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Snapshot of Recent Trends in Asbestos Litigation

2010 Update

By **Lucy P. Allen** and
Mary Elizabeth C. Stern*

Using publicly available data, we analyzed trends in asbestos-related liabilities of more than 150 companies. This study represents our second annual assessment of these data, and extends our analysis one year to cover the period from 2001 through 2009.

We found that 2009 looked very much like 2008:

- Claims filings continued to decline, but not dramatically;
- Average aggregate indemnity payments rose, but remained below earlier spikes;
- The number of resolved claims stayed constant;
- Dismissal rates pulled back some, but continued at high levels;
- Pending claims are at their lowest level since 2001; and
- Average dollars per resolved claim increased, but remained below prior spikes.

These results are consistent with the lack of any substantial changes in the asbestos litigation environment in 2009.

Methodology:

Compiling data from companies' Form 10-K filings with the SEC from 2001 through 2009, we tracked five key metrics:¹

- *Annual filings*: the number of new claims a company receives each year;
- *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 dismissing;
- *Percent of claims dismissed*: the fraction of claims a company closes without payment; and
- *Average settlement paid per claim*: the total indemnity paid divided by the number of claims closed each year.

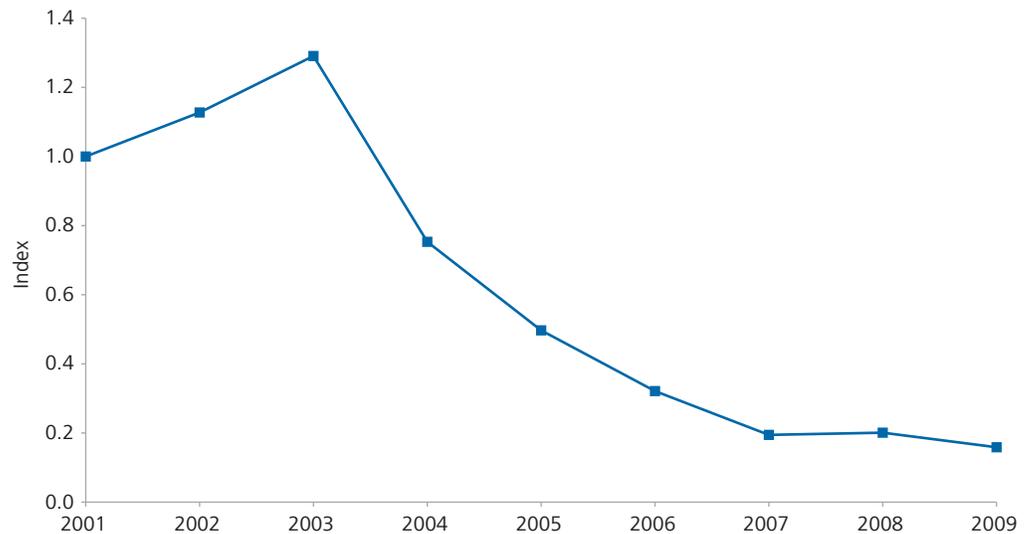
In addition, for those firms reporting an asbestos-related reserve, we also tracked the number of years out for which companies reserved.

Below we analyze each key metric separately.

Average Claim Filings Have Declined 88% Since 2003

- Average claim filings, which stabilized in 2008 after falling steadily since the 2003 peak in filings, dropped slightly again in 2009.
- From its peak in 2003 through 2009, the average number of claims filed per year has fallen 88%.

