



ASBESTOS CLAIMS AND LITIGATION

***UPDATE AND REVIEW: 2016 NEW CASE FILING
SUMMARY AND ANALYSIS***

September 1, 2017

PURPOSE AND SUMMARY OF THIS REPORT

The Asbestos Liability Risk Assessment Group (ALRA Group) provides informed, timely, and sophisticated advice to affected parties, including defendants, potential defendants, the insurance and reinsurance industry, financial institutions, financial analysts, and policymakers, with respect to asbestos liability risk assessment issues. The ALRA Group arose as an outgrowth of a prior group, composed of the same principals, the Asbestos Trust Fund Services Group (ATFS),¹ which was formed to offer advice and counsel concerning proposed, and pending, federal legislation to channel asbestos claims, and pending litigation, into a federally-administered, and privately funded, trust fund for asbestos claims. The ATFS Group issued its first comprehensive Report,² containing a review and analysis of American asbestos litigation from its inception, with an emphasis of the science, medicine, and government regulatory issues which underlay the litigation, and traced the development of the litigation, including significant developments, defendant strategies, and company bankruptcies, ending with an analysis of the trend in the cases through calendar year 2005, on December 31, 2006. Following that Report, a demand for annual update Reports was created. The ALRA Group has responded with its annual updates of the asbestos litigation in 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, and 2014.³

These reports were timely and well received, as parties with an interest in trends in the asbestos litigation have a continuing need to obtain accurate data about recent case filings, and the rapidly-developing changes and trends in the cases. While searchable electronic dockets are becoming more common, it remains difficult to obtain an accurate reading of the cases filed in the courts throughout the United States, because most cases are initiated in the state courts where

¹ The ATFS changed its name, and formally became the ALRA Group on August 1, 2007.

² **ASBESTOS CLAIMS AND LITIGATION: ISSUES AND STRATEGY; AN ANALYSIS OF THE CASES THROUGH 2005 AGAINST AN HISTORICAL CONTEXT**, © Asbestos Trust Fund services Group, Dec. 1, 2006. The Report may be accessed in the Archive on this site under “News and Updates.”

³ **ASBESTOS CLAIMS AND LITIGATION: UPDATE AND REVIEW: 2006 NEW CASE FILING SUMMARY AND ANALYSIS**, July 1, 2007, **ASBESTOS CLAIMS AND LITIGATION: UPDATE AND REVIEW: 2007 NEW CASE FILING SUMMARY AND ANALYSIS**, May 18, 2008, **ASBESTOS CLAIMS AND LITIGATION: UPDATE AND REVIEW: 2008 NEW CASE FILING SUMMARY AND ANALYSIS**, June 20, 2009, **ASBESTOS CLAIMS AND LITIGATION: UPDATE AND REVIEW: 2009 NEW CASE FILING SUMMARY AND ANALYSIS**, October 1, 2010; **2010 NEW CASE FILING SUMMARY AND ANALYSIS**, November 1, 2011, **ASBESTOS CLAIMS AND LITIGATION: UPDATE AND REVIEW: 2011 NEW CASE FILING SUMMARY AND ANALYSIS**, October 15, 2012; **ASBESTOS CLAIMS AND LITIGATION: UPDATE AND REVIEW: 2012 NEW CASE FILING SUMMARY AND ANALYSIS**, December 1, 2013, **ASBESTOS CLAIMS LITIGATION CLAIMS AND LITIGATION: UPDATE AND REVIEW 2013 & 2014 NEW CASE FILING SUMMARY AND ANALYSIS**, June 1, 2015.

there are a variety of docket search capabilities, with no centralized, national, easily-available court databases to review new case filings. While the situation has improved with many courts, adapting electronic filing systems, and dockets, the data remain scattered.

With this, the eleventh in a series of such Reports, covering eleven years of case statistics, the ALRA Group has again successfully filled this gap with a compilation of new case filing data in jurisdictions where its members are active in representing defendants in the litigation. Its prior Reports provided a list of new cases, filed in 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013 and 2014, in selected jurisdictions. This is the update for 2016.

With its proprietary record of tracking asbestos case filings from 2005 to present, the ALRA Group is uniquely situated to track trends in the case filings over time. This Report contains an additional review, and charts, of trends in asbestos case filings over the 2005-2016 time period. In addition, new with this Report, is an analysis of cases, by disease, filed against a representative defendant from 2005 through 2016. The ALRA Group is able to present this information as a compilation of its proprietary data collected and published in this, and its earlier, Reports. As with the annual data, these summaries are the result of the ALRA Group members' work in defending the asbestos cases in courts around the country.

As over the last several years, there continue to be a number of developments which show that asbestos liability through 2016 has evolved. New trends are emerging, and many commentators continue to find themselves behind the curve, relying upon older, historical data. Efforts to scientifically, or statistically, predict asbestos litigation trends have been inconsistent, and often contradictory. However, the best assessment of where the trends in case filings are headed continues to be from actual cases filed. As practicing asbestos defense counsel, the members of the ALRA Group have been able to compile those case data in key, representative, jurisdictions as outlined below.

