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Average Dollars per Resolved Claim Continue to Climb

Snapshot of Recent Trends in Asbestos Litigation: 2020 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 2008–2019. By compiling this information, we allow companies to benchmark their own data against trends observed for other defendants. In 2019, the trends were mixed for defendants. On average, total spending and new filings declined, while average dollars per resolved claim increased.

More specifically, we observe, on average, that:

- Average dollars per resolved claim increased 25% in 2019, after having increased almost 30% in 2018.
- Total payments declined 9% in 2019 compared to the prior year, pulling back from the increase observed in 2018 and remaining within the historical range in spending.
- Reserves, which had trended up over the past three years, dropped 10% in 2019, almost completely reversing the 2015–2018 increases.
- Dismissal rates declined slightly in 2019, whereas the number of resolved claims fell 33% in 2019.
- New claim filings fell 7%, as claim filings continued their five-year decline.

In addition to reviewing 10-Ks, we also collect 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 2017.²

- Mesothelioma incidence increased slightly in 2017 but remained below the levels of the previous eight years.

Overall, trends in 2019 were mixed for defendants. New filings and total spending both fell relative to the prior year, but average dollars per resolved claim increased substantially, greatly exceeding prior peaks in average dollars. At the same time, after increasing for several years, reserve levels declined.

Whether the increase in average resolution values will impact total spending going forward is not yet known. The decline in reserves offers some support for the possibility that the increase in average dollars may not translate into higher total spending, as, on average, companies have not revised their own forecast projections. Declining reserve levels are consistent with constant forecast projections, as companies settle pending claims, drawing down their reserves. The effect of individual metrics on the forecast cannot be determined from the public data. The increase in average dollars over the past year corresponded to a large decline in resolutions, as well as a continuing decline in filings. With the drop in resolutions, it may be that lower value claims were pushed off (remaining in companies' backlogs) and that the observed increase in average values represents a timing issue, rather than a new trend in values. Alternatively, the downward trend in filings may offset increases in average resolution values. Either of these possibilities might mitigate upward pressure on total spending.

Methodology

This study represents our twelfth 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 2019, our full dataset now includes data from 2001 through 2019.

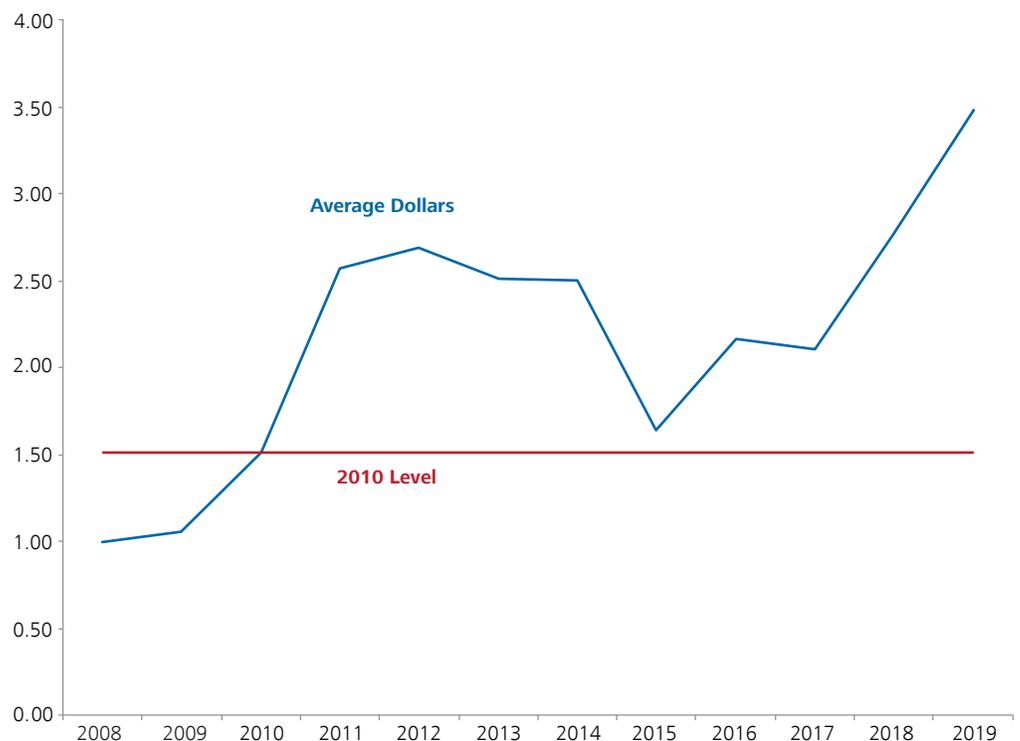
In this update, we analyze data reported by companies over the past 12 years, tracking seven key metrics related to asbestos liability:³

