



ASBESTOS CLAIMS AND LITIGATION

***UPDATE AND REVIEW: 2009 NEW CASE FILING
SUMMARY AND ANALYSIS***

October 1, 2010

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, and 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. This Group responded with its annual updates of the asbestos litigation in 2007, 2008, and 2009.³

These reports were timely and well received, as parties with an interest in trends in the asbestos litigation have had a continuing need in obtaining accurate data about recent case filings, and the rapidly-developing changes and trends in the cases. It remains difficult to obtain an accurate reading of the cases filed in the courts throughout the United States, because of the fact that most cases are initiated in the state courts where there are no centralized, national, easily-available databases to review new case filings.

With this, the fifth in a series of annual Reports, 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

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 .

filed in 2005, 2006, 2007, and 2008 in selected jurisdictions. This is the annual update for 2009. As the five year anniversary Report in this series, this Report also contains an additional review of trends in asbestos case initiation over the 2005-2009 time period as described more fully below. The Alra Group is able to present this information as a compilation of its proprietary data collected and published in 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 in each of the last five years.

As over the last several years, there continue to be a number of developments which show that asbestos liability in 2009 has evolved from historical trends. 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, as 2009 has concluded, the best assessment of where the trends in case filings are headed continues to be in 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 compiled below.

As to these cases filed in 2009, a number of general observations can be made. As has been the case over the last several years, and as was true in 2008, the 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 its continued reduction of its permissible exposure level to asbestos in the workplace. In addition, an important development has been the large scale 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.⁴

Moreover, the ability to package weaker pulmonary cases with more serious malignant cases continues to be more difficult for the Plaintiffs' counsel. Increasingly, cases are being examined, and must be pursued, on their own merits. Following its recent practice as described in our 2008 Report, the federal court Multi-District Litigation for asbestos, the MDL 875 in the Eastern District of Pennsylvania at Philadelphia has been more expeditiously and vigorously moving its docket, with the intended effect; isolating each claim for case specific examination,

⁴ 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.

and examination which either results in a remand and movement of the case, or its dismissal.

Another development described in our last Report, and which has accelerated is an increasing portability of mesothelioma cases. Traditionally, mesothelioma 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,⁵ has resulted in mesothelioma cases being handled by referring counsel,⁶ who appear to shop such cases around to the most favorable jurisdiction. Given that venue is often dependent upon where the Defendant did business, and most Defendants did business in many states, this has been a successful strategy. For example, Delaware has become a jurisdiction of choice since many Defendants are incorporated there.⁷ Another important trend is the continued emergence of the bankruptcy trusts based upon chapter 524(g) of the U.S. bankruptcy Code, resulting from successful chapter 11 bankruptcy plans from former asbestos product manufacturers, suppliers, and contractors, formerly defendants in the asbestos litigation. 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. For example, fifty-four asbestos bankruptcy trusts have been established as of the date of this Report, with nine more in the pipeline, and more to come.⁸ It is this hole which the ALRA Group fills with its series of Reports.

It is against this dynamic background that we present the new case information from selected jurisdictions around the country for 2009, together with our proprietary analysis of the trends now seen in the numbers, types, and locations of new case filings over the past five years. These data continue to be important because, although asbestos-related disease, most importantly, malignant mesothelioma, has decreased, with the number of mesothelioma cases

⁵ "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.

⁶ See, *The Law Firm That Operates Like an Ad Agency*, AdAge, March 23, 2009; Sokolove, J., *Sokolove Means Success*, Vol. 1, April, 2009.

⁷ See, Denise Leslie Kraft, *Commentary: Rhode Island Appears to Shut The Door to Out-of-State Asbestos Litigants While Delaware Continues to Leave Out The Welcome Mat*, Mealey's Litigation Report: Asbestos, vol. 23, no. 21, December 1, 2008.

⁸ 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.

appearing to have peaked at around 2000, they continue to only very slowly be falling. According to one respected commentator, the time asbestos-related mesotheliomas are projected to gradually decline from approximately 2300 per year to 500 per year is another 45 years, to 2055.⁹