For the cases filed in 2016, a number of general observations can be made. As has been the case over the last several years, trend in disease mix from pulmonary cases, to malignancies, and, in particular, malignant mesotheliomas, continues. There seem to be a number of reasons for this, including the fact that there are simply fewer cases of asbestos-related pulmonary disease, particularly asbestosis. Such diseases result from historically high, prolonged exposures to asbestos, something that has generally not occurred over the past few decades, especially since the passage of the OSHA asbestos standard and the continued reduction of its permissible exposure level to asbestos in the workplace.⁴ The last decade has seen the large scale

⁴ For an in depth treatment of asbestos regulations and their decreasing permissible airborne levels over time, in the occupational workplace, and non-occupational settings, see, Brownson, Robert D., Brownson, Kristi K., *Current and Historical American Asbestos Regulations, 2017 Update*, www.brownsonnorby.com. at, Publications

abandonment of litigation over non-impaired claimants with asbestos-related pleural disease. This has resulted from the fact that Plaintiffs' firms are no longer employing extensive mass pulmonary screenings, from which most such cases resulted, the adoption by the courts of inactive or non-impaired dockets for such cases, and a general reluctance for plaintiffs' counsel to take and pursue such cases.⁵ Likewise,, there continues to be a leveling off, and decrease in lung cancer cases, which may be a continuing trend, and a continuing emphasis on a relatively stable number of available mesothelioma cases.⁶

Most significantly, there appears no real decrease in the number of malignant mesotheliomas occurring, and diagnosed, in the United States. In fact, according to the most recent data from the Centers for Disease Control and Prevention (CDC), mortality from malignant mesothelioma, contrary to prior projections, has increased from 1999 to 2015, the most recent year in which it has reported data.⁷ Specifically, during 1999-2015, the annual number of malignant mesothelioma deaths increased 4.8% overall, from 2,479 annually in 1999, to 2,579 annually in 2015.⁸

A development described in our last Reports, which continues, is the portability of mesothelioma cases, and, now, of lung cancer cases. Traditionally, these malignancy-based cases, like other asbestos cases, with some exceptions, have generally been commenced in the jurisdiction where the plaintiff resided. This resulted from the fact that such cases typically were handled by plaintiffs' counsel in those jurisdictions. While they often associated with national asbestos counsel, the cases were generally venued locally. More recently, national advertising on television, and through the internet,⁹ has resulted in mesothelioma cases, and lung cancer cases,

tab.

⁵ See, Cloud, Ian P., *Future of Asbestos Litigation - Plaintiff Perspective, Current Concepts in Asbestos Related Lung Disease*, Fifth Annual Course, Harvard School of Public Health, April 10-11, 2009.

⁶ It is generally predicted that asbestos-related mesotheliomas in the United States will continue until at least 2050. See, Hadley, Barbara, Russell, T., ASBESTOS THE FUTURE RISK, Global Mesothelioma Study, pp.46-52, U.S. Asbestos Litigation, pp. 86-92, Iskaboo Publishing, Ltd., London, U.K., 2013.

⁷ Mazurek, Jacek M., Syamlal, Girija, Wood John M., Hendricks, Scott A., Weston, Ainsley, *Malignant Mesothelioma Mortality - United States, 1999-2015*, Centers for Disease Control and Prevention, www.cdc.gov/mmwr/volumes/66/wr/mm6608a3.htm.

⁸ Mazurek, Jacek M., et al., *Malignant Mersothelioma Mortality - United States, 1999-2015* at p. 3.

⁹ "Mesothelioma Lawyer" is one of the expensive search terms on Google, and with other search engines on the internet. See, Cloud, *The Future of Asbestos Litigation -Plaintiff Perspective*, Note 4.

being handled by referring counsel,¹⁰ who appear to shop such cases around to the most favorable jurisdiction.

An important function of the ALRA Group is to offer advice as to the impact of asbestos bankruptcies, and their effect upon ongoing companies now, or in the future, named as Defendants in asbestos litigation.¹¹ Much of the publically available and reviewed data concerning asbestos claims results from the trusts, with the result that there is less analysis available about the cases in litigation in the courts.^{12 13}

It is against this dynamic background that we present the new case information from selected jurisdictions around the country for 2016, together with the ALRA Group's proprietary analysis of the trends now seen over the past eleven years. These data continue to be important because the projection of future asbestos-related litigation, while uncertain, is thought to continue for several decades. It is believed by some that traditional models of future mesothelioma are in fact forecasting incidence rates that are too low.¹⁴

The following is a summary of asbestos case filings in 2016, together with an analysis of case filings over time in selected jurisdictions.

¹⁰ See, *National Attorney Referral Program*, Napoli, Bern, Ripka, Skolnick & Associates, LLP, published in, *Asbestos Litigation Conference, A National Overview & Outlook*, Perrin Conferences, Sept. 8-10, 2014; (describing payment of over \$500,000,000 in referral and co-counsel fees since 2000, and over \$4 billion in verdicts and settlements.); *The Law Firm That Operates Like an Ad Agency*, AdAge, March 23, 2009; Sokolove, J., *Sokolove Means Success*, Vol. 1, April, 2009.