Figure 1. **Average Number of Asbestos Claim Filings**
Indexed to 2001

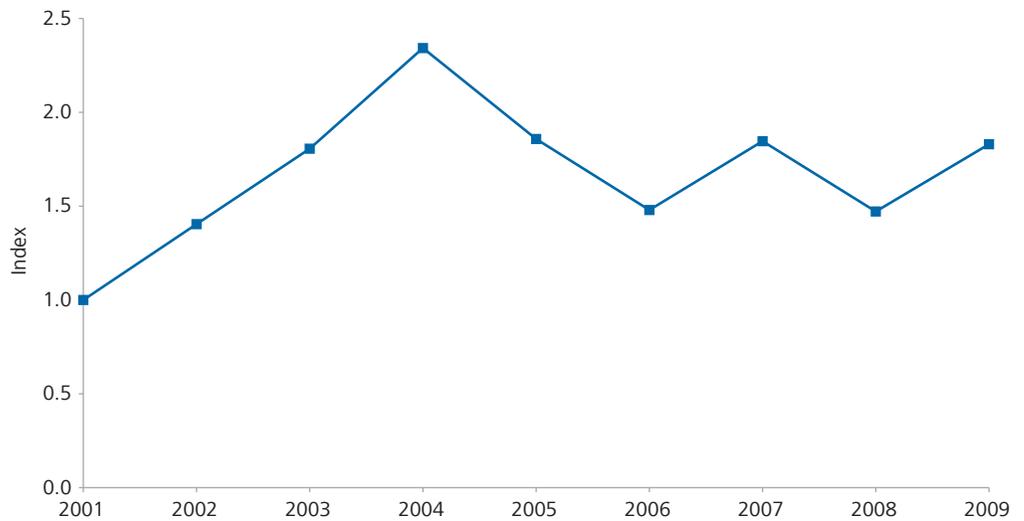


- As we noted last year, the drop in filings followed the enactment of legislative and judicial tort reforms in multiple jurisdictions and the tightening of medical documentation requirements by several trusts. Although most companies included in this report did not report malignant versus non-malignant filings in their 10-Ks, given that the recent reforms primarily targeted unimpaired non-malignant claims, the drop in total filings likely represents a drop in non-malignant filings. In fact, this shift in filings is seen in the data recorded by the one company that did report new claim filings by disease.

Indemnity Payments Rose in 2009, Continuing the Sawtooth Pattern begun in 2006

- The total indemnity payments by defendants increased, on average, approximately 33% each year from 2001 through 2004, before pulling back in both 2005 and 2006.
- Since then, total indemnity payments have bounced between 2005 and 2006 levels, rising or falling 23% on average each year.
- In other words, while there has been some variability in total payments over the past several years, overall, the amount that individual companies have been paying has remained fairly steady in the recent period.

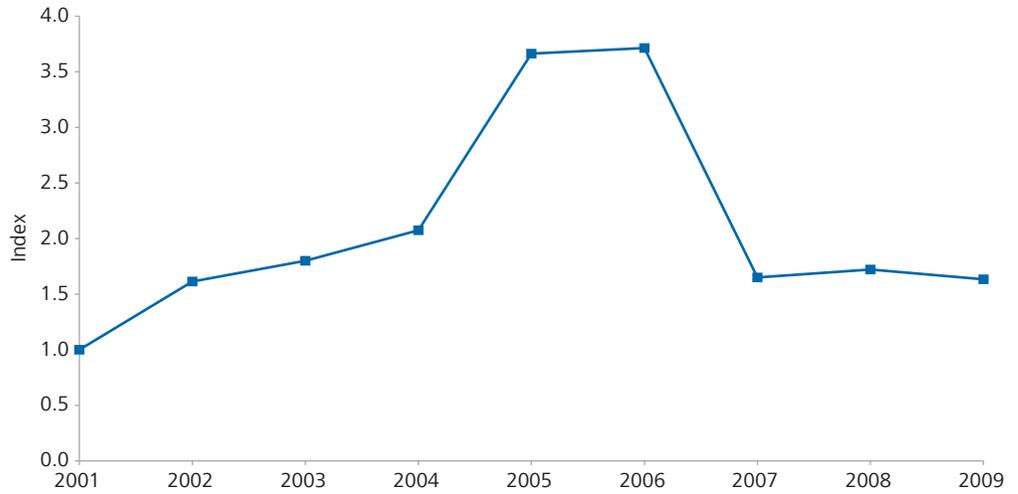
Figure 2. **Defendant Average Asbestos Indemnity Payments**
Indexed to 2001



Total Number of Resolved Claims Has Been Constant in Recent Years, while the Number of Claims Pending Has Dropped

