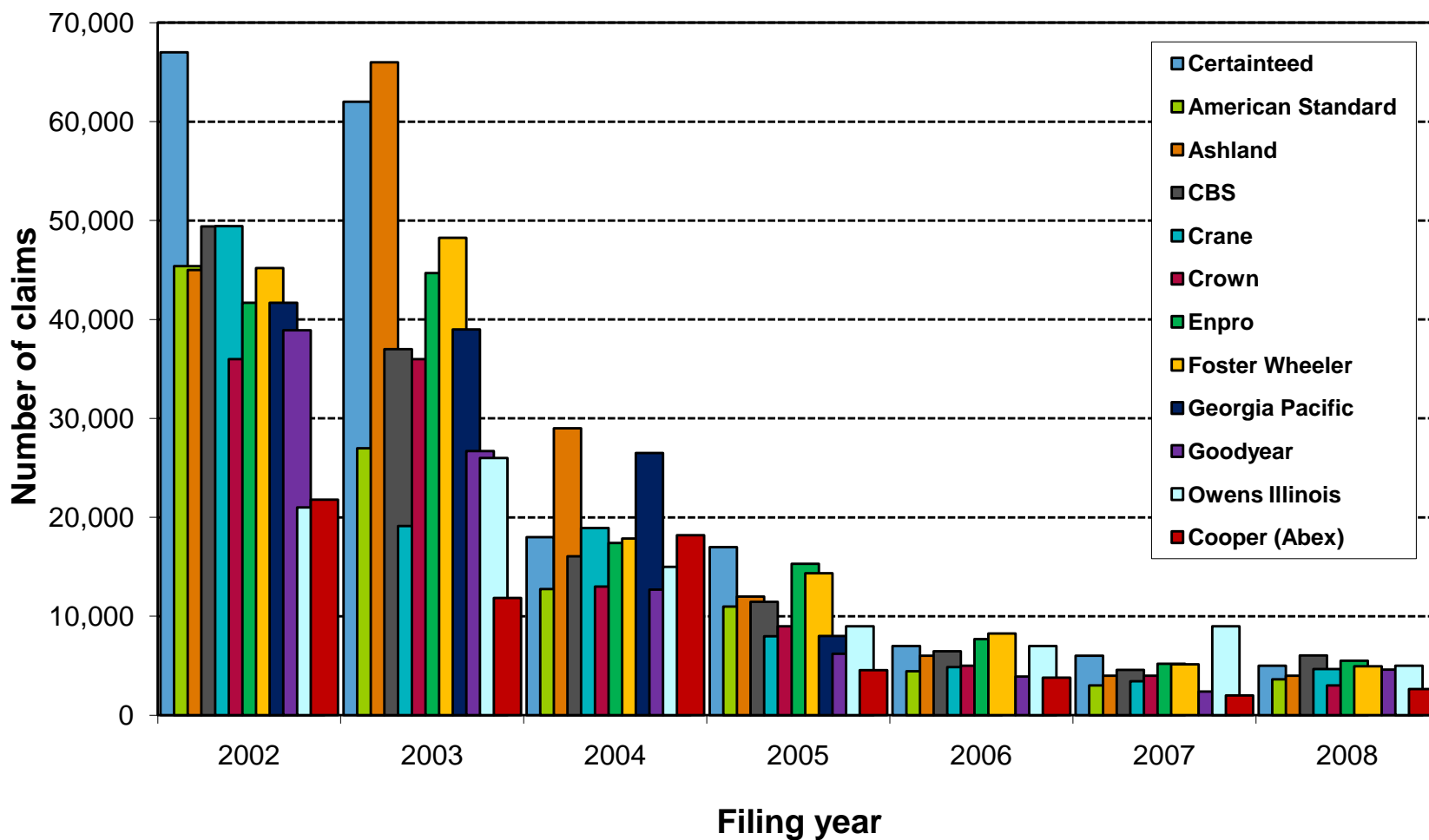**BATES WHITE**
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National Trends Driving the Litigation