NEW ASBESTOS CASES FILED IN SELECTED JURISDICTIONS - 2009

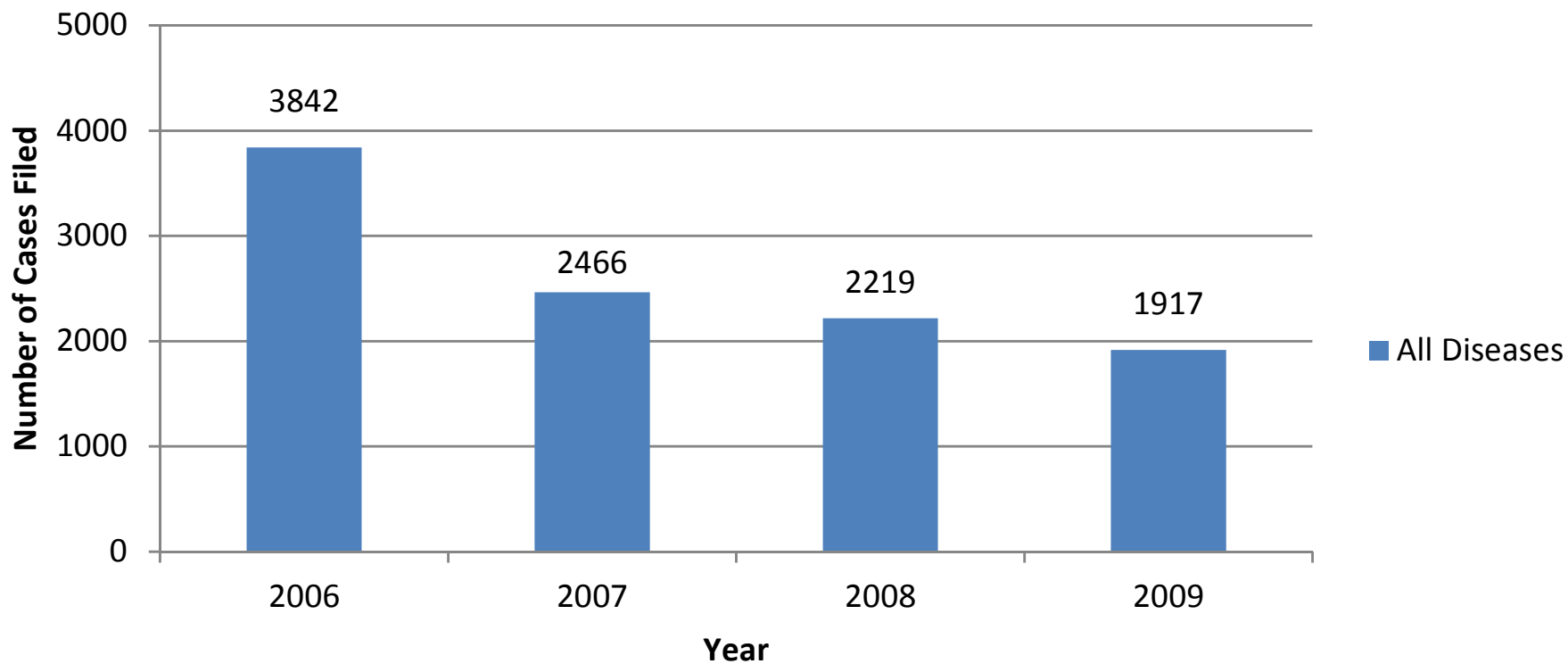
<i>State Courts</i>	<i>2009 - Mesothelioma</i>	<i>2009 - Other Diseases</i>
Alabama	11	4 lung cancer 6 (all other diseases)
California (San Francisco & Alameda Counties)	87 (San Francisco) 89 (Alameda)	224
California (Los Angeles County)		166 (all diseases)
Connecticut	25	11 lung cancer, 60 (all other diseases)
Delaware	199	
Florida	25	13 lung cancer 9 (all other diseases)
Georgia	13	4 lung cancer
Illinois (Cook County)		170(all diseases)
Illinois (Madison County)		814 (all diseases)
Maine	9	6
Maryland		445 (Baltimore City Circuit Court) (all diseases)
Massachusetts	55	38 lung cancer, 43 (al other diseases)
Michigan	18	66 lung cancer, 135(all other diseases)
Minnesota	19	30 (all other diseases)
Mississippi	3	4 (all other diseases)
New York	132 (New York County)	72 (all other diseases) (approx.)
North Dakota		9
Ohio (Cuyahoga County)	43	44 (all other diseases)
Oregon	9 (approx.)	
Pennsylvania (Philadelphia)	53	72 (all other diseases)
Pennsylvania (Pittsburgh)	47	33 (all other diseases)
Rhode Island	34 (approx.)	7 (all other diseases)
Texas		267 (all diseases-malignancies)
Washington		47 (approx.) (all diseases)
West Virginia (Kanawha County)	91 (approx.)	

⁹ Price, Bertram, *Trends in incidence of mesothelioma and Evaluation of Exposure to Asbestos, The Health Effects of Chrysotile Asbestos; Contribution of Science to Risk-Management Decisions*, The Canadian Mineralogist, Special Publication 5, p. 75, Mineralogical Assoc. of Canada, R.P. Nolan, et al., eds., 2001.

