

Be Certain.

KCIC



**ASBESTOS LITIGATION:**

**2019 YEAR IN REVIEW**

**KCIC Industry Report**

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## INTRODUCTION

While there is no national register of asbestos complaints, KCIC estimates that it processes over 90% of all asbestos complaints filed nationally. The public information from these complaints is mined and analyzed for trends by disease, jurisdiction, plaintiff firm, defendant, exposure type, and other plaintiff attributes. This gives KCIC a unique, high-level perspective of filing patterns and emerging trends in this litigation. The data included in this report, unless otherwise stated, come solely from the public information listed on complaints.

The data show a consistent average lag of about one month between a lawsuit being filed and it being served/received. All data analyzed for this report is based on complaints received and processed by KCIC through January 31, 2020, regardless of file year. While this means a greater portion of 2018 complaints than 2019 complaints will have been received by the time of publication, this ensures the report uses the most up to date data available for all filing years. The data include talc cases where traditional asbestos defendants are also named but exclude purely cosmetic talc cases that do not allege any non-talc exposure.

## FILINGS OVERVIEW

For 2019, total asbestos filings were relatively consistent with the total filings for 2018. As of January 31, 2020, there was a very slight decrease of 2% in total filings, (though this number will inevitably increase as more 2019 complaints are received throughout 2020). Based on historic filing patterns, the 2019 total will likely increase by another 4% for an estimated 2% increase over 2018.

### Asbestos Filings by Year

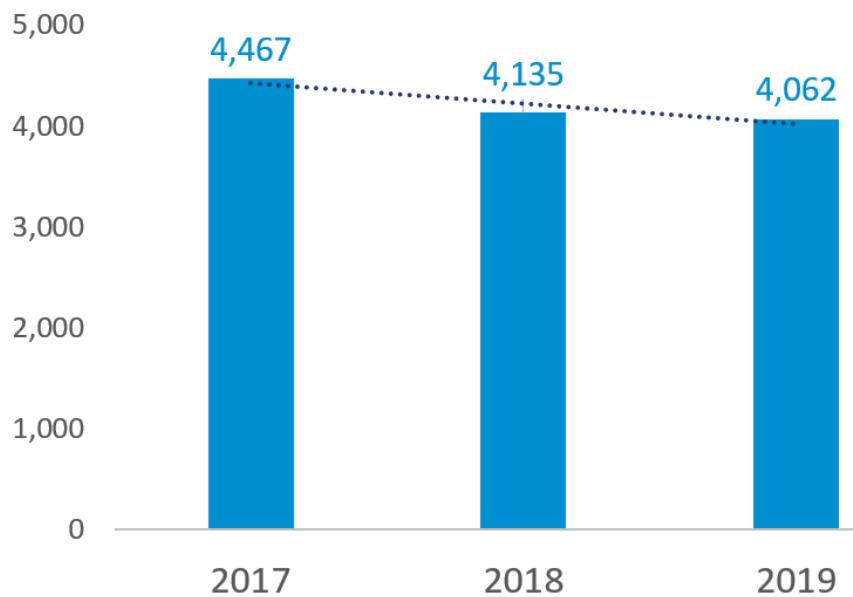
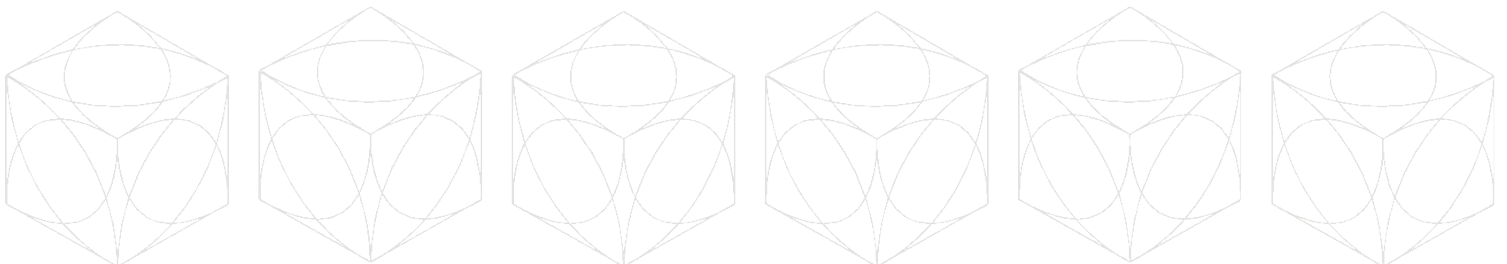


Figure Filings-1



While overall filings remained similar to 2018, the disease mix did not. Mesothelioma filings, the main economic driver of this litigation, saw a slight increase of 2%; lung cancer filings, however, increased more than 21% from 2018 to 2019 from 1,101 to 1,334. Non-malignant filings and lawsuits where the disease was unstated (shown in this report as “Unknown”) decreased by 33% and 51% respectively.

### Asbestos Filings by Disease - All Jurisdictions

Disease	2017 Filings	2018 Filings	2019 Filings	% Change 2018 - 2019
Mesothelioma	2,212	2,087	2,121	1.6%
Lung Cancer	1,110	1,101	1,334	21.2%
Other Cancer	133	91	94	3.3%
Non-Malignant	678	509	342	-32.8%
Unknown	334	347	171	-50.7%
<b>Grand Total</b>	<b>4,467</b>	<b>4,135</b>	<b>4,062</b>	<b>-1.8%</b>

Figure Filings-2

The decrease in filings where the disease is unknown is relevant in explaining some of the increase in lung cancer and mesothelioma filings. New York City, a jurisdiction where complaints have not historically included the alleged disease, began stating the alleged disease on more complaints in 2019. The new Case Management Order (“CMO”) for New York City Asbestos Litigation (“NYCAL”), enacted July 20, 2017, increased the specificity needed in a pleading for it to be placed on the accelerated docket. In April of 2018, Judge Manuel Mendez was designated as the new NYCAL Coordinating Judge and has been enforcing the new CMO.

In fact, the number of New York City complaints not stating disease decreased by almost 70% in 2019, and the number of these complaints now alleging mesothelioma or lung cancer more than doubled. For purposes of quantifying the effects of this reclassification from unknown to actual disease allegations in NYCAL, Figure Filings-3 shows filings by disease excluding New York City. Outside of NYCAL, lung cancer filings in the rest of the country increased 15% and mesothelioma filings were steady with a decrease of less than 1%.

### Asbestos Filings by Disease - Excluding New York, NY Filings

Disease	2017 Filings	2018 Filings	2019 Filings	% Change 2018 - 2019
Mesothelioma	2,136	2,012	1,995	-0.8%
Lung Cancer	1,075	1,061	1,223	15.3%
Other Cancer	132	90	91	1.1%
Non-Malignant	671	506	341	-32.6%
Unknown	100	120	98	-18.3%
<b>Grand Total</b>	<b>4,114</b>	<b>3,789</b>	<b>3,748</b>	<b>-1.1%</b>

Figure Filings-3

Of the 2019 filings, 11% of lung cancer and 13% of mesothelioma lawsuits included allegations of talc exposure. The majority of these traditional asbestos with talc cases (66%) were filed by The Gori Law Firm in Madison County or St. Clair County, Ill. Figure Filings–4 details the 2019 filings by disease that included talc allegations.

## 2019 Asbestos Filings with Allegations of Talc Exposure

Disease	2019 Filings	2019 Filings with Talc	% with Talc
Mesothelioma	2,121	281	13.2%
Lung Cancer	1,334	149	11.2%
Other Cancer	94	1	1.1%
Non-Malignant	342	4	1.2%
Unknown	171	0	0.0%
<b>Total Filings</b>	<b>4,062</b>	<b>435</b>	<b>10.7%</b>

Figure Filings–4

## JURISDICTION OVERVIEW

The top jurisdictions for asbestos filings have changed very little over the past few years. Madison County, Ill. continues to be the epicenter of this litigation with 28% of all 2019 lawsuits filed there – a slight increase in concentration there compared to the 27% of 2018 lawsuits filed in Madison County. Similarly, out of the 149 total jurisdictions with filings in 2019, the overall concentration of filings within the top 15 has also slightly increased – 82% of 2019 lawsuits were filed in the top 15 jurisdictions compared to a concentration of 80% in 2018.

