

# Perrin Conferences Cutting-Edge Issues in Asbestos Litigation Conference

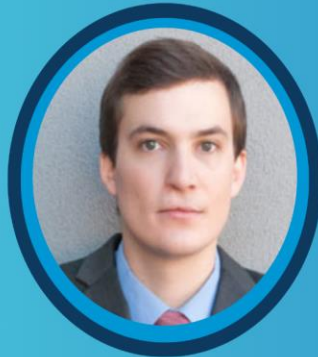


March 12-13, 2024

## Recent Large Verdicts



**Lily Keefer**  
STOUT  
Chicago, IL



**Pierre Ratzki, Esq.**  
Weitz & Luxenberg  
New York, NY



**Stuart Simon**  
President  
American Jury Centers  
Boca Raton, FL



**Erin Smith-Corbally**  
Manager, Asbestos Claims  
The RiverStone Group  
Manchester, NH



**Daniel Wasserberg, Esq.**  
Meiowitz & Wasserberg  
New York, NY



Overview of Recent Verdicts and Trends



Jurisdictional Impact



What to Expect Going Forward?



How Do You Evaluate the Risk?



Managing Jury Selection



# 2023 Verdicts

# Verdicts 2023



	Date	Verdict	Plaintiff	Disease	Living or Deceased	Defendant	Firm	Court
	2/27/2024	\$23 million	James McWilliams	Mesothelioma	Living	Jenkins Bros.	Weitz & Luxenberg	NY Supreme Appellate Div. 1 <sup>st</sup> Dept.
#7	2/15/2023	\$18.4 million	Elsie Graham	Mesothelioma	Deceased	Whittaker Clark & Daniels	DOBS	Portland, OR
#9	3/3/2023	\$29.1 million	Sarah Plant & Dr. Parker Plant	Mesothelioma	Living	Whittaker Clark & Daniels	DOBS	South Carolina
#2	4/7/2023	\$40 million	William Gaborko	Mesothelioma	Deceased	Emerson Electric Company	Weitz & Luxenberg	Superior Court of LA County, CA
#3	5/4/2023	\$36.7 million	William S. Walker	Mesothelioma	Living	Level 3 Holdings f/k/a Peter Kiewit & Sons Co.	Baron & Budd	Louisiana's 4th Cir. Ct. of Appeals

# Verdicts 2023 cont.



	Date	Verdict	Plaintiff	Disease	Living or Deceased	Defendant	Firm	Court
#4	7/7/2023	\$32.4 million	Joel Hernandezcueva	Mesothelioma	Deceased	Union Carbide (46.4%), EF Brady (10%), Elementis (5%)	DOBS	Superior Court of LA County, CA
#10	7/18/2023	\$18.8 million	-	Mesothelioma	Living	Johnson & Johnson	Kazan, McClain, Satterley & Greenwood	-
#5	8/3/2023	\$31.5 million (plus punitives)	Romeo and Rosa Maffei	Lung Cancer	Living	Burnham Boilers	Weitz & Luxenberg	NY County Supreme
#8	8/28/2023	\$28.5 million	James Petro	Lung Cancer	Living	Mario & DiBono (30%), The Port Authority (25%), Tishman Realty & Construction (15%)	Meirowitz & Wasserberg	NY County Supreme
#1	8/30/2023	\$40.75 million	Bruce Torgerson	Mesothelioma	Deceased	John Crane	Frost Law Firm	Cook County, IL
#6	12/21/2023	\$30 million	Dorothy Jackson on behalf of husband Thomas Jackson	Mesothelioma	Deceased	Bridgestone Firestone (BATO)	DOBS	Cook County, IL



# 2022 Verdicts

# Verdicts 2022



	Date	Verdict	Plaintiff	Disease	Living or Deceased	Defendant	Firm	Court
#9	2/22/2022	\$13.5 million	*Raymond Budd & Vickie Budd	Mesothelioma	Living	Kaiser Gypsum Company Inc.	Weinstein Caggiano	Washington Court of Appeals Div. I
#6	3/10/2022	\$20 million	Bill Trokey	Mesothelioma	Living	Ford	Simmons	St. Louis, MO
#7	3/30/2022	\$18 million	*-	-	Deceased	John Crane	Phillips & Paolicelli	Broward County, FL
#1	5/20/2022	\$43.8 million	*Deanne & Craig Warren	Mesothelioma	Living	Algoma Hardwoods	DOBS	Long Beach, CA, LA County
#3	5/20/2022	\$30 million	Brenda Ibarra on behalf of Rebeirano Ibarra	Mesothelioma	Deceased	Ameron International Corporation	Bergman Draper Oslund Udo	Multnomah County, Portland, Oregon
#8	7/15/2022	\$15 million	Munir Seen	Mesothelioma	Deceased	Kaiser Gypsum Company Inc.	Simmons	NYC
#10	9/13/2022	\$10.7 million	*Steven Watts	Mesothelioma	Living	Pneumo-Abex	MRHFM	-
#2	12/12/2022	\$40.8 million	Rita-Ann & Gary Lee Chapman	Mesothelioma	Living	Avon and Hyster Yale	DOBS	California

# Verdicts 2022 cont.



	Date	Verdict	Plaintiff	Disease	Living or Deceased	Defendant	Firm	Court
#4	12/19/2022	\$25 million	Richard & Winfred Daciw	Pulmonary Asbestosis	Living	John Crane	Nass Cancelliere	Philadelphia, PA
#5	2/27/2024	\$23 million	James McWilliams	Mesothelioma	Living	Jenkins Bros.	Weitz & Luxenberg	NY Supreme Appellate Div. 1 <sup>st</sup> Dept.





# 2021 Verdicts

# Verdicts 2021



	Date	Verdict	Plaintiff	Disease	Living or Deceased	Defendant	Firm	Court
#7	6/3/2021	\$12.1 million	Robert Mitchel	Mesothelioma	Deceased	John Crane	Simon Greenstone Panatier	Lorain County, OH
#10	7/30/2021	\$10.6 million	Sharon Jennings on behalf of husband	Mesothelioma	Deceased	Honeywell	Kelley & Ferraro LLP	Cuyahoga County, OH
#9	8/5/2021	\$11.22 million	Dennis Woodruff	Mesothelioma	Living	Zidell Explorations and Port of Tacoma	Bergman Draper Oslund Udo	Pierce County Superior Court, Washington
#3	8/5/2021	\$29.5 million	Teresa Elizabeth Leavitt	Mesothelioma	Living	Johnson & Johnson	Kazan, McClain, Satterley & Greenwood	CA Court of Appeals
#8	8/11/2021	\$12 million	*Angela Keene on behalf Dennis Seay	Mesothelioma	Deceased	Celanase	Kirkland & Ellis LLP	Spartanburg County, SC
#6	8/12/2021	\$15.6 million	John & Denise Wagner	Mesothelioma	Living	Eaton	DOBS	Reno NV

# Verdicts 2021 cont.



	Date	Verdict	Plaintiff	Disease	Living or Deceased	Defendant	Firm	Court
<b>#4</b>	8/27/2021	\$27 million	Tina Prudencio	Mesothelioma	Living	Johnson & Johnson	Kazan, McClain, Satterley & Greenwood	-
<b>#2</b>	9/23/2021	\$32 million	Robert Weist on behalf of Kathy Weist	Mesothelioma	Deceased	Kraft Heinz and Metal Masters	Meirowitz & Wasserberg and Scott Frost	Columbia, SC
<b>#5</b>	11/1/2021	\$23 million	Cynthia Cowger	Mesothelioma	Living	Qualitex	Weitz & Luxenberg and Cooney & Conway	Cook County, IL
<b>#1</b>	12/9/2021	\$76 million	Nedelka Vanklive	Ovarian Cancer	Living	Whittaker Clark & Daniels	Kazan, McClain, Satterley & Greenwood	Alameda County Superior Court

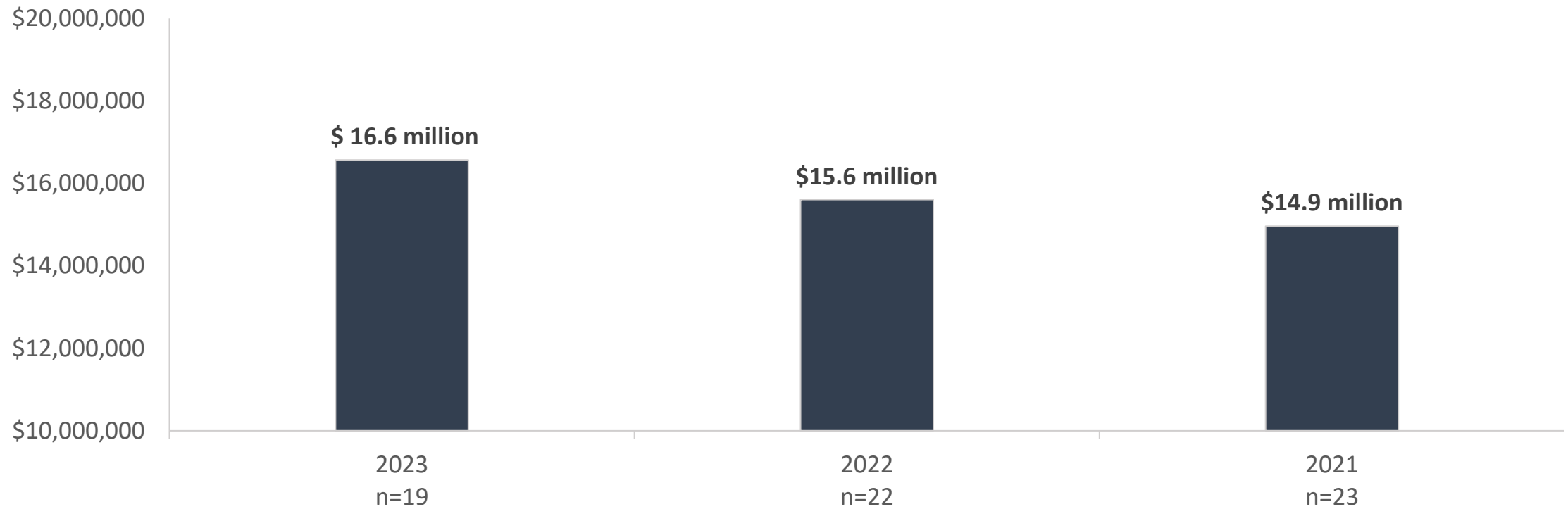
The background is a blue-tinted photograph of a person in a suit, likely a lawyer or judge, holding a large, ornate scale of justice. The person is looking down at the scale. The scale has a central beam with two pans hanging from it, and a decorative handle. The overall mood is serious and professional.

