

# Asbestos and Its Impact on Texas

*Texas Public Policy Foundation*

**2<sup>nd</sup> Annual Policy Orientation for the  
Texas Legislature  
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Brown McCarroll, L.L.P.**

# Asbestos – Related Diseases Are Latent Diseases

# Asbestos – Related Diseases

- Mesothelioma
- Asbestosis
- Lung Cancer

# Mesothelioma

- Almost always fatal
- Can be lower doses and shorter exposures
- Usually develops 30-50 years after exposure

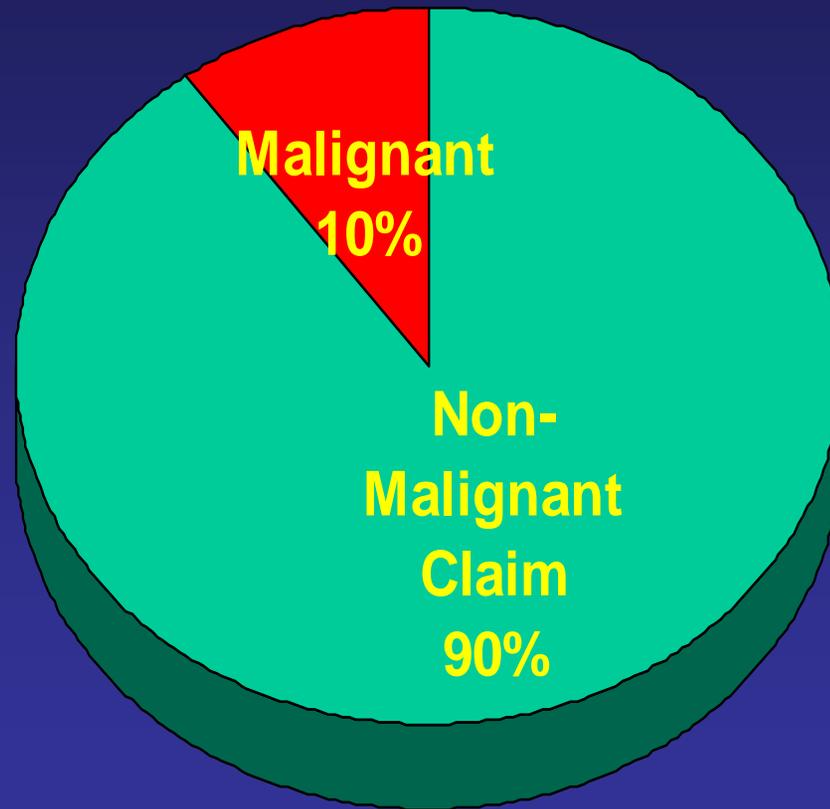
# Asbestosis

- Not a cancer
- Scarring of lung tissues
- Requires high doses and sustained exposure
- Usually develops 15-30 years after exposure

