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Filings Decline but Average Dollars per Resolved Claim Reach a New High

Snapshot of Recent Trends in Asbestos Litigation: 2019 Update



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Each year, we conduct a review of asbestos-related liabilities reported in companies' 10-Ks, with the current report covering the period from 2008 through 2018. By compiling this information, we allow companies to benchmark their own data against trends observed for other defendants. In 2018, the results were mixed for defendants—spending over the past year was higher than observed recently, both in terms of average dollars per resolved claim and total payments, while the number of pending claims and new filings continued to fall.

More specifically, we observed, on average, that:

- Average dollars per resolved claim increased 29% in 2018, fully reversing the decline observed in 2015, and reaching a new peak.
- Although total payments remained within their historical range, after increasing 19% in 2018, they are approaching the upper end of the range.
- Reserves, which were flat between 2016 and 2017, increased again in 2018, with total reserves up 13% since 2015.
- Dismissal rates plateaued in 2018, and the number of claims resolved continued to decline.
- New claim filings fell 6%, marking the fourth year of declines. Claim filings in 2018 were 33% below 2008 levels.

In addition to reviewing 10-Ks, we also collected data from the National Cancer Institute Surveillance, Epidemiology, and End Results (SEER) Program on the incidence of mesothelioma diagnoses in the United States. These data are available through 2016.

- Mesothelioma incidence fell 9% in 2016, after inching up over the prior three years.

Overall, defendants saw mixed results in 2018. New filings continued to fall, but the declines did not translate into lower spending by companies. After having remained fairly stable for several years, both average resolution values and total spending increased substantially in 2018. Reserves also increased over the past year, with some companies both increasing reserves and lengthening the reserve period, while others increased reserves only. For this latter group, the increase in reserves suggests that these companies do not yet expect a decrease in their total liabilities, even if receiving fewer annual filings.

Although there is frequently a multi-year lag between claim filing and resolution, filings have now declined for several years without any impact on total dollars. This pattern suggests that the declines to date may not have included mesothelioma claims, which can comprise the majority of companies' liabilities. Until mesothelioma filings (which are not reported publicly by companies) begin to decline, the total spending by defendants may continue at historical levels. While mesothelioma incidence has only declined for one year, from 2015 to 2016, if this decline were to continue, it may lead to a subsequent decline in mesothelioma filings against defendants.

Methodology

This study represents our eleventh 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 2018, our full dataset now includes data from 2001 to 2018.

In this update, we analyze data reported by companies over the past 11 years, tracking seven key metrics related to asbestos liability:²

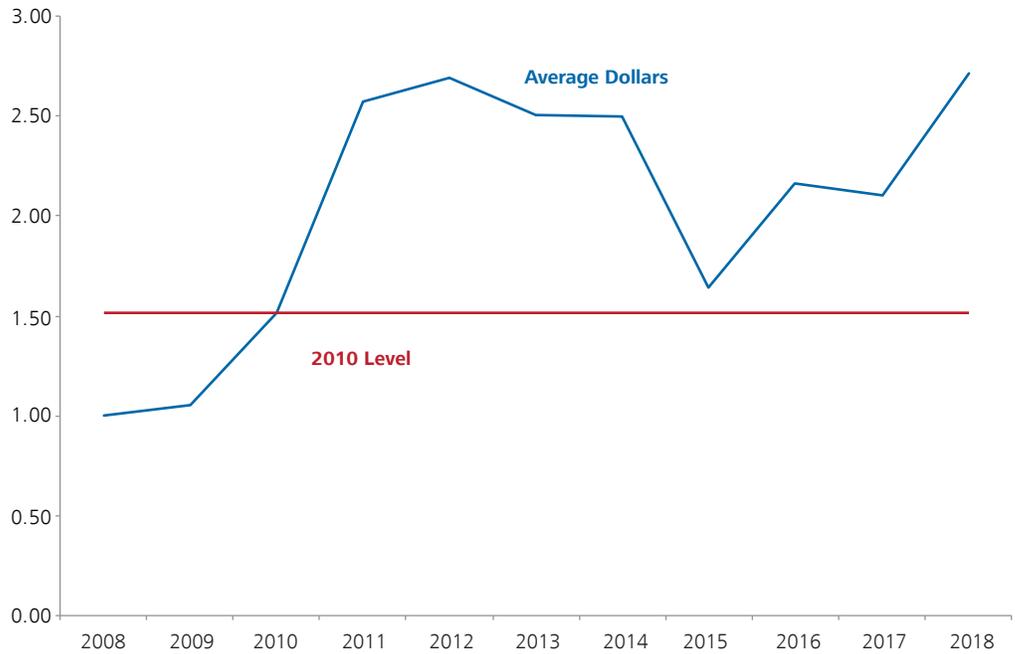
- *Total indemnity paid*: the aggregate amount a company pays to resolve claims each year;
- *Number of claims resolved*: the number of claims a company closes each year, either by settling or obtaining dismissals;
- *Average settlement paid per resolved claim*: the total indemnity paid divided by the 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;
- *Pending claims*: the cumulative number of claims received by a company that have not yet been resolved; and
- *Reserves*: asbestos-related reserve amount and the number of years included in the reserve.