### 2018 JURISDICTIONAL CONCENTRATION

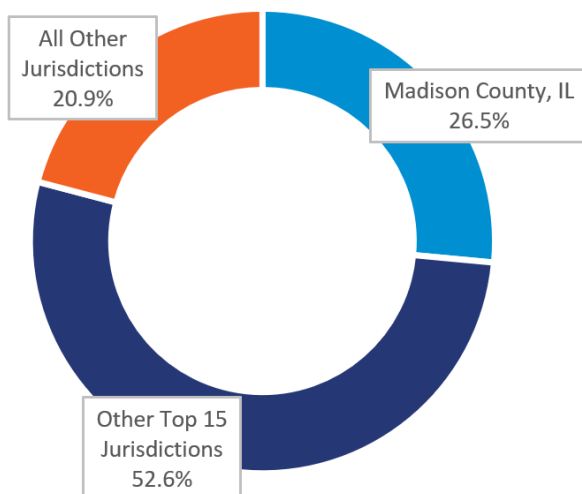


Figure Jurisdiction-1.1

### 2019 JURISDICTIONAL CONCENTRATION

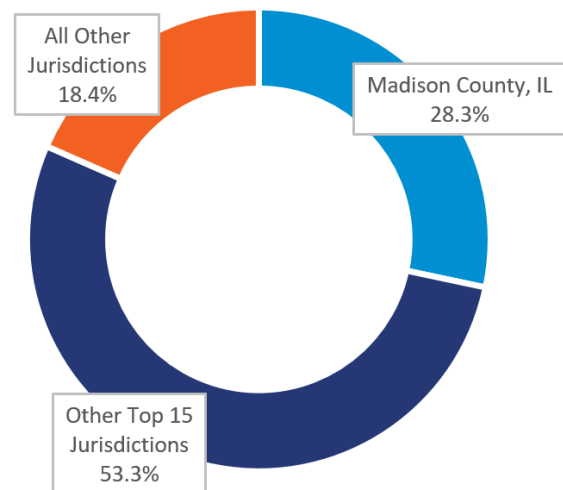


Figure Jurisdiction-1.2

When looking at the top 15 jurisdictions for 2019 filings, the top jurisdictions themselves have not changed much over time, but the ranking of each jurisdiction and the count of filings by year have varied for certain jurisdictions. Figure Jurisdiction-2 details the filings by year for the top 15 jurisdictions in 2019, along with the ranking of each in prior years and the percentage change in filings between 2018 and 2019.

## Top 15 Jurisdictions Based on 2019 Filings

Jurisdiction	2017 Filings	2017 Rank	2018 Filings	2018 Rank	2019 Filings	2019 Rank	% Change 2018 - 2019
Madison County, IL	1,125	1	1,095	1	1,150	1	5.0%
St. Clair County, IL	207	5	266	4	359	2	35.0%
New York, NY	353	3	346	2	314	3	-9.2%
Philadelphia, PA	261	4	216	5	244	4	13.0%
St. Louis, MO	187	7	183	6	234	5	27.9%
Baltimore City, MD	484	2	330	3	167	6	-49.4%
Wayne County, MI	197	6	107	8	158	7	47.7%
Cook County, IL	165	8	168	7	132	8	-21.4%
Los Angeles, CA	103	11	99	10	120	9	21.2%
Kanawha, WV	120	10	98	11	98	10	0.0%
Allegheny, PA	54	17	61	13	86	11	41.0%
New Castle, DE	130	9	100	9	71	12	-29.0%
Orleans, LA	50	18	55	14	62	13	12.7%
Middlesex, NJ	101	12	96	12	60	14	-37.5%
Middlesex, MA	81	13	51	16	59	15	15.7%
<b>Total (Top 15)</b>	<b>3,618</b>		<b>3,271</b>		<b>3,314</b>		<b>1.3%</b>
<b>Total (All)</b>	<b>4,467</b>		<b>4,135</b>		<b>4,062</b>		<b>-1.8%</b>

Figure Jurisdiction-2

### Notable Increases

As stated above, the vast majority of filings were in Madison County, which saw a 5% increase in filings compared to 2018. Other jurisdictions, like Wayne County, Mich., Allegheny, Pa., and St. Clair County, Ill., saw much more significant increases of 48%, 41%, and 35% respectively. St. Clair County continues to see an increase in lung cancer filings by The Gori Law Firm (41% increase in lung cancer filings there), contributing both to the increase in filings in the jurisdiction and the increase in overall lung cancer filings in 2019. In Wayne County, filings increased largely due to a 50% increase in non-malignant filings by Goldberg, Persky, and White, coupled with an increase in lung cancer filings by Mazur & Kittle. Allegheny also saw an increase in lung cancer filings by several plaintiff firms.

### Notable Decreases

The biggest change this year was the continued decrease (49% in 2019) in new filings in Baltimore City, Md. There has been a focus in this jurisdiction to clear out a large backlog of old asbestos cases, likely contributing to the decrease in new filings as hundreds of old cases have been brought forth each month. The 49% overall decrease in Baltimore City filings was largely comprised of a 65% decrease in non-malignant filings. This decline in Baltimore's non-malignant filings was a large factor in the 33% decrease in 2019 non-malignant filings seen nationally. Other jurisdictions with notable decreases in filings included Middlesex, N.J. (38% decrease), New Castle, Del. (29% decrease), and Cook County, Ill. (21% decrease). The decrease in Cook County was due to Cooney & Conway filing fewer mesothelioma and lung cancer cases in this jurisdiction. In New Castle, the decrease was due to Napoli Shkolnik decreasing its lung cancer filings by 38% and Weitz & Luxenberg decreasing its mesothelioma filings by 21% in this jurisdiction. A decrease in Weitz & Luxenberg filings also was the driving factor behind the decrease in filings in Middlesex, N.J.

## PLAINTIFF FIRM TRENDS

Similar to the jurisdictional trends, asbestos filings continue to be heavily concentrated within the top 15 of the total 164 plaintiff firms who filed cases in 2019. The concentration amongst these top firms was about 72% in 2019 – consistent with the concentration within the top 15 firms in 2018. The Gori Law Firm once again topped the list with 16% of all asbestos lawsuits in 2019 – an increase over the 14% of 2018 lawsuits filed by this firm.

**2018 Plaintiff Firm Concentration**

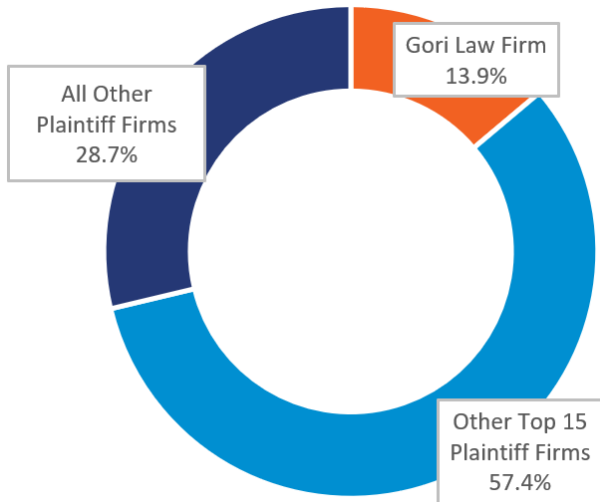


Figure Firms-1.1

**2019 Plaintiff Firm Concentration**

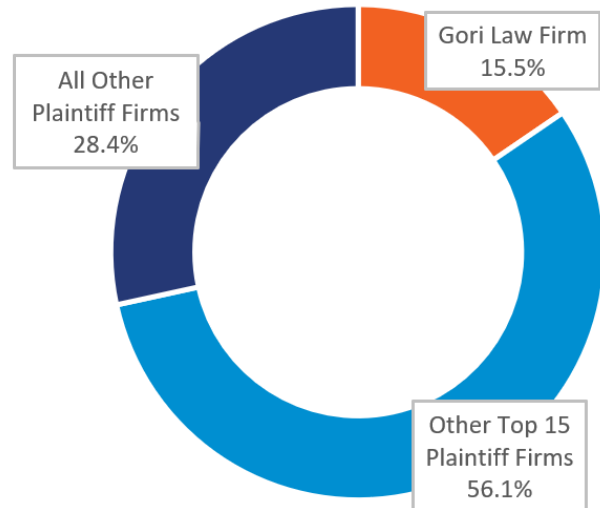
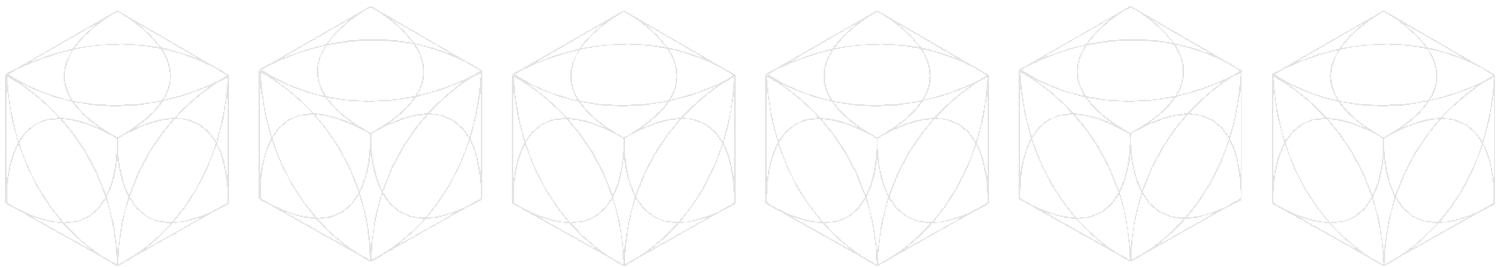


Figure Firms-1.2

Figure Firms-2 details the top 15 plaintiff firms filing asbestos lawsuits in 2019, along with the rank and number of filings for the past years and the percentage change in filings from 2018 to 2019. For this analysis, the national plaintiff firm listed on the complaint was used. If a complaint did not name a national firm, the local plaintiff firm filing the complaint was counted.