# Verdict Comparisons

# Verdict Averages



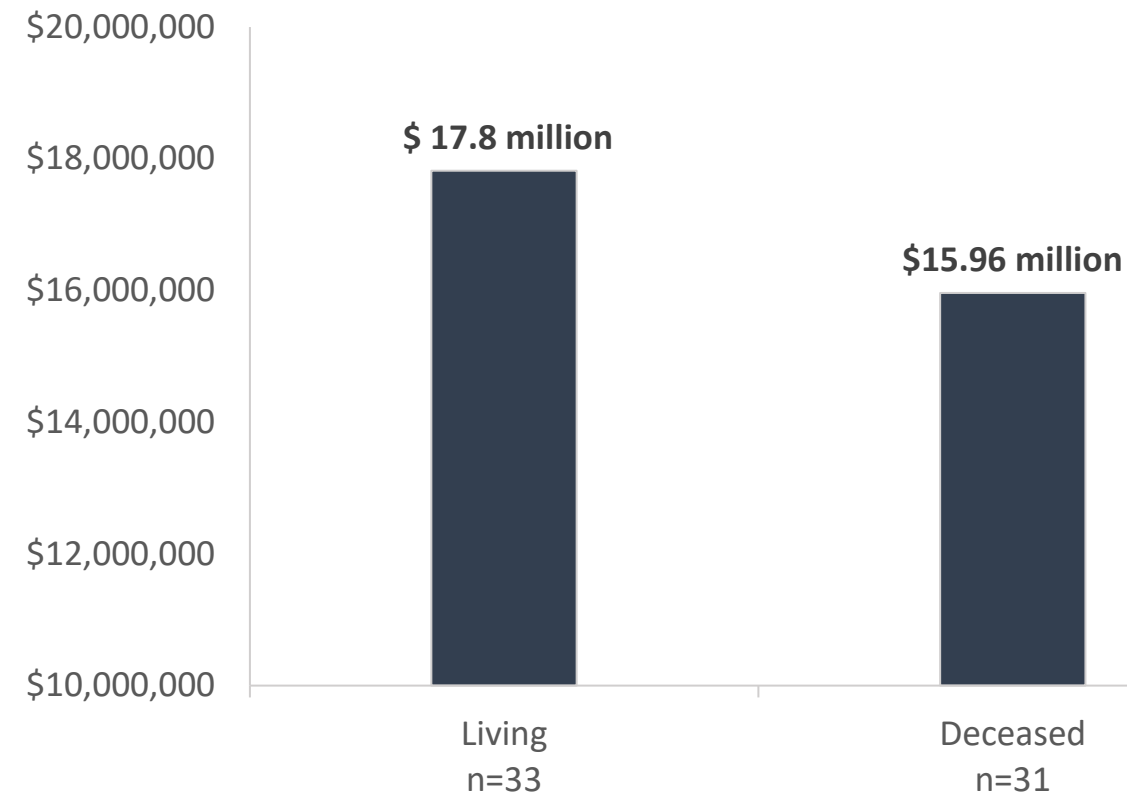
Verdict Average  
*2023-2021*



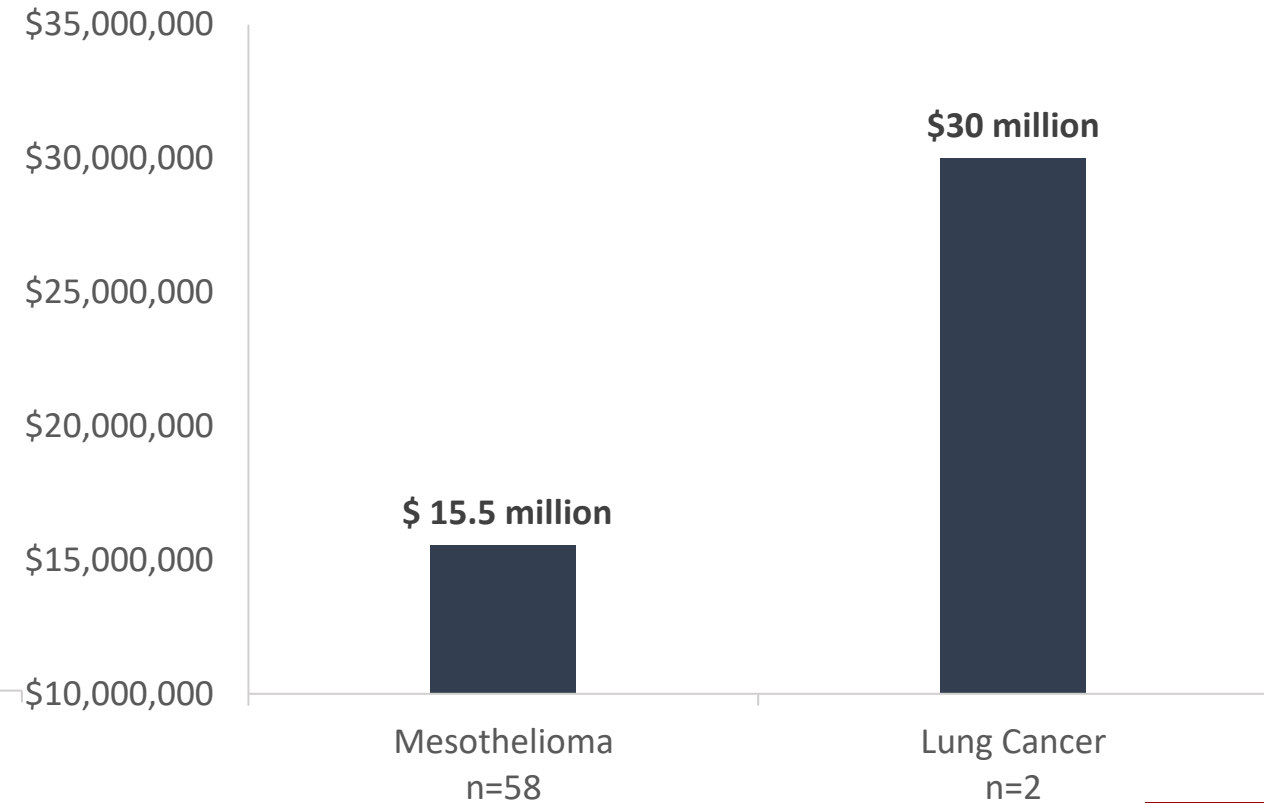
# Verdict Comparisons



**Verdict Average**  
*Living v. Deceased Plaintiffs*



**Verdict Average**  
*Mesothelioma v. Lung Cancer Cases*





# McWilliams v. Jenkins Bros.

# McWilliams v. Jenkin Bros.

## Facts

- Mr. James McWilliams
  - 81 years old
  - Pleural mesothelioma
  - Career Steamfitter
    - LaGuardia Airport, World Trade Center, and the Empire State Building
  - **Exposure:** Insulation and gaskets from *Jenkins valves*
- Pain and Suffering
  - Thoracentesis
  - Chemotherapy
  - Experimental CAR-T therapy
  - Immunotherapy
    - Bilious and bloody rashes
  - Thrush, trouble swallowing, inability to eat solid foods
  - Weakness, fatigue, and shortness of breath
  - Confusion, depression, anxiety about the future
    - “Strangulating” to death



