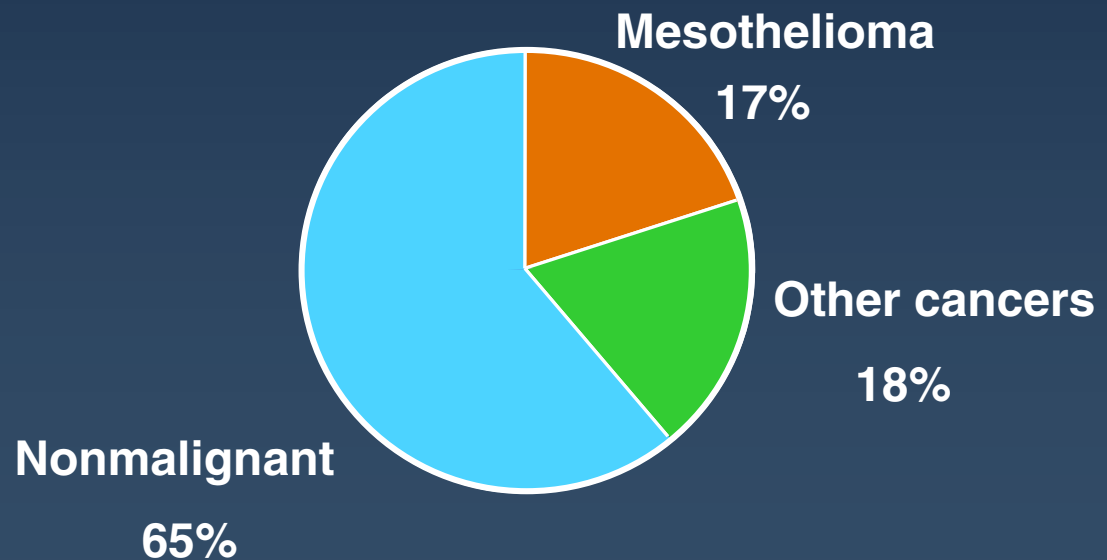


# ***Most Dollars Are Paid to Nonmalignant Claimants (1991–2000)***

## **Distribution of Claims**



## **Estimated Allocation of Compensation**





# *Outline*

- What are the numbers behind the profile?
- ● How did we get here?
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# ***There Are Lots of Reasons***

- **Widespread occupational exposure led to many injuries**
- **Mass litigation techniques proved successful for plaintiffs**
- **Efficiency efforts promoted additional litigation**
- **Global settlements failed**
- **Over time cases migrated to jurisdictions favorable to plaintiffs**
- **Mega-trials attracted attention**
- **Mean verdicts rose**



# ***Widespread Occupational Exposure***

- **Asbestos is abundant, inexpensive, versatile**
- **Failure to warn of its risks and inadequate protection increased exposure**
- **Estimated 27 million U.S. workers in high-risk industries and occupations exposed, 1940-1979**
- **Unknown numbers of workers exposed**
  - **In other industries and occupations**
  - **Since 1979**



## ***Many Injuries***

- **More than 225,000 premature deaths estimated through 2009**
- **Variety of diseases**
  - **Mesothelioma**
  - **Other cancers, particularly lung cancer**
  - **Asbestosis**
  - **Pleural thickening or plaques**
- **Studies suggest that most recent claimants without malignancies are not currently functionally impaired**



# ***Plaintiff Attorneys Learned Advantages of Mass Litigation***

- **Challenges for plaintiffs' attorneys**
  - Statutes of limitations
  - Repetitive litigation of key issues
  - Vigorous & well-funded defense
- **Plaintiffs' attorneys response**
  - Mass filings
  - Mass screenings
- **A small number of firms represented most plaintiffs**