¹¹ 11 U.S.C. 524(g), from the Bankruptcy Reform Act of 1994, Pub L. No. 103-394.

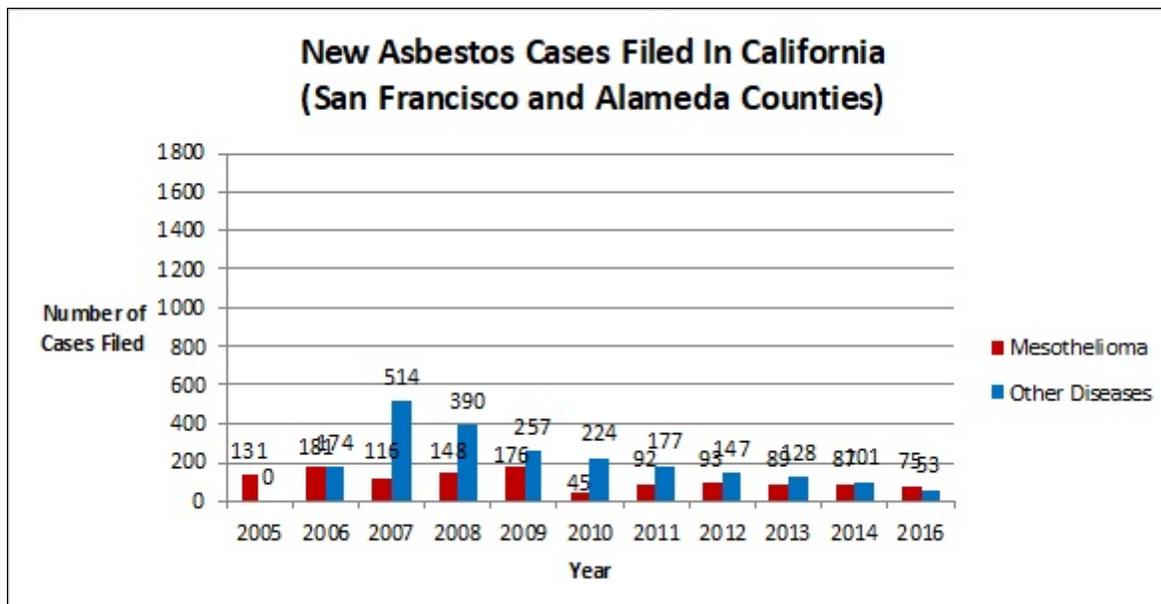
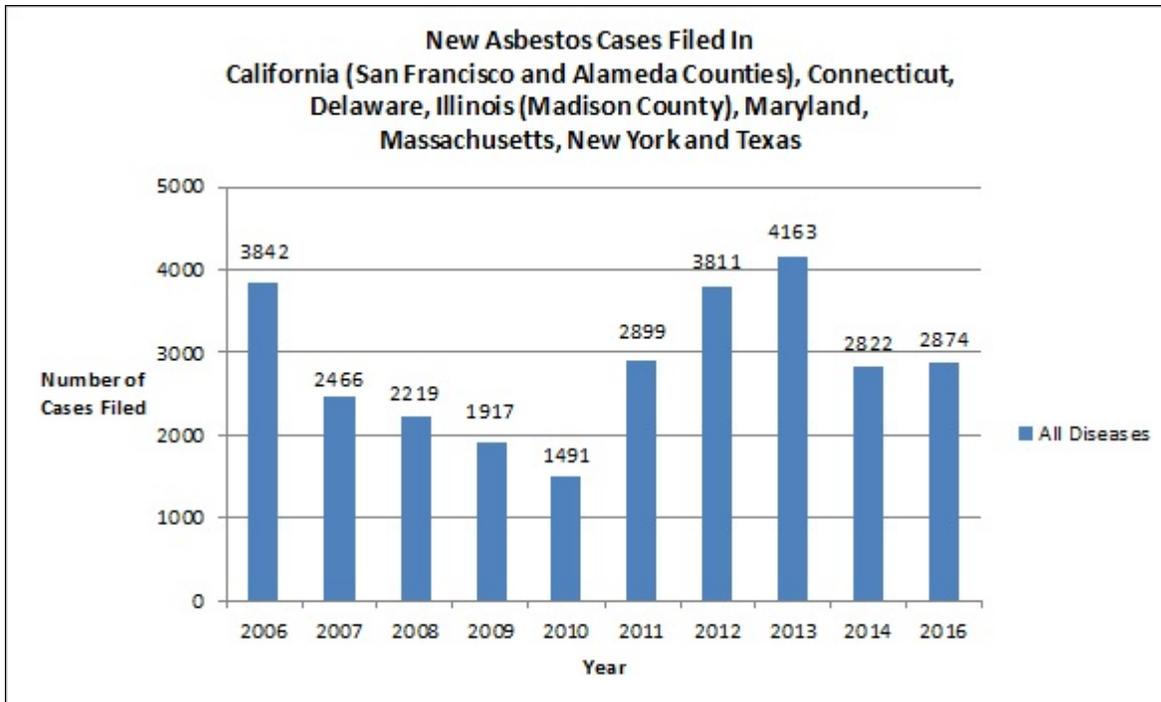
¹² See, Biggs, Jenni, Gwilliam, Tina, Lattin, Chris, and Lin, Steve, *Asbestos & Environmental Liabilities*, Towers Watson University, October 18, 2011 (noting that the Manville Trust ended public disclosures of detailed data after 12/31/2006).