- *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;
- *Percentage 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.

Average Dollars per Resolved Claim Increased by 25%

- Average dollars per resolved claim increased 25% in 2019, increasing for the second year in a row and reaching a new peak.
- The prior high had been reached over the 2011–2014 period, but had been almost erased in 2015, when average dollars declined substantially.
- Since 2015, average resolution values have increased 112% in aggregate, with the current peak 1.3 times as high as the prior peak in 2012.

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

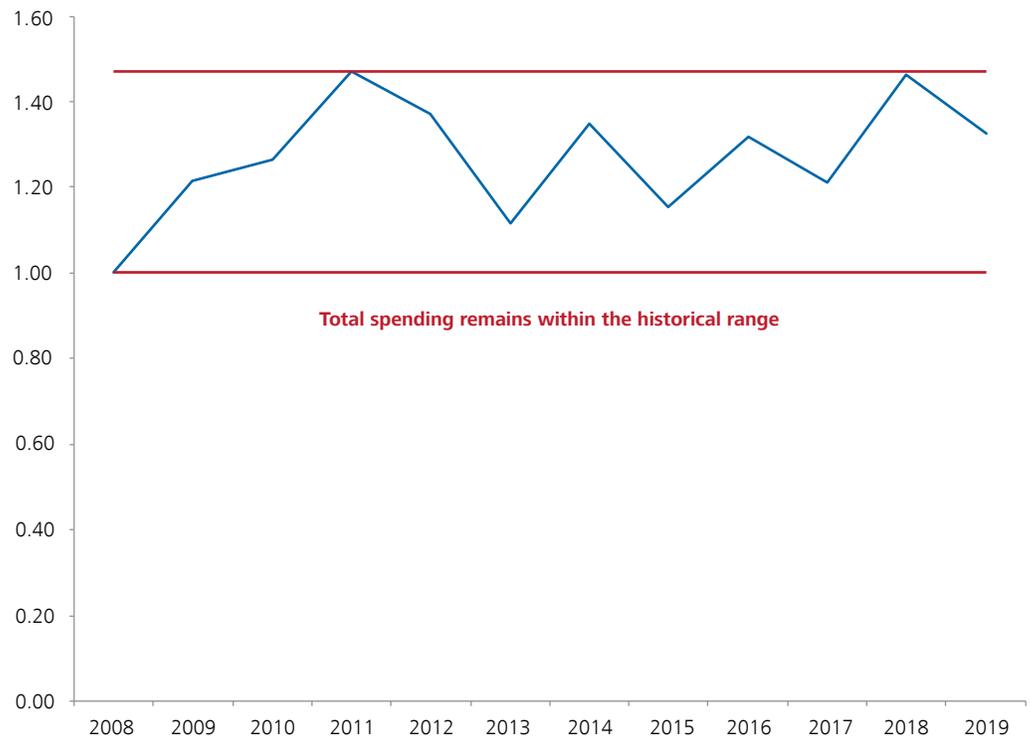


- The driver of the increase in average resolution values is not known—did settlement demands increase, or was the mix of claims the companies chose to resolve weighted more heavily toward more expensive disease categories (mesothelioma claims) or more expensive jurisdictions (e.g., New York)? Nor is it known whether these changes may be temporary, for example, if the mix of claims resolved does not reflect the mix of claims still pending or continuing to be filed. Because companies do not report the disease mix or jurisdiction mix of the claims resolved, we cannot determine whether the increase in overall resolution values is being driven by a change in the mix of claims resolved or is the result of higher settlement values within a disease/jurisdiction category.