## Top 15 Plaintiff Firms Based on 2019 Filings

Plaintiff Firm	2017 Filings	2017 Rank	2018 Filings	2018 Rank	2019 Filings	2019 Ranking	% Change 2018 - 2019
The Gori Law Firm	590	1	573	1	629	1	9.8%
Simmons Hanly Conroy, LLC	382	4	411	3	506	2	23.1%
Weitz & Luxenberg, PC	449	3	434	2	424	3	-2.3%
Maune Raichle Hartley French & Mudd, LLC	252	5	271	5	273	4	0.7%
SWMW Law, LLC	103	8	170	7	226	5	32.9%
Goldberg Persky & White, PC	144	7	144	8	170	6	18.1%
Law Offices of Peter G. Angelos, PC	459	2	353	4	162	7	-54.1%
Cooney & Conway	212	6	223	6	155	8	-30.5%
Belluck & Fox, LLP	62	13	90	9	58	9	-35.6%
Karst & Von Oiste, LLP	40	21	33	24	54	10	63.6%
Nass Cancelliere	57	15	36	21	53	11	47.2%
Shrader & Associates, LLP	59	14	53	11	53	12	0.0%
Mazur & Kittel, PLLC	70	11	45	15	52	13	15.6%
Brookman Rosenberg Brown & Sandler	48	19	49	13	47	14	-4.1%
Brayton Purcell	63	12	62	10	46	15	-25.8%
<b>Total (Top 15)</b>	<b>2,990</b>		<b>2,947</b>		<b>2,908</b>		<b>-1.3%</b>
<b>Total (All)</b>	<b>4,467</b>		<b>4,135</b>		<b>4,062</b>		<b>-1.8%</b>

Figure Firms-2

### Notable Increases

The plaintiff firms with the largest percentage increases in filings from 2018 to 2019 were Karst & Von Oiste (64% increase), Nass Cancelliere (47% increase), and SWMW Law, LLC (33% increase). Over the past few years, SWMW has steadily increased its filing presence in Madison County and St. Louis. In 2019, SWMW increased its mesothelioma filings in Madison County by 48% and filed more than three times as many mesothelioma lawsuits in St. Louis than in the previous year. SWMW also significantly increased its lung cancer filings by 14% in 2019 – with a 66% increase in lung cancer lawsuits filed in Madison County. Karst & Von Oiste doubled its lung cancer filings and mesothelioma filings in St. Louis, while Nass Cancelliere increased its lung cancer and other cancer filings in Philadelphia.

### Notable Decreases

The Law Offices of Peter G. Angelos, Cooney & Conway, and Belluck & Fox all saw significant decreases in filings in 2019. Peter Angelos' firm filed 54% fewer lawsuits in 2019 than in the prior year – decreasing its non-malignant filings in Baltimore City significantly and all but stopping filing in any other jurisdictions in which it had previously filed. Belluck & Fox saw a 36% decrease in filings, mostly due to a 42% decrease in mesothelioma filings. Cooney & Conway decreased filings by 31% compared to 2018, with a 30% decrease in mesothelioma filings, mostly in Cook and Madison County in Illinois.

## MESOTHELIOMA FOCUS

As stated earlier in this report, the number of complaints listing mesothelioma as the alleged disease increased by 2% from 2018 to 2019. When New York City is removed from this calculation, 2019 mesothelioma filings were steady with a decrease of less than 1%. Over the past few years, mesothelioma filings have made up about 50% of all asbestos complaints – increasing slightly to 52% in 2019. Figure Mesothelioma-1 lists the top 10 jurisdictions based on 2019 mesothelioma filings. The concentration of mesothelioma filings was 79% within the top 10 jurisdictions, with almost half (47%) of all mesothelioma claims being filed in Madison County. This concentration within the top jurisdictions is consistent with that which occurred in 2017 and 2018 during which 78% of all mesothelioma complaints were filed in the top 10 jurisdictions.



## Top 10 Mesothelioma Jurisdictions Based on 2019 Filings

Top 10 Jurisdictions 2019	2017 Filings	2018 Filings	2019 Filings	% Change 2018 - 2019
Madison County, IL	1,016	992	1,002	1.0%
New York, NY	76	75	126	68.0%
Los Angeles, CA	85	84	108	28.6%
Philadelphia, PA	128	104	104	0.0%
St. Louis, MO	62	52	88	69.2%
Cook County, IL	110	106	86	-18.9%
Alameda, CA	51	43	45	4.7%
Middlesex, NJ	80	75	44	-41.3%
Middlesex, MA	44	40	40	0.0%
New Castle, DE	63	49	37	-24.5%
<b>Subtotal of Top 10 Mesothelioma Jurisdictions 2019</b>	<b>1,715</b>	<b>1,620</b>	<b>1,680</b>	<b>3.7%</b>
<b>Grand Total of All Mesothelioma Claims</b>	<b>2,212</b>	<b>2,087</b>	<b>2,121</b>	<b>1.6%</b>

Figure Mesothelioma-1

Figure Mesothelioma-2 lists the top 10 Plaintiff Firms based on 2019 mesothelioma filings. Out of all mesothelioma complaints filed in 2019, 71% were filed by the top 10 plaintiff firms, which is consistent with the concentration seen in 2018 filings.

## Top 10 Mesothelioma Plaintiff Firms Based on 2019 Filings

Top 10 Plaintiff Firms 2019	2017 Filings	2018 Filings	2019 Filings	% Change 2018 - 2019
Simmons Hanly Conroy, LLC	327	375	437	16.5%
Maune Raichle Hartley French & Mudd, LLC	252	270	273	1.1%
The Gori Law Firm	330	290	251	-13.4%
Weitz & Luxenberg, PC	144	142	177	24.6%
Cooney And Conway	158	165	115	-30.3%
SWMW Law, LLC	60	58	98	69.0%
Shrader & Associates, LLP	58	52	52	0.0%
Early Lucarelli Sweeney & Meisenkothen	38	29	39	34.5%
Belluck & Fox, LLP	48	62	36	-41.9%
Simon Greenstone Panatier, PC	33	25	28	12.0%
<b>Subtotal of Top 10 Mesothelioma Plaintiff Firms 2019</b>	<b>1,448</b>	<b>1,468</b>	<b>1,506</b>	<b>2.6%</b>
<b>Grand Total of All Mesothelioma Claims</b>	<b>2,212</b>	<b>2,087</b>	<b>2,121</b>	<b>1.6%</b>

Figure Mesothelioma-2

Simmons Hanly Conroy has steadily increased its percentage share of mesothelioma filings from 15% in 2017, to 18% in 2018, and to 21% of all mesothelioma filings in 2019. In contrast, The Gori Law Firm continued to decrease its mesothelioma filings in Madison County and elsewhere in 2019 leading to a 13% decline in mesothelioma cases for this firm. SWMW continued to increase its mesothelioma filings (by 69% compared to 2018) with increased filings in St. Louis and Madison County.

In 2019, 81% of mesothelioma plaintiffs were male and 19% were female, a ratio consistent with the ratio in mesothelioma filings from the past couple of years. The male to female ratio across all disease types in 2019 was 87% male to 13% female, meaning there was a higher proportion of females filing mesothelioma claims than other disease types.

## LUNG CANCER FOCUS

In 2019, the largest increase in filings by disease type occurred in lung cancer filings. Overall, the number of complaints listing lung cancer as the alleged disease increased by 21% in 2019 (15% when New York City filings are excluded). In 2017 and 2018, lung cancer filings were about 25% of the total asbestos claim population. In 2019, lung cancer filings increased to 33% of all asbestos filings. Figures Lung Cancer-1 and Lung Cancer-2 list the top 10 jurisdictions and plaintiff firms based on 2019 lung cancer filings. For lung cancer cases, 81% of lawsuits were filed in the top 10 jurisdictions – an increase in concentration compared to 2017 and 2018 filings of which 78% were in the top 10 locales. For plaintiff firms, 69% of 2019 lung cancer lawsuits were filed by the top 10 plaintiff firms, an increase over the 64% in 2017 and 68% in 2018.

