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## Indemnity Payments Remain at Historical Levels While Filings Decline

### Snapshot of Recent Trends in Asbestos Litigation: 2018 Update

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Each year, we conduct a review of asbestos-related liabilities reported in companies' 10-Ks. By compiling this information, we allow companies to benchmark their own data against trends observed for other defendants. While we found decreases in 2017, on average, in dollars spent per resolved claim, the number of resolutions, dismissal rates, and indemnity payments, all remained within historical ranges. Asbestos reserves plateaued, also staying at similar levels to prior years. In contrast, new claim filings fell significantly, dropping below the levels observed over the past decade.

More specifically, we observed, on average, that:

- After increasing in 2016, average dollars per resolved claim pulled back in 2017 (falling 5%), although the values remained higher than in 2015.
- The number of claims resolved and average dismissal rates both declined for the second year in a row, dropping 29% and 14%, respectively, over the two-year period.
- Total indemnity payments decreased slightly, falling 8%, but remained within the range observed historically.
- Reserves, which had increased slightly over the prior two years, were flat in 2017.
- New claim filings fell, on average, marking the third year of declines (for a cumulative decline of 19%), but the magnitude of the declines remained much smaller than those observed during the mid-2000s.

While new claim filings appear to be trending downward, average resolution values and total indemnity payments remain within historical ranges, if somewhat lower, on average, than the levels observed in 2016. Because there is often a multi-year lag between claim filing and resolution, it may simply be too soon to observe the impact of the reduction in filings on total indemnity payments. The extent of any impact, however, will depend on the disease mix of those claims that continue to be filed, and disease information is not available from public data. If non-mesothelioma claims (which tend to command lower values) have declined, while mesothelioma filings remain steady, the total liability for companies may continue in the historical range for the near future. Two pieces of evidence support this prediction. First, we reviewed data on the incidence of mesothelioma since 2008 and found that estimated mesothelioma incidence has essentially been flat over the period, with a slight increase observed in the most recent year available, 2015. These data suggest that the reduction in filings is unlikely to be the result of a decrease in mesothelioma claims. The fact that reserves have plateaued also suggests that, at this point, companies are not reducing their projected liabilities, the majority of which tend to be earmarked for mesothelioma claims.

In this report, we provide analysis of data reported over the past ten years.<sup>2</sup> Prior to 2008, dramatic changes in the litigation occurred, with large increases in filings, followed by a surge in dismissal rates and a later drop-off in claim filings. In comparison, the past ten years have been more stable, with the biggest change being an increase in average resolution values in 2011, likely as the mix of claims being filed and resolved included more malignant filings and fewer non-malignant filings.

## Methodology

This study represents our tenth annual assessment of trends in the asbestos-related liabilities of more than 150 asbestos defendants. By collecting information in defendants' Form 10-K filings with the US Securities and Exchange Commission (SEC) for 2017, our full dataset now includes data from 2001 to 2017.

In this update, we analyze data reported by companies over the past ten years, tracking six key metrics related to asbestos liability:<sup>3</sup>