Total Indemnity Payments Pulled Back in 2019

- In 2019, total indemnity payments decreased 9%, dropping back into the historical range and nearly reversing the prior year's increase.
- Aggregate indemnity payments have exhibited a sawtooth pattern over the past seven 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. The 2019 decrease continues this pattern.

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



- The increase in average dollars per claim did not translate into an increase in total spending over the past year.

Both Dismissal Rates and the Number of Claims Resolved Decreased for the Fourth Year

- In 2019, both dismissal rates and the average number of claims resolved declined, with dismissal rates dropping 4% and the number of claims resolved dropping 33%, continuing their declines over the past four years.
- Although dismissal rates have declined each year since 2015, the pace of decline has been slowing. Current dismissal rates remain slightly below 2011 levels, the prior low.

- In contrast, the number of claims resolved dropped substantially over the past year, declining at a faster rate than in prior years and resulting in annual resolutions falling below the prior floor from 2011 through 2013.

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



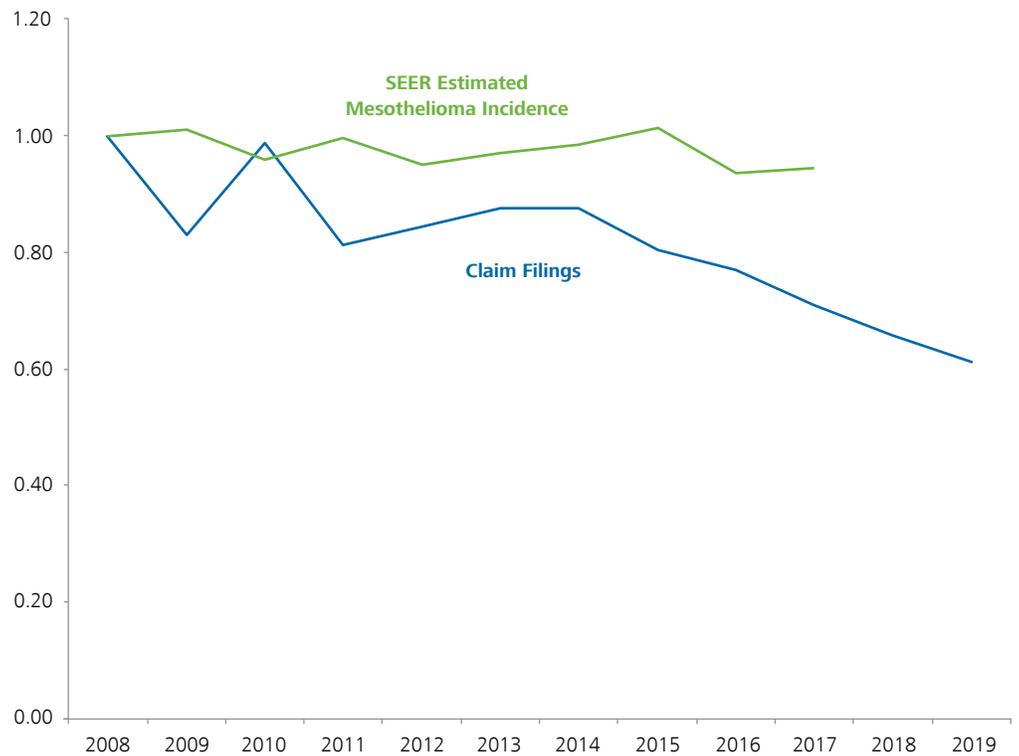
- Pending claims plateaued in 2019, indicating that, on average, the number of resolved claims equaled the number of new filings. Previously, pending claims had been declining as companies resolved backlogged claims. With pending claims stabilized, going forward, dismissal rates may also remain more constant and changes in the average number of claims resolved may more closely follow changes in new filings.