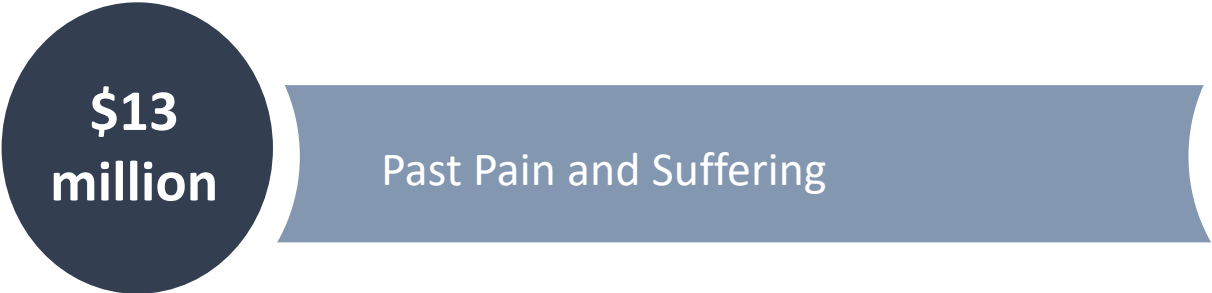
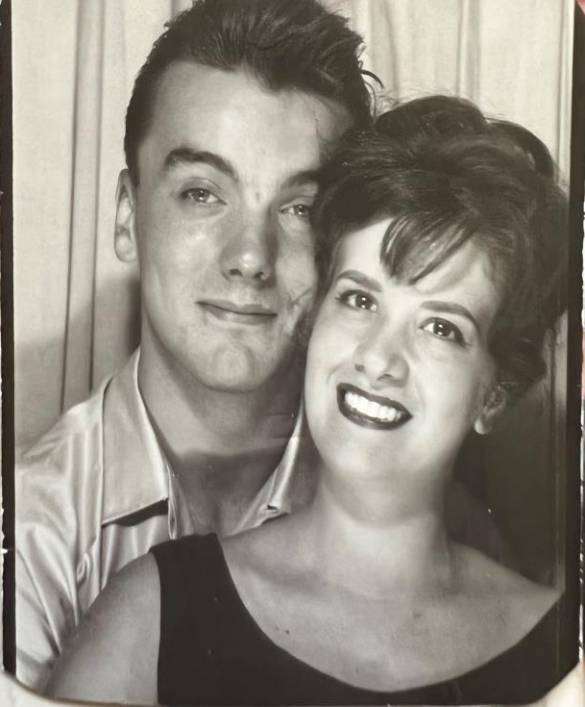
## Defendant Jenkins’s Theme

- Mr. McWilliams’ age, widower, time of diagnosis
- Plaintiff “failed to prove *any* future damages”

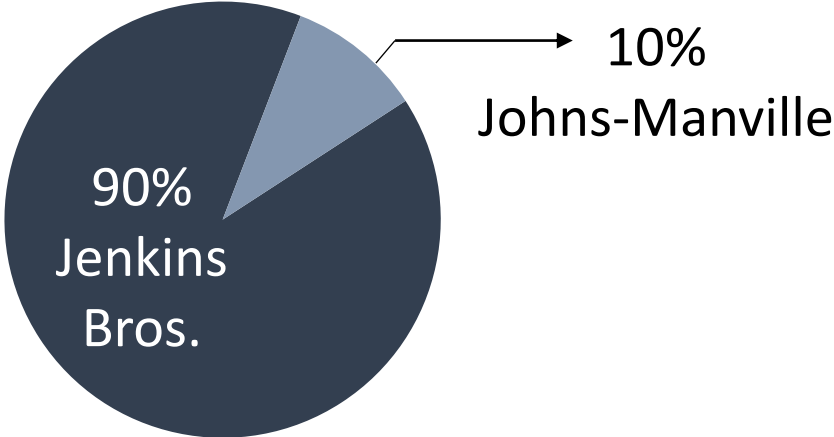


# McWilliams v. Jenkin Bros.

## Verdict



**Total: \$23 million**



# McWilliams v. Jenkin Bros.



## Post-Trial Decisions

- Court Affirmed Verdict in Total
  - No reduction
  - Rejected that “Plaintiff failed to prove future damages”
  - Emphasized that Mr. McWilliams had survived longer than most mesothelioma patients

## The Appellate Decision

- Appellate Division Affirmed Verdict in Total
  - No reduction
  - Award did not materially deviate from similar awards



Largest asbestos verdict affirmed at the appellate level in New York



Second largest pain & suffering award ever affirmed at the appellate level in New York



# Maffei v. Burnham LLC

# Maffei v. Burnham LLC

## Facts

- Mr. Romeo Maffei
  - 66 years old
  - Lung cancer
  - **Exposure:** Insulation and gaskets: Demolished and removed *Burnham boilers*
- **Pain and Suffering**
  - Stage 4 lung cancer
    - Metastasized to brain
  - Gamma knife procedures
  - Radiation therapy
    - Throat inflammation and chest burns
  - Chemotherapy
    - Nausea, headaches, and diarrhea
  - Lung resection
  - Permanent cognitive decline
  - Weakness, depression, insomnia
- Mrs. Rosa Maffei's Pain and Suffering
  - "Nothing was the same"



## Defendant Burnham's Theme

- Lung cancer caused by smoking
- One doctor declared Mr. Maffei "cancer free"

# Maffei v. Burnham LLC

## Verdict

**\$6.6  
million**

Past Pain and Suffering

**\$19.9  
million**

Future Pain and Suffering

**\$6.5  
million**

Punitive Damages

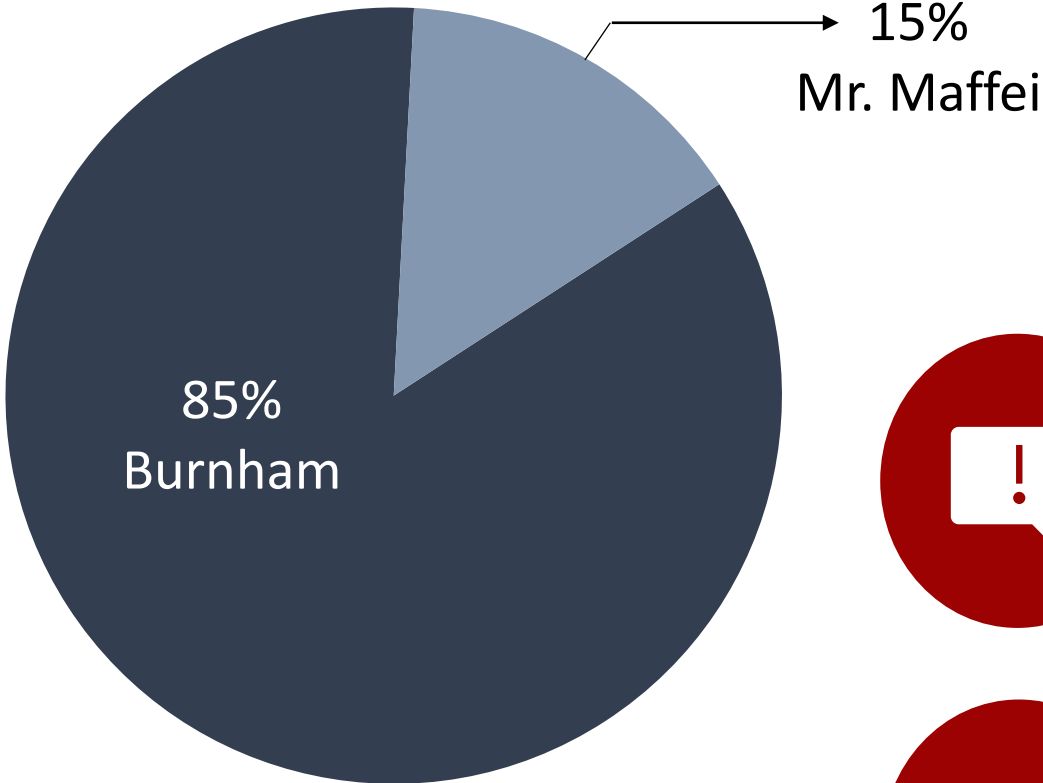
**\$5  
million**

Past and Future Loss of Consortium

**Total: \$38 million**



# Maffei v. Burnham LLC



Largest asbestos verdict in New York in 2023



First non-talc punitive damages award since NYC re-introduced punitive damages

The background is a blue-tinted photograph showing a person's hands, wearing a dark cap, working with a thick rope on a ship's deck. The person appears to be securing or adjusting the rope. The scene is dimly lit, with the primary light source coming from the side, creating strong highlights and deep shadows. The overall mood is industrial and focused.