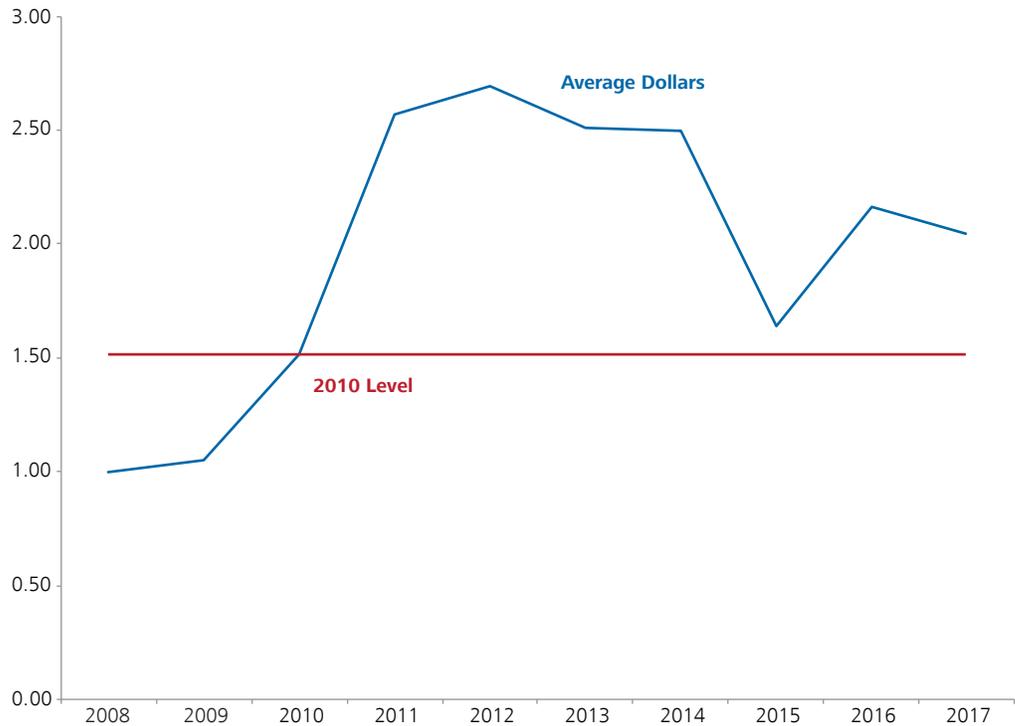
- *Total indemnity paid*: the aggregate amount a company pays to resolve claims each year;
- *Number of claims resolved*: the number of claims a company closes each year, either by settling or obtaining dismissals;
- *Average settlement paid per resolved claim*: the total indemnity paid divided by the number of claims resolved each year;
- *Percent of claims dismissed*: the fraction of claims a company resolves without payment;
- *Filings*: the number of new claims a company receives each year; and
- *Reserves*: asbestos-related reserve amount and the number of years included in the reserve.

We also obtained data on mesothelioma incidence rates through 2015, the most recent data available, from the Surveillance, Epidemiology, and End Results (SEER) Program of the National Cancer Institute.

### Average Dollars per Resolved Claim Increased 5%

- Over the past three years, average resolution values have exhibited a sawtooth pattern, falling 34% in 2015, increasing 32% in 2016, and falling again, by 5%, in 2017.
- Although average resolution values decreased in 2017, they remained higher than the values observed in 2015. Given the variability in values, it is too soon to determine whether the recent decline will be sustained.

Figure 1. **Average Dollars per Resolved Asbestos Claim**  
Indexed to 2008



## For a Second Year, Both the Number of Claims Resolved and Dismissal Rates Decreased, on Average

- In 2017, both average dismissal rates and the average number of claims resolved dropped 8%.
- Both metrics had increased substantially in 2015, before declining last year and again this year. While lower, these averages remain within historical ranges. Average dismissal rates have returned to 2011 levels, representing the low end of the ten-year range; the average number of claims resolved has fallen to the lower half of the range.

Figure 2. **Average Number of Resolved Claims and Average Dismissal Rates**  
Indexed to 2008