Filings Declined for the Fifth Consecutive Year, While Mesothelioma Incidence Has Remained Stable

- Filings in 2019 dropped 7%, on average, falling for the fifth straight year, with 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 39% over the past 12 years.
- Although the overall trend has been declining filings, there continues to be variability across defendants, with 45% reporting a decrease in new filings in 2019, 40% reporting an increase, and 15% reporting no change.

- Claim filings against firms who make beauty products with talcum powder have increased substantially in recent years, and these claims may involve allegations of asbestos exposure. For example, both Johnson & Johnson and Colgate-Palmolive have reported an increase in talc-related claims over the past several years, although filings for Colgate-Palmolive pulled back this year. Since these defendants have not categorized their reporting on filings into claims from pure talc exposure and claims related to alleged asbestos-contaminated talc, these firms are not included in this analysis.

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 or the jurisdictions in which claims are brought. As such, data do not exist to determine what is driving the decline in filings and whether the drop is similar across diseases and jurisdictions.
- In particular, from the aggregate data, we cannot determine if mesothelioma filings, which have historically commanded the highest dollars, have also declined. However, we can assess how mesothelioma diagnoses have changed over time, which may provide some insight into filing activity.
- To estimate the annual incidence of mesothelioma disease in the United States population, we use the SEER data, with mesothelioma incidence rates reported by age and gender, and national population statistics along the same dimensions. Over the 2008–2015 period, mesothelioma incidence rose or fell in any given year, but did not exhibit an upward or downward trend in diagnoses, instead staying within a band of 0.96 to 1.01, around the 2008 levels. In 2016, mesothelioma incidence declined 8%, falling below the lower bound of the 2008–2015 range.

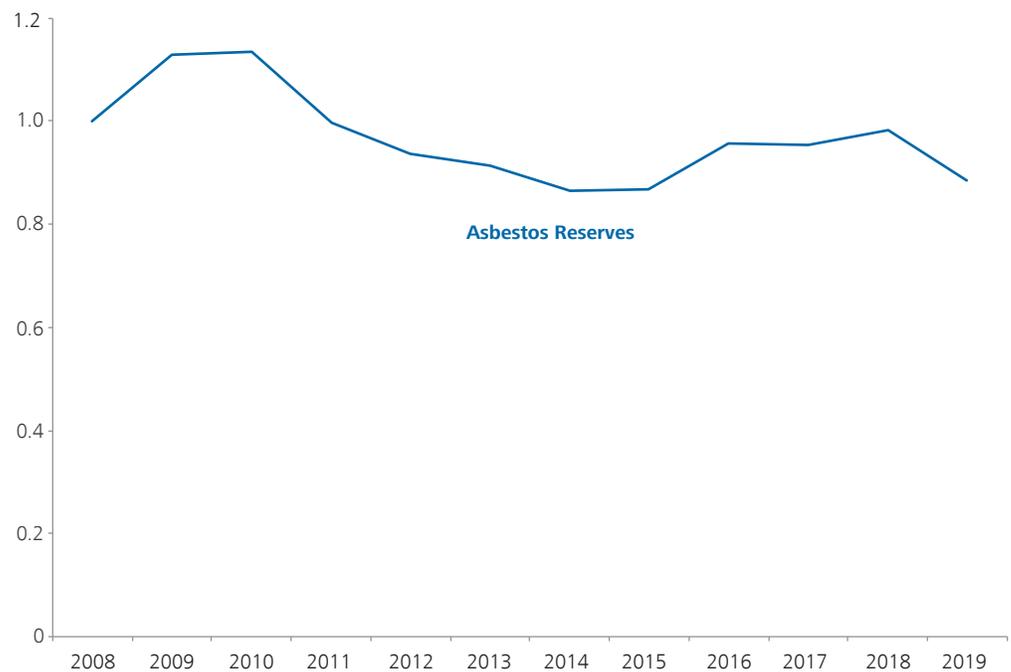
- In 2017, the year with the most recent data available, mesothelioma incidence again increased, but still remained below the 2008–2015 historical range. With a two-year lag in the release of the SEER data, a contemporaneous estimate of mesothelioma incidence is not available from this source. Given the variability of historical annual changes in mesothelioma incidence, it is too soon to assess whether mesothelioma incidence has reached a new plateau or will continue to decline, as forecasters, including NERA, have been projecting for the occupationally exposed population.⁴
- If mesothelioma claim filings followed the same pattern as mesothelioma incidence over this period (i.e., largely not declining), then the decline in overall filings would have to be coming from other diseases. Trends over the past two years are not yet known.