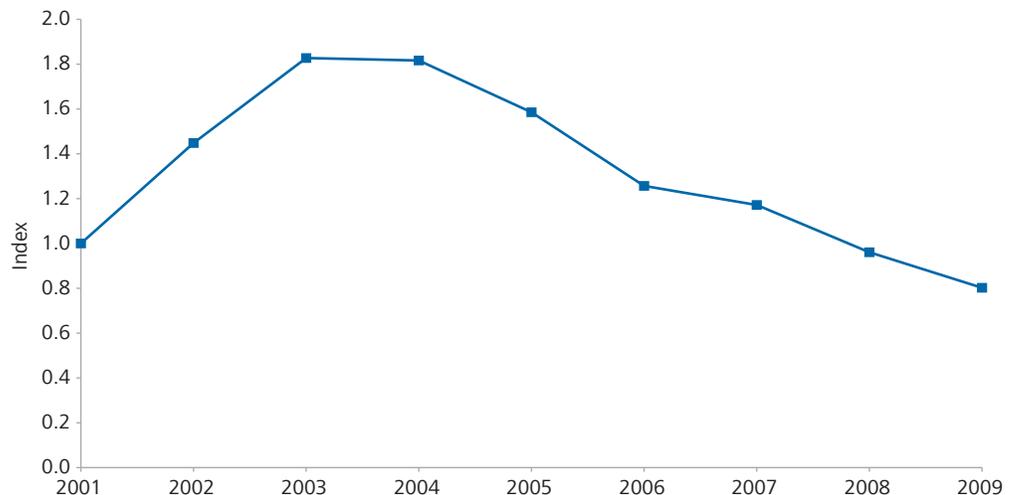
- The average number of claims resolved each year peaked in 2005 and 2006 (after growing steadily from 2001 through 2004) and then fell sharply in 2007.
- Since 2007, the average number of resolutions has been essentially flat.

Figure 3. **Average Number of Resolved Asbestos Claims**
Indexed to 2001



- The stable pace of resolutions, combined with the continued decline in average annual filings, has resulted in the lowest aggregate level of pending claims across companies since 2001 (with over half of the component companies reporting fewer claims pending in 2009 than in 2001).

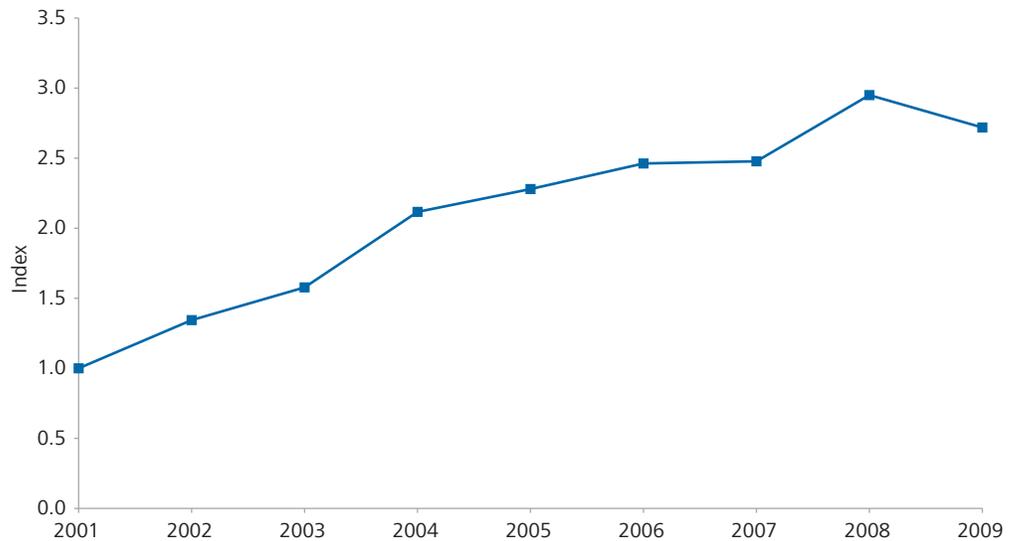
Figure 4. **Average Number of Pending Asbestos Claims**
Indexed to 2001



Dismissal Rates in 2009 Continued at High Rates

- Dismissal rates in 2009 pulled back slightly from the record high rates in 2008, but remain almost three times as high as the rates observed in 2001.