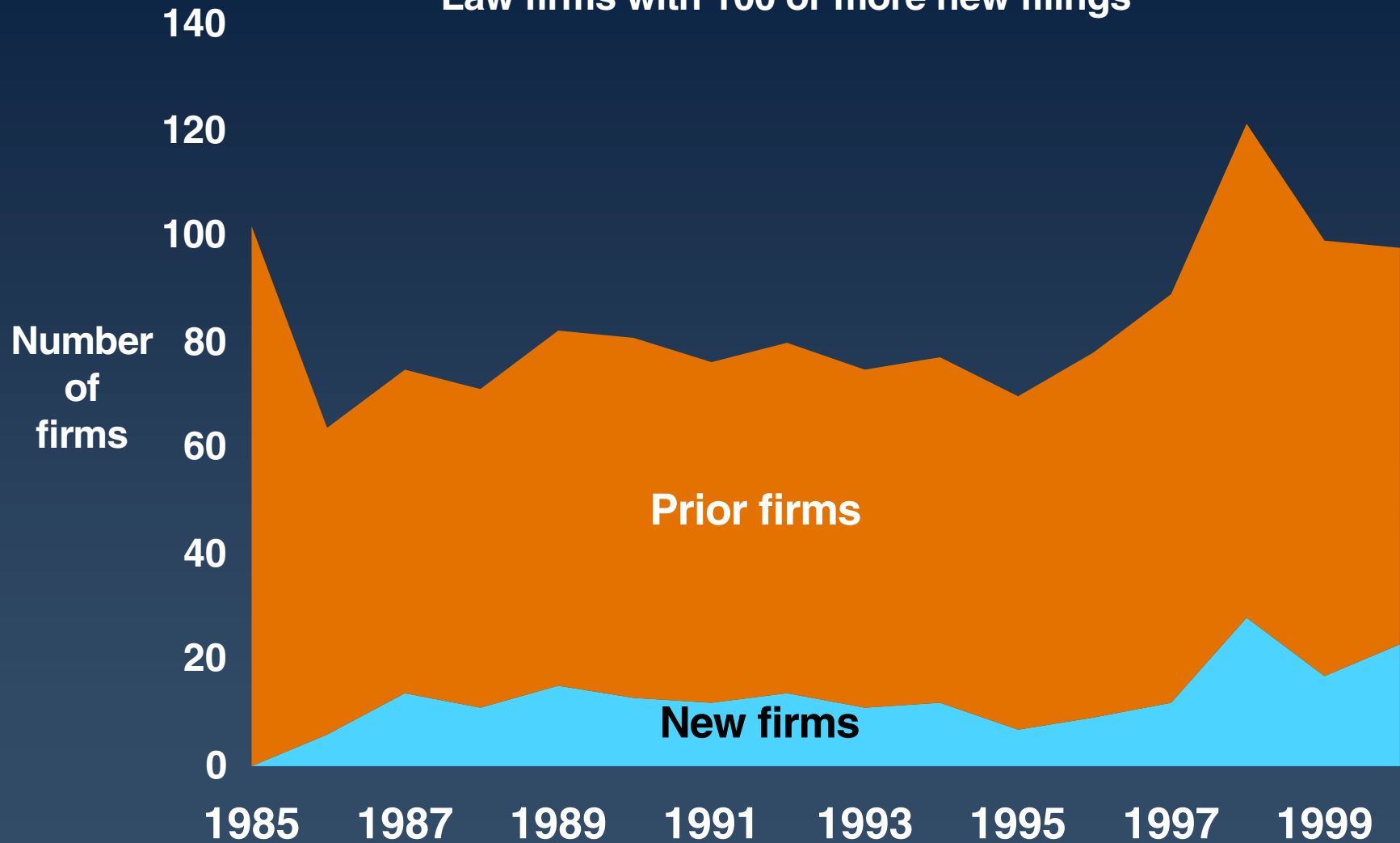
# ***Efficiency Efforts Promoted Additional Litigation***

- **Judicial case management**
- **Defendants' settlement programs**
- **Bankruptcy trust procedures**