Reserve Levels Decreased in 2019

As discussed above, although average dollars per resolved claim continued to increase in 2019, total spending has remained within historical ranges and new filings continued their decline. With metrics mixed on the status of the litigation for defendants, reserve levels provide some insight into companies’ own projections going forward.

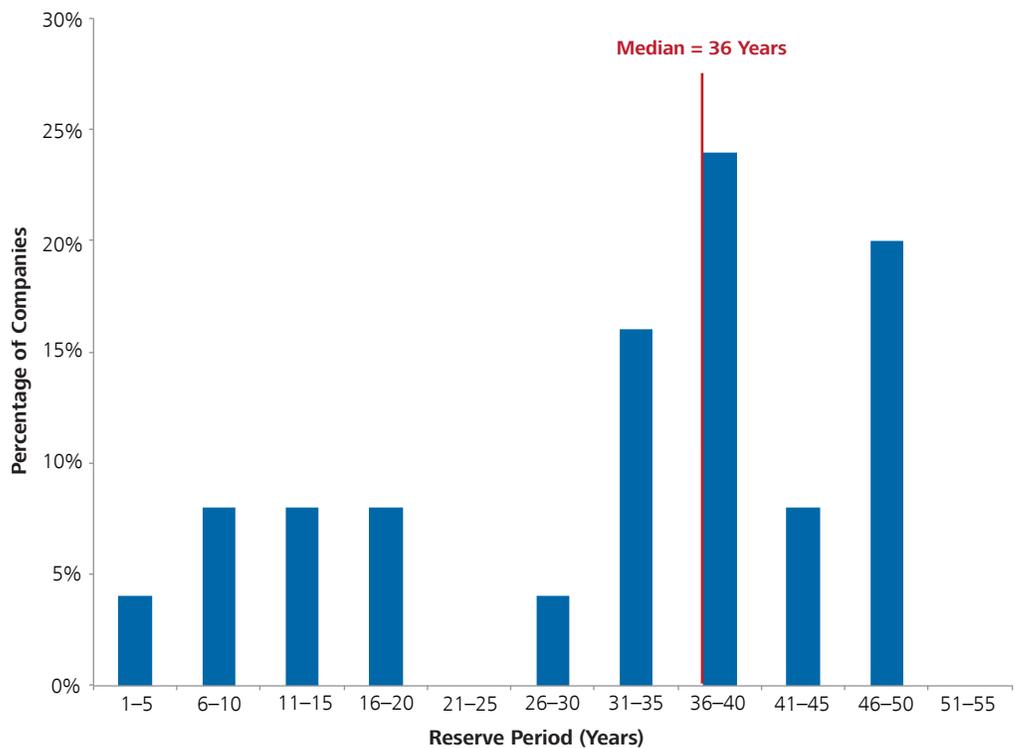
- Average reserves had been trending up over the prior three years, with increases in 2016 and 2018, and a cumulative increase in reserves of 13% on average since 2015.
- In contrast, in 2019, reserve levels fell 10% on average, dropping back in line with 2015 levels.