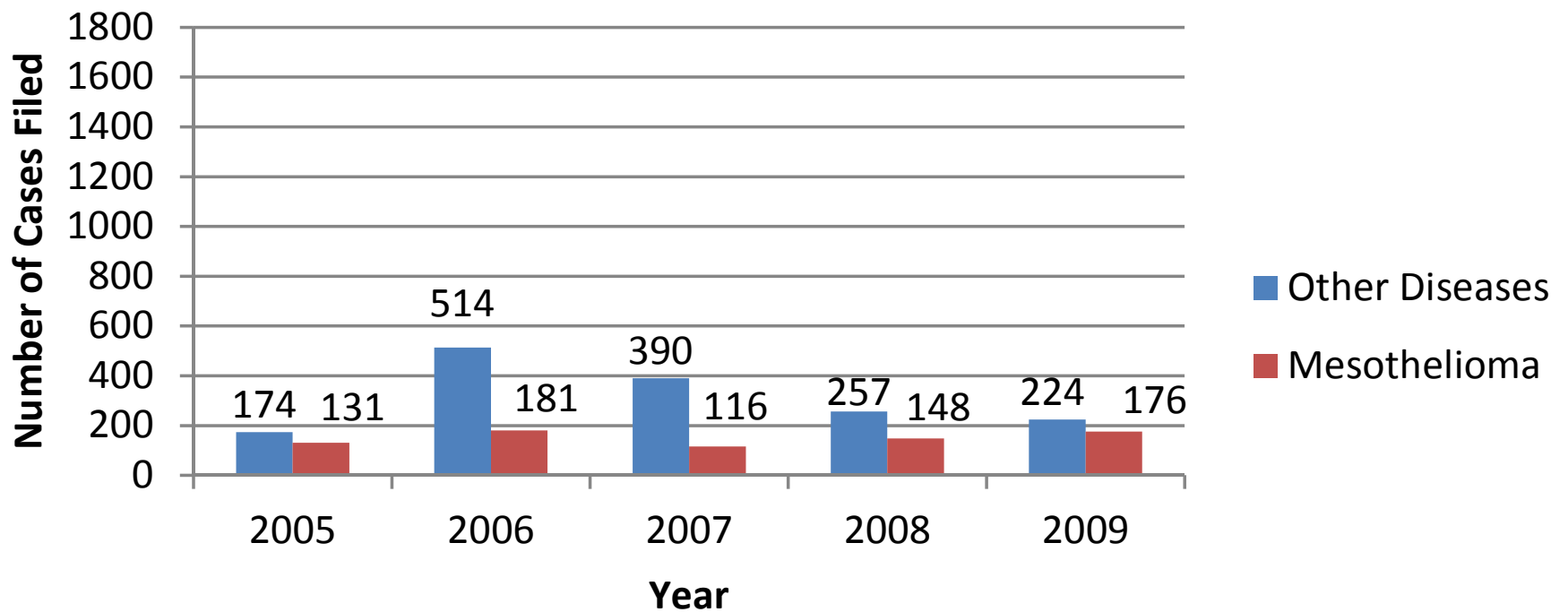
<i><u>State Courts</u></i>	<i><u>2009 - Mesothelioma</u></i>	<i><u>2009 - Other Diseases</u></i>
U.S. District. Court., E.D. Pa., MDL 875 (Multi-district Asbestos Litigation) Docket (Dec. 31, 2009)		42,076 cases, consisting of 2,337,692 individual claims (all diseases), (50,889 (pending, all diseases)

An analysis of trends in the case filings is presented in the charts on the next nine pages.

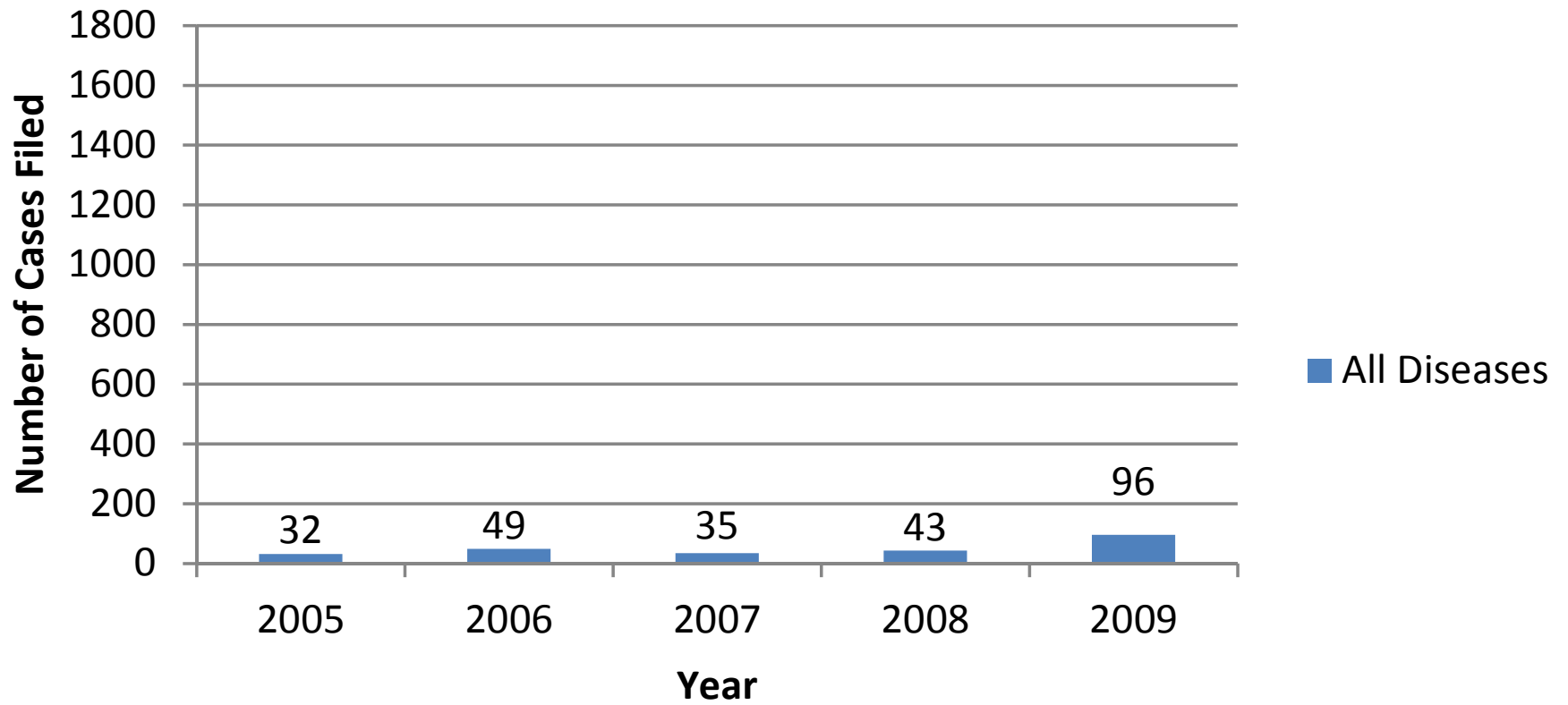
**New Asbestos Cases Filed In
California (San Francisco and Alameda Counties, Connecticut,
Delaware, Illinois (Cook County), Maryland,
Massachusetts, New York and Texas**



