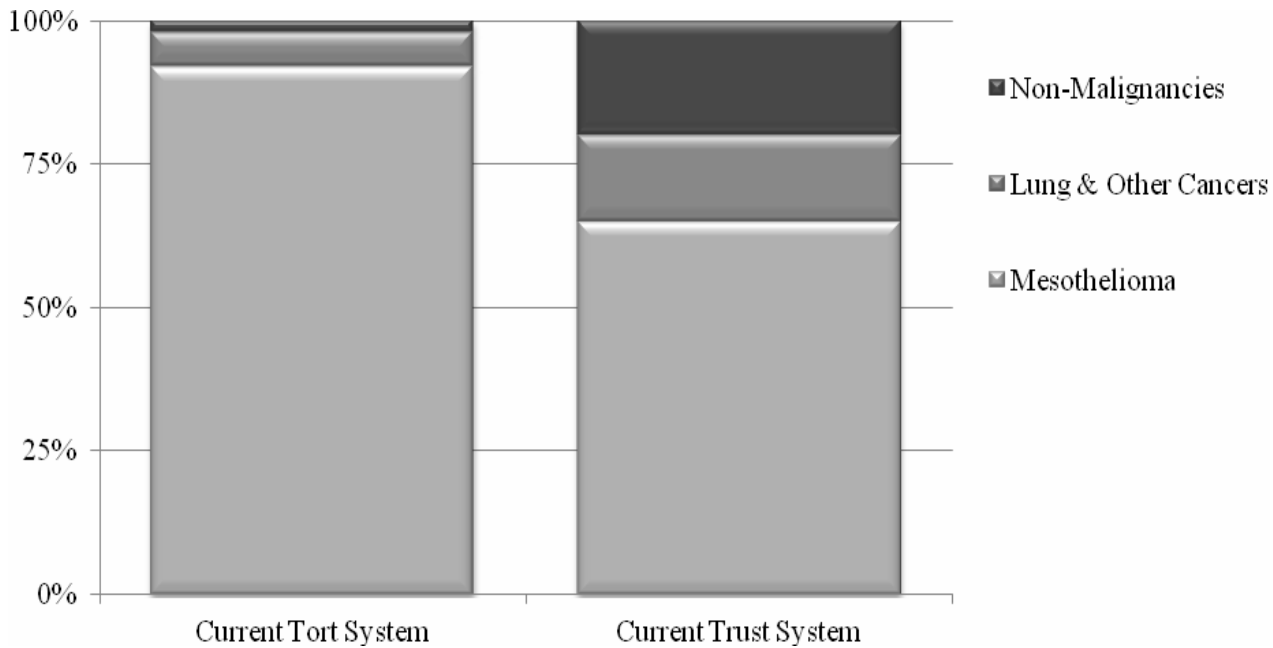


Figure 12: Trust and tort system distribution of claim payments by disease



data suggests that up to 10,000 contemporary, non-mesothelioma claims were paid by the trust system in each of the last two years.³⁶

Regardless of whether the current levels of compensable trust claims are being influenced by a new focus on lung cancer recruitment, or a renewed interest in non-malignant screenings, it is the current TDP criteria that provide the economic incentives for plaintiff attorneys to seek out and file such claims. As a result, claim resolutions in the trust system represent a stark divergence from contemporary tort compensation trends. Figure 13 illustrates the current difference in claim payment distribution between the trust and tort system.³⁷

Moreover, the incentives and resulting claim behavior could have been reasonably predicted even prior to most trusts becoming operational. One of the many legislative debates over the aforementioned FAIR Act centered on the trust fund's willingness to provide compensation to lung cancer claimants who may have smoked tobacco products. Dr. Bates' testimony before the U.S. Senate Judiciary Committee provided a report detailing how the trust would become insolvent due to the looser criteria established to compensate lung cancer claimants.³⁸ The qualification criteria proposed under the FAIR Act was based on the same procedures adopted by the Manville Personal Injury Settlement Trust in 2002 and in place for dozens of trusts today. In fact, given that hundreds

Figure 13: Summary of Trust Assets and Claim Payments by TAC Firm (dollars in millions)

TAC Member Firm / Affiliation	No. of Trusts	2013 YE Assets	2013 Claim Payments	2006-13 Claim Payments
Kazan, McClain, Lyons, Greenwood & Harley	20	\$14,020	\$1,360	\$14,360
Baron & Budd, P.C.	16	\$11,670	\$1,150	\$13,140
Motley Rice, LLC	12	\$11,300	\$1,130	\$12,830
Cooney & Conway	15	\$11,400	\$1,180	\$11,360
Weitz & Luxenburg	15	\$10,990	\$1,090	\$12,230