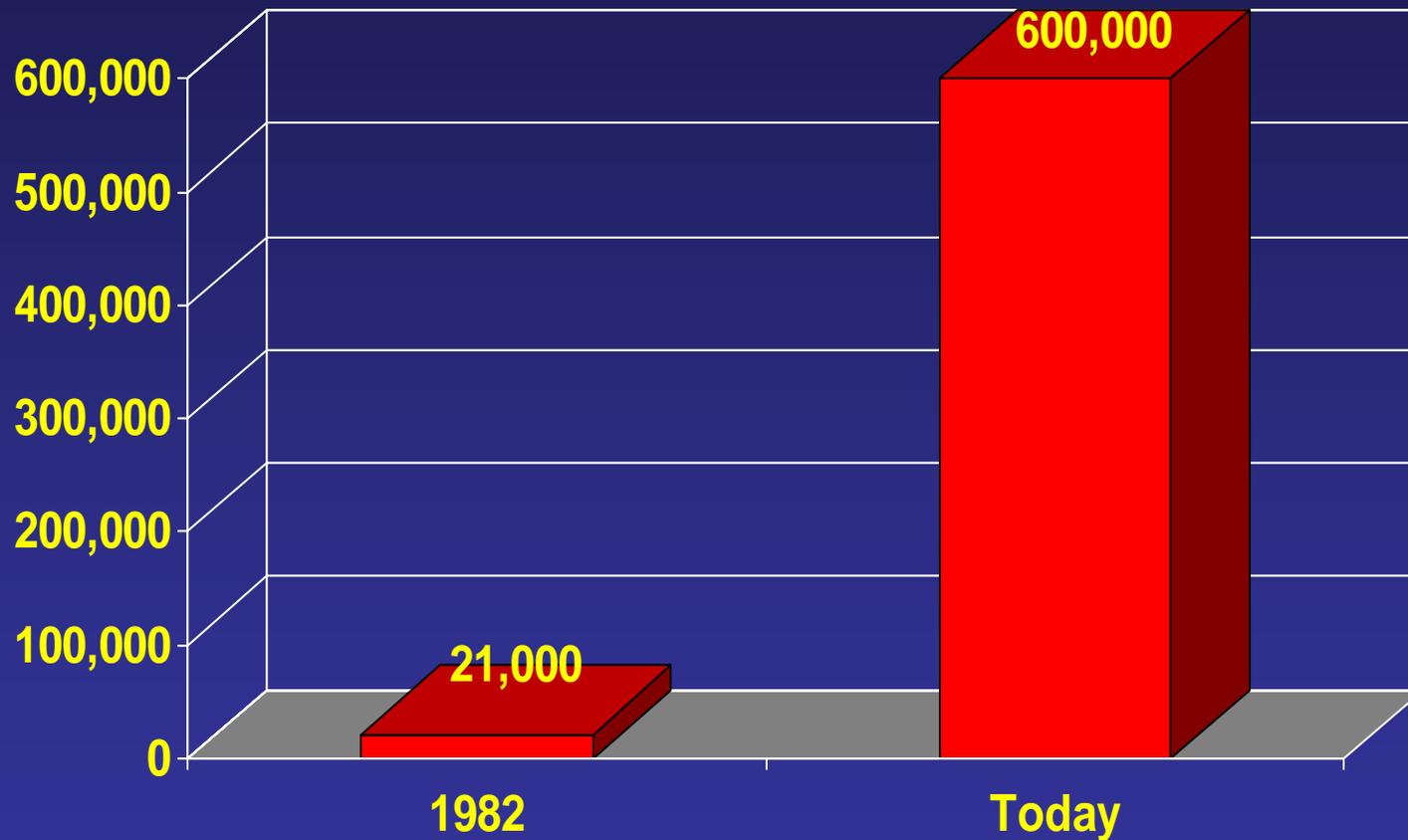
# Lung Cancer

- Synergistic with smoking
- Dose/exposure requirements similar to asbestosis
- Usually develops 20-40 years after exposure