Figure 5. **Average Asbestos Reserves**
Indexed to 2008



- The decline in reserves offers some support for the possibility that the increase in average dollars may not translate into higher total spending. Had companies anticipated paying higher dollars in the future, we would have expected reserve levels to increase. How the individual metrics interact with the companies' own forecast projections is not known. For example, it is possible the increase in observed dollars is expected to be temporary (based on the mix of claims the companies elected to resolve) or the increase in average dollars is expected to be offset by declines in filings.
- Not all companies decreased their reserves in 2019, although the majority did, with 68% reporting lower reserves. Another 6% held reserve levels constant and 26% increased their reserve. Of the companies that increased their reserve, 38% also lengthened the reserve period, 25% did not change the number of years, and 38% did not report a reserve period.⁵
- In 2019, the median number of years for which companies reserved was 36 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 25 years, a similar split as in 2018.

Figure 6. **Distribution of Asbestos Reserve Period Used by Companies in 2019**



Summary of Trends Through 2019

- The results over the past year have been varied for defendants. Some positive trends included total spending declining, new filings falling for another year, and reserves decreasing. At the same time, average dollars per resolved claim increased to a 12-year high, dismissal rates continued to decline (although more slowly than in prior years), and the drop-off in mesothelioma incidence predicted by forecasters has not yet fully materialized.
- The last time average dollars increased substantially was in 2011, which corresponded with a relative peak in total spending. Since then, changes in spending have remained within the historical range observed over the 2008–2011 period, with annual spending up or down in any given year but without an upward or downward trend. Whether the recent increase in average dollars will again cause total spending to trend above the recent spending range is not yet known.
- Both claim filings and average resolution values have been showing strong trends, with filings continuing to decline (over an extended period) and average resolution values rising (more recently). One driver of these patterns may be a changing mix in filings, with a drop in non-mesothelioma claims, as the lagged mesothelioma incidence has not declined as much as filings. Because mesothelioma claims command the highest resolution values, a decline in filings of other diseases would result in higher average dollars across all resolved claims, even if the number of mesothelioma claims and average mesothelioma settlement values have remained constant. Alternatively, if mesothelioma filings have also been declining for defendants, particularly more recently, this sustained drop in filings may be putting upward pressure on settlement values. As the occupationally exposed population decreases and the incidence of asbestos-related diseases (namely mesothelioma) arising from this population is expected to decline, plaintiff attorneys may press for higher settlements to offset declining projected revenues.
- Liability projections depend on granular assessment of litigation trends. For example, what are filing and settlement trends by disease and by jurisdiction? While data on aggregate trends can be informative about the general direction of the litigation, changes in the individual metrics (in this case average resolution values) reported in the public data may not provide enough information to assess their impact on future liabilities.
- A forecaster projecting future liabilities for an individual company would take into account aggregate trends in the litigation (such as mesothelioma incidence, which is declining more slowly than forecasters had projected, or jurisdictional changes, as with the reintroduction of punitive damages in New York), as well as company-specific factors (such as the disease mix of claims being filed, the company's success in resolving claims without payment, and the company's historical payments, among others).

Endnotes

- 1 The authors would like to thank Eli Pullman and Vivian Qiu for their research. We also thank Dr. Stephanie Planchich for her comments and suggestions.
- 2 Data from each firm's most recent Form 10-K (obtained as of April 2020) 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.
- 3 Surveillance, Epidemiology, and End Results (SEER) program. <https://seer.cancer.gov/>
- 4 See, e.g., William J. Nicholson, George Perkel, and Irving J. Selikoff, "Occupational exposure to asbestos: Population at risk and projected mortality – 1980–2030," *American Journal of Industrial Medicine*, Vol. 3.3, 1982, pp. 259–311.
- 5 Total may not sum due to rounding.

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