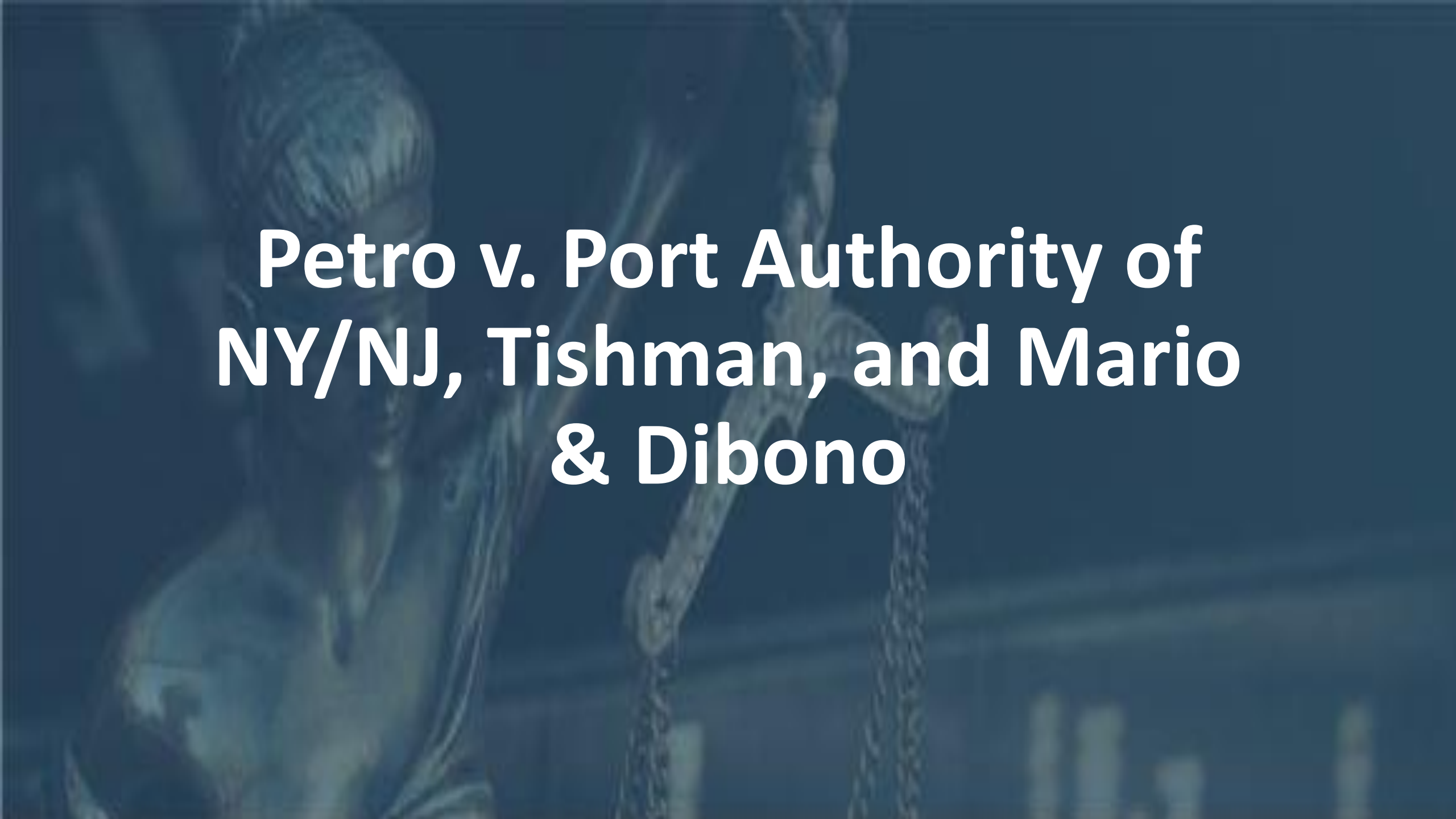
# **Weist v. Kraft Heinz Co. & Metal Masters Inc.**

# Weist v. Kraft Heinz Co. & Metal Masters Inc.

- **Facts**
  - Kathy Weist was exposed to asbestos from laundering her husband's clothes.
  - Her husband worked for Metal Masters at a facility owned and operated by Kraft Heinz.
- **Award**
  - \$32 Million Dollar Award
    - \$11 Million Survival Damages
    - \$10 Million Wrongful Death Damages
    - \$10 Million Punitive Damages
    - \$1 Million Loss of Consortium







**Petro v. Port Authority of  
NY/NJ, Tishman, and Mario  
& Dibono**

# Petro v. Port Authority of NY/NJ, Tishman, and Mario & Dibono

## • Facts

- James Petro was a career steamfitter (1960-1995)
- Asbestosis (1995); Lung Cancer (2020)
- Trial involved spray fireproofing exposures during construction of the World Trade Center (1969-1974)

## • Award

- \$ 28.5 Million Dollar Award
  - 13.5 Million past pain and suffering
  - 15.0 Million future pain and suffering



# Rise in Nuclear Verdicts

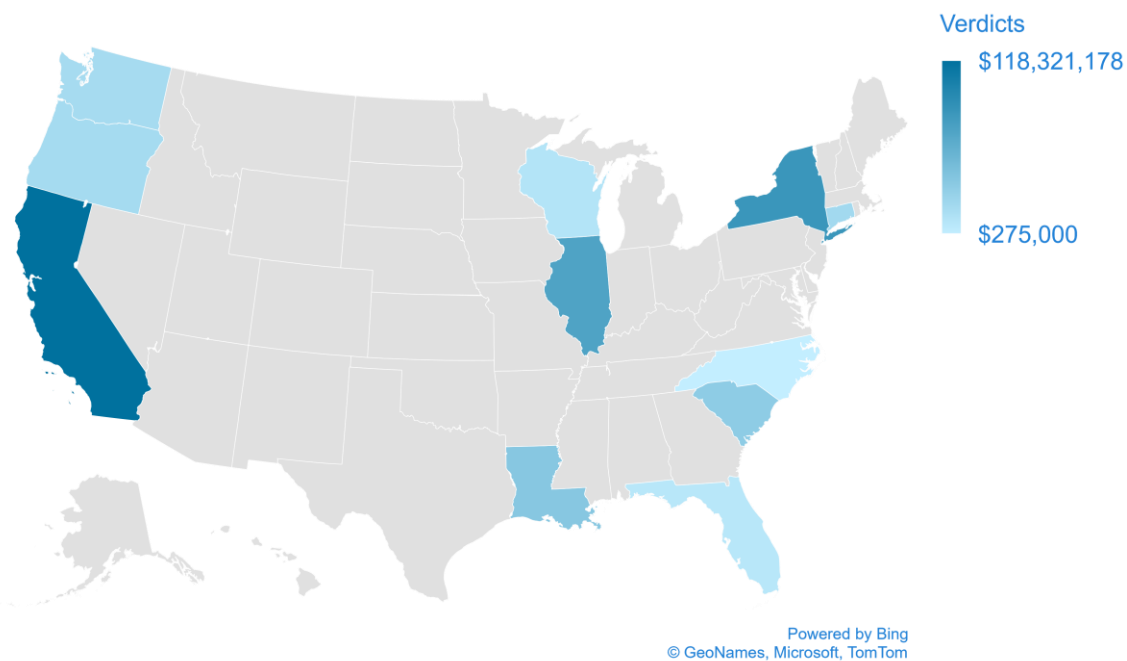


- From 2010 – 2019, nuclear verdicts (\$10M or more) grew significantly in frequency and size
  - 2010 median: \$19.3M
  - 2019 median: \$24.6M
  - 27.5% increase in median verdicts, far outpacing inflation
- States producing the most nuclear verdicts:
  - Florida
  - California
  - New York
- Nuclear verdicts were most frequent in **product liability (23.6% of the total)**, auto accident (22.8%), and medical liability (20.6%) cases.
- Nuclear verdicts can also lead to a rise in “nuclear settlements”