# Number of Law Firms with Large Caseloads Increased Dramatically

Law firms with 100 or more new filings



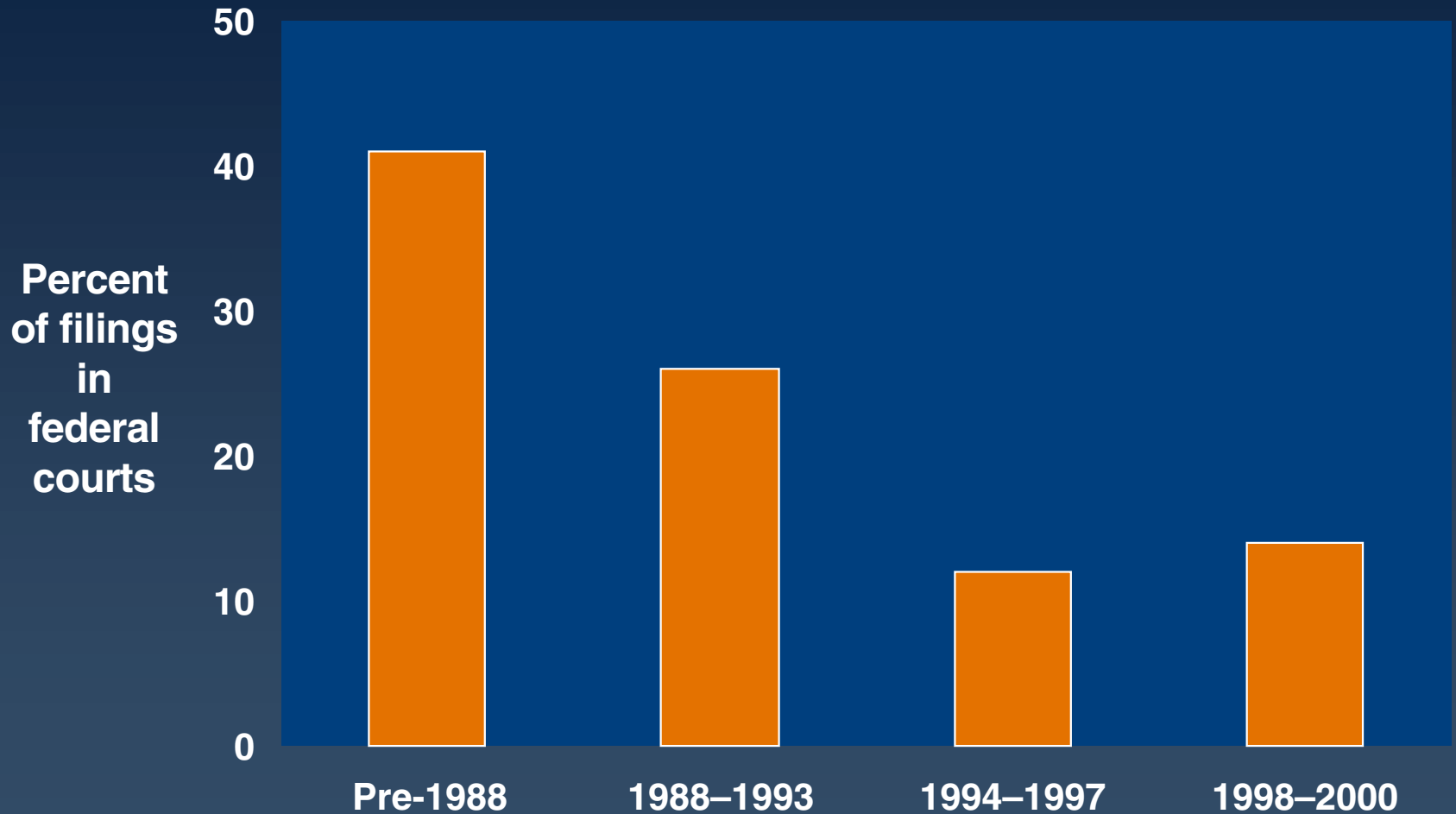


# ***Global Settlements Failed***

- **Multi-district litigation (MDL) did not produce a large-scale settlement**
- **Class action settlements overturned by U.S. Supreme Court**