### Top 10 Lung Cancer Jurisdictions Based on 2019 Filings

Top 10 Jurisdictions 2019	2017 Filings	2018 Filings	2019 Filings	% Change 2018 - 2019
St. Clair County, IL	199	254	351	38.2%
St. Louis, MO	116	125	137	9.6%
Madison County, IL	97	96	136	41.7%
New York, NY	35	40	111	177.5%
Philadelphia, PA	79	74	93	25.7%
Kanawha, WV	84	62	60	-3.2%
Baltimore City, MD	98	78	59	-24.4%
Wayne County, MI	60	43	57	32.6%
Allegheny, PA	19	29	41	41.4%
New Castle, DE	60	45	32	-28.9%
<b>Subtotal of Top 10 Lung Cancer Jurisdictions 2019</b>	<b>847</b>	<b>846</b>	<b>1,077</b>	<b>27.3%</b>
<b>Grand Total of All Lung Cancer Claims</b>	<b>1,110</b>	<b>1,101</b>	<b>1,334</b>	<b>21.2%</b>

Figure Lung Cancer-1

### Top 10 Lung Cancer Plaintiff Firms Based on 2019 Filings

Top 10 Plaintiff Firms 2019	2017 Filings	2018 Filings	2019 Filings	% Change 2018 - 2019
The Gori Law Firm	254	279	374	34.1%
Weitz & Luxenberg, PC	69	71	142	100.0%
SWMW Law, LLC	41	111	127	14.4%
Law Offices of Peter G. Angelos, PC	74	83	60	-27.7%
Simmons Hanly Conroy, LLC	47	33	58	75.8%
Goldberg, Persky & White, PC	44	38	40	5.3%
Mazur & Kittel, PLLC	41	22	33	50.0%
Napoli Shkolnik, PLLC	74	40	31	-22.5%
Nass Cancelliere	29	21	29	38.1%
Karst & Von Oiste, LLP	17	13	27	107.7%
<b>Subtotal of Top 10 Lung Cancer Plaintiff Firms 2019</b>	<b>690</b>	<b>711</b>	<b>921</b>	<b>29.5%</b>
<b>Grand Total of All Lung Cancer Claims</b>	<b>1,110</b>	<b>1,101</b>	<b>1,334</b>	<b>21.2%</b>

Figure Lung Cancer-2

While The Gori Law Firm decreased its mesothelioma filings, it continued to increase lung cancer filings with a 34% increase in 2019. This firm mainly increased the number of lung cancer lawsuits it filed in St. Clair County – making up the majority of the 38% increase in lung cancer filings in that location.

The 178% increase shown for New York and 100% increase shown for Weitz & Luxenberg filings is again driven by the aforementioned change in the NYCAL CMO to more often require a disease to be specified in the pleading.

## DEFENDANT COMPANY NAMINGS ANALYSIS

In 2019, more than 10,000 individual entities were named as defendants in asbestos litigation. Over the past few years, the average number of individual entities named as defendants on asbestos complaints has remained consistent in the mid-sixties. For this analysis, a naming of Company A as successor in interest to Company B and Company C would count as three separate namings. For 2019, the average was 65 entities named per complaint, though the maximum number named on a single complaint was 297. By disease, non-malignant and lung cancer cases named more defendants on average (73 and 68 respectively), while mesothelioma and other cancer complaints named fewer than average (63 and 62 respectively).

### Average Number of Defendants per 2019 Complaint by Disease

Disease	Average Number of Defendants
Mesothelioma	63
Lung Cancer	68
Other Cancer	62
Non-Malignant	73
Unknown	41
Overall Average	65

Figure Defendants-1

There are a handful of defendants that are named on the majority of complaints. For the purposes of this section of the report, only the final successor companies were counted (Company A as successor in interest to Company B and Company C would only count Company A as one naming). When looking at the most commonly named defendants in 2019 based on final successor namings, the top defendant was named on 83% of complaints and by 75% of plaintiff firms. There were eight companies named on more than 50% of 2019 complaints. Almost every asbestos complaint filed in 2019, (96%), named at least one of these eight companies. Similarly, 92% of plaintiff firms named at least one of these eight companies in 2019.

The number of defendants named on asbestos complaints continues to be a topic of concern in this litigation. Recently a West Virginia circuit court judge cancelled a mediation for several lung cancer cases citing the impossible task of mediating with the “vast number of defendants.”<sup>1</sup> Similarly, legislation was passed in the Iowa Senate which requires plaintiffs to establish evidence to give a basis for the claim against each defendant.<sup>2</sup> KCIC will continue to monitor state legislation and judicial opinions on this subject.

<sup>1</sup>Dickerson, C. (2020, February 11). Asbestos judge criticizes plaintiffs attorneys for lack of action, suing too many defendants. Retrieved from <https://wvrecord.com/stories/525269273-asbestos-judge-criticizes-plaintiffs-attorneys-for-lack-of-action-suing-too-many-defendants>

<sup>2</sup>Iowa legislation targets asbestos lawyers who blame more defendants than they can prove. (2020, February 21). Retrieved from <https://legalnewslines.com/stories/525808239-iowa-legislation-targets-asbestos-lawyers-who-blame-more-defendants-than-they-can-prove>

## PERSONAL JURISDICTION UPDATE

Since the Bristol-Myers Squibb Supreme Court ruling<sup>3</sup> in California, attention to personal jurisdiction arguments, especially in the mass tort arena, has been on the rise. The premise of a personal jurisdiction argument is that a state's court lacks authority to render judgment in cases where plaintiffs sue in a forum other than a defendant's "home" state and/or in a jurisdiction to which the plaintiff does not have a connection. One way to measure how this type of legislation is affecting filings is to look at where plaintiffs file in relation to where they live. This analysis considered only complaints that included residency, which has consistently been about 70% of complaints. When looking at the residency information, the percentage of plaintiffs that file out-of-state continued to increase from 51% in 2017 to 52% in 2018 to 54% in 2019. Illinois, and Madison County in particular, has been the top location for asbestos filings for several years. When looking at complaints that list the plaintiff's state of residency, 63% of all plaintiffs filing out-of-state filed in Illinois. The next most common venue for out-of-state filing was Pennsylvania, which had 8% of all non-resident filings.

### State of Filing for 2019 Non-Resident Plaintiffs

State of Filing	% of Out-of-State Filings
Illinois	63.2%
Pennsylvania	7.9%
Delaware	4.8%
New York	4.6%
California	3.9%
All Other Resident States	15.6%
<b>Grand Total</b>	<b>100.0%</b>

Figure PJ-1

### 2019 Illinois Filings by State of Plaintiff Residency

State of Residency	Percent
Texas	8.5%
Illinois	8.2%
Florida	6.3%
Ohio	5.4%
All Other Resident States	71.6%
<b>Grand Total</b>	<b>100.0%</b>

Figure PJ-2

Looking more closely at the residency profile for Illinois, the data show that only a small portion of Illinois filings in 2019 were filed by Illinois residents.

Only 8% of plaintiffs who filed in Illinois in 2019 also resided there, while 92% of Illinois complaints were filed by residents who did not live there.

<sup>3</sup> Bristol-Myers Squibb Co. v. Superior Court, 582 U. S. (2017)

Figures PJ-3 and PJ-4 show the state of plaintiff residency compared to the state in which the plaintiff’s lawsuit was filed for the top two plaintiff firms filing in 2019, The Gori Law Firm and Simmons Hanly Conroy.

2019 Gori Law Firm Filings by State of Plaintiff Residency

In 2019, The Gori Law Firm filed 91% of its complaints in Illinois. Overall, this firm filed in nine different states, but those plaintiffs resided in 45 different states.

State of Residency	Filed in State of Residency	Filed in Illinois	Filed Elsewhere
Florida	2.8%	82.9%	14.3%
Illinois	100.0%	100.0%	0.0%
Texas	0.0%	96.3%	3.7%
Alabama	0.0%	100.0%	0.0%
California	10.5%	84.2%	5.3%
All Other Resident States	5.1%	90.6%	4.3%

Figure PJ-3

2019 Simmons Hanly Conroy Filings by State of Plaintiff Residency

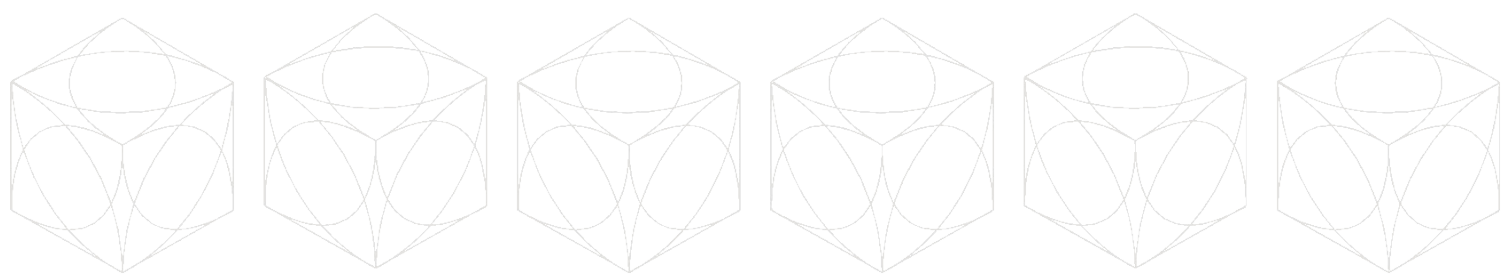
For Simmons Hanly Conroy, 80% of this firm’s 2019 lawsuits were filed in Illinois. The firm filed in 11 different states, but those plaintiffs resided in 49 different states.

State of Residency	Filed in State of Residency	Filed in Illinois	Filed Elsewhere
California	54.2%	43.7%	2.1%
Texas	0.0%	86.5%	13.5%
Illinois	100.0%	100.0%	0.0%
Ohio	0.0%	100.0%	0.0%
Florida	18.2%	63.6%	18.2%
All Other Resident States	9.5%	81.7%	8.8%

Figure PJ-4

EXPOSURE TYPES & GENDER ANALYSIS

The percentage of total asbestos complaints that were filed by male plaintiffs continued to gradually increase. In 2017, females made up 15% of total filings while males made up 85%. In 2019, males were 87% of the total population and females were 13%. Figure Exposures–1 details the male to female breakdown of asbestos complaints over the past few years.