We also obtained data on mesothelioma incidence rates by age and gender through 2016, the most recent data available, from the SEER Program of the National Cancer Institute.

Average Dollars per Resolved Claim Increased by 29%

- Average resolution values increased substantially in 2011, rising 70% on average, before pulling back almost entirely in 2015. With increases in 2016 and again in 2018, average resolution values have returned to, and slightly exceeded, the 2011 through 2014 levels.

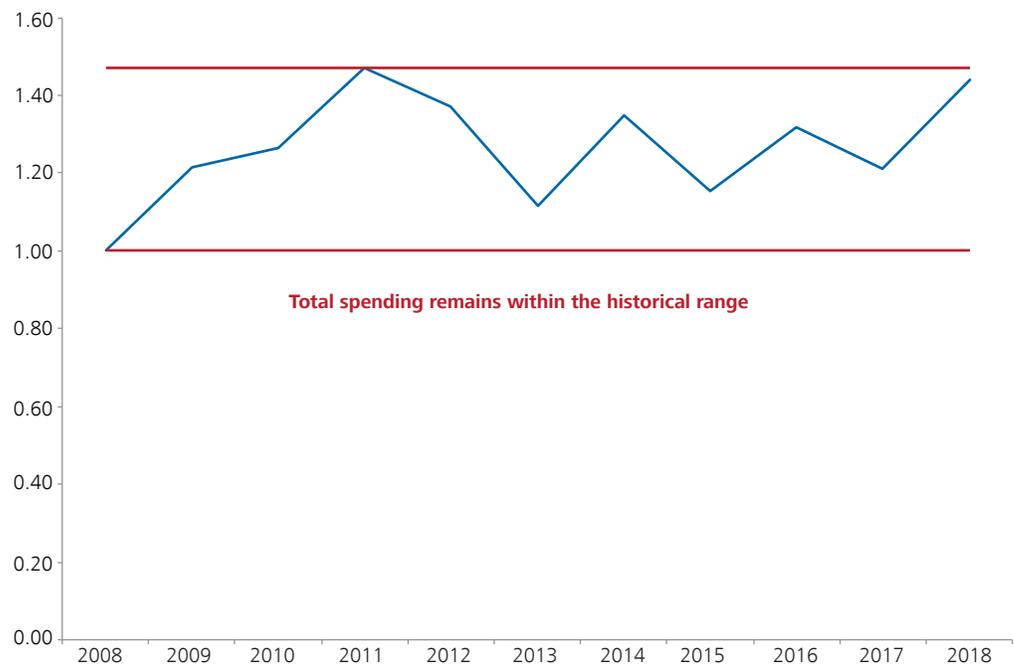
Figure 1. **Average Dollars per Resolved Asbestos Claim**
Indexed to 2008



Total Indemnity Payments Increased to the Upper End of the Historical Range

- In 2018, total indemnity payments increased 19%, on average, nearing the upper end of the historical range.
- Aggregate indemnity payments have exhibited a sawtooth pattern over the past six years, 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. Reversing a decline the prior year, the 2018 increase continues this pattern.