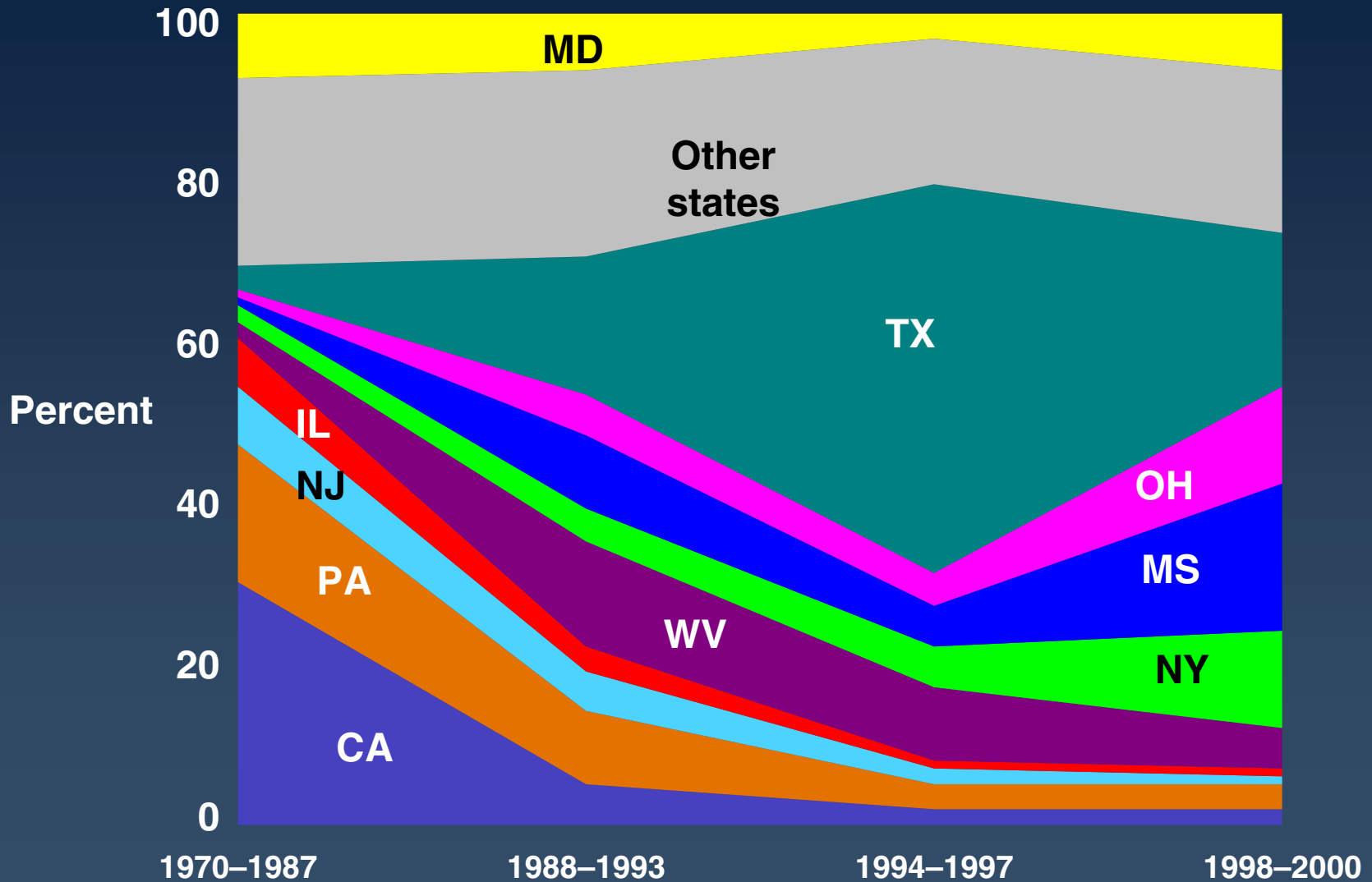


# *Filings Moved from Federal to State Courts*





# And from Some States to Others





# ***And To Venues Favorable to Plaintiffs***

## **Top five state court venues**

<b>1970–1987</b>	<b>1988–1993</b>	<b>1994–1997</b>	<b>1998–2000</b>
<b>Los Angeles, CA</b>	<b>Kanawha County, WV</b>	<b>Harris County, TX</b>	<b>Cuyahoga County, OH</b>
<b>San Francisco, CA</b>	<b>Jackson County, MS</b>	<b>Galveston County, TX</b>	<b>Jefferson County, MS</b>
<b>Philadelphia, PA</b>	<b>Baltimore, MD</b>	<b>Jefferson County, TX</b>	<b>New York, NY</b>
<b>Baltimore, MD</b>	<b>Orange County, TX</b>	<b>Monongalia, WV</b>	<b>Baltimore, MD</b>
<b>Alameda, CA</b>	<b>Middlesex County, NJ</b>	<b>New York, NY</b>	<b>Claiborne County, MS</b>



# ***State Courts Redoubled Their Efforts To Resolve Cases Efficiently***

- **Judicial case management**
- **Large-scale consolidation**

***These efforts often ignored effects on  
litigation dynamics & outcomes***



## ***Mega-Trials Attracted Wide Attention***

- **1993-2001: 527 trial verdicts, covering 1598 plaintiffs**
- **~ 2/3 claims were tried in groups, most involving small number of plaintiffs & no absent plaintiffs**
- **16 “mega-trials”**
  - 8 intended to bind ~37,000 plaintiffs
  - 8 others, ~20,000 plaintiffs, tried in groups



# ***Mean Verdicts Rose Dramatically from 1998-2001***

- **Mesothelioma: ~\$2M to ~\$6.5M**
- **Other cancer: ~\$1M to ~ \$2.5M**
- **Asbestosis: ~\$2.5M to ~\$5M**



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# ***What Are the Consequences?***