Figure 5. **Average Asbestos Dismissal Rates**
Indexed to 2001

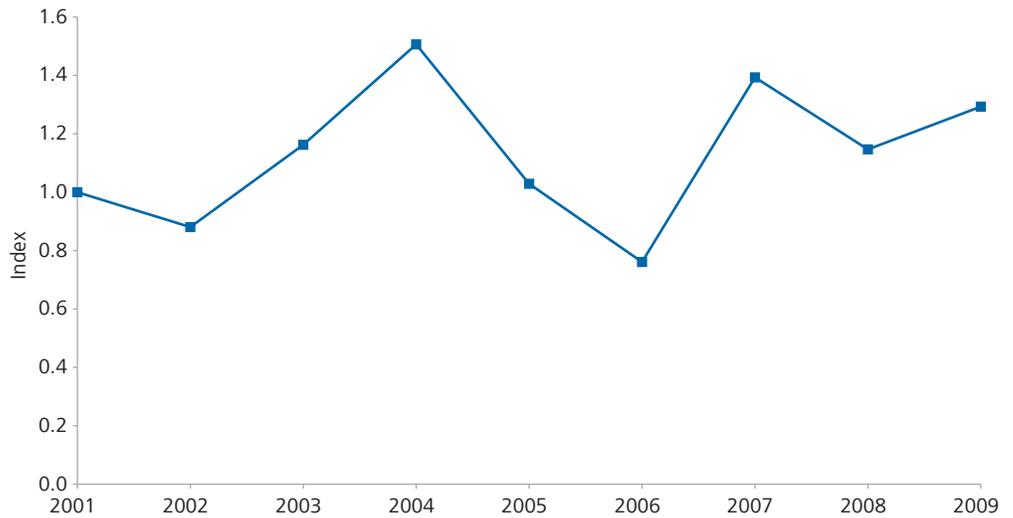


- As we noted last time, since the tort reforms passed during the mid-2000s, the general trend of dismissal rates has been increasing. Because these reforms largely targeted unimpaired non-malignant claims, the increase in dismissed claims through 2008 likely represents the dismissal of unimpaired non-malignant filings.
- As the unimpaired non-malignant claims are cleaned out of companies' backlogs and as pending claims shift toward more malignant filings, we may see a further retreat in dismissal rates in the future. But this pull-back may be mitigated as the quality of future claims—even among the malignant claims—may be eroded, e.g., product identification may become more difficult to establish with the passage of time.

Average Dollars Paid per Resolved Claim Remained High in 2009

- Historically, average dollars paid per resolved claim (including both settled and dismissed claims) have exhibited a sawtooth pattern, with annual changes either up or down of more than 25%.
- Following a big jump in average values in 2007, over the past two years, average values per resolved claim have become less variable, settling in at a level above the 2005/2006 averages, but below the peak in 2004.

Figure 6. **Average Dollars per Resolved Asbestos Claim**
Indexed to 2001



- The recent higher average dollar amounts per resolved claim are consistent with a changing mix of pending claims, which are likely shifting toward more malignancies and away from the unimpaired non-malignant claims.

Reserve Periods Varied Widely Among Companies Reporting Asbestos Reserves

- In their 10K filings with the SEC, companies reported reserves to cover future asbestos liabilities over periods for as short as five years or as long as 50 years.
- The average number of years reported was 19 years; the median was 10 years.
- Some companies reported their liabilities through a fixed end-date, which they then held constant in subsequent 10Ks. Other companies reported their liabilities over a set number of years, rolling forward the period in later 10Ks.

Summary of Trends Through 2009: Aggregate Results Continue to be Generally Favorable to Defendants

- Filings are down; dismissal rates remain high; total indemnity payments and average dollars per resolved claim remain below peak levels—all favorable trends for defendants.
- Although the rate of improvement appears to have slowed—dismissal rates have pulled back somewhat, total indemnity payments and average dollars per resolved claim are slightly higher—these changes are consistent with the mix of claims shifting toward more malignancies (as non-malignant filings drop); there are no signs that the activity is returning to previously high levels.
- The stability in the 2009 results compared with those in prior years is consistent with the lack of major changes in the asbestos litigation environment in 2009.
- Going forward, some of the unknowns that may affect future filings and payments include: whether the pace of the litigation will change as non-malignant claims no longer clog up certain jurisdictions, and what effect, if any, the new asbestos trusts will have on filings and settlements for still solvent defendants.

Notes

* Lucy P. Allen is a Senior Vice President and Mary Elizabeth C. Stern is a Vice President with NERA Economic Consulting. The authors thank Adelina Halim for her valuable contributions to the paper.

¹ Data from the most recent Form 10-K were used whenever available. We included only data reported at the individual claim level and for companies that reported at least two consecutive years in the period. The indexes reported are an average of trends observed at the company level, and each chart may contain different companies, depending on which company reported each statistic.

Data for prior years was 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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Contacts

For further information and questions, please contact:

Lucy P. Allen

Senior Vice President,
Mass Torts and Product Liability Practice Chair
New York: +1 212 345 5913
lucy.allen@nera.com

Mary Elizabeth Stern

Vice President
White Plains: +1 914 448 4054
mary.elizabeth.stern@nera.com

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