Charles H. Mullin, PhD

Perrin Conference

San Francisco, CA

September 13, 2010

# Expectations at the beginning of the last decade were ominous

- $50 billion of expenditure incurred (RAND)
- Large forecasts for future expenditures
  - $150 billion (Tillinghast) to $225 billion (Milliman) of additional expenditure
  - $100 billion plus for non-malignant claims
- A turbulent litigation environment
  - State and Federal tort reform efforts
  - Continuing surge of recruited claims
  - Growing bankruptcy wave
  - Emergence of new defendants

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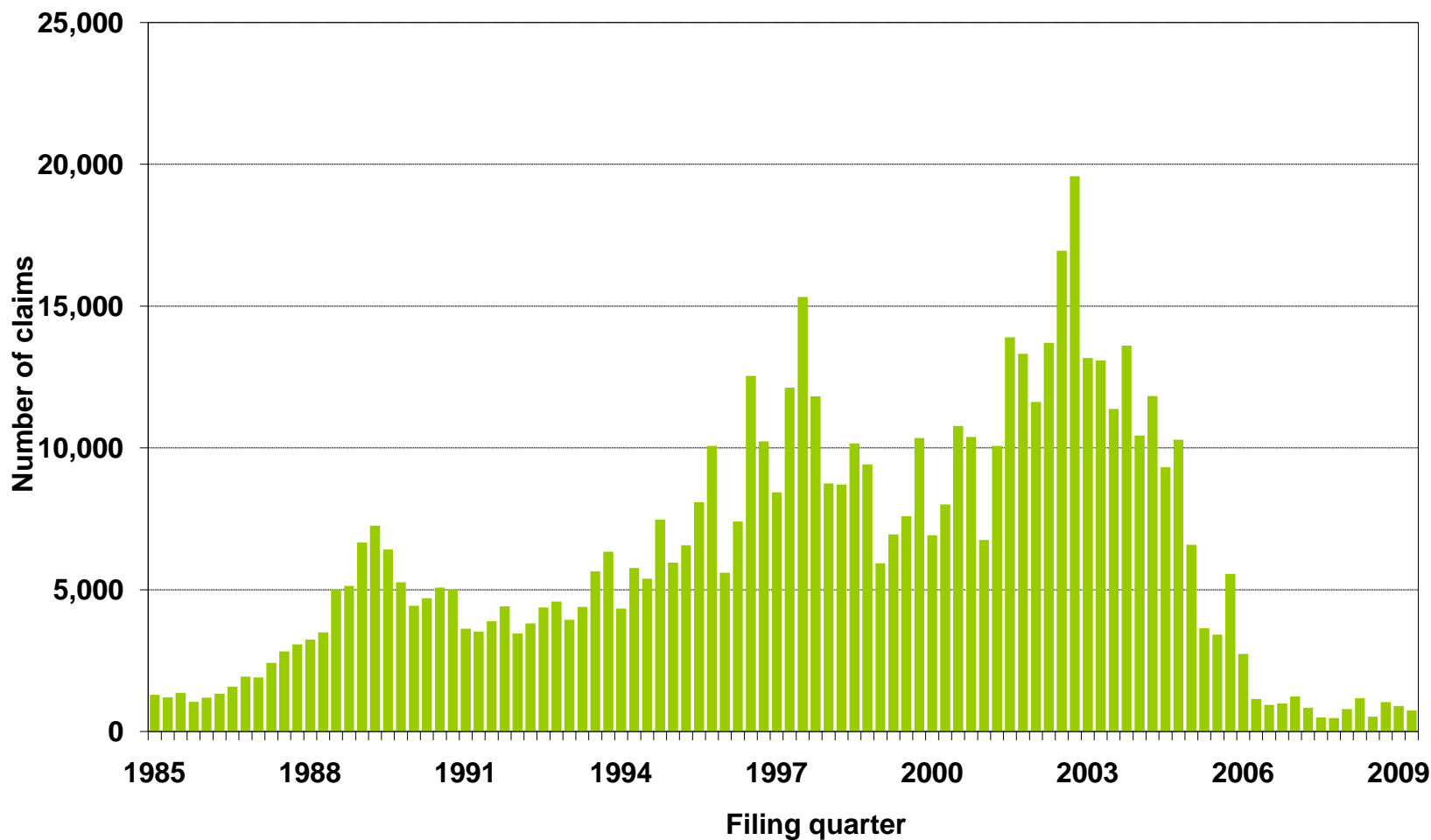
Mass recruitment ceased—defendants received fewer claims