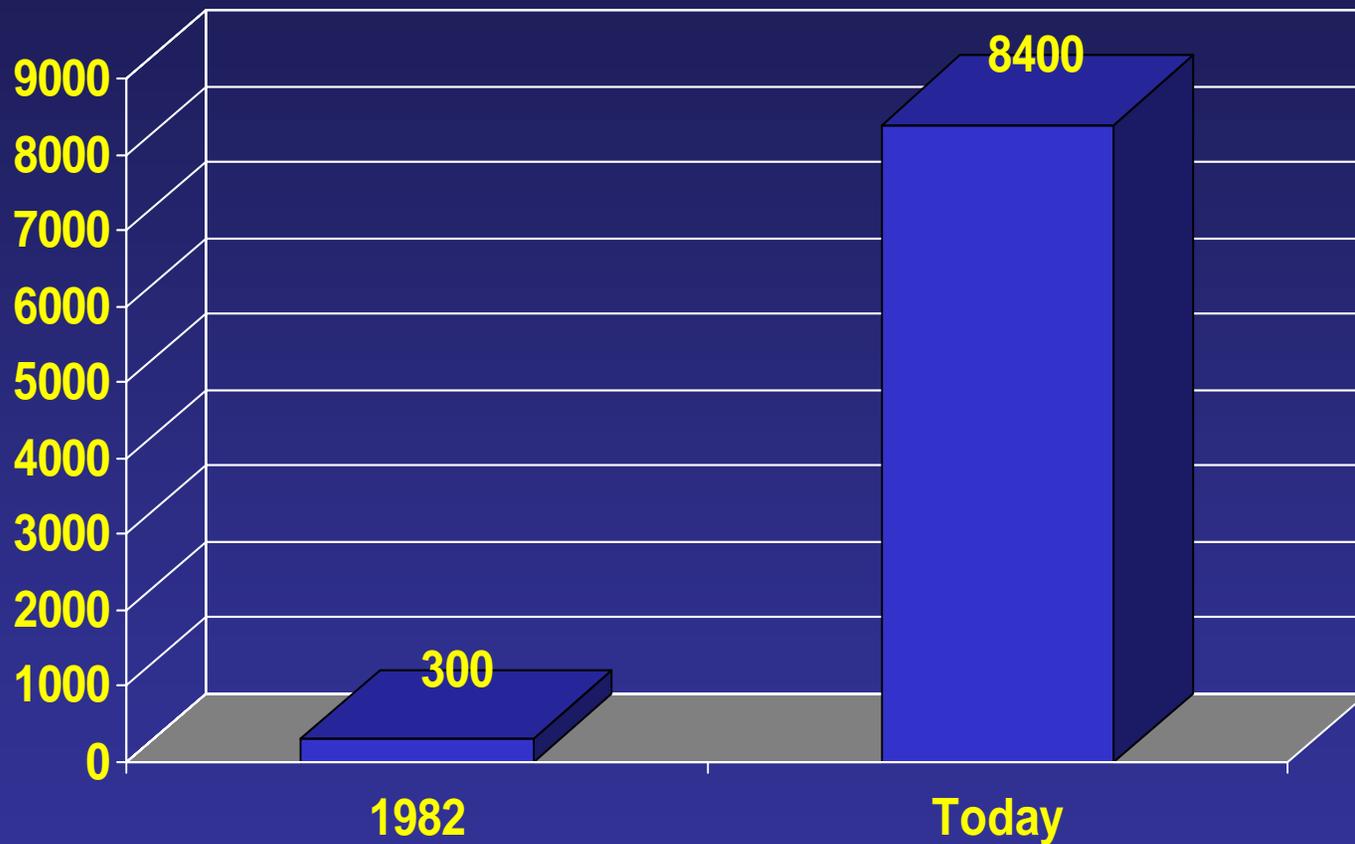
# Claims 1991-2002



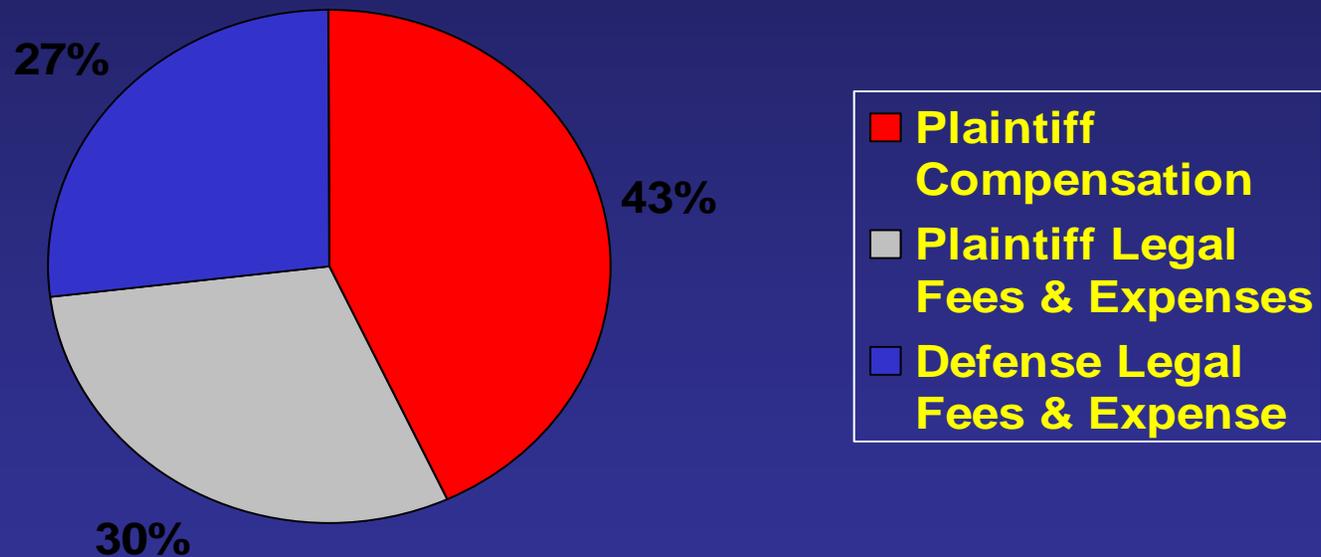
# Asbestos Claimants



# Number of Defendants



# Total Asbestos Litigation Spending

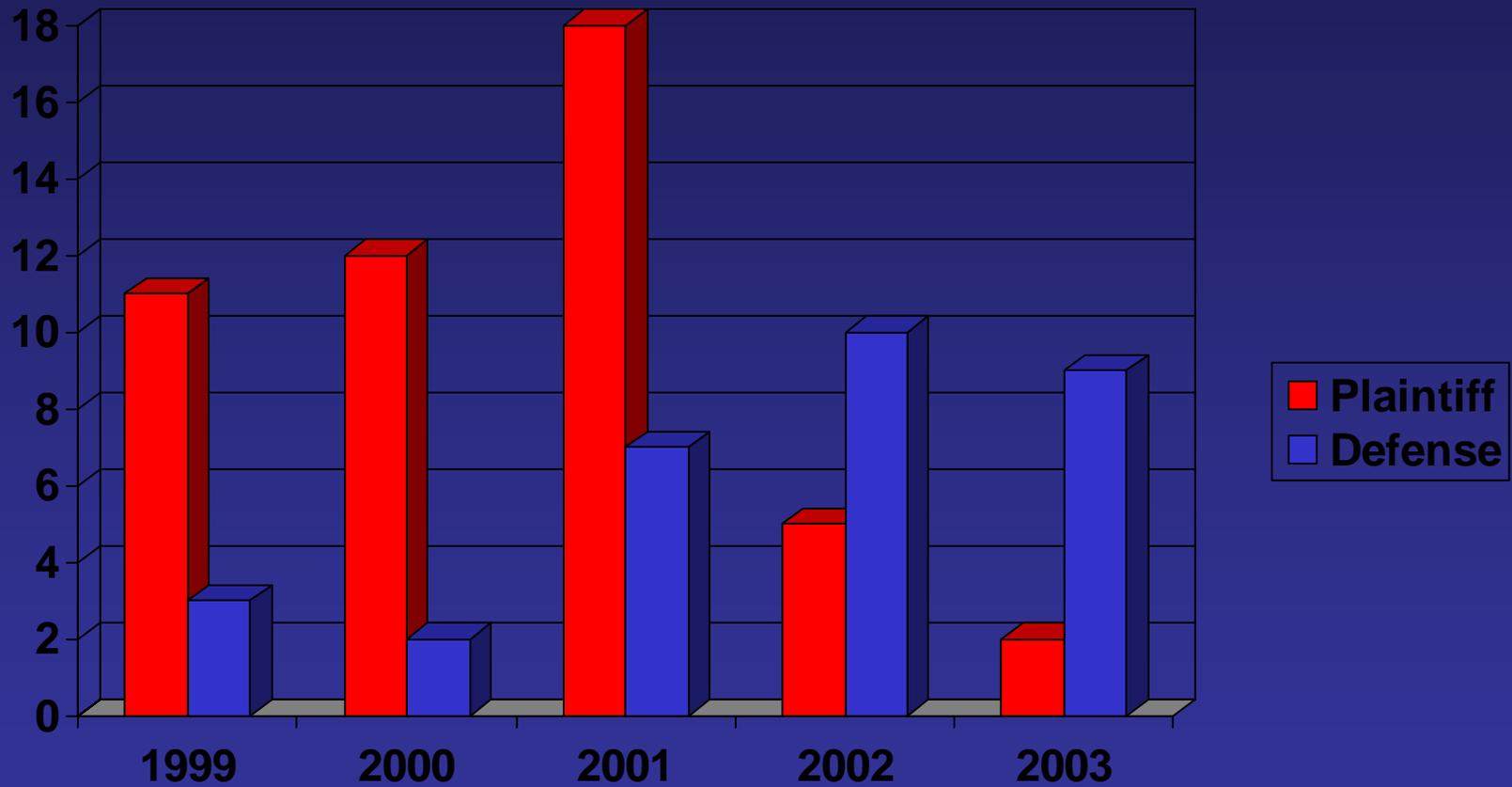


# Texas Verdicts



**Brown | McCarroll**  
L.L.P.

# Texas Verdicts



# Who Gets Sued?

- Product manufacturers
- Contractors
- Suppliers / Distributors
- Retailers
- Premises Owners

# HB 4

- Proportionate responsibility and third parties
- Joint and several liability from 15% to 51%
- Cap on bond for judgments
- Offer of settlement

# Non-Impaired Dockets

- ABA Guidelines
- Impairment Criteria
- Other States (some legislative and some judicial)

# Rule 13

## Multi-District Litigation ("MDL")

- Applicability (filed on or after 09/01/03)
- MDL Panel
- Transfer to Pretrial Court