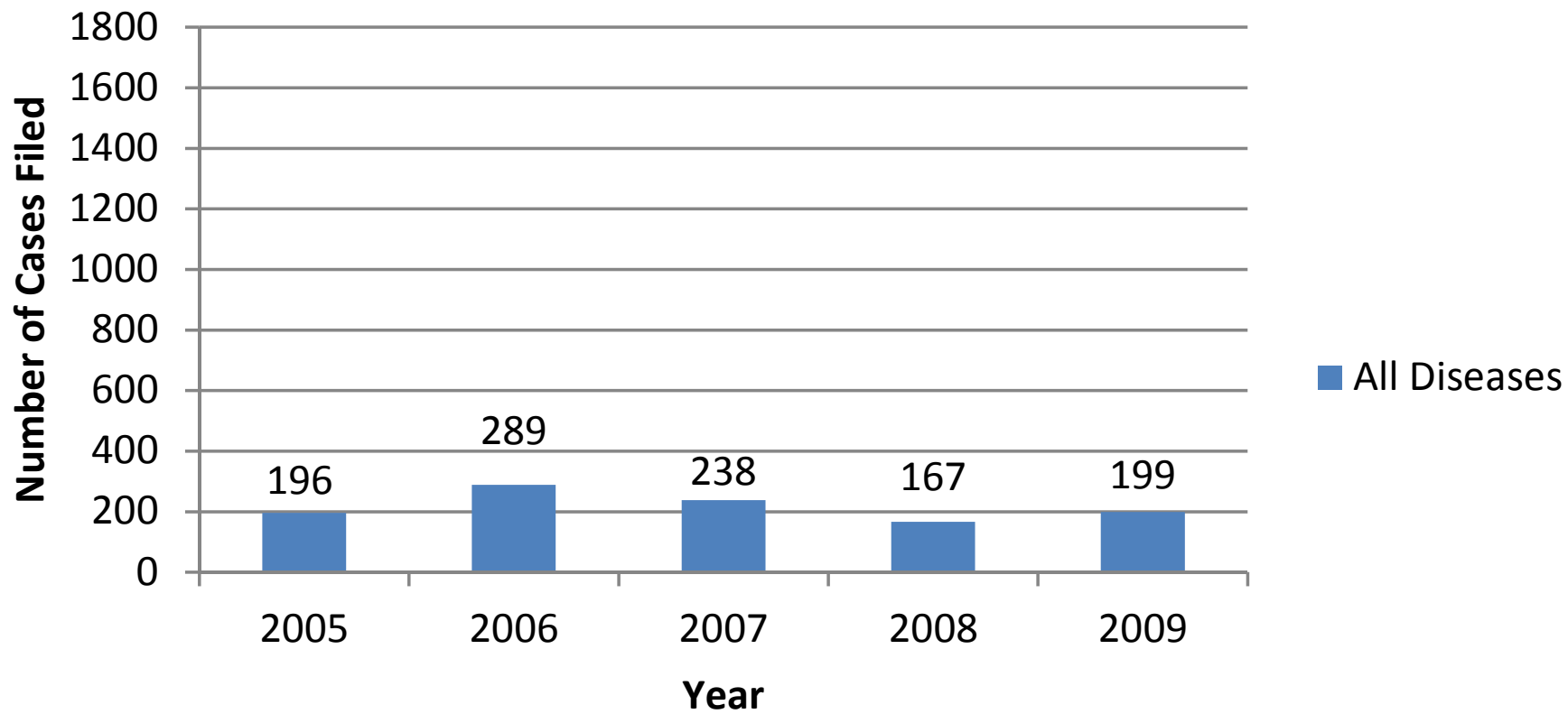
New Asbestos Cases Filed In California (San Francisco and Alameda Counties)