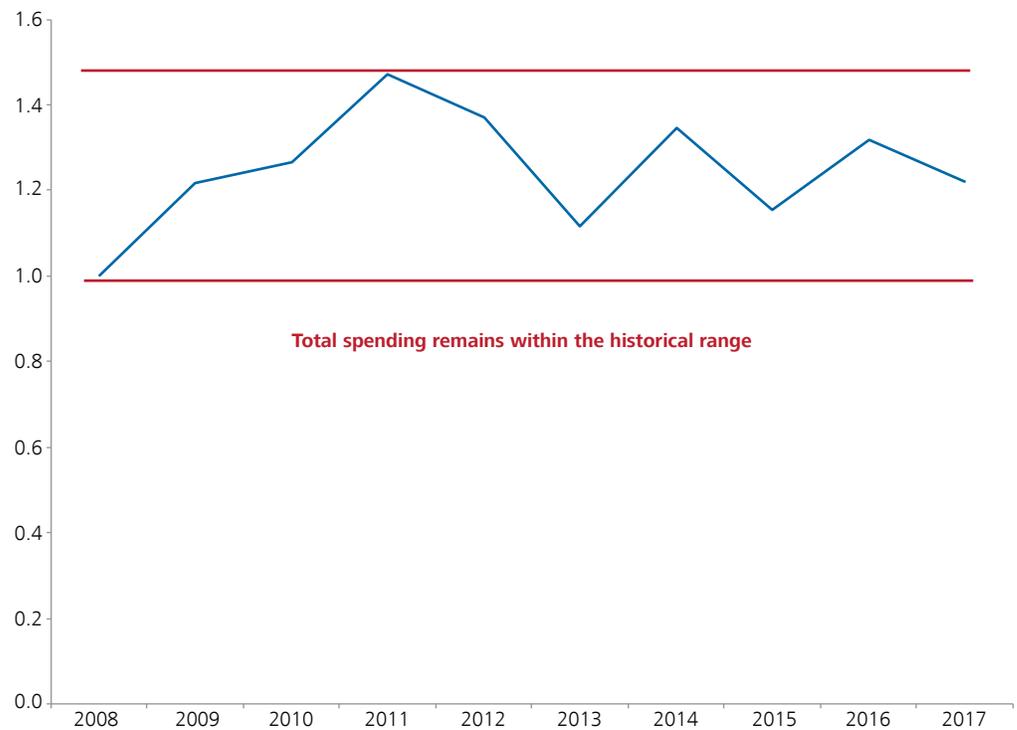


- The 2016 and 2017 reversals in the number of claims resolved and dismissal rates is consistent with our prior hypothesis that the 2015 increase may have been the temporary effect of companies clearing out backlogs of older claims.

## Total Indemnity Payments Remain Within the Historical Range

- In 2017, total indemnity payments decreased 8%, on average, but also continued to remain within the ten-year historical range.
- Since 2013, aggregate indemnity payments have exhibited a sawtooth pattern, with declines in average spending followed by increases. Average payments have ranged from 1.1 to 1.5 times 2008 levels, as annual averages have fluctuated with no clear upward or downward trend. The 2017 decrease continues this pattern and remains consistent with historical levels.

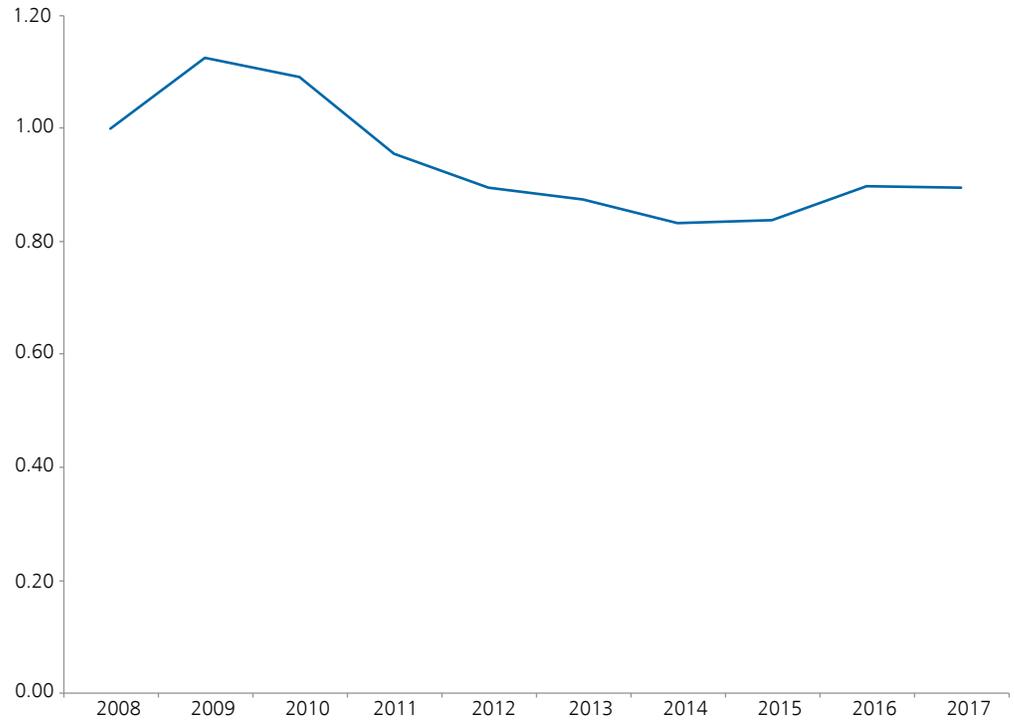
Figure 3. **Total Indemnity Payments per Defendant**  
Indexed to 2008