- Mark Davidson, Harris County

# MDL Panel

Five-judge panel appointed by Chief Justice of Texas Supreme Court

- David Peeples (224<sup>th</sup> District Court)
- Errlinda Castillo (13<sup>th</sup> Court of Appeals)
- Mack Kidd (3<sup>rd</sup> Court of Appeals)
- George Hanks (1<sup>st</sup> Court of Appeals)
- Douglas Lang (5<sup>th</sup> Court of Appeals)

# Authority of MDL Panel

- To transfer cases involving common questions of fact to one judge for rulings on all pretrial issues
- To stay all or part of any trial proceeding until it has ruled

# Transfer to Pretrial Court

- Decided by vote of 3 out of 5 panel members
- Effective upon notice
- No further action in Trial Court
- Transfer of Tag-along cases

# Authority of Pretrial Court

- Jurisdiction
- Venue
- Disposition by other than conventional trial on merits (summary judgment, default judgment, settlement)
- Discovery
- Trial preparation (preadmission of exhibits, motions in limine, motion to strike expert witnesses, etc.)
- Inactive Docket ?

# Rulings of Pretrial Court

- No remand to Trial Court if final disposition by Pretrial Court.
- Pretrial Court orders are binding in Trial Court after remand

# Rule 11

## Applicability

- Cases filed on or after October 1<sup>st</sup>, 1997 and before September 1<sup>st</sup>, 2003
- Cases involving material question of fact and law in common with another case in another county

## Authority of Pretrial Judge

- Decide all pretrial motions

# Litigation Reality

- 25,000+ claims
- Concentrated in certain counties
- Mass settlements and matrix deals
- Millions on Monday

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