- **Bankruptcies becoming more frequent**
- **Significant economic impact on defendant companies**
- **Compensation for future claimants is at risk**



# ***Bankruptcies Are Becoming More Frequent***

- **First bankruptcy in 1976**
- **20 in the 1980s**
- **17 in the 1990s**
- **29 from January 1, 2000, through Summer 2002**



# ***And Bankruptcy Is Only Part of the Story***

- Defendants' net payments to asbestos claimants weaken their financial position, cost jobs
- Upper-bound estimates of effects on defendants:

	<u>Today</u>	<u>Eventually</u>
Reduced level of investment	\$10 B	\$33 B
Jobs not created	138,000	423,000

- However, other firms' reactions may offset the overall effects on the economy



# ***Future Claimants' Compensation at Risk***

## ***Example of Johns-Manville***

**Compensation as  
percent of  
liquidated value**

<b>1988</b>	<b>Trust payments began</b>	<b>100%</b>
<b>1990</b>	<b>Payments suspended</b>	<b>(Only exigent cases paid)</b>
<b>1995</b>	<b>Payments resumed</b>	<b>10%</b>
<b>2001</b>	<b>Payment plan revised</b>	<b>5%</b>



# ***There Is Widespread Agreement About the Current State of the Litigation...***

- **Recent surge in filings**
- **Majority of recent claimants are not currently functionally impaired**
- **High transaction costs**
- **Large number of bankruptcies**
- **Spread of litigation through economy**
- **Future claimants' prospects are uncertain**



# ***Disagreement About***

- **Whether reform is needed**
- **If so, what reform would best remedy perceived problems**