Every year, we conduct an annual review of asbestos-related liabilities reported in companies’ US Securities and Exchange commission (SEC) filings. This information can assist companies in benchmarking their own data against trends observed for other defendants, which can help to forecast asbestos-related liabilities. Analyzing the 2016 data, we observed, on average, that dollars per claim rose, as the number of resolutions dropped and dismissal rates pulled back slightly. Claim filings and indemnity payments continued at historical levels, but companies increased their reserves, on average.

Specifically, we observed for companies, on average, that:

• After falling substantially in 2015, average dollars per resolved claim increased 43% in 2016, returning to pre-2015 levels.

• The number of claims resolved fell, reversing an increase in 2015, while dismissal rates declined.

• Total indemnity payments increased slightly, rising 15%, but remained within the range observed historically.

• Filings remained flat at the levels observed since 2007 and have continued to mirror recent estimates of national mesothelioma incidence, which appears to have plateaued.

• Reserves increased, reversing declines observed over the prior five years.
The average resolution values increased in 2016, reversing a decline in 2015. Last year, we had hypothesized that the drop in resolution values at the time may have been the result of companies clearing out backlogged claims—as the number of claims resolved had increased and dismissal rates were up. Consistent with our 2015 hypothesis, that the improvement in average resolution values may have been a temporary phenomenon related to the resolution of older claims, since each of these metrics was reversed over the past year—the number of resolved claims fell, dismissal rates pulled back, and average resolution values have increased, all returning to prior levels.

The 2016 metrics continue to indicate a period of relative stability in the asbestos litigation environment, as filings and total indemnity spending remain steady and average resolution values and resolved claims returned to historical levels. But, the increase in reserves may indicate that expected liabilities are not trailing off as quickly as companies may have expected.

Methodology

This study represents our ninth annual assessment of trends in asbestos-related liabilities of asbestos defendants and extends our analysis one year to include 2016.

To analyze these trends, we compiled publicly available data from more than 150 asbestos defendants’ Form 10-K filings with the SEC, from 2001 through 2016. We tracked five key metrics related to asbestos liability:

- **Total indemnity paid**: the aggregate amount a company pays to resolve claims each year;
- **Number of claims resolved**: how many claims a company closes each year either by settling or obtaining dismissals;
- **Average settlement paid per resolved claim**: the total indemnity paid divided by the number of claims resolved each year;
- **Percent of claims dismissed**: the fraction of claims a company closes without payment; and
- **Annual filings**: the number of new claims a company receives each year.

Additionally, for those firms reporting asbestos-related reserves, we tracked the average reserve amount. We also obtained data on mesothelioma incidence rates through 2014 from The Surveillance, Epidemiology, and End Results (SEER) Program of the National Cancer Institute.
Average Dollars per Resolved Claim Increased 43%

- In 2015, average dollars per resolved claim on average fell substantially, returning to relative levels last observed in 2010.

- In 2016, resolution values reversed their decline, rising approximately 43%, and approaching the relative levels observed from 2011 through 2014.

Figure 1.  **Average Dollars per Resolved Asbestos Claim**
Indexed to 2001
Both the Number of Claims Resolved and Dismissal Rates Decreased, on Average

- As average resolution values per claim fell in 2015, the number of claims resolved increased by almost 70%, while dismissal rates also increased by 15%.

- Both of these measures were reversed in 2016. The number of claims resolved decreased by 27%, and dismissal rates dropped 6%, with each returning to ranges observed over 2011 through 2014.

Figure 2. **Average Number of Resolved Claims and Average Dismissal Rates**
Indexed to 2001

- In the 2015 report, we had hypothesized that the increased resolutions and dismissal rates may have reflected companies’ decisions to clear out their existing backlog of claim filings. The lower average resolution values, also observed in 2015, would have been expected if the claims being cleared out were of lower quality than the claims resolved in prior years.

- The 2016 reversal in the number of claims resolved, dismissal rates, and average values represents a return to prior levels, and is consistent with our prior hypothesis that the 2015 decline may have been the temporary effect of companies clearing out backlogs of older claims.
Total Indemnity Payments Remain Within the Historical Range

- In 2016, total indemnity payments increased 15%, on average, and continued to remain within the historical range.

- Since 2006, aggregate indemnity payments have ranged from 1.4 to 2.3 times the 2001 levels, as annual averages have fluctuated with no clear upward or downward trend. The 2016 increase continues this pattern and remains within the historical range.