Source: Company 10-K filings

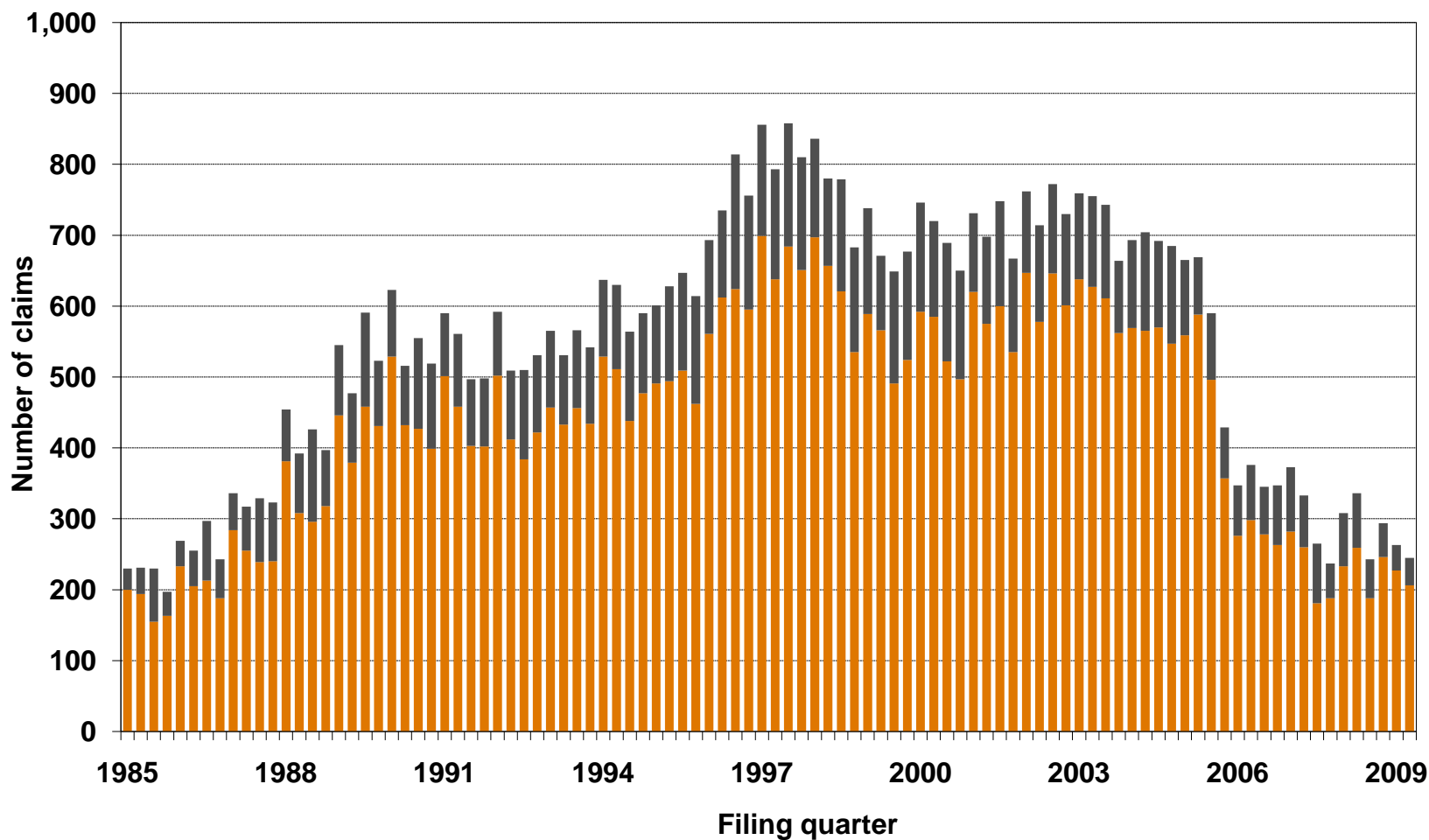# Mass recruitment ceased—total filings in the tort system decreased