Figure 2. **Total Indemnity Payments per Defendant**
Indexed to 2008

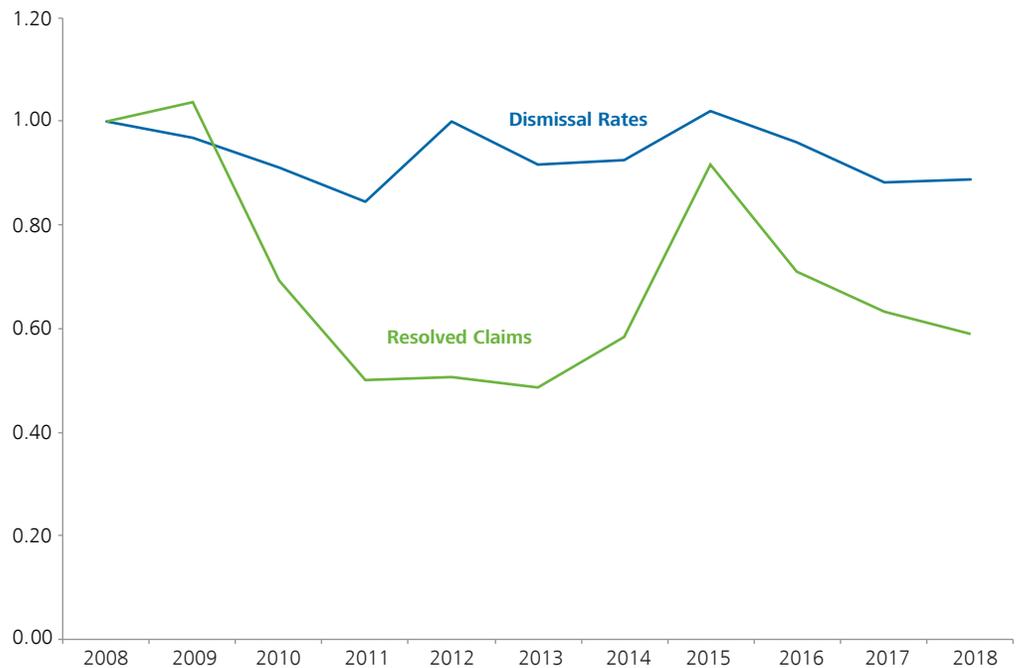


- Although annual spending is approaching the upper bound of the historical range, there is not yet enough data to assess whether total indemnity payments will continue their sawtooth pattern, staying within this historical range, or will begin to exceed the range.

Dismissal Rates Plateaued, and the Number of Claims Resolved Decreased for the Third Consecutive Year

- Dismissal rates and the number of claims resolved both spiked in 2015 and then dropped in each of the next two years.
- In contrast, the two metrics diverged in 2018, with average dismissal rates remaining essentially flat, while the number of claims resolved continued to fall, dropping 7% on average in 2018.
- Dismissal rates are currently slightly above the 2011 low. Although the number of resolved claims continued to decline, resolutions have not yet reached the 2011–2013 lows, when the average number of claims resolved hit a floor.