## Male:Female Ratio for Asbestos Filings 2017-2019

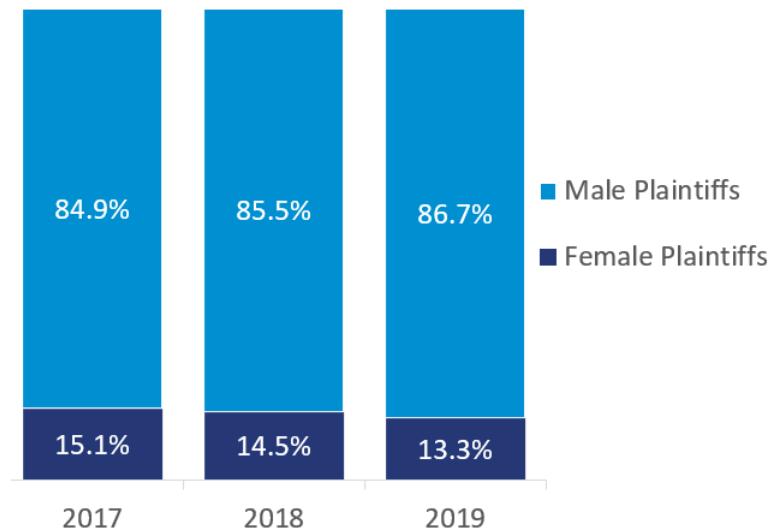


Figure Exposures-1

The types of asbestos exposure alleged by male and female plaintiffs tend to differ. There are many ways in which a plaintiff may be exposed to asbestos. Exposure may be primary, meaning the plaintiff was directly exposed to the asbestos, or secondary, where the plaintiff was exposed through another person's direct exposure (e.g. a wife exposed while washing her husband's asbestos-contaminated clothing). Further, exposure can be occupational, meaning it occurred over the course of the plaintiff's employment (e.g. a shipyard worker), or non-occupational, meaning the exposure occurred outside of the plaintiff's employment (e.g. a plaintiff who performed auto repair work on his car on the weekends).

Figure Exposures-2 shows the gender breakdown for primary and secondary exposures from 2017 to 2019. For this analysis, plaintiffs that allege both primary and secondary exposures are counted within the primary exposures grouping.

## Primary and Secondary Exposure Filings by Gender 2017-2019

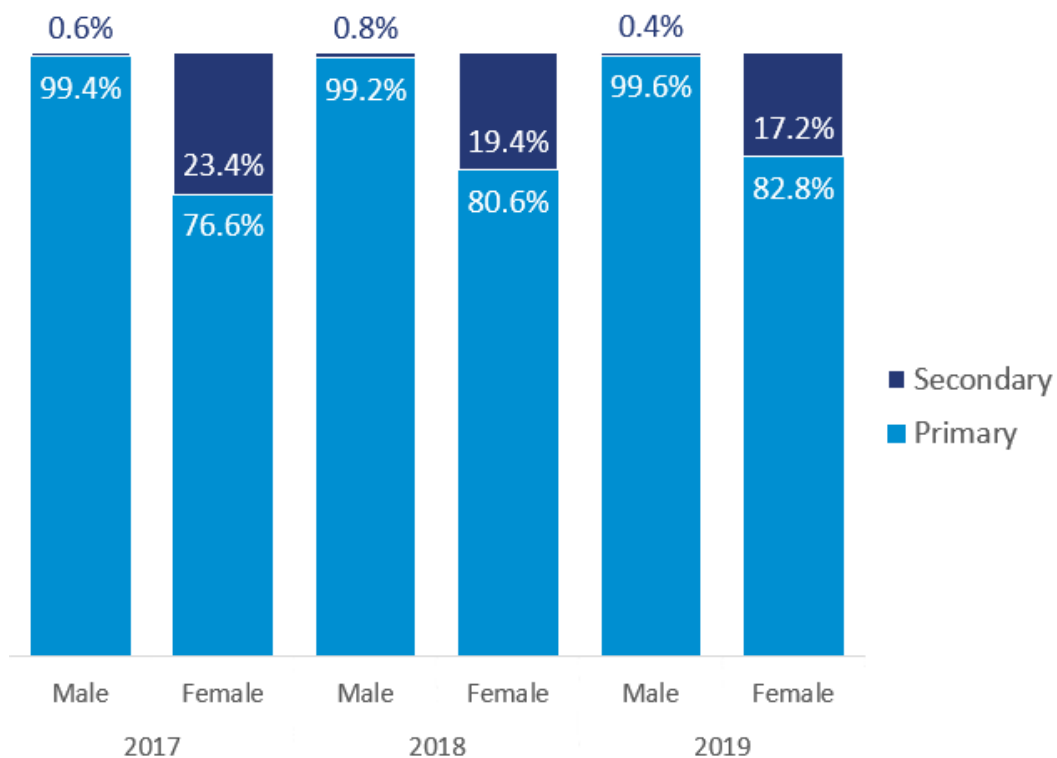


Figure Exposures-2

Of all female plaintiffs, the proportion which alleged primary exposure to asbestos increased from 77% in 2017, 81% in 2018, to 83% in 2019. This was mostly due to an increase in the number of lung cancer complaints filed by The Gori Law Firm on behalf of females alleging primary exposure to asbestos. The proportion of females with only secondary exposures decreased from 23% in 2017 to 17% in 2019. The decrease in female secondary exposures corresponds with the overall decrease in Baltimore City filings, as the number of female plaintiffs alleging only secondary exposure on non-malignant complaints filed there decreased 93% since 2017. The number of female plaintiffs alleging mesothelioma due to only secondary asbestos exposures has also decreased 23% due to decreases in filings by a variety of firms. In contrast, the proportion of primary exposure allegations within the male filing population stayed steady at over 99%.

For non-occupational exposures, the number of male plaintiffs alleging non-occupational exposure to asbestos increased 11% (from 1,179 to 1,313) from 2018 to 2019, while the number of female plaintiffs alleging non-occupational exposure declined by 2% (from 290 to 284). Figure Exposures-3 shows the percentage of male and female plaintiffs by year that alleged any non-occupational exposure within their complaint. While the number of female plaintiffs with non-occupational exposure decreased in 2019, the total number of female plaintiffs (regardless of exposure type) also decreased. The net effect was an overall increase in the percentage of female plaintiffs with non-occupational exposures from 48% in 2018 to 52% in 2019. For males, the percentage of male plaintiffs with non-occupational exposure also increased from 33% in 2018 to 37% in 2019.

### Percentage of Filings by Gender with Non-Occupational Exposure Alleged

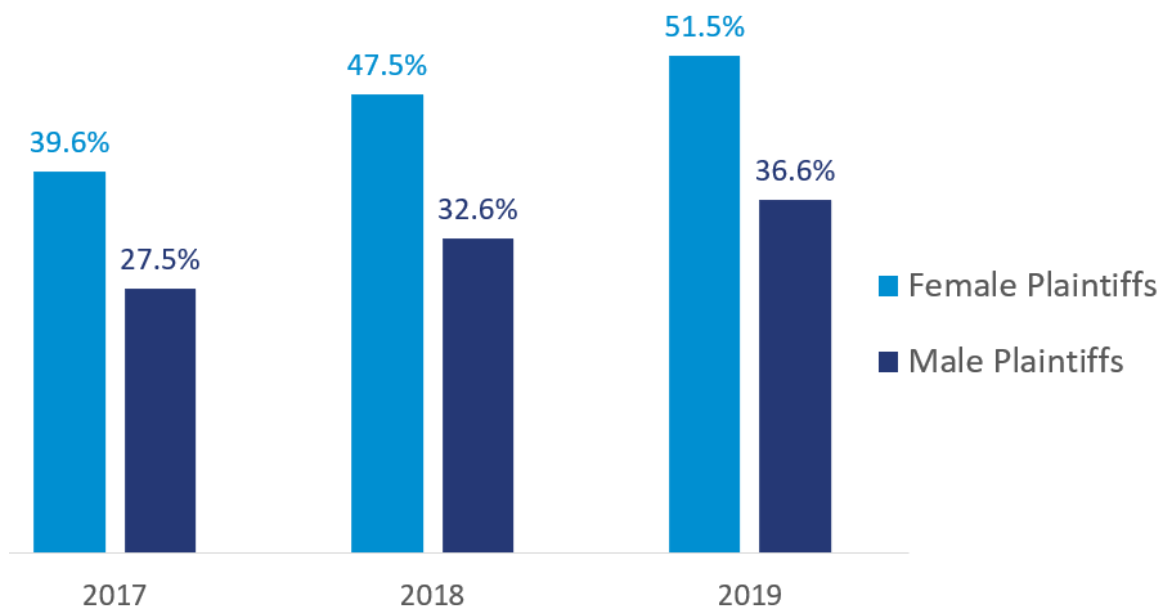


Figure Exposures-3

The percentage of female plaintiffs with non-occupational exposure continues to be higher than the percentage of male plaintiffs. The portion of female plaintiffs alleging non-occupational exposure is also increasing more significantly than that of male plaintiffs. For females, it has increased from 40% in 2017 to 52% in 2019. For males, the change has been from 28% in 2017 to 37% in 2019.