## Reserves Levels Plateaued in 2017

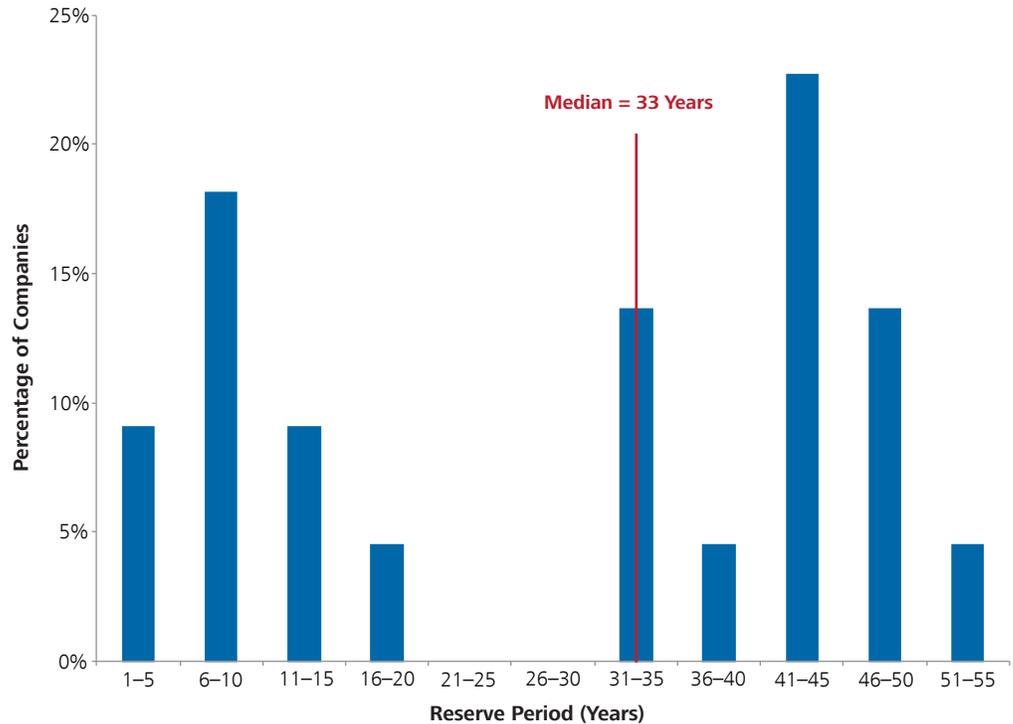
- On average, reserves decreased only slightly in 2017 (by 0.3%), essentially plateauing, after having increased in each of the prior two years.

Figure 4. **Average Asbestos Reserves**  
Indexed to 2008



- While reserves were flat in 2017 on average, the results were mixed across firms. Approximately 27% of companies increased their reserve, 67% decreased their reserve, and 6% of companies held their reserves constant.
- The median number of years for which companies reserved was 33 years. The number of reserve years for individual defendants, however, ranged from 5 to 51 years in a bi-modal distribution: 41% of the companies reported reserves of 20 or fewer years and 59% reported reserves of more than 30 years.

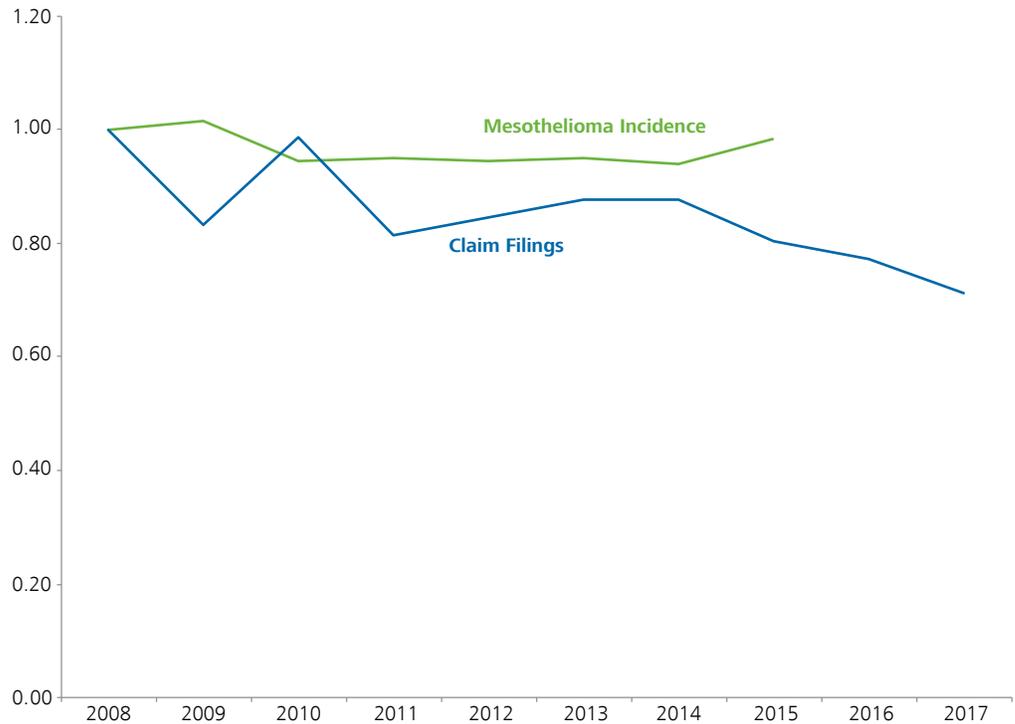
Figure 5. **Distribution of Asbestos Reserve Period Used by Companies in 2017**