Source: Bates White claimant database
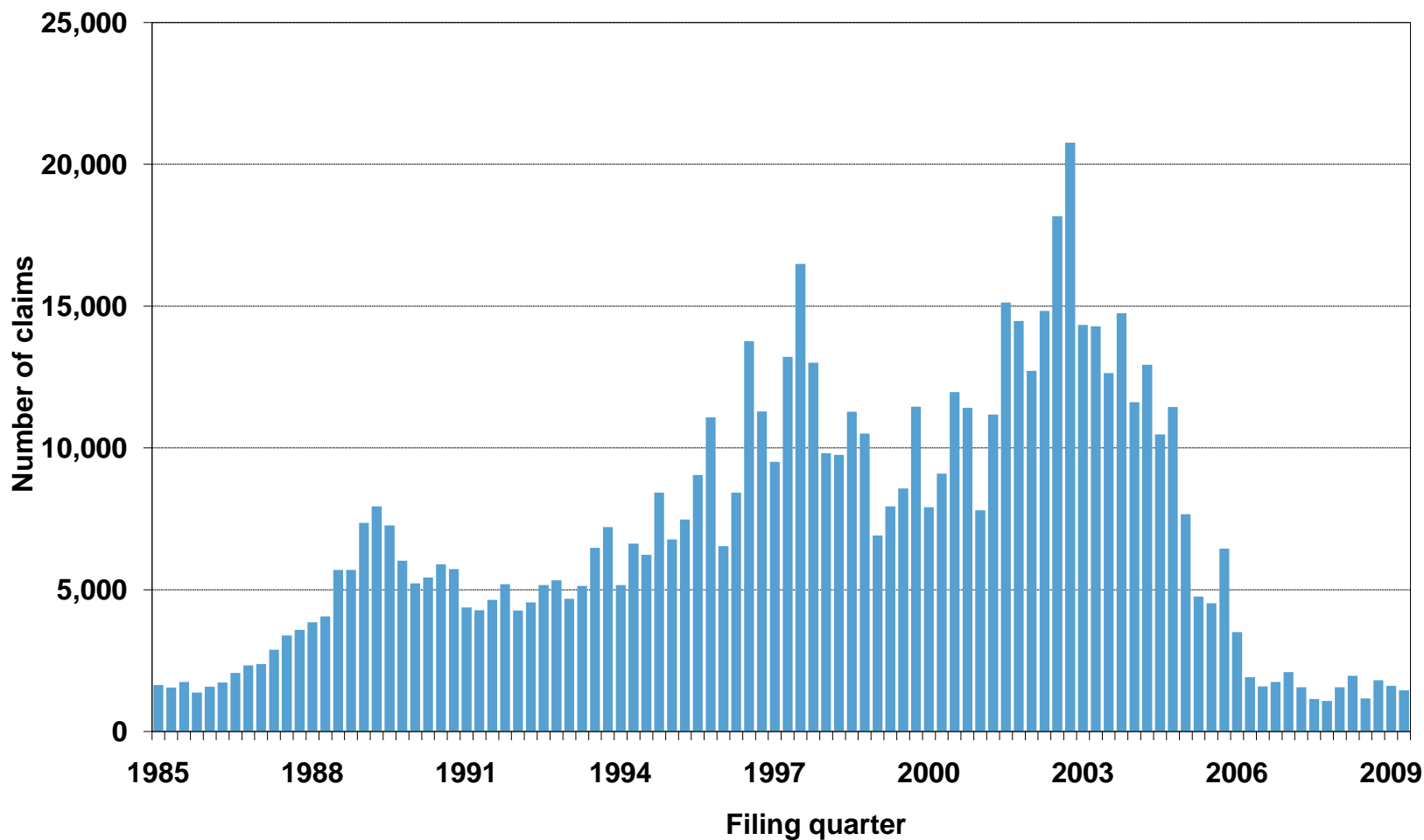
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