## PLAINTIFF AGE ANALYSIS

The complaint data for this report was also mined for information regarding the age of asbestos plaintiffs. For this analysis, the plaintiff age was calculated as the difference between the file date and the birthdate, where available, for living plaintiffs. Where a deceased date was provided in the complaint, the age was calculated as the difference between the date of death and the birthdate. While the majority of asbestos complaints do not contain a date of birth, the percentage of complaints that do provide this data has remained consistent between 30-35% over the past few years. Figure Age-1 gives the percentage of complaints by file year that contained birthdate by disease. For this analysis, only complaints with date of birth were considered.

### Percentage of Complaints with Birthdate by Disease and File Year

Disease	% of 2017 Filings	% of 2018 Filings	% of 2019 Filings	% of 2017-2019 Filings
Mesothelioma	36.4%	33.3%	30.3%	33.4%
Lung Cancer	46.4%	37.9%	32.3%	38.4%
Other Cancer	39.1%	38.5%	29.5%	36.1%
Non-Malignant	27.3%	29.5%	25.1%	27.5%
Unknown	5.0%	8.5%	4.0%	6.3%
<b>All Diseases</b>	<b>35.2%</b>	<b>31.9%</b>	<b>29.3%</b>	<b>32.2%</b>

Figure Age-1

Figures Age-2.1 and Age-2.2 show the average, median, minimum and maximum age of plaintiffs by file year and disease for complaints that list date of birth. The available age data show a consistent average and median plaintiff age for all disease types of 74 years. The ages range from a minimum of 33 to a maximum of 100 years.

### Average and Median Plaintiff Age by Disease and File Year

Year	2017		2018		2019		2017-2019	
Disease	Average Age	Median Age	Average Age	Median Age	Average Age	Median Age	Average Age	Median Age
Mesothelioma	74	75	74	76	75	76	74	76
Lung Cancer	73	73	73	74	73	73	73	73
Other Cancer	73	71.5	76	75	70	70	73	72
Non-Malignant	72	72	73	72	75	74	73	73
Unknown	74	73	73	73	75	72	74	73
<b>All Diseases</b>	<b>74</b>	<b>74</b>	<b>74</b>	<b>75</b>	<b>74</b>	<b>74</b>	<b>74</b>	<b>74</b>

Figure Age- 2.1

### Maximum and Minimum Plaintiff Age by Disease and File Year

Disease	Mesothelioma		Lung Cancer		Other Cancer		Non-Malignant		Unknown		All Diseases	
Year	Max	Min	Max	Min	Max	Min	Max	Min	Max	Min	Max	Min
2017 Filings	97	33	97	41	96	56	96	47	92	61	97	33
2018 Filings	96	33	91	48	95	59	93	55	89	53	96	33
2019 Filings	98	35	93	52	85	47	100	52	88	69	100	35
<b>2017 - 2019 Filings</b>	<b>98</b>	<b>33</b>	<b>97</b>	<b>41</b>	<b>96</b>	<b>47</b>	<b>100</b>	<b>47</b>	<b>92</b>	<b>53</b>	<b>100</b>	<b>33</b>

Figure Age- 2.2



For the youngest age bracket (30 – 49 years old) the male to female ratio is 59% to 41% - a much higher female concentration than in the overall population of filings. The proportion of mesothelioma filings in this age group is also much higher than in the overall population of filings. Of the male plaintiffs under 50 years old, all filed mesothelioma claims. For females under 50, 75% filed mesothelioma claims. When looking at the complaints for the youngest plaintiffs in this age bracket (33 – 38 years of age), all were mesothelioma complaints filed by Simmons Hanly Conroy in California. In fact, the Simmons firm filed the majority (25% of all lawsuits with birthdate provided in the complaint) for plaintiffs under 50 years old.

When looking at the distribution of plaintiffs by age group, the data show a difference in distribution by disease. Figure Age-3 shows the percentage of plaintiffs by disease which fell into each age group for mesothelioma, lung cancer, and non-malignant complaints that included birthdate data.

### Distribution of Plaintiffs by Age Group by Disease 2017 - 2019

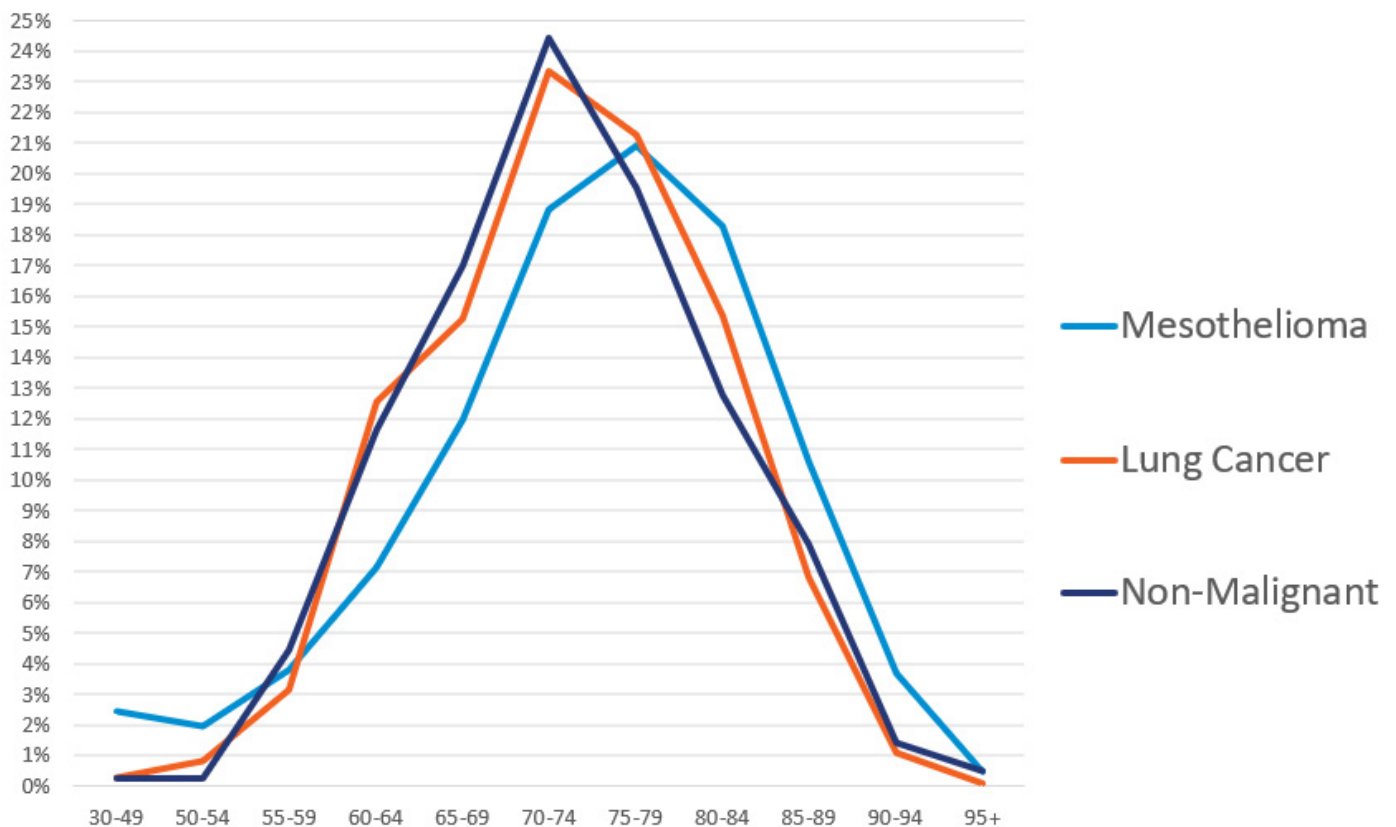
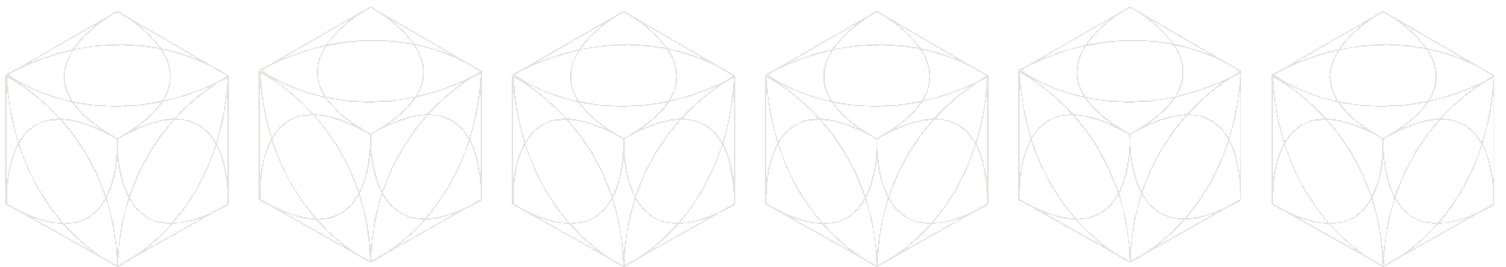


Figure Age-3



The highest percentage of mesothelioma filings with date of birth available in the complaint fell in the 75-79 age group, meaning a larger percentage of mesothelioma plaintiffs skew somewhat older than lung cancer or non-malignant claimants – both of which are most highly distributed in the 70-74 age group. This makes sense given the longer latency period for developing mesothelioma. While mesothelioma plaintiffs are more highly concentrated in an older age group, mesothelioma also had the highest percentage of plaintiffs in the youngest age groups between 30 and 54 years of age – with a total number of mesothelioma plaintiffs in these age brackets that was more than five times higher than the number of 30-54 year old lung cancer and non-malignant plaintiffs combined.