Figure 3.  **Total Indemnity Payments per Defendant**
Indexed to 2001
Filings Remain Steady

- On average, filings in 2016 were slightly below filings in the prior year.

- After increasing in the early 2000s, annual filings declined mid-decade to only 20% of 2001 levels and have remained steady since.

- Mesothelioma incidence as reported by SEER (extrapolating incidence rates to the national population) has also continued to be steady. Note, there is a two-year lag in the release of the SEER data. As a result, a contemporaneous estimate of mesothelioma incidence is not known.

Figure 4. **Average Number of Asbestos Filings vs. Estimated Mesothelioma Incidence**
Indexed to 2001

- Major changes in filing activity occurred between 2004 and 2007, as filings dropped dramatically. As we have noted in prior updates, the drop in filings over this period was likely a decline in non-malignant filings (based on a key judicial decision at the time that questioned the medical documentation of non-malignant claims). As a result, the current filing activity likely represents malignant disease claims—mesothelioma, lung cancer, and other cancers, along with some remaining non-malignant claims.

- Although the disease mix of filing is not known, the flat filings path since 2007 mirrors stable estimates of annual mesothelioma incidence. These results are essentially unchanged since last year.
Reserves Levels Increased by 7%

• On average, reserves increased by 7% in 2016, the first substantive increase since 2009.

• After peaking in 2009, asbestos reserves declined from 2010 through 2014, before essentially plateauing in 2015.

Figure 5.  Average Asbestos Reserves
Indexed to 2001

• Although on average reserves increased in 2016, the results were mixed across firms. Approximately 42% of companies increased their reserves, 42% decreased their reserves, and 16% of companies maintained reserve levels from 2015. Of the companies increasing their reserves, 20% increased both the size of the reserve and the number of years being reserved.

• The median number of years for which companies reserved rose to 28 years from 15 years in 2015. In addition, the distribution is more evenly split in 2016 than in prior years, with half of the firms reserving for 25 or fewer years and half of the companies reserving for more than 30 years. In prior years, 70% of firms reserved for 20 or fewer years, while 30% reserved for 35 or more years.
Summary of Trends Through 2016

- Overall, the litigation environment in 2016 was relatively unchanged for companies, with claim filings and aggregate indemnity levels holding steady. Where we had observed differences last year (lower average resolution values, higher average number of resolved claims, and higher dismissal rates), they proved to be transitory, as the prior variances were largely reversed in 2016.

- The steady annual flow of filings corresponds to stable mesothelioma incidence estimates over the 2010-2014 period. With a two-year lag in the SEER data, current incidence estimates are not known.

- Although the litigation environment has been fairly stable for companies, asbestos reserves increased, on average, and a number of firms extended the period over which to measure projected liabilities. Given the stability of the other metrics, the adjustment to reserves may indicate that actual liabilities have not fallen off as quickly as projected.

- This aggregate trends analysis may provide a benchmark through which companies can assess their own experience. To more accurately determine company-specific trends, it would be necessary to review an individual company’s own data in terms of type of filings, age of claims, average resolution values by disease, along with other metrics. This more detailed analysis would be useful for companies interested in projecting future liabilities or assessing their current liability projections.
Endnotes

1 The authors would like to thank Yingtian Yang, Yaxuan Wen, and Reena Zhan for their research. We also thank Jorge Baez for his comments and suggestions.

2 Data from each firm’s most recent Form 10-K were used whenever available. We included only data reported at the individual claim level for companies reporting at least two consecutive years in the period. The indexes shown below represent an average of trends observed at the company level. Each chart may contain different companies, depending on the data reported by each company in each year.

Data for prior years were updated if companies changed previously reported information. As a result, the graphs in the current update may differ from those in the previous update over the earlier period.

3 See, Judge Janice Graham Jack’s decision in In Re Silica Products Liability Litigation, Order No. 29, MDL Docket No. 1553 (July 1, 2005).
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Contacts
For further information and questions, please contact the authors:

**Mary Elizabeth C. Stern**
Director
+1 914 448 4054
mary.elizabeth.stern@nera.com

**Lucy P. Allen**
Managing Director
Mass Torts & Product Liability Practice Chair
+1 212 345 5913
lucy.allen@nera.com

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