Decline was dominated by decreases in non-malignant filings
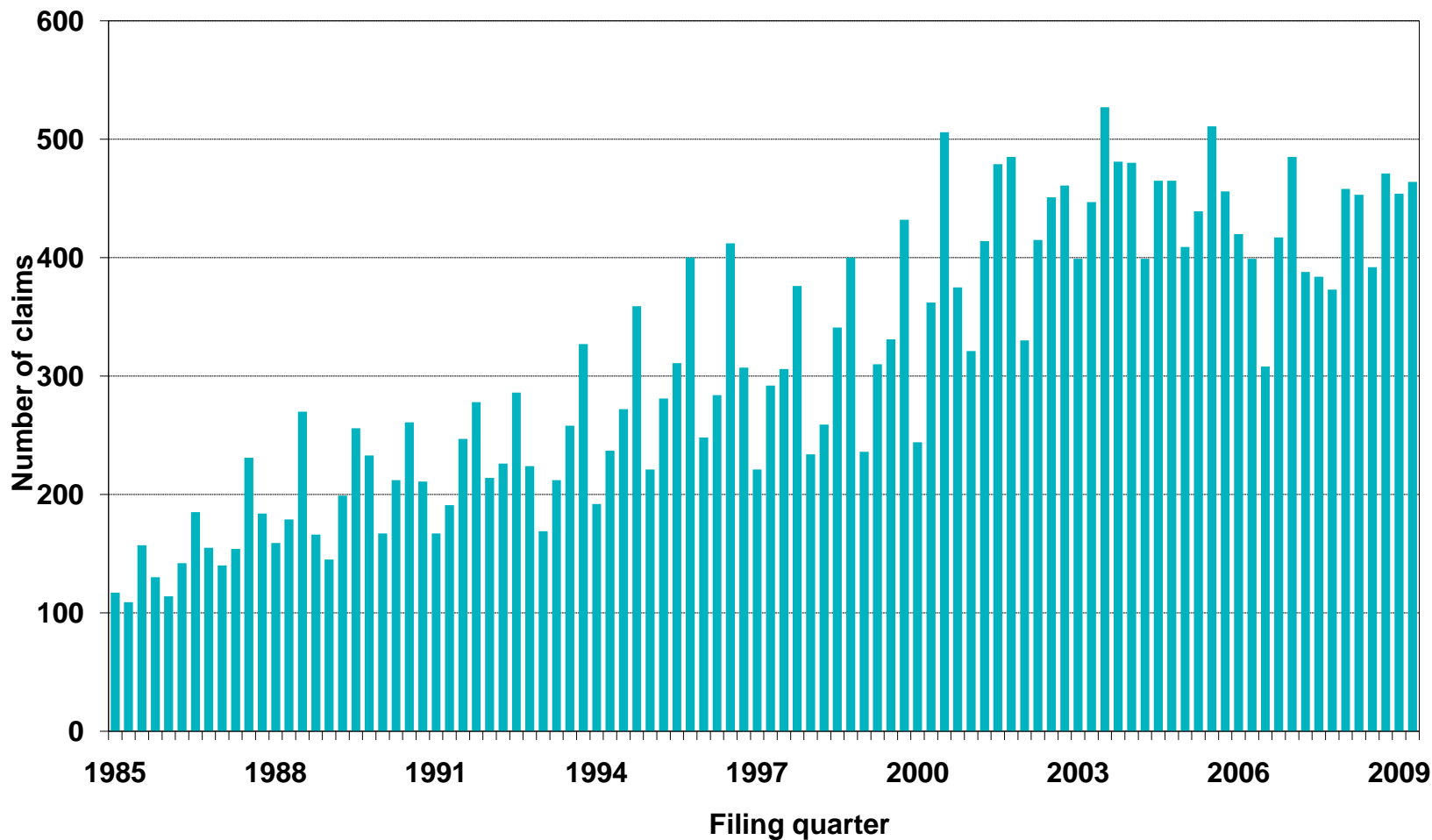