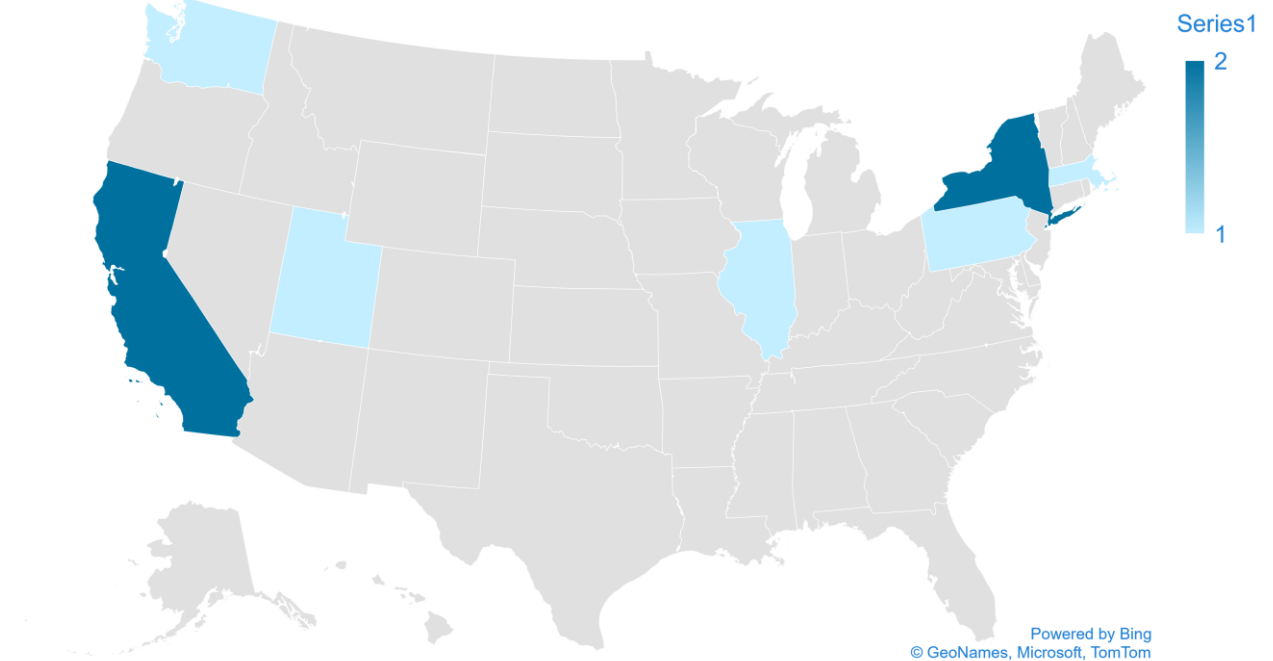
# Recent Verdicts by State



## 2023 - 2024 Plaintiff Verdicts by State



## 2023 - 2024 Defense Verdicts by State



9 plaintiff verdicts were returned in 2023  
and YTD 2024

21 plaintiff verdicts were returned in 2023  
and YTD 2024

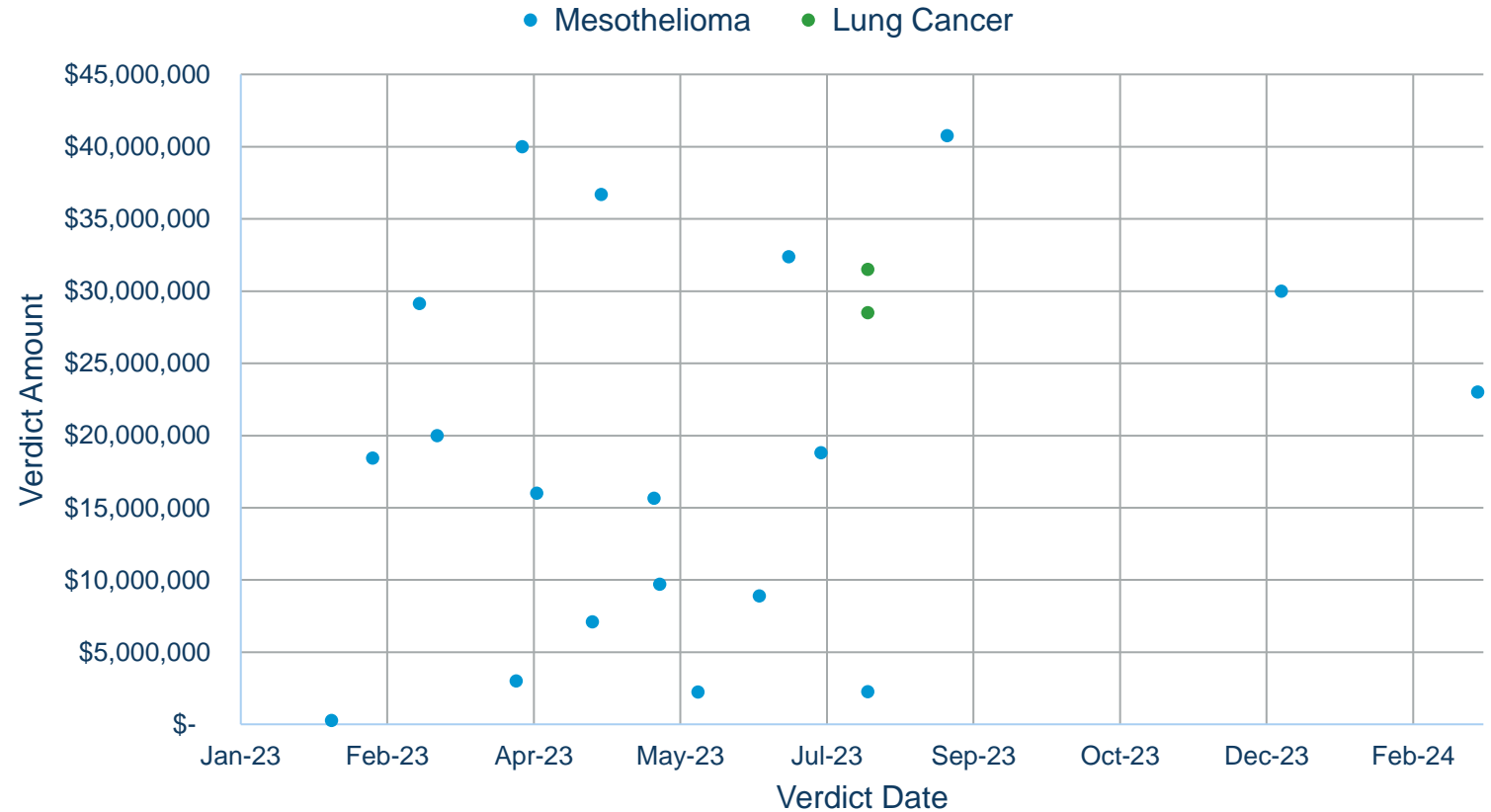
# 2023 – 2024 Plaintiff Verdicts



21 plaintiff verdicts were awarded in 2023 and YTD 2024

- Avg. mesothelioma verdict: \$18.6M
  - 12 mesothelioma verdicts over \$10M
  - These verdicts average \$26.7M
- Avg. lung cancer verdict: \$30M

2023 - 2024 Plaintiff Verdicts



# Defendant View



- It is important for defendants and their counsel to understand the key facts in cases where the jury awarded damages to a plaintiff
  - Does anything make the plaintiff or case unique?
- Defendants should prioritize tracking claims data consistently to identify high risk cases
  - Disease
  - Age at Diagnosis
  - Exposure Type(s)
  - Product Type(s)
  - Occupation
  - Jurisdiction
  - Plaintiff Firm
  - Other Defendants
- Defendants, defense counsel, and insurers should leverage this data when assessing case risk, including how a jury may view the case

# Recent Defense Verdicts



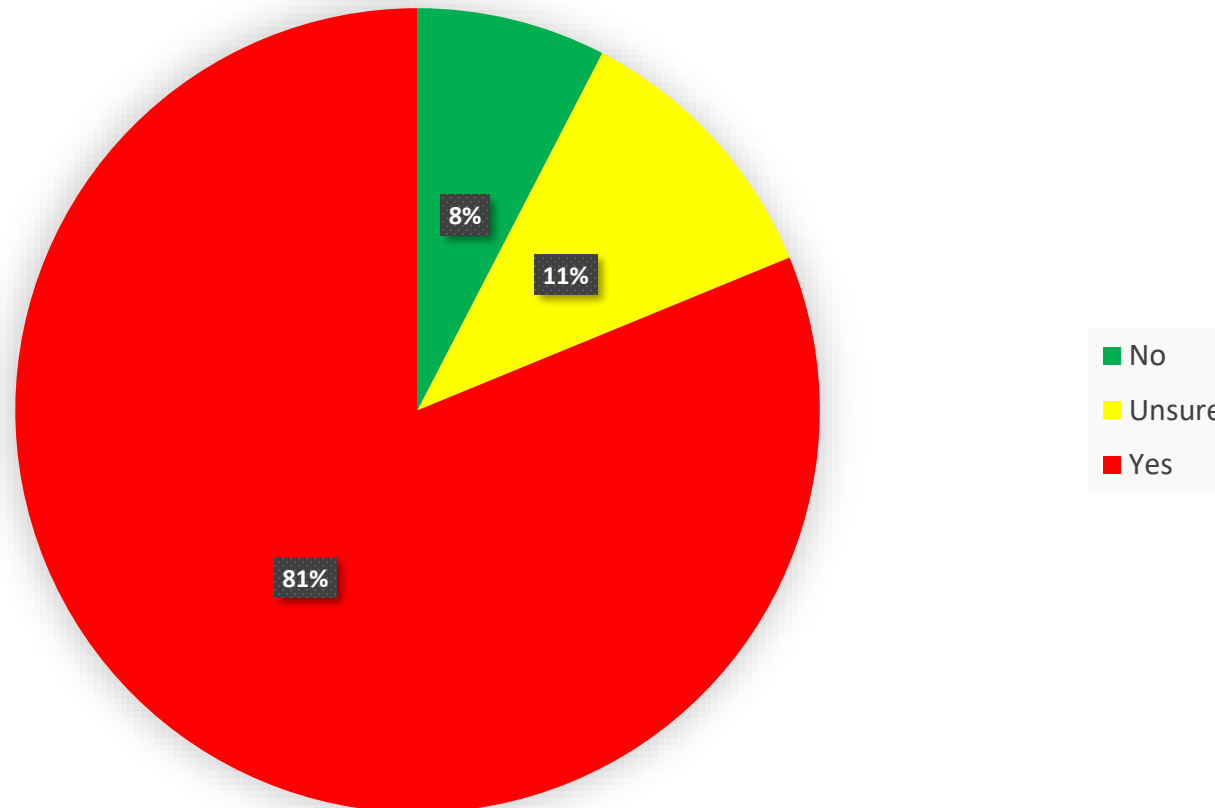
Date	Verdict	Plaintiff	Diagnosis	Defendant	Firm	Court
2/15/2024	Defense	Cardillo	Mesothelioma	American International Inc.		NYCAL
9/28/2023	Defense	Cook	Mesothelioma	Ford, Pnuemo Abex	Smith Anderson Maron Marvel	Massachusetts
9/19/2023	Defense	Bjoin	Lung Cancer	J-M Mfg., Ferguson Enterprises	MG+M	California (LA County)
7/11/2023	Pltf. Verdict reversed on post-trial motions	Hernandezcueva	Mesothelioma	Union Carbide, Elementis Chem., EF Brady Co.	Polsinelli DeHay & Elliston Hawkins, Parnell, & Young	California (LA County)
4/12/2023	Defense	Olson	Mesothelioma	Crane	Hawkins, Parnell, & Young	Washington (King County)
3/1/2023	Defense	Hurley	Mesothelioma	Chanel	MG+M	Illinois (Cook Co.)
2/9/2023	Defense	Porzucek	Mesothelioma	Union Carbide		Pennsylvania (Allegheny)
2/6/2023	Defense	Screiner	Mesothelioma	Hedman Resources	Clyde & Co	New York (Erie Co.)