Figure Age-4 shows the distribution of mesothelioma plaintiffs with age available in the complaint by age group filed in the last three years. For 2017 and 2018, the highest percentage of mesothelioma plaintiffs fell in the 75-79 age group. In 2019, however, the highest percentage of plaintiffs is evenly distributed between the 70-74 and 75-79 age groups.

### Distribution of Mesothelioma Plaintiffs by Age Group and File Year

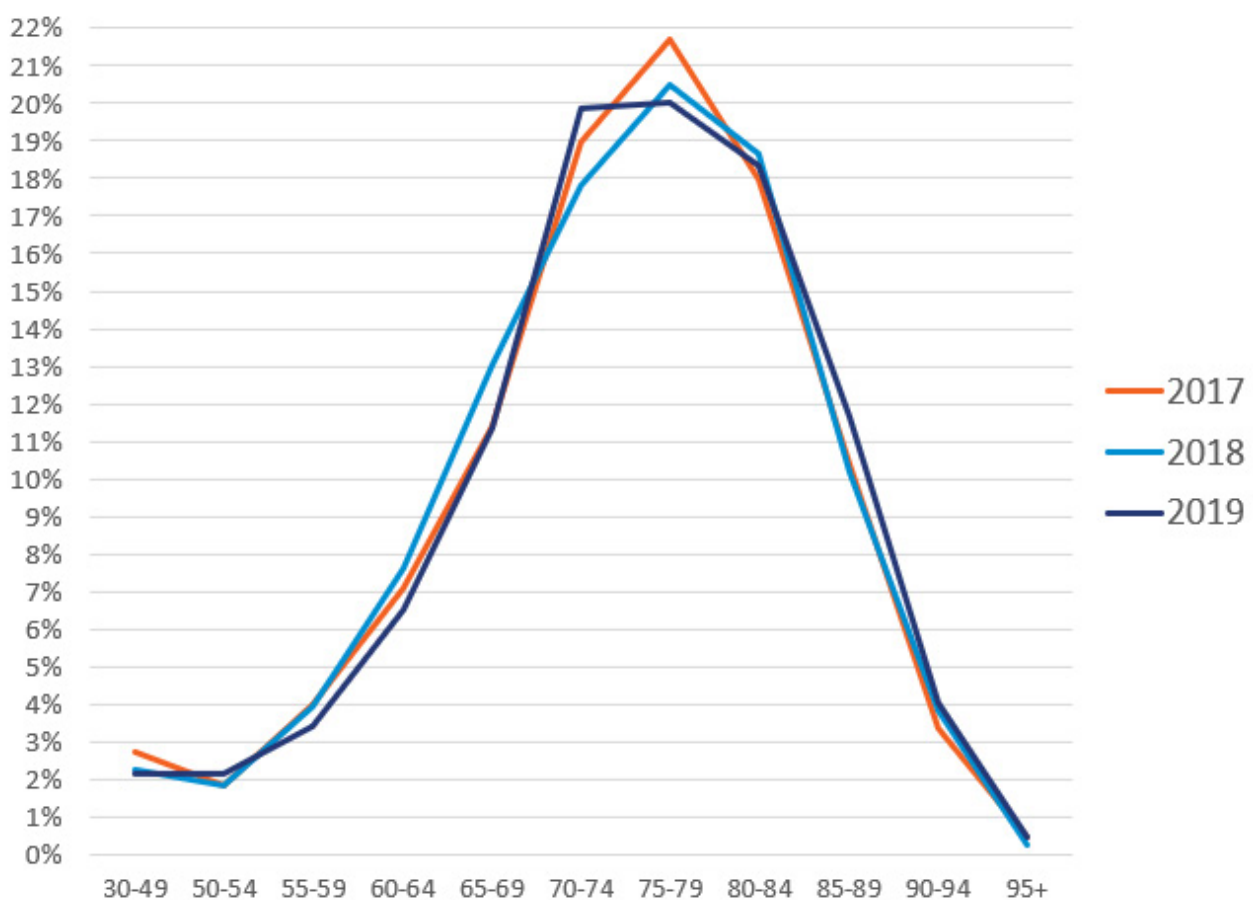


Figure Age-4

The mesothelioma age at filing date was then compared to the mesothelioma incidence rate recorded in the most recent report available from the Surveillance, Epidemiology, and End Results (“SEER”) Program of the National Institute of Health which provided mesothelioma incidence rates through 2016. To estimate the total number of mesothelioma diagnoses by age group, the 2016 SEER incidence rate by age group (per 100,000 people) was multiplied by the estimated population totals by gender and age group provided by the most recent data available from the American Community Survey housing and population estimates published by the United States Census Bureau for 2017. This calculation was then divided by 100,000 to yield the Calculated Diagnoses by age group shown in Figures Age-5.

### Calculated Mesothelioma Diagnoses by Age Group – Males

Age Range	2016 SEER Incidence	2017 Census Population	Calculated Diagnoses	% of Diagnosed Population
0-54	0.1	113,239,431	113	4.3%
55-64	1.2	19,844,042	238	9.1%
65-74	6.2	12,128,995	752	28.8%
75-84	15.1	6,212,577	938	35.9%
85+	21	2,708,412	569	21.8%
<b>Grand Total</b>		<b>154,133,456</b>	<b>2,610</b>	<b>100.0%</b>

Figure Age-5.1

### Calculated Mesothelioma Diagnoses by Age Group – Females

Age Range	2016 SEER Incidence	2017 Census Population	Calculated Diagnoses	% of Diagnosed Population
0-54	0.1	119,285,067	119	16.1%
55-64	0.6	20,903,478	125	16.9%
65-74	1.4	15,374,394	215	29.1%
75-84	2.6	7,874,900	205	27.7%
85+	2.2	3,433,111	76	10.2%
<b>Grand Total</b>		<b>166,870,951</b>	<b>740</b>	<b>100.0%</b>

Figure Age-5.2

Based on complaint data with diagnosis date provided, 85% of mesothelioma claims are filed within a year of diagnosis, meaning that the majority of the population diagnosed in 2016 would have filed in 2017. Using that metric, the percentage of the total calculated diagnoses per age group (“% of Diagnosed Population” from Figures Age-5) was then plotted with the percentage of mesothelioma complaints filed in 2017 per age group for males and females in Figures Age-6.

#### Mesothelioma Percentage of Diagnoses vs. Filings by Age Group – Males

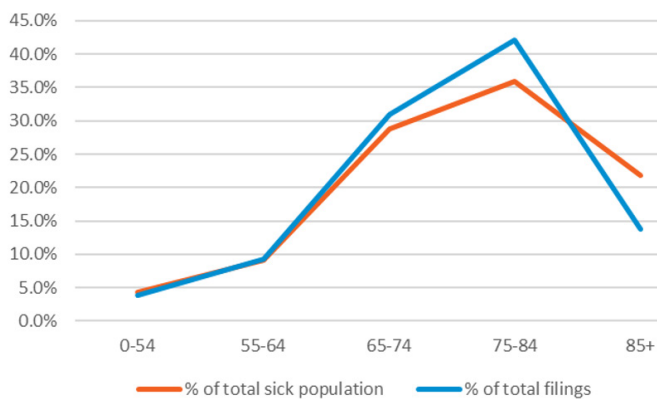


Figure Age-6.1

#### Mesothelioma Percentage of Diagnoses vs. Filings by Age Group – Females

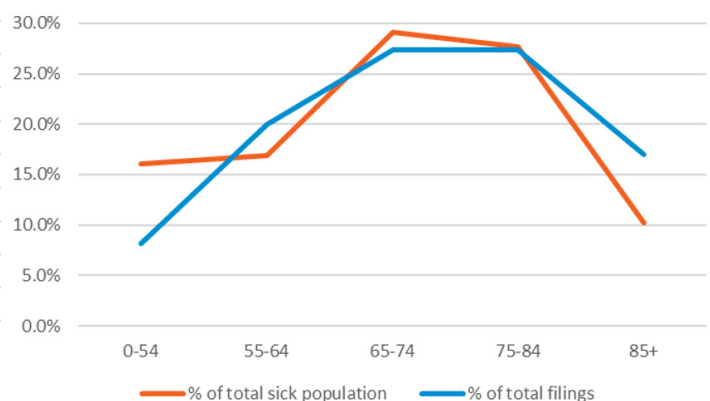


Figure Age-6.2

The data show differences in mesothelioma filing trends for males and females based on age. In the youngest age group, the percentage of men diagnosed is generally the same as the percentage of men filing, however, the percentage of women diagnosed is higher than the percentage of women filing lawsuits. For males, the percentage of mesothelioma diagnoses in the younger age ranges (0-64) is 13% which tracks closely with the percentage of mesothelioma filings for the same age groups. For females, the percentage of diagnoses under 55 years of age is 16%, much higher than the 8% percent of female filings for that age range.