Source: Bates White claimant database

U.S. lung and other cancer filings also declined

Source: Bates White claimant database

Mesothelioma filings remained steady

Source: Bates White claimant database
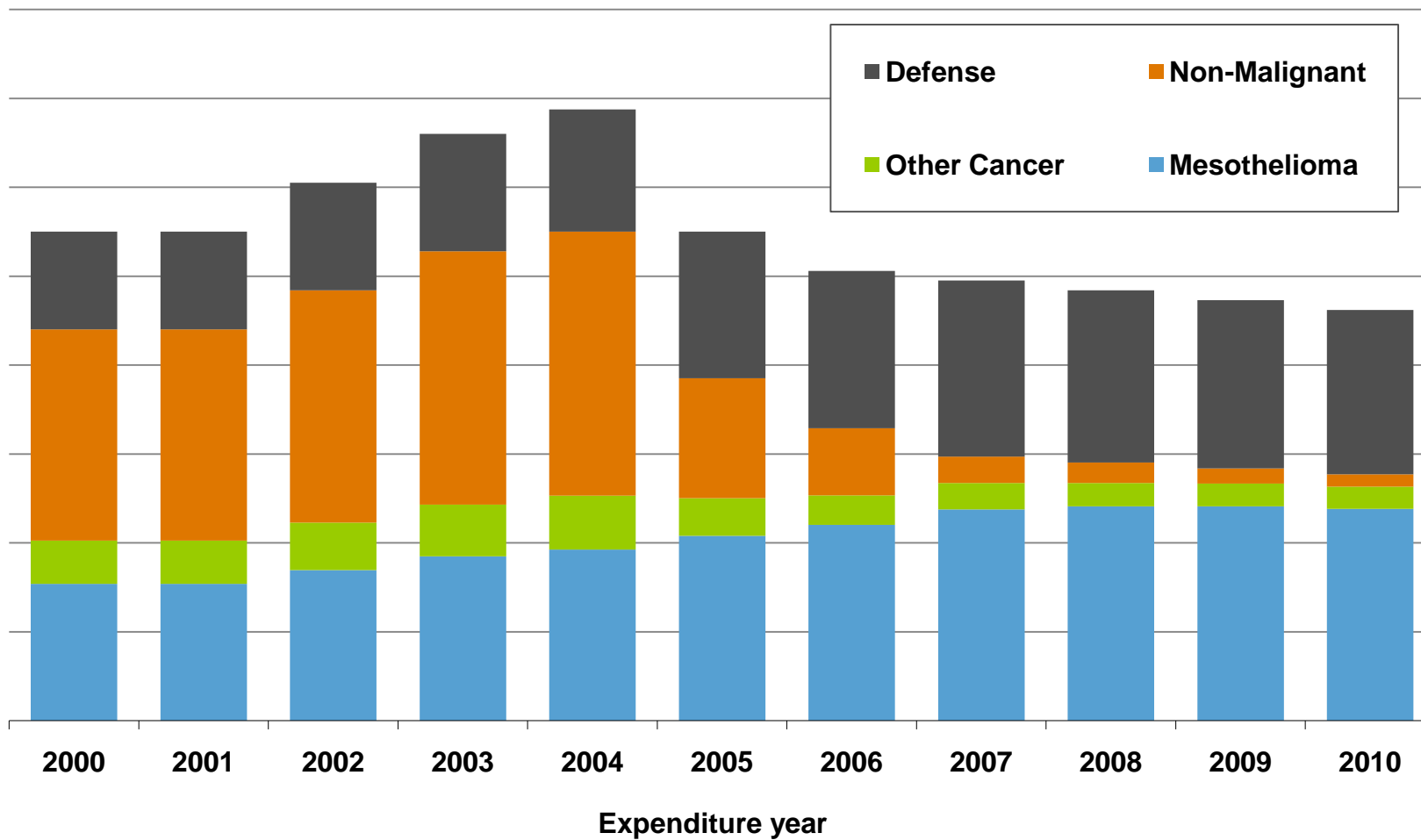
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Summary of recent filing patterns

- Total claim counts are down
  - Non-malignant claims are down 95%
  - Lung and other cancer claims are down 60%
  - Mesothelioma claims are down 5%
- Mesothelioma claims dominate the current landscape

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Changes in expenditures are more difficult to measure than filings

- No one party observes all of the information
  - Defendants know their spend and only some disclose
  - Plaintiff law firms know the recoveries of only their claimants
  - Insurers observe a patchwork quilt
- All data sources indicate the following trends
  - Non-mesothelial expenditures have declined
  - Mesothelioma expenditures (indemnity + defense) have increased
  - Total expenditures for the largest defendants have declined
  - Many new defendants have emerged
  - Wealthy 524(g) trusts have emerged

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Total expenditure by year and disease

Expenditure year

Legend: Defense, Non-Malignant, Other Cancer, Mesothelioma

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