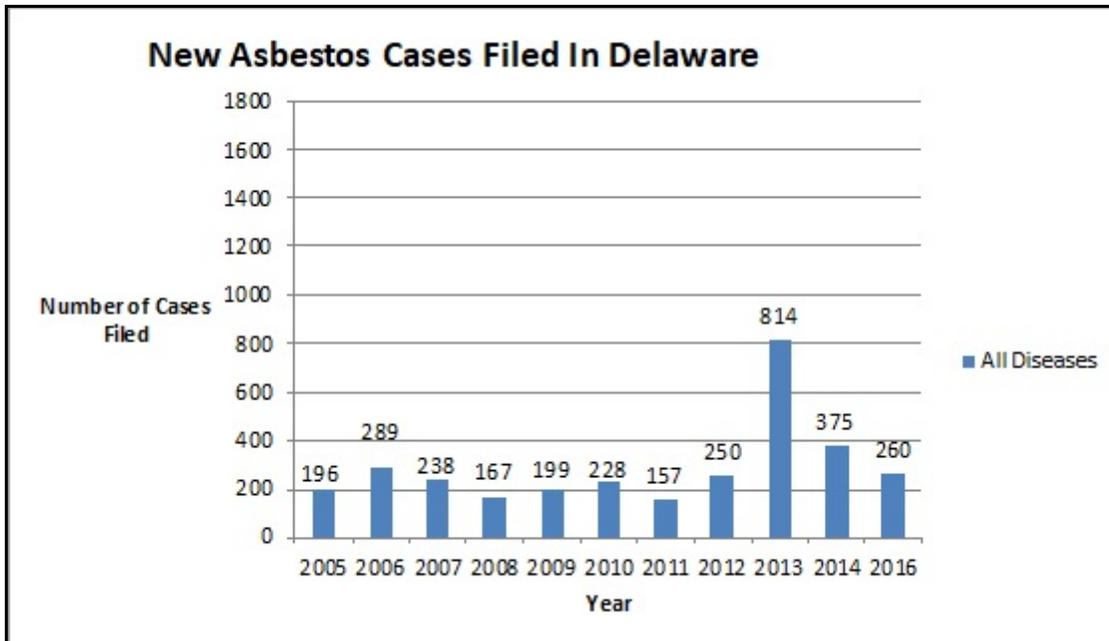
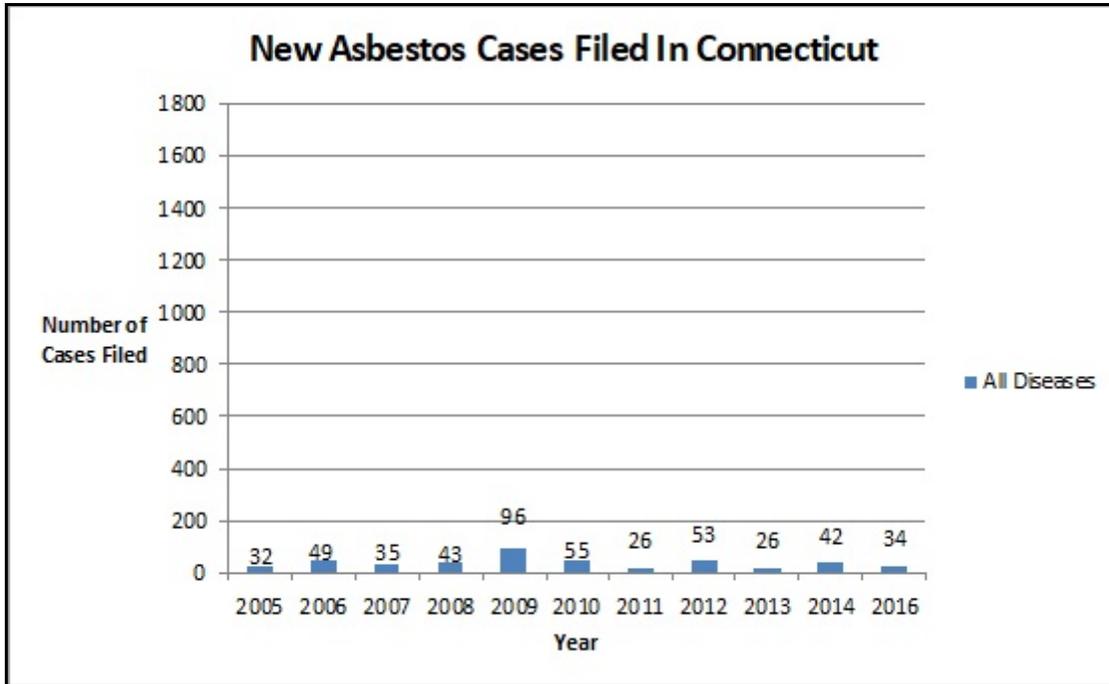
¹³ The ALRA Group has worked to provide guidance and early warning into the potential for such bankruptcies to unwary parties assuming asbestos liabilities in corporate transactions. See, *Hidden Asbestos Liability in Corporate Transactions and Acquisitions*, ALRA Group, 2012, www.alragroup.com ; **PFIZER PAPER** For a general review of asbestos-related bankruptcies, see also, Dixon, Lloyd, McGovern Geoffrey, and Coombe, Amy, *Asbestos Bankruptcy Trusts An Overview of Trust Structure and Activity With Detailed Reports on the Largest Trusts*, RAND Corporation, Institute For Civil Justice, 2010; See also, Bentley, P., Blabey, D., Jr., *Commentary: Asbestos Estimation in Today's Bankruptcies: The Central Importance of the New Trusts*, Mealey's Litigation Report: Asbestos, vol. 26, No. 24, January 18, 2012.