### Filings Declined for the Third Consecutive Year

- Filings in 2017 dropped 8%, on average, following declines of 4% in 2016 and 8% in 2015. Some variability across defendants was observed, however, with 43% reporting a decrease in new claim filings, 35% reporting no change, and 22% reporting an increase in new claims.
- Over the prior six years, average filings had ranged from 0.81 to 0.99 times 2008 levels, without an upward or downward trend. With the most recent declines, filings have now dropped below historical levels. In comparison with the pre-2007 decline in filings reported in prior studies, however, the recent differences in claim levels are much smaller.
- While filings have trended down, on average, mesothelioma incidence as reported by SEER (extrapolating incidence rates to the national population) has continued to be steady, increasing slightly in 2015. (A two-year lag in the release of the SEER data means that a contemporaneous estimate of mesothelioma incidence is not available from this source.)

Figure 6. **Average Number of Asbestos Filings vs. Estimated Mesothelioma Incidence**  
Indexed to 2008

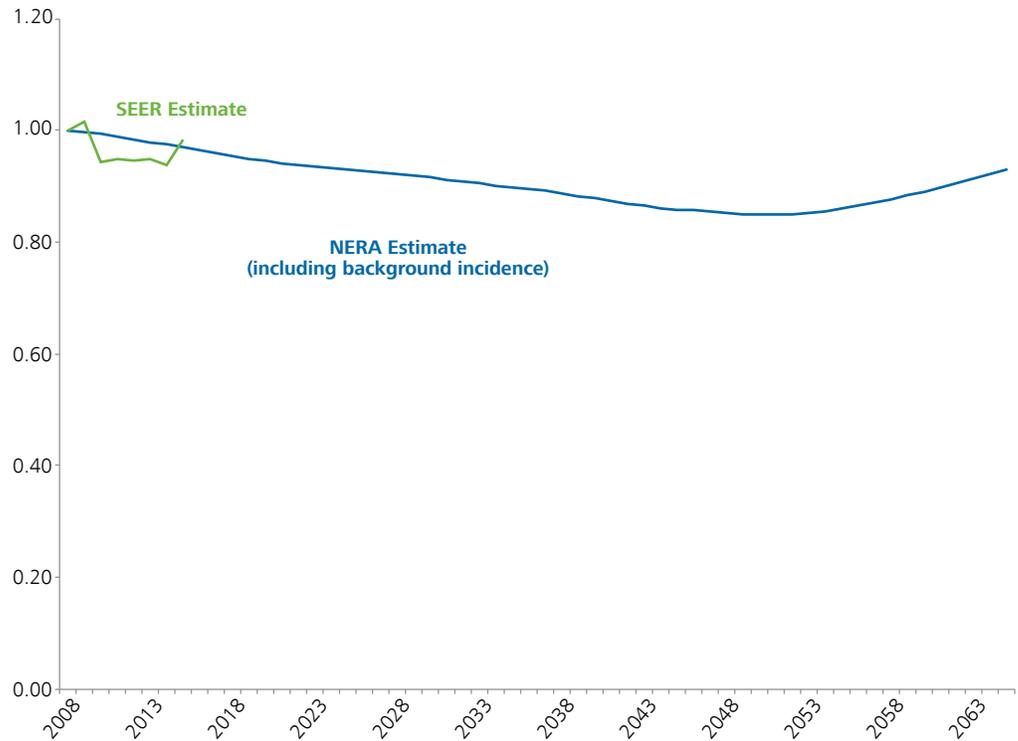


- While we do not know the disease mix of the claim filings because the public filings do not generally contain this information, the graph above at least suggests that the decline in claims is unlikely to reflect a reduction in mesothelioma filings. If the decline is in non-mesothelioma claims, the trend in mesothelioma filings may more closely mirror mesothelioma incidence.
- The composition/disease mix of the claim filings also has potential ramifications on total indemnity spending. Although claim filings have been declining, we have not yet observed a corresponding decline in total indemnity levels. The lack of a decline may be due to a lag between when claims are filed and when they resolve. However, if the decline in filings is coming from non-mesothelioma claims and the filings of mesothelioma claims continues to be steady, we may not see a corresponding decline in total indemnity payments. Mesothelioma cases tend to have higher resolution costs than non-mesothelioma cases, so if the mix of resolutions has shifted toward mesothelioma cases, indemnity spending overall may not decline. In addition, for many defendants, mesothelioma claims (with the highest average settlement values of any disease) represent the bulk of their liability. If mesothelioma claims continue at historical levels, total liabilities will not fall off in the near term.