# PULSE Surveys & Crowd sourcing



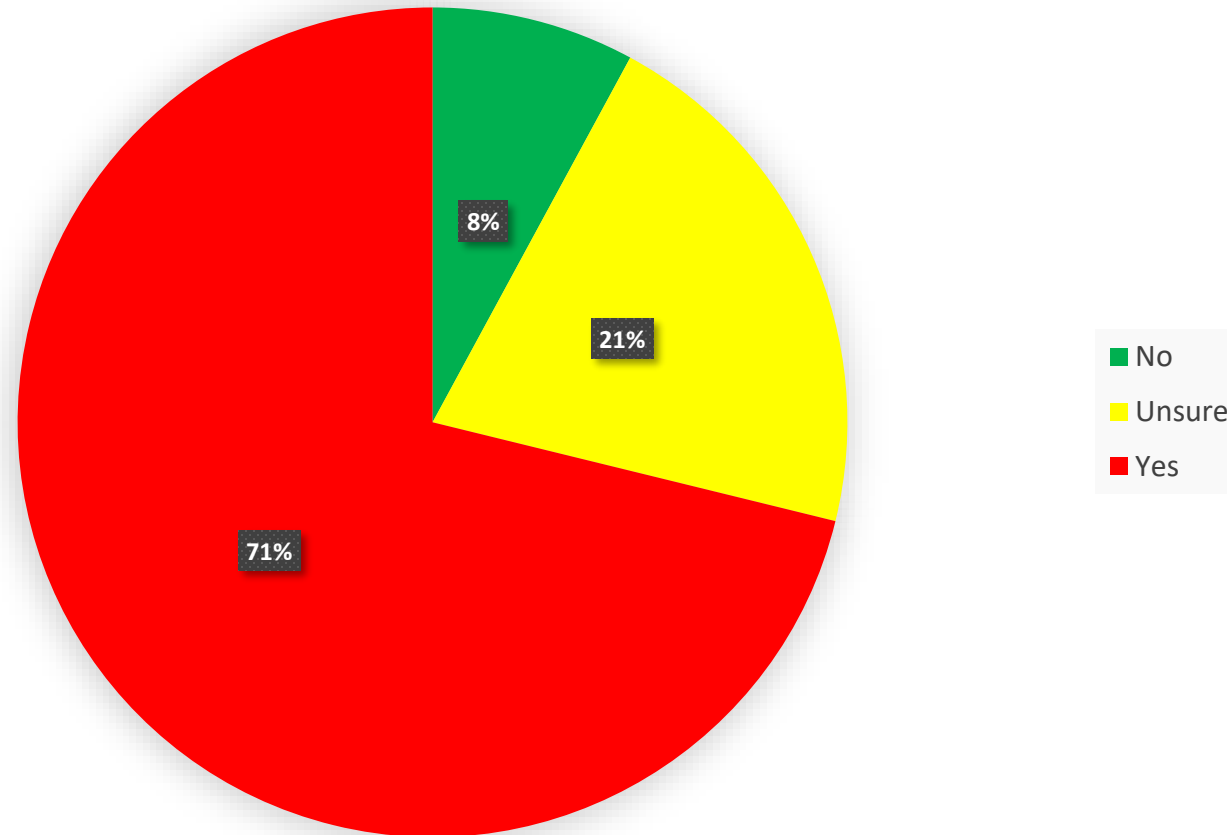
Do you believe large corporations often place profit before safety?



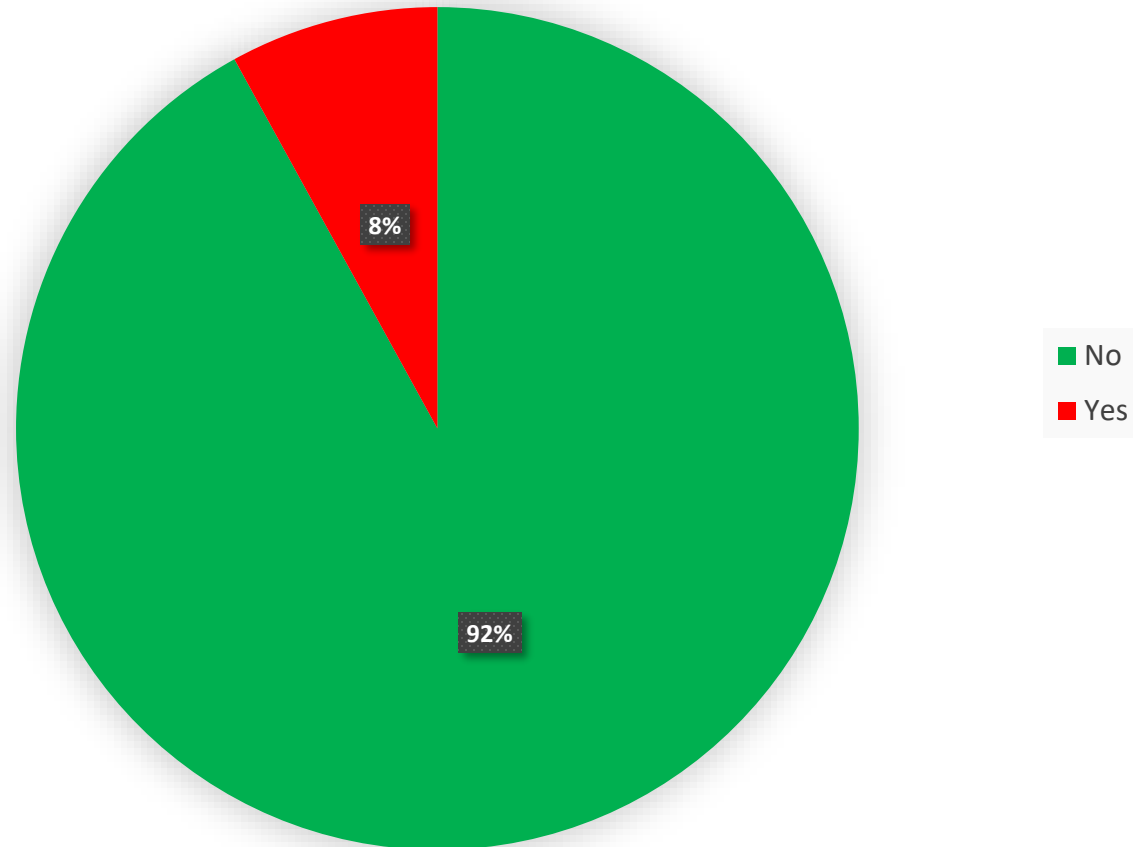
# Corruption?



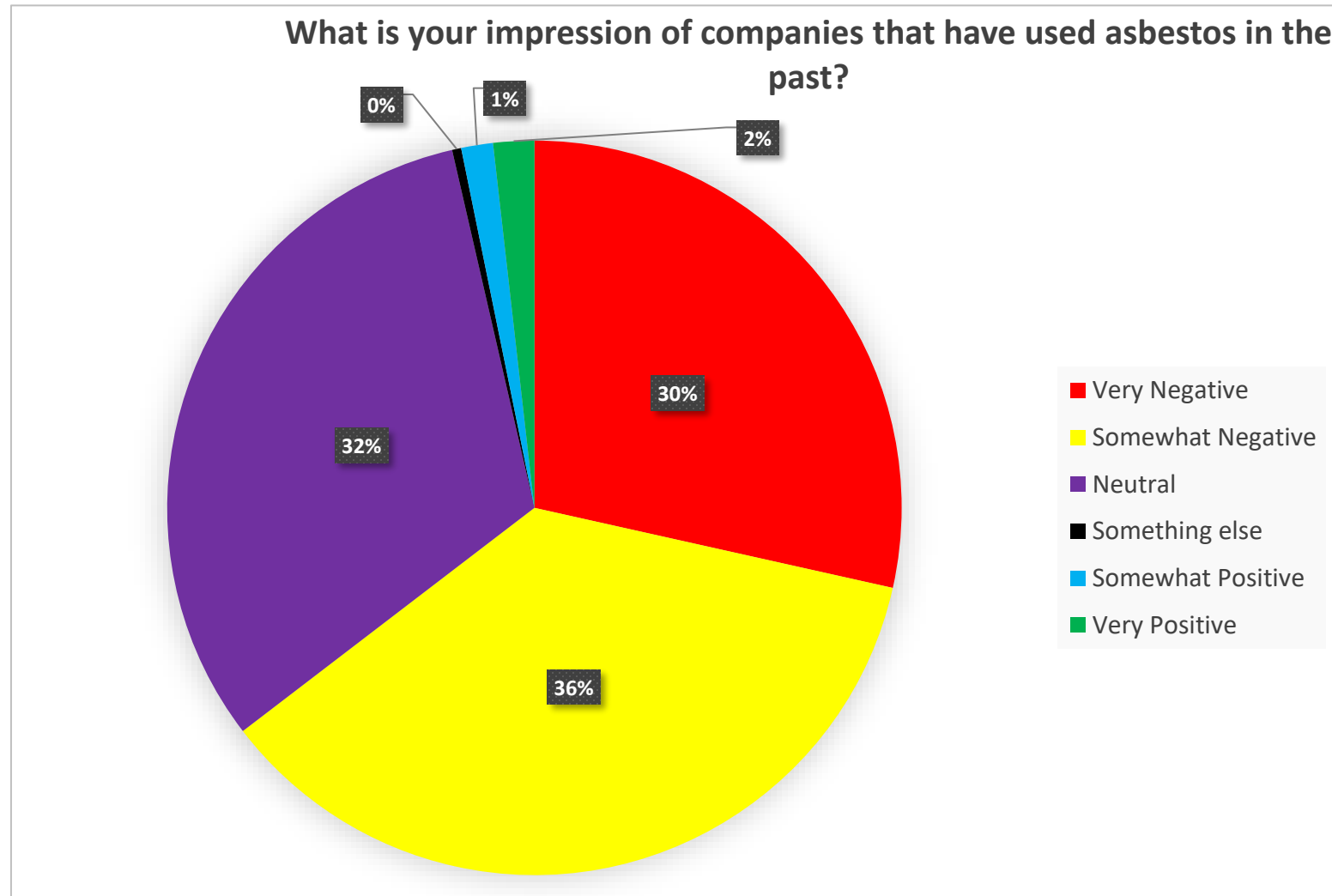
Do you believe corruption and deception is common in large corporations?