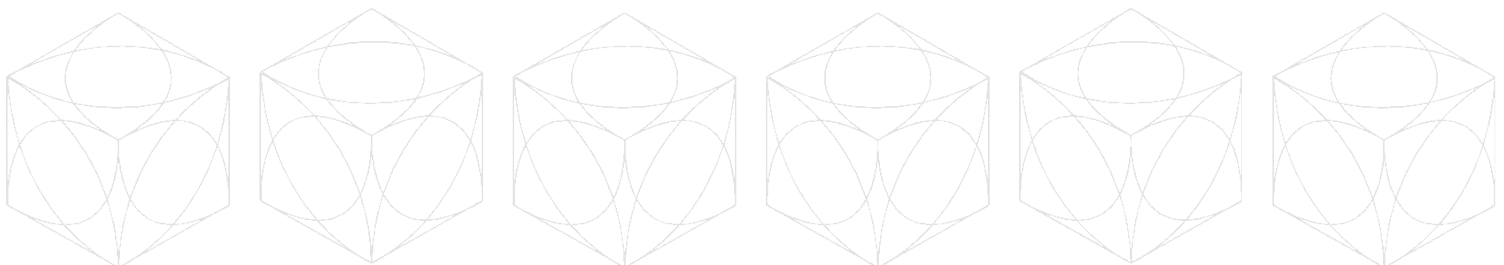
When looking at the older age groups, there is a shift – the male percentage of diagnoses for the 85+ age group is higher than the male percentage of filings in that group, but for females the reverse is true. While males aged 85 and older made up 22% of the calculated diagnoses, this age group comprised only 14% of male mesothelioma filings. In contrast, the percentage of the calculated diagnoses made up of females 85 and older was 10%, a smaller percentage than the 17% of female mesothelioma filings for this age group.

The average age of male mesothelioma plaintiffs filing in 2017 (where birthdate was provided on complaint) was 75 years old. Based on the calculated diagnoses, 42% of males were diagnosed and 44% of males filed lawsuits before age 75. For females, the average age of mesothelioma plaintiffs in 2017 was 72 years old, and 62% of calculated diagnoses and 56% of 2017 filings fell into the groups below 75 years of age. In other words, males have a higher percentage of diagnoses and filings in the age groups 75 years and older, while the majority of female diagnoses and filings occur in the age groups under 75 years.

## DATE OF FIRST EXPOSURE ANALYSIS

The data for this report was also used to look for trends in date of first exposure (DOFE) alleged in complaints. Over recent years, the majority of complaints have included DOFE information – 86% in 2017, 88% in 2018, and 90% in 2019. For this analysis, only exposure dates associated with primary, first-person exposures, whether occupational or non-occupational, were considered.

The concept of a DOFE "walk forward" is based upon the idea that the dates of first exposure for plaintiffs should get later as time progresses. Given that the average latency period from exposure to asbestos to developing an asbestos-related disease is expected to remain broadly constant, and the average age of plaintiffs has remained constant, then it should follow that plaintiffs' DOFEs would shift later with each new year of filings, theoretically, one year. Figure DOFE-1 shows the movement of the average DOFE by file year.



## Average Primary Exposure DOFE by File Year 2017-2019

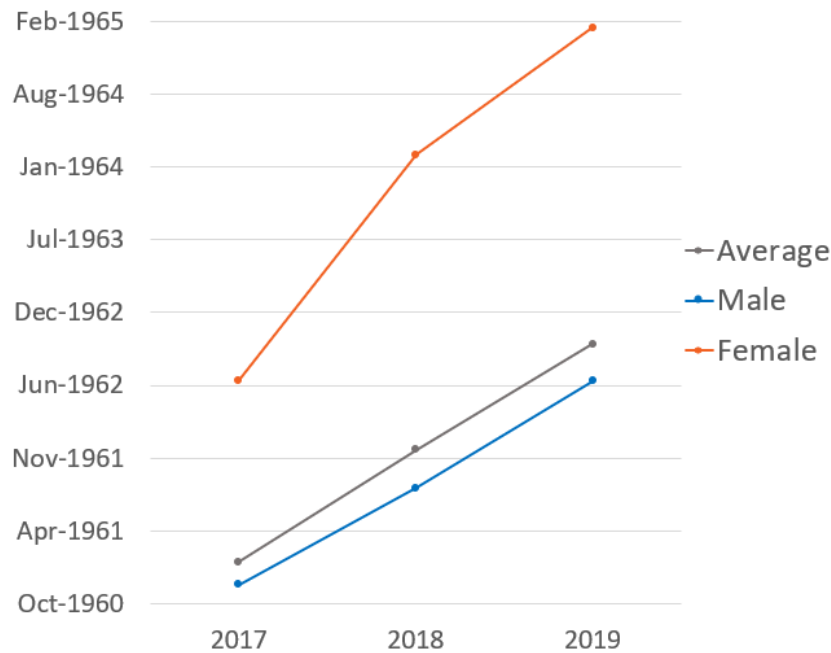


Figure DOFE-1

The data confirmed that the average DOFE for a plaintiff's primary exposure has been moving later over the past few filing years. In 2017, the average DOFE was in February of 1961. By 2019, the average DOFE had moved to September of 1962. Overall, there has been a DOFE shift of almost 10 months per year from 2017 to 2019. DOFE movement will differ based on defendant-specific attributes (e.g. when a product was first manufactured or when acquisitions occurred), however, this is the national trend for all asbestos exposures based on primary exposure alleged in the complaint.

The rate at which female DOFEs are shifting is higher than that of males over the last three years. From 2017 to 2019 female DOFEs have moved by two and a half years, while male DOFEs have shifted by one and a half years. In other words, the female average DOFE was more than a year later than that for males in 2017. In 2019, the average DOFE for females was more than two years later than the male average.

The average age of plaintiffs with a DOFE for primary exposure included in the complaint, was slightly higher than the overall population. For 2019 filings in this population, the average age for males and females filing was 75. The average DOFE for the 2019 file year was 1962 for males and 1965 for females. This means that, on average, plaintiffs were exposed starting at age 18 for males and starting at age 21 for females.

## VERDICTS SUMMARY

This year KCIC analyzed trends in asbestos verdicts. For this analysis, the verdict data included was compiled through KCIC research and from data received from Blueprint Trial Consulting. Over recent years, only about 1% of asbestos lawsuits were litigated to verdict with the rest resolved by settlement or dismissal. Of those litigated to verdict, 65% were decided in favor of the plaintiff. When looking at verdict awards, the total over the past three years is approximately \$1.7B while the average is nearly \$18M. Figure Verdicts-1 shows the percentage of verdict dollars by plaintiff firm and Figure Verdicts-2 shows the percentage of dollars by state of filing for 2017 – 2019.

## Percentage of Verdict Totals by Plaintiff Firm 2017-2019

Plaintiff Counsel	% of Verdict Dollars
Maune Raichle Hartley French & Mudd, LLC	19.5%
Simmons Hanly Conroy, LLC	11.6%
Levy Konigsberg, LLP	10.7%
Dean Omar Branham Shirley, LLP	8.4%
Weitz & Luxenberg, PC	6.0%
Simon Greenstone Panatier, PC	5.9%
Kazan, McClain, Satterley & Greenwood	5.6%
The Ferraro Law Firm	4.6%
Waters, Kraus & Paul, LLP	3.1%
Brayton Purcell	2.5%
All Other Plaintiff Counsels	22.1%
<b>Grand Total</b>	<b>100.0%</b>

Figure Verdicts-1

## Percentage of Verdict Totals by State of Filing 2017-2019

State of Filing	% of Verdict Dollars
New York	33.5%
California	36.9%
New Jersey	6.6%
Washington	4.2%
All Other States	18.8%
<b>Grand Total</b>	<b>100.0%</b>

Figure Verdicts-2

Some of these plaintiff firms are top filers, while others, such as Dean Omar Branham Shirley, had less than 1% of filings but more than 8% of verdict dollars in 2017-2019, meaning they held several high value verdicts despite their low filing count. New York and California are the most dangerous jurisdictions. Illinois, home of Madison County, makes up only 0.2% of the total plaintiff verdict dollars.

## 2019 ASBESTOS REPORT CONCLUSION

Not much has changed in asbestos litigation over the past few years. Overall filing counts are stable with a high concentration of complaints being filed by the top plaintiff firms within the top jurisdictions