Figure 3. **Average Number of Resolved Claims and Average Dismissal Rates**
Indexed to 2008

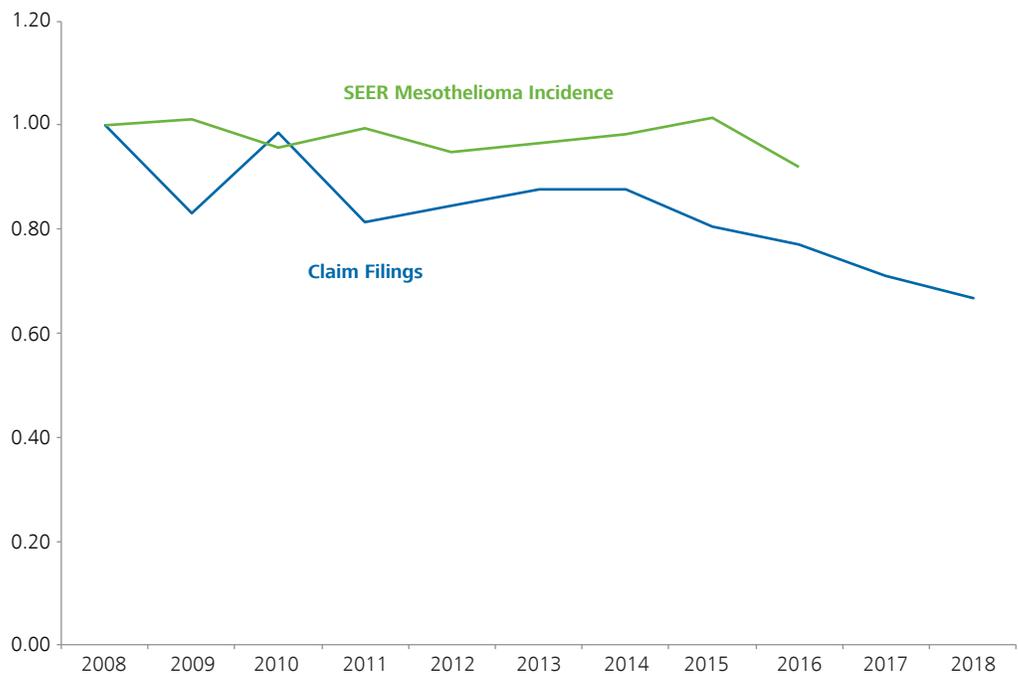


- The reversal over the past three years of the 2015 spike in resolutions and dismissal rates and of the corresponding drop in average dollars supports our prior hypothesis that the 2015 results may have been the temporary effect of companies clearing out backlogs of older claims. As such, we would expect the current resolution values and dismissal rates to continue.

Filings Declined for the Fourth Consecutive Year

- Filings in 2018 dropped 6%, on average, falling for the fourth straight year and marking a cumulative decline of 24% over the period.
- Except for a jump in filings in 2010, which was reversed the next year, there has been a general downward trend in filings since 2008, with an aggregate decline of 33% over the past 10 years.
- Although the overall trend has been declining filings, there continues to be variability across defendants, with 70% reporting a decrease in new filings in 2018, 20% reporting an increase, and 10% reporting no change.
- The declining filings trend may not capture the recent filings against talcum powder defendants, who historically have not reported data on new filings, but have reported receiving asbestos-related disease claims. One of the defendants, Colgate-Palmolive, has started reporting annual asbestos-related disease filings and reported filings were flat from 2017 to 2018.

Figure 4. **Average Number of Asbestos Filings vs. Estimated Mesothelioma Incidence**
Indexed to 2008