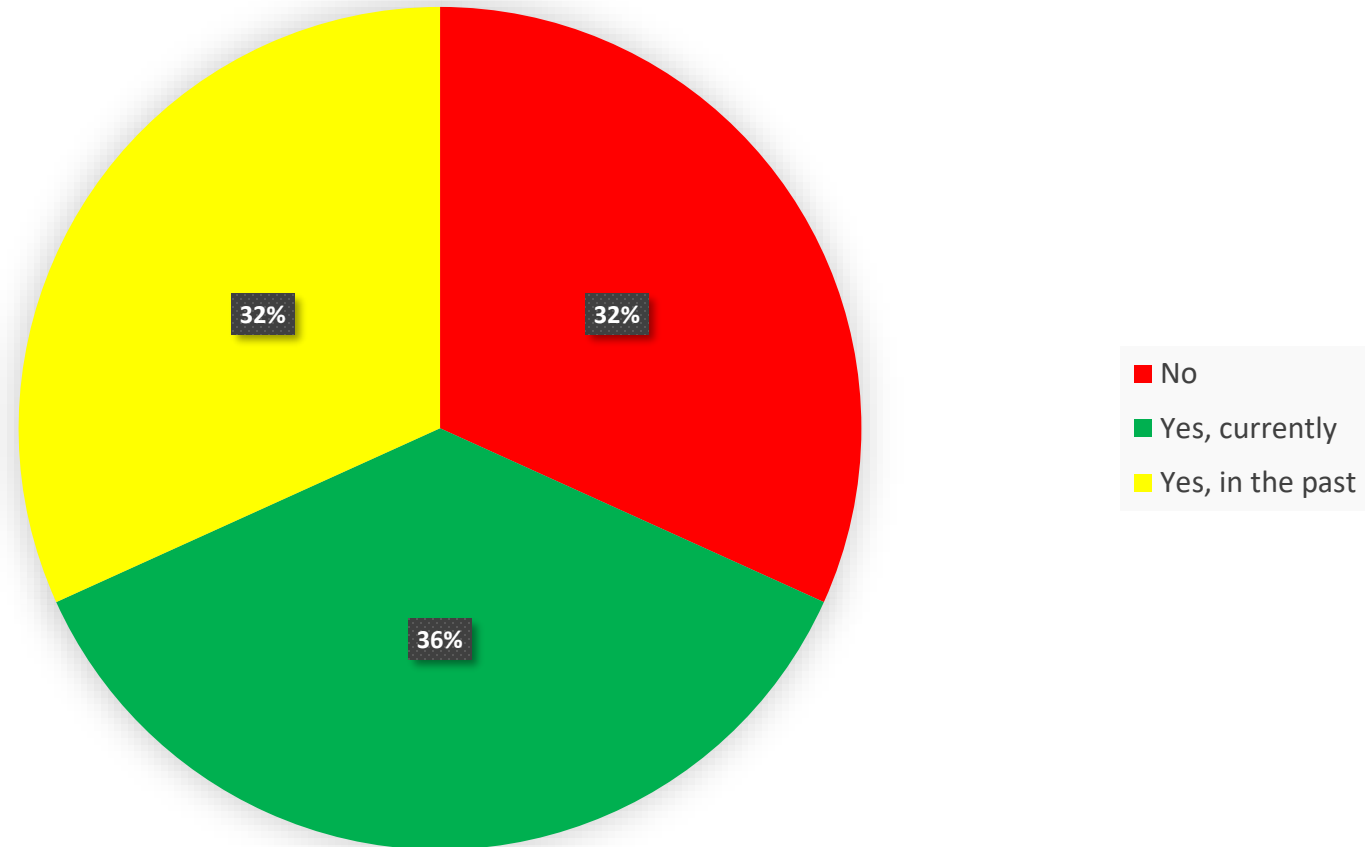
Do you have any concerns about health issues because of products or materials you have used?