## Total Mesothelioma Incidence Expected to Remain High, Though Occupational Exposure Has Been Falling

- As noted above, mesothelioma incidence has been flat over the past ten years, as estimated based on the SEER data. In contrast, estimates of occupational mesothelioma incidence have projected that incidence should begin decreasing, as the heavily exposed population is declining (through natural mortality).<sup>4</sup>
- Evidence exists, however, that a growing proportion of mesothelioma incidence may be associated with background rather than occupational exposure. For example, in the SEER data, female rates of mesothelioma incidence have been constant over time, while females historically did not have substantial occupational exposure. In contrast, rates of mesothelioma incidence among males rose historically with increases in occupational exposures to asbestos.
- Incorporating estimates of mesothelioma incidence from both occupational exposure and non-occupational exposure (background rates), NERA's estimates of total incidence mirror the SEER extrapolation. Our projection is that total incidence may continue at the current level, as incidence of mesothelioma associated with background, non-occupational exposure will become larger than incidence associated with occupational exposure (the general US population—and, hence, the background incidence—is growing overall, while the remaining population of occupationally exposed workers is shrinking).

Figure 7. **NERA and SEER Estimates of Mesothelioma Incidence**  
Indexed to 2008



- While total incidence may be expected to hold constant, future claims of occupational exposure may be harder to bring against the traditional defendants if evidence of workplace exposure does not exist.

### Summary of Trends Through 2017

- Overall, the asbestos litigation environment in 2017 was fairly stable, with total indemnity levels holding steady, average resolution values continuing within historical ranges, and the level of reserves plateauing. Together, these metrics suggest that the current level of liabilities may be expected to continue in the near future for companies, on average.
- In terms of resolutions, the number of claims resolved has declined (as companies appear to have cleared out backlogged claims in prior years) and dismissal rates have fallen (again perhaps related to the earlier clearing out of potentially lower quality claims). These two trends tend to have an offsetting impact on the number of claims resolved for positive payment.

- While filings appear to be pulling back, the disease mix of claims continuing to be filed is not known. Because the value of claims differs by disease, with mesothelioma claims commanding much higher settlement values, the disease mix of claims may be more important than the overall filing level in determining the impact on total indemnity payments.
- Aggregate claim filings have historically been a function of mesothelioma incidence. Now, while mesothelioma incidence estimates continue to be steady, claim filings appear to be falling off. Without knowing the disease mix of the claims filed and with a two-year lag in the SEER data, there is not yet enough data to assess whether these trends (claim filings versus mesothelioma incidence) are in fact diverging.
- After incorporating an estimate of the background rate of mesothelioma incidence from the non-occupationally exposed population, NERA forecasts that mesothelioma incidence will remain at recent levels. However, continued high incidence may not lead to the same level of claim filings in the future, or the claims being filed may lack evidence of occupational exposure. Traditional defendants may find that the claims alleged against them in the future may not be of the same quality as historical claims, as the claims may lack sufficient evidence of occupational exposure to tie them to the company. An analysis of a defendant's own claims would shed more light on filings trends specific to that defendant, as well as the quality of claims being filed.

## Endnotes

- <sup>1</sup> The authors would like to thank Yaxuan Wen, Sonya Natarajan, and Frank Chiang for their research. We also thank Dr. Stephanie Plancich and Dr. Denise Neumann Martin for their comments and suggestions.
- <sup>2</sup> In prior reports, we analyzed data back to 2001. We are focusing on the past ten years in this update to highlight more recent changes.
- <sup>3</sup> 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 in this paper represent an average of trends observed at the company level. Each chart may contain different companies, depending on the data reported by each company, 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.
- <sup>4</sup> See, for example, William J. Nicholson, George Perkel, and Irving Selikoff, "Occupational Exposure to Asbestos: Population at Risk and Projected Mortality - 1980-2030," *American Journal of Industrial Medicine*, Vol. 3, Issue 3, 1982.

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