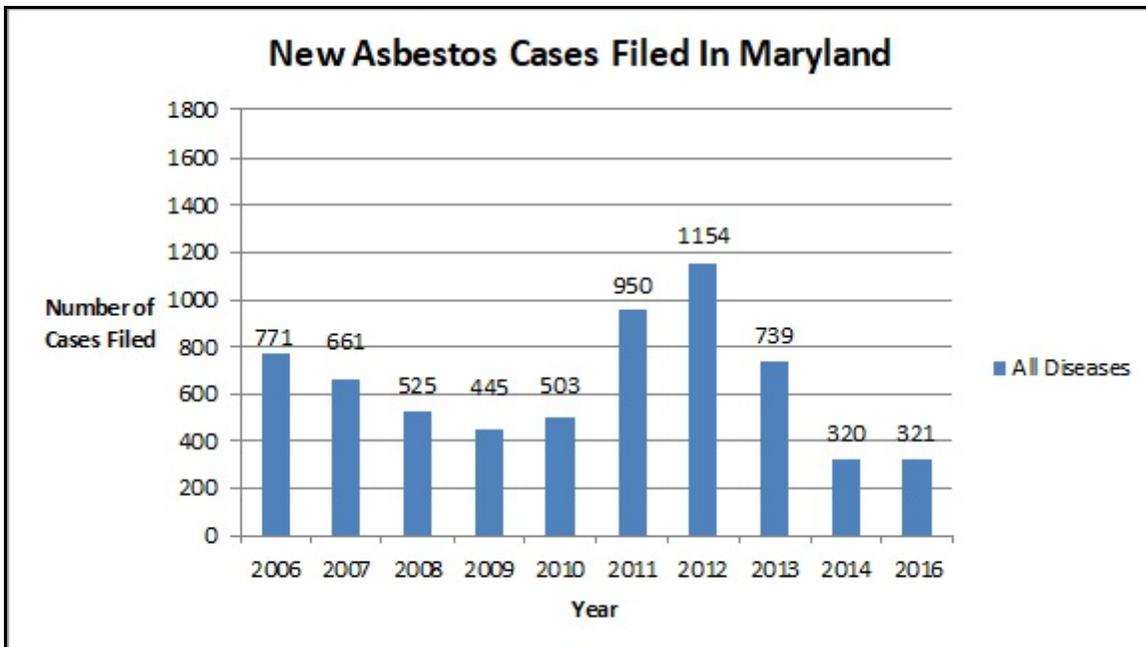
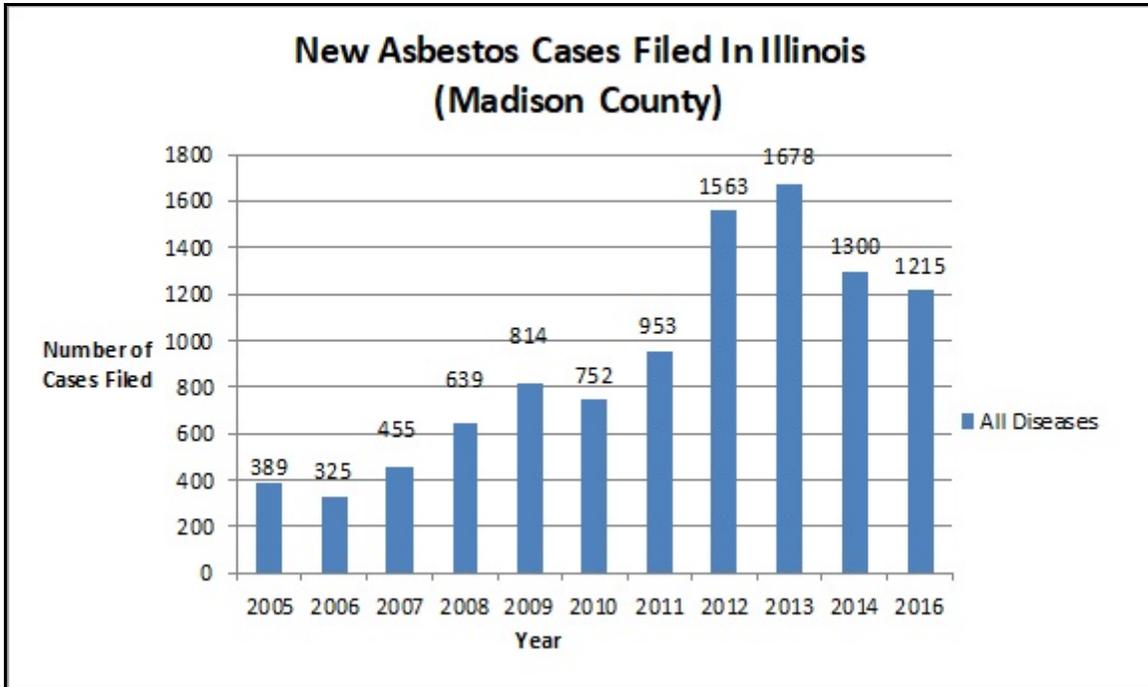
¹⁴ Asbestos the Future Risk, Global Mesothelioma Study 2014 (Note 6); Horewitz, Jessica, and Sirgo, Jorge, *Forecasting Mesothelioma: Improvements in the Nicholson Methodology are Better Predictors of the Recent Past*, John Liner Review, vol. 23, n. 1, Summer, 2009, Standard Publishing Corp., Boston, MA.