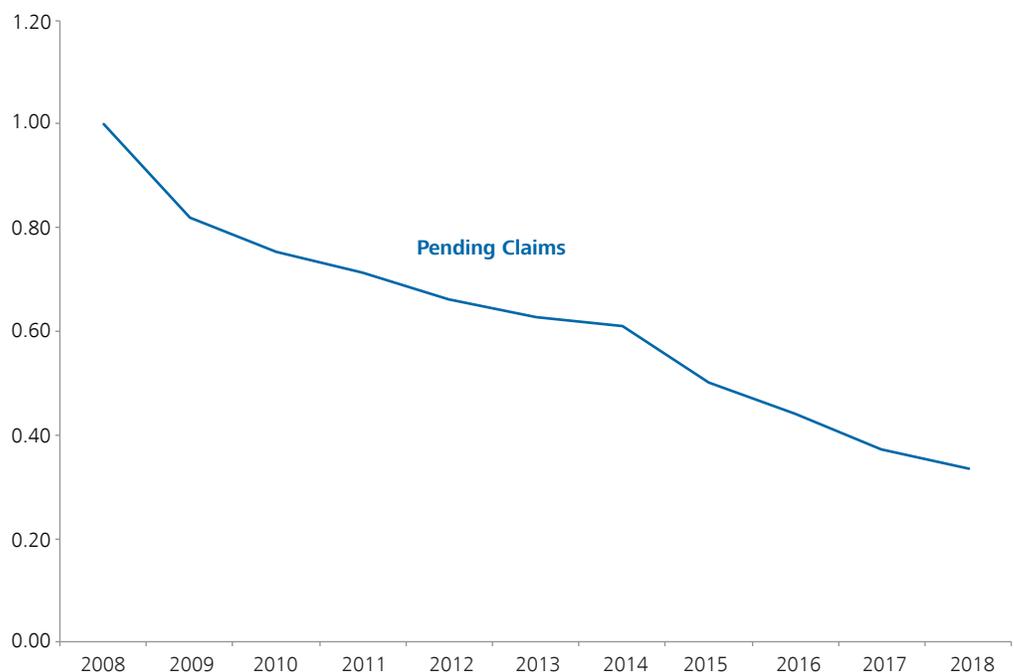
- Companies typically report overall filings without information on the mix of diseases alleged. As such, data do not exist on what is driving the decline in filings and whether the drop is similar across diseases.

- Although we do not have information on the disease mix of filings, we have been able to estimate the annual incidence of mesothelioma diagnoses in the United States population using the SEER data compiled by the National Cancer Institute, with mesothelioma incidence rates reported by age and gender. Applying these incidence rates to national population statistics along the same dimensions, we estimated the annual incidence of mesothelioma disease in the United States. Over the 2008–2015 period, mesothelioma incidence had been fairly constant: up and down over the first four years, then inching up over the next three years, but remaining within the historical range.
- In contrast, in 2016, the most recently available data, mesothelioma incidence declined 9%, falling below the lower bound of the 2008–2015 range. With a two-year lag in the release of the SEER data, a contemporaneous estimate of mesothelioma incidence is not available from this source. And, with only a one-year decline in mesothelioma incidence, it is too soon to assess whether the drop observed over the past year is the start of a retreat in mesothelioma incidence or whether it represents a temporary decline.

Pending Claims Have Continued to Decline

- Pending claims, which have been declining steadily since 2008, dropped 10% on average over the past year.
- Although the number of resolutions has also been declining for several years, resolutions continue to exceed new filings as the older claims move through the courts, resulting in the observed declines in the pending stock.