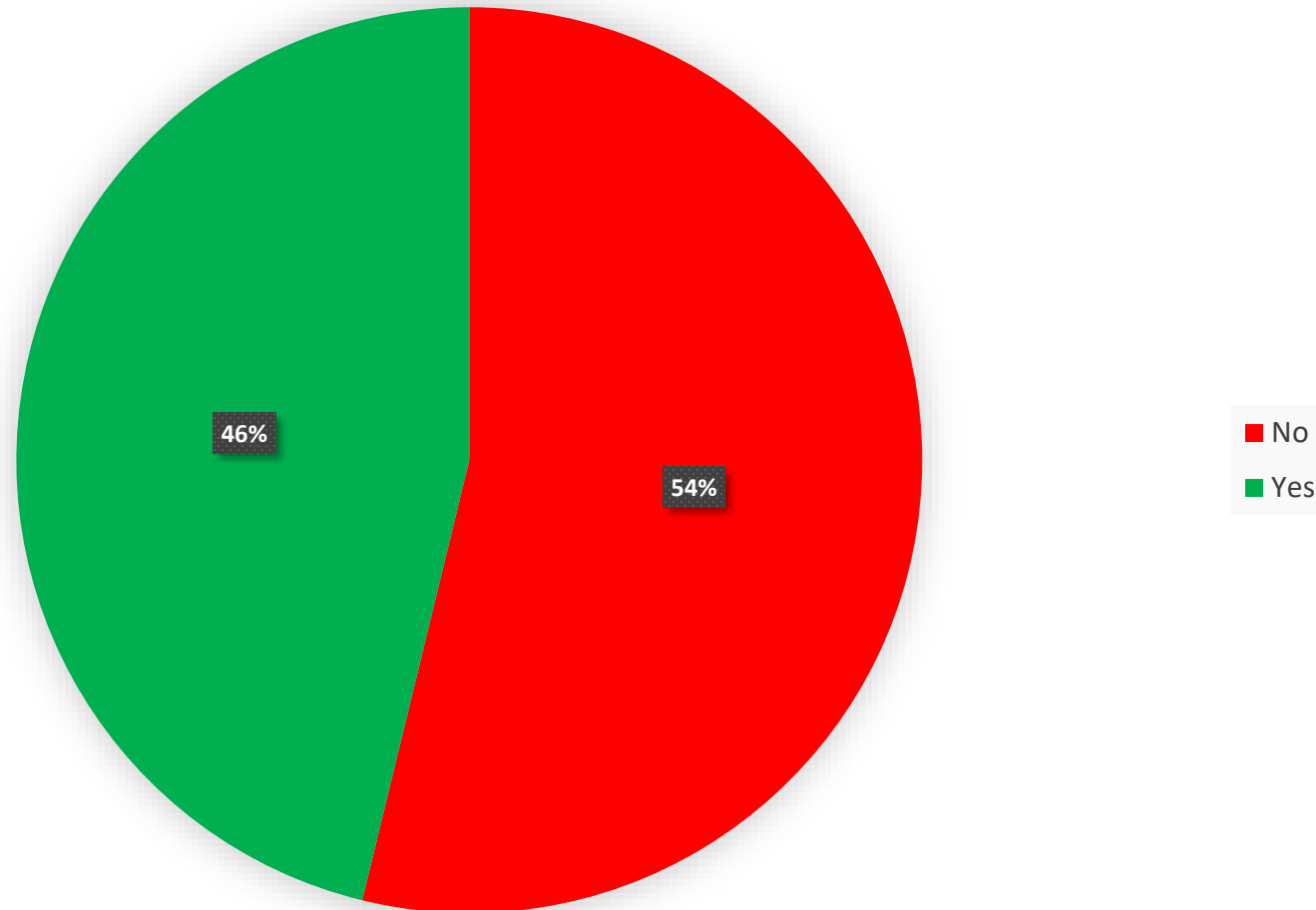
# History of Asbestos



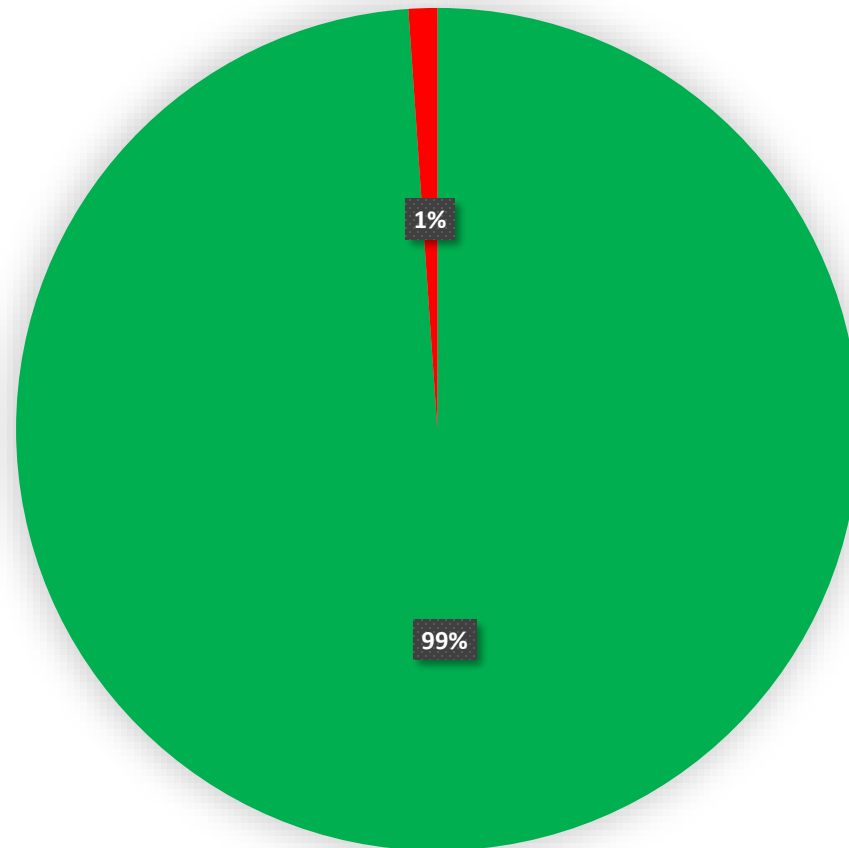
Have you ever had occasion to use varied forms of Personal Protective Equipment (PPE)?



Are you familiar with MSDS or safety data sheets?



Have you, or someone close to you, ever suffered from:  
Asbestosis/Asbestos related disease

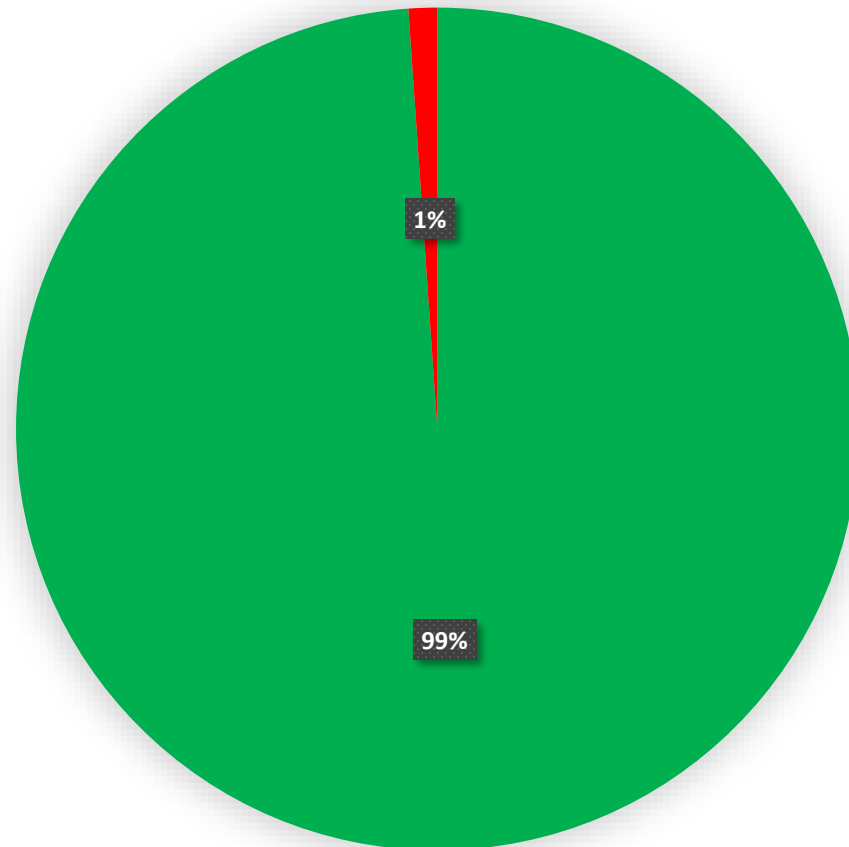


■ No  
■ Yes

# Mesothelioma



Have you, or someone close to you, ever suffered from:  
Mesothelioma



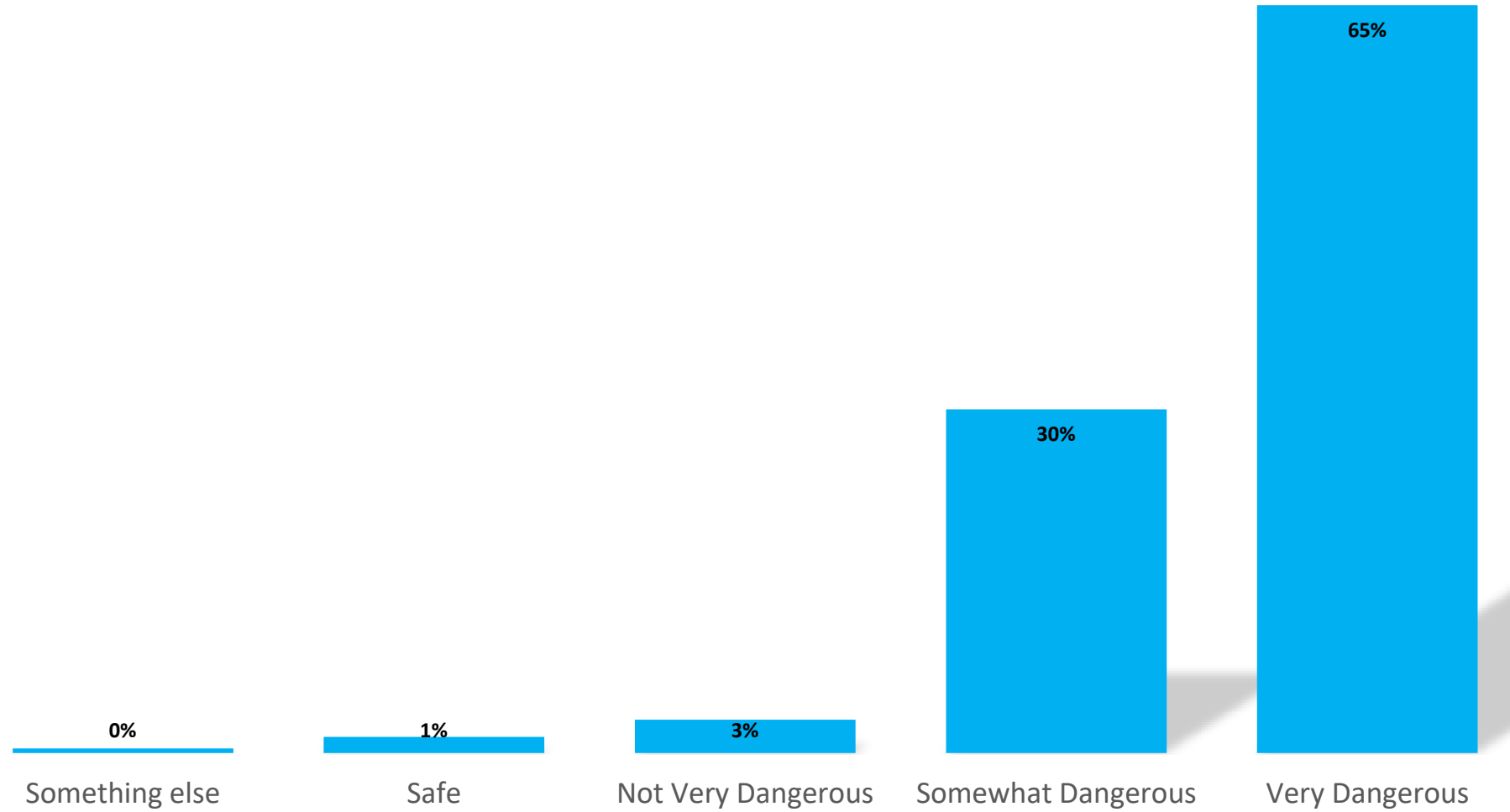
■ No  
■ Yes



# Danger of Asbestos



What is your impression of how dangerous exposure to asbestos might be?





## **Briefly, what opinions or beliefs, if any, do you have regarding companies that made, sold, installed, or used asbestos containing products?**

- They do it for the money they don't care about the people safety
- My opinion of companies that made, sold, installed or used asbestos containing products is that they likely knew about the harmful effects before the general public and continued to use them to make more money.
- I think it's awful and dangerous to use it and they should be held accountable
- I believe that they were unaware of the dangers of using asbestos and have since changed their use of it.
- I think they exactly know the hazards of handling asbestos and they provide maximum safety standards of handling it.
- I feel they are greedy and look for their own best interest and profit first
- If the companies did it knowing of the danger and health impacts to their employees, I would feel less trust toward them
- If done after the dangers were known, it is incredibly irresponsible



<b>Case Comments</b>					
	<b>Plaintiff Control</b>	<b>Plaintiff Additional</b>	<b>Defense Control</b>	<b>Defense Additional</b>	<b>Total</b>
<b>Favorable Plaintiff</b>	36%	25%	0%	9%	23%
<b>Critical of Defendant</b>	26%	34%	7%	6%	22%
<b>Shared Blame</b>	10%	0%	11%	11%	7%
<b>Lesser Award</b>	12%	25%	14%	14%	17%
<b>Defense Not Responsible</b>	0%	0%	4%	9%	2%
<b>Critical of Plaintiff</b>	16%	16%	64%	51%	29%