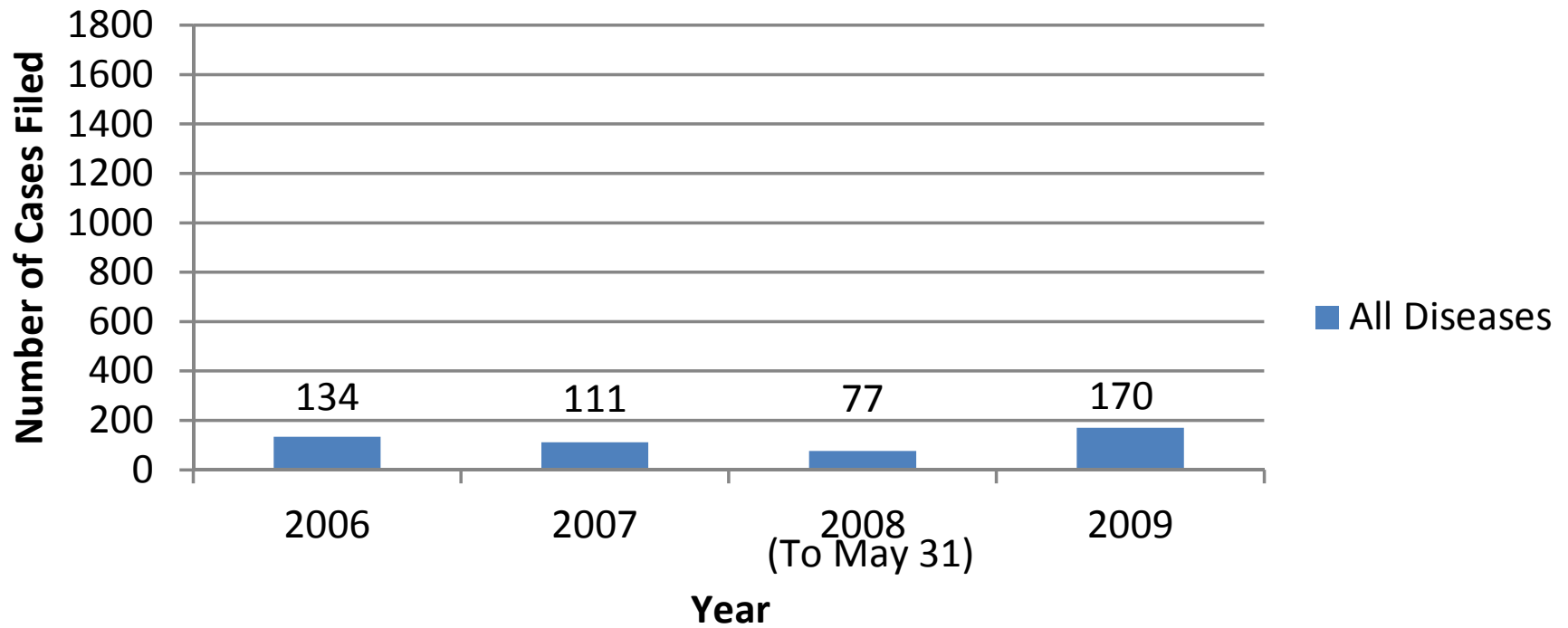
New Asbestos Cases Filed In Connecticut



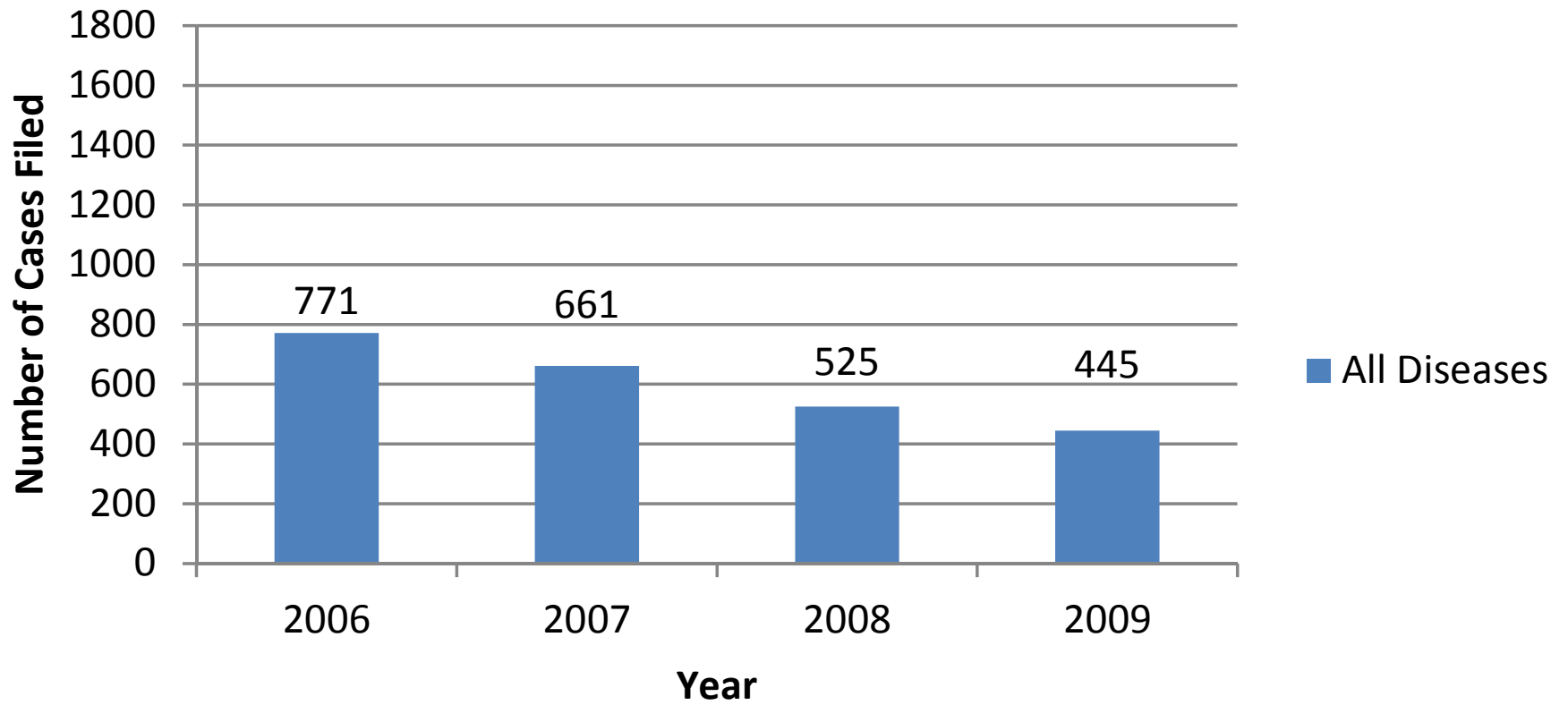