Figure 5. **Average Number of Pending Claims**
Indexed to 2008

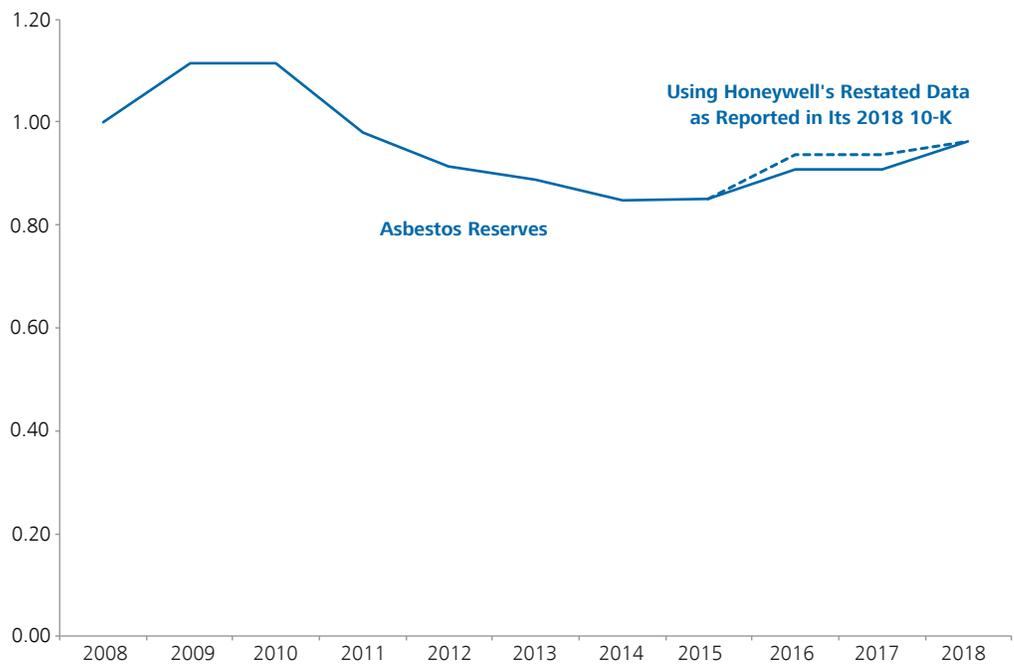


Reserve Levels Increased in 2018

With decreased new filings and increased average dollars per resolved claim, metrics are mixed on the status of the litigation for defendants, but reserve levels provide some insight into companies' projections going forward.

- Average reserves have been trending up over the past three years (even as pending claims have fallen), with increases in 2016 and 2018. Since 2015, reserves have increased 13% on average.
- In contrast, average reserves fell steadily from 2011 through 2014, before plateauing in 2015.

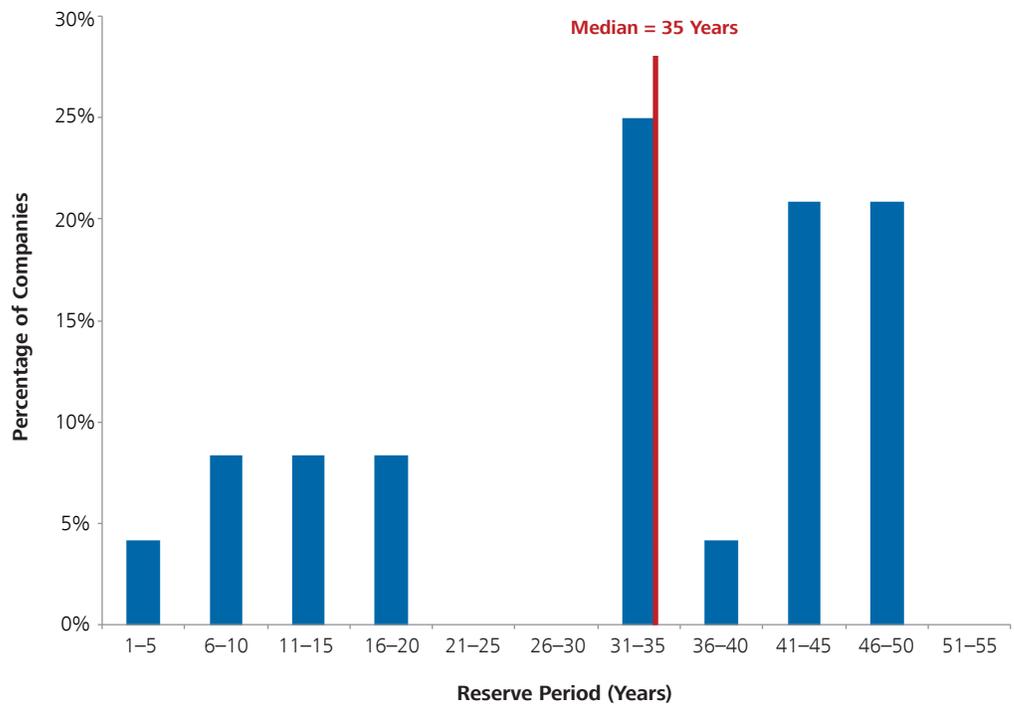
Figure 6. **Average Asbestos Reserves**
Indexed to 2008