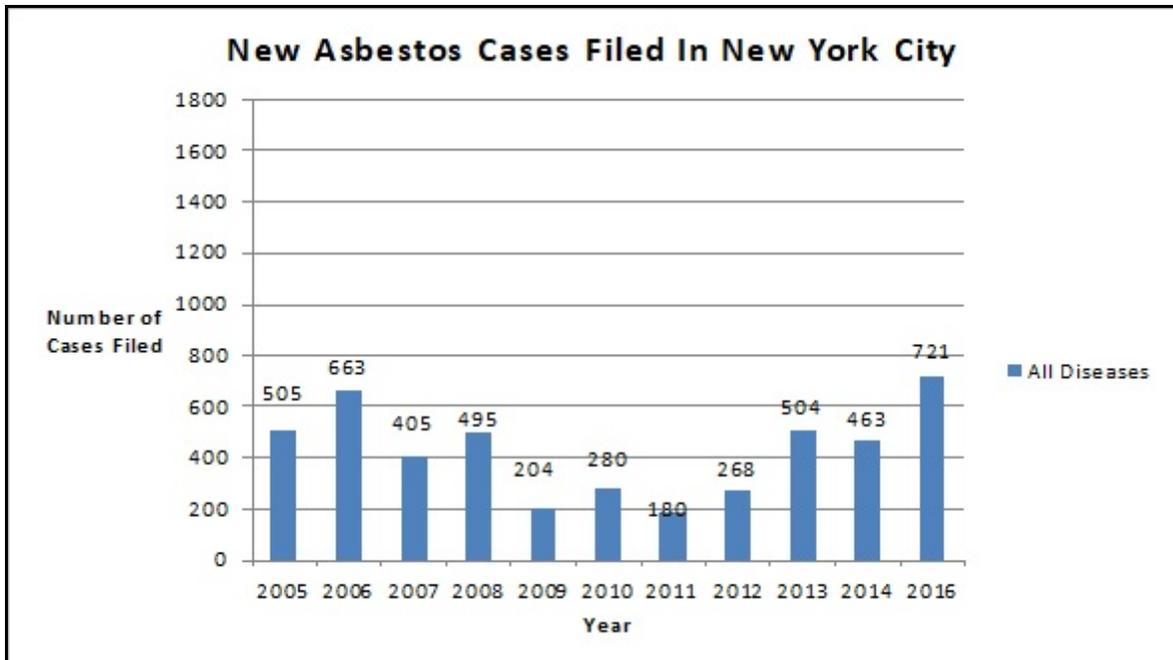
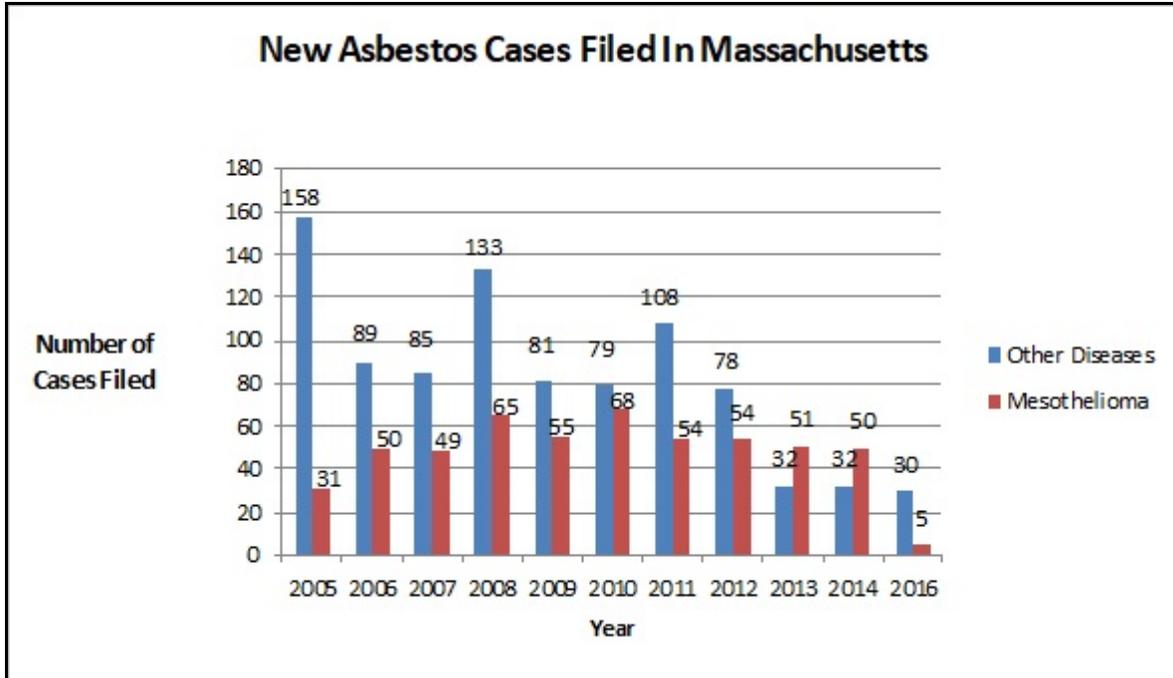
NEW ASBESTOS CASES FILED IN SELECTED JURISDICTIONS - 2016

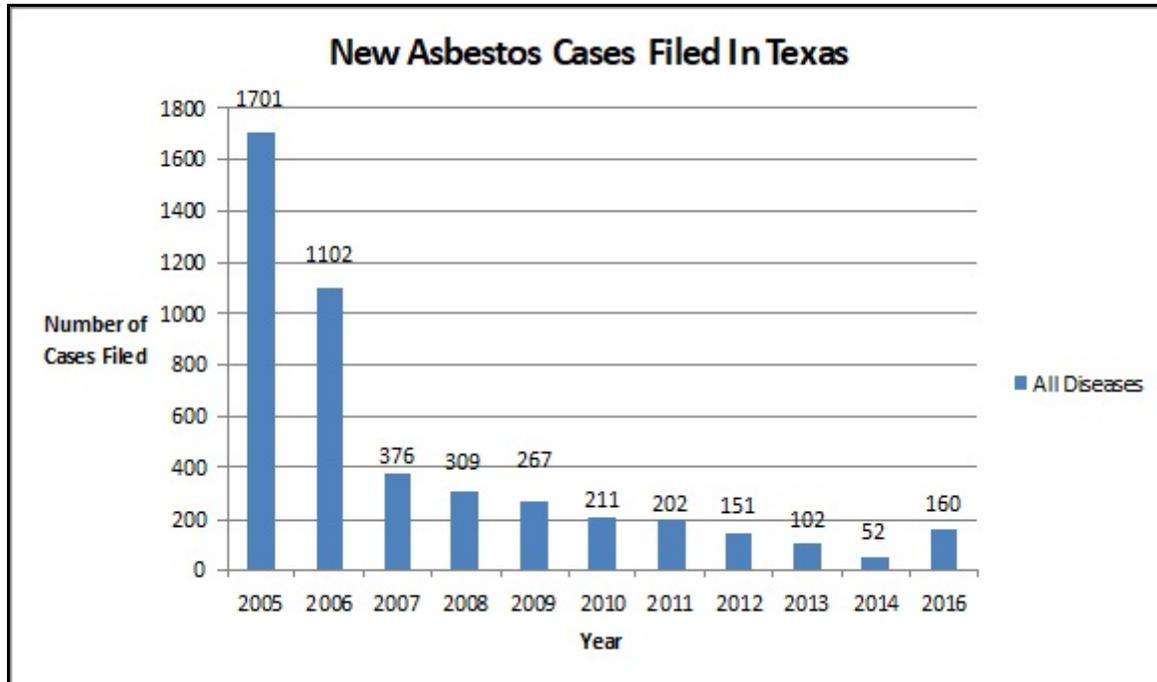
<i>State Courts</i>	<i>2016 - Mesothelioma</i>	<i>2016 - Other Diseases</i>
Alabama	2	
California (San Francisco & Alameda Counties)	18 (San Francisco) 57 (Alameda)	15 (lung cancer), 31 (all other diseases) (San Francisco) 4 (lung cancer), 3 (all other diseases) (Alameda)
California (Los Angeles County)	94	4(lung cancer)
California (Solano County)	2	11 (all other diseases)
Connecticut		34 (all diseases)
Delaware		260 (all diseases)
Florida	35 (approx.)	
Georgia	11	2 (1 lung cancer, 1 asbestosis)
Illinois (Cook County)		165 (all diseases)
Illinois (Madison County)		1,215 (all diseases)
Illinois (St. Clair County)		75 (all diseases)
Iowa		6 (all diseases)
Maine		1
Maryland (Baltimore City Cir. Ct.)		321 (all diseases)
Massachusetts	5 (approx.)	30 (approx. all other diseases)
Michigan	7	52 (lung cancer), 131 (all other diseases)
Minnesota	16	8 (all other diseases)
Mississippi	1	
Missouri (City of St. Louis)		292 (all diseases)
New Jersey		94 (all diseases)
New York (New York City)		721 (all diseases)
North Carolina	4	
North Dakota	1	4 (all other diseases)
Ohio (Cuyahoga County)		112 (all diseases)
Pennsylvania (Philadelphia)		248 (all diseases)
Pennsylvania (Pittsburgh)		46 (all diseases)
Rhode Island	20 (approx.)	6 (approx. all other diseases)
Texas		160 (all diseases)
Washington		14 (all diseases) (approx.)
West Virginia (Kanawha County)		110 (approx. all diseases)
Wisconsin		Less than 25 (all diseases)

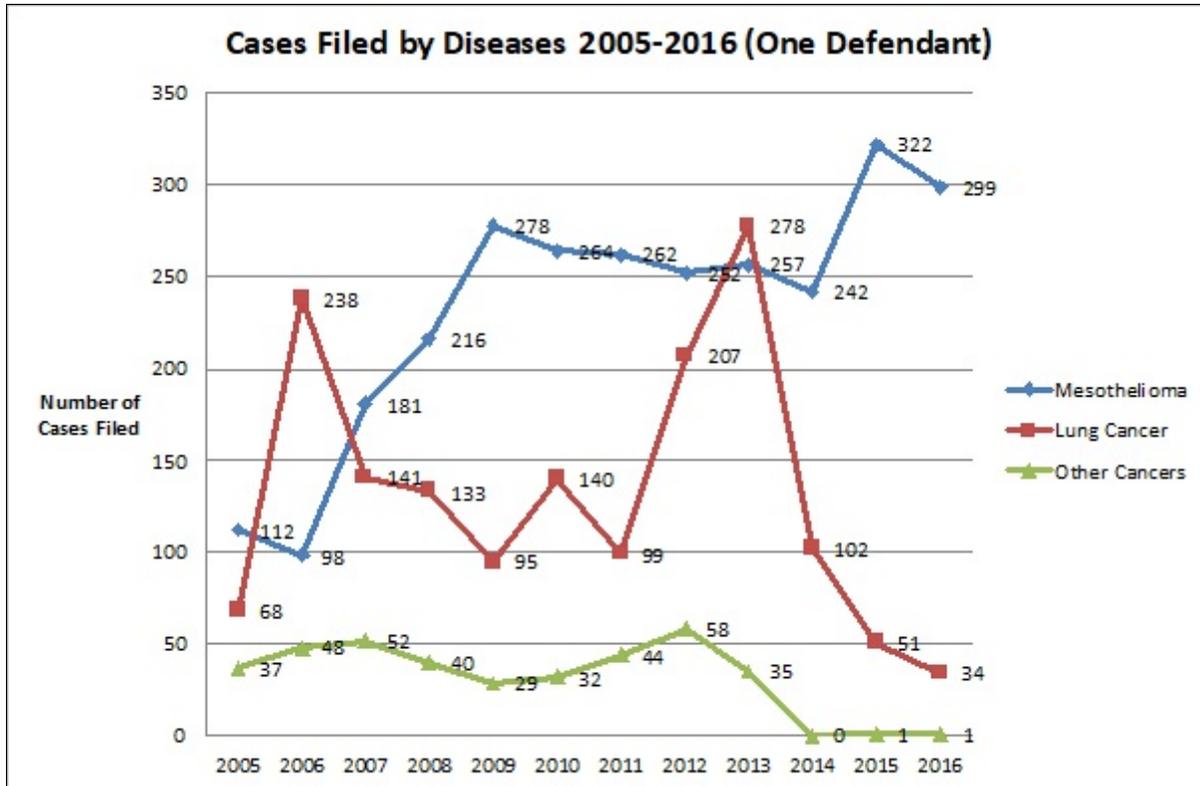












CONCLUSION

In this Report, the ALRA Group has provided a review of new case filings during 2016 in the asbestos litigation in jurisdictions around the country to summarize how the litigation is progressing in the courts and to present data about the new cases based upon the actual experience of ALRA Group members in the asbestos litigation. This Report supplements the data presented in the ALRA Group’s 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013 and 2014 Update Reports. In addition, it analyzes the trends in case filings in selected jurisdictions over the past eleven years.

For further information concerning the matters expressed in this Report, please contact members of the ALRA Group through <http://www.ALRAGroup.com>.

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