New Asbestos Cases Filed In Delaware



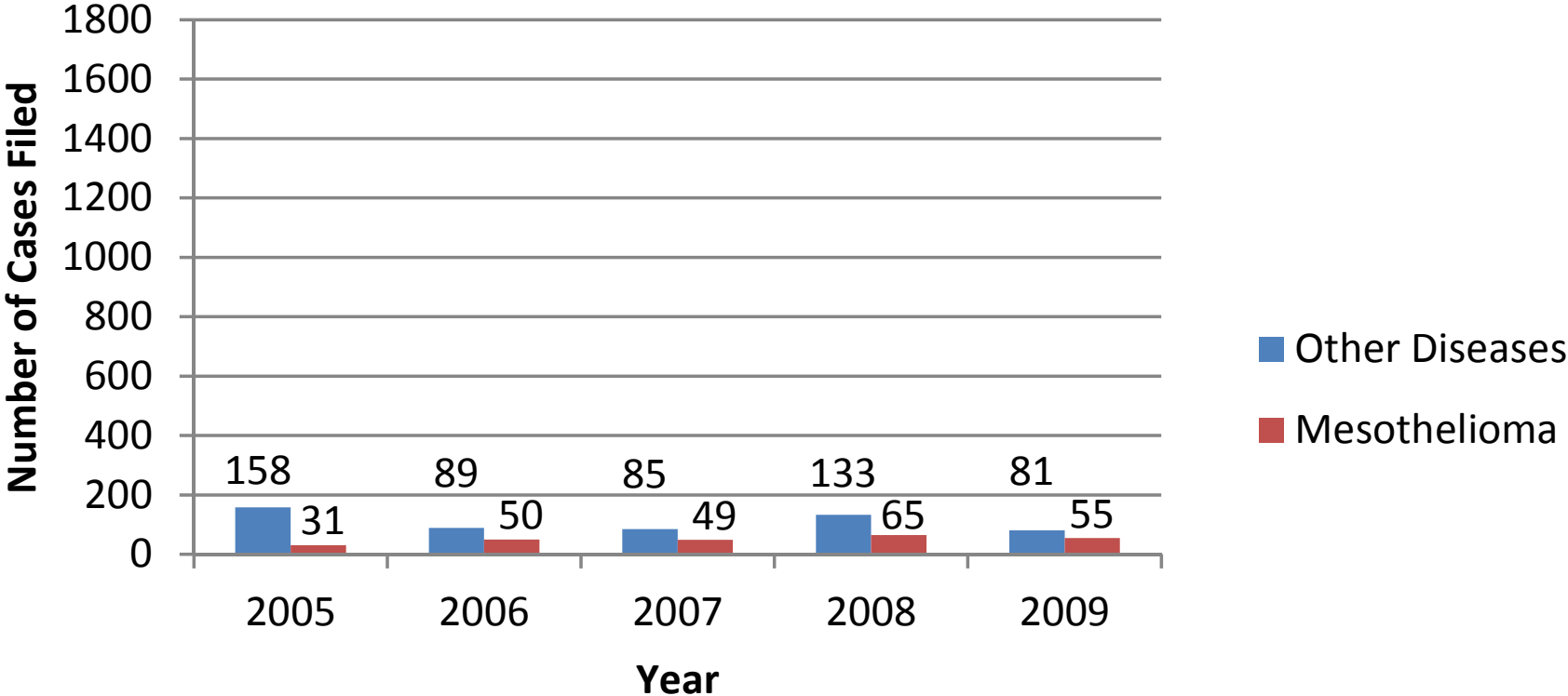
New Asbestos Cases Filed In Illinois (Cook County)