- Not all companies increased their reserves in 2018. In fact, the increase was driven by just a third of the companies. Two-thirds either held reserve levels constant or decreased their reserve. Of the companies that increased their reserve, 18% also lengthened the reserve period, 55% did not change the number of years, and 27% did not report a reserve period.
- One of the firms that both increased its reserve and lengthened the period was Honeywell, which extended its reserve period from 5 to over 40 years. In addition, the company restated reserves in 2016 and 2017, using the longer period for each. We have reported the change in reserve amounts both including and excluding the restated reserves, which affects the timing of the observed increase.

- In 2018, the median number of years for which companies reserved was 35 years, with a bi-modal distribution for individual defendants ranging from 5 to 50 years: 30% of the companies reported reserves of 20 or fewer years, and 70% reported reserves of more than 30 years. In 2015, the distribution was flipped: 70% of defendants reserved for 20 or fewer years, and 30% reserved for more than 35 years.

Figure 7. **Distribution of Asbestos Reserve Period Used by Companies in 2018**



- Over the past several years, we have observed some companies increasing the number of years over which they are reserving, resulting in a lengthening of the median reserve period from 15 years in 2015 to 28 years in 2016, 33 years in 2017, and now 35 years in 2018. Over the past year, three companies that had been reserving for 10 or fewer years reported reserves for more than 30 years. Two additional companies began reporting a reserve in 2018, one for 20 years and one for over 30 years.

Summary of Trends Through 2018

- The results over the past year have been varied for defendants. Some positive trends continued, with new filings falling for another year, the stock of pending claims shrinking, and dismissal rates plateauing after falling the prior two years. But, average dollars increased to an 11-year high, total spending approached the upper end of the historical range, and reserve levels increased, on average.
- As filings have been falling on average, reserve levels have increased, and 55% of companies increasing their reserves continued to use the same reserve period. The increase in reserves covering the same number of years suggests that these defendants are not expecting the current declines in filings/pending claims to lower their liabilities compared with prior projections.
- In addition, we continued to see companies pushing out their reserve periods (a trend first observed in 2016), with the median reaching 35 years in 2018. The increase in the number of reserve years is likely a response to the SEC's pushing back on companies perceived as being under-reserved, with notably a late 2015/early 2016 investigation into Owens Illinois' determination of its asbestos-related liabilities and a 2018 review of Honeywell's accounting treatment of similar liabilities. The increase may also reflect forecasters' expectations about a long tail in the litigation, and companies' assessment that the litigation has been relatively stable recently, providing support for longer future projections.
- Understanding the path of mesothelioma incidence is an important component of forecasting future asbestos-related mesothelioma claims. NERA and other forecasters have been projecting declining mesothelioma incidence among the occupationally exposed workforce, as the most intensely exposed groups decline through natural mortality. More recently, we and other forecasters have projected that the impact of the declining population on total mesothelioma incidence may be more moderate, as in addition to occupational sources of exposure, researchers have found evidence of a background rate of mesothelioma incidence among non-occupationally exposed groups. As additional data on national mesothelioma incidence is compiled, we will be able to better refine the fraction of future incidence related to occupational exposure versus background rates.

Endnotes

- ¹ The authors would like to thank Tanner Baker, Eli Pullman, and Renqing Wang for their research. We also thank Dr. Stephanie Plancich for her comments and suggestions.
- ² Data from each firm's most recent Form 10-K (obtained as of April 2019) 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.

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