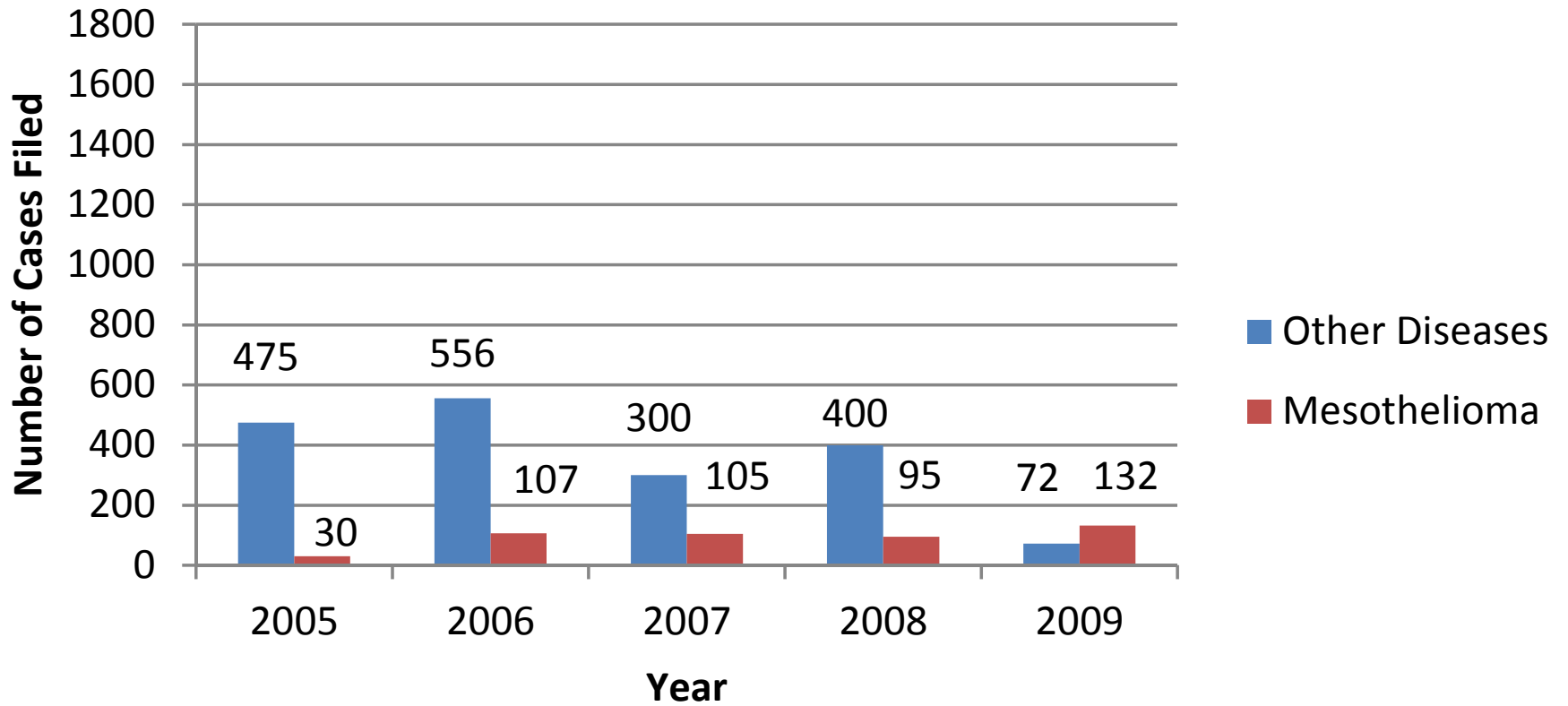
New Asbestos Cases Filed In Maryland



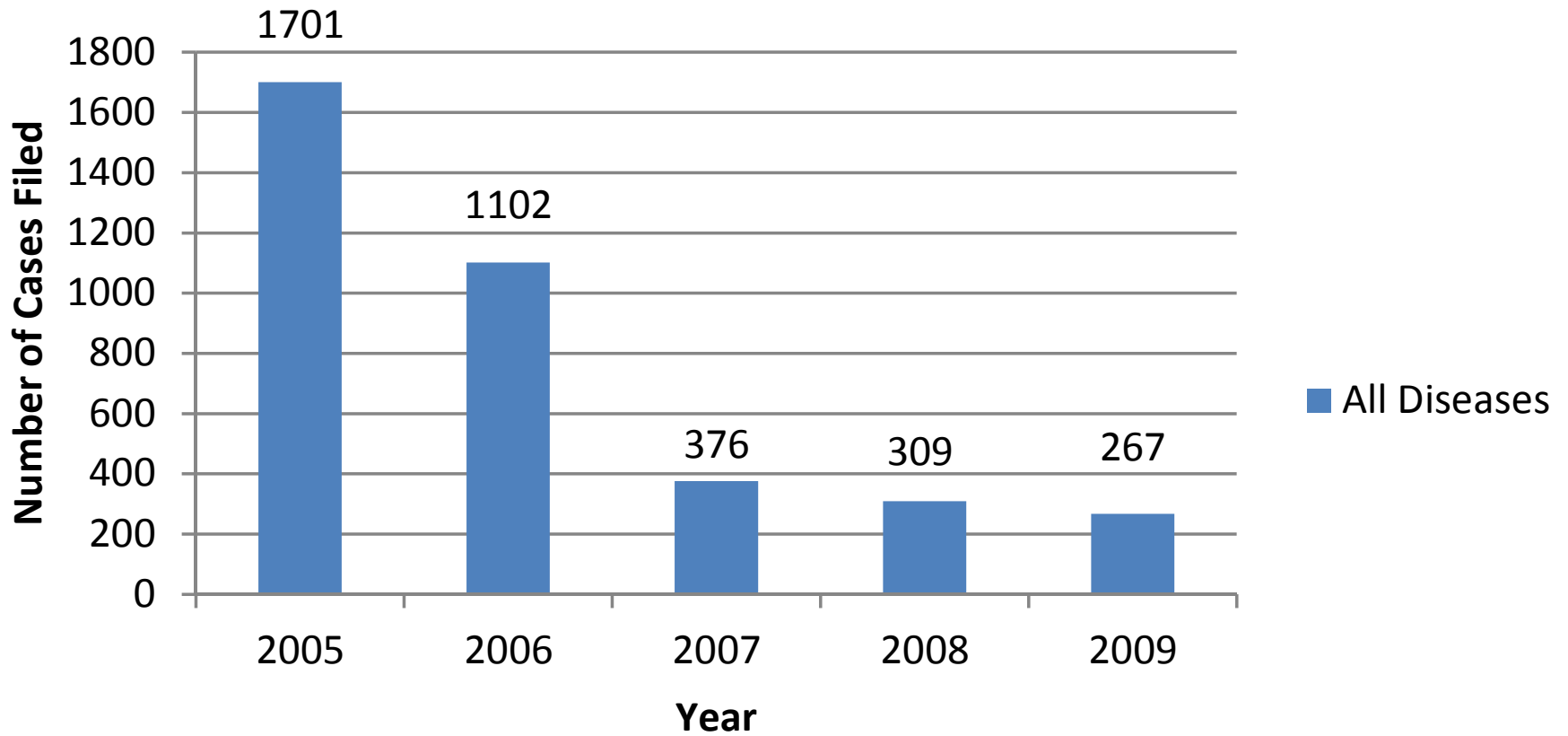
New Asbestos Cases Filed In Massachusetts



New Asbestos Cases Filed In New York



New Asbestos Cases Filed In Texas



CONCLUSION

In this Report, the ALRA Group has provided a review of new case filings during 2009 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 fifth report in a series of annual updates, supplements the data presented in the ATFS Group's 2006, 2007, and 2008 Update Reports. In addition, it analyzes the trends in case filings in selected jurisdictions over the past five years.

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

ALRA Group
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[Robert D. Brownson](#)
Brownson & Ballou, PLLP
225 South Sixth Street
Suite 4800
Minneapolis, MN 55402
(612) 332-4020
(612) 332-4025 FAX
rbrownson@brownsonballou.com

[Clayton F. Farrell](#)
Collins, Einhorn, Farrell & Ulanoff, PC
4000 Town Center
Suite 909
Southfield, MI 48075-1473
(248) 351-5433
(248) 351-5454 FAX
Clay.Farrell@ceflawyers.com

[David M. Governo](#)
Governo Law Firm LLC
Two International Place
15th Floor
Boston, MA 02110
(617) 737-9045
(617) 737-9046 FAX
dgoverno@GOVERNO.COM

[F. Grey Redditt, Jr.](#)
Vickers Riis Murray & Curran, LLC
11th Floor, Regions Bank Building
106 Saint Francis Street
P.O. Box 2568
Mobile, AL 36652
(251) 432-9722
(251) 432-9781 FAX
gredditt@vickersriis.com

[James N. Sinunu](#)
Sinunu Bruni LLP
333 Pine Street
Suite 400
San Francisco, CA 94104
(415) 362-9700
(415) 362-9707 FAX
JSinunu@sinunubruni.com

[Steven Wright](#)
Wright & Associates, PA
615 Congress Street
P.O. Box 4077
Portland, ME 04101
(207) 775-7722
(207) 775-7727 FAX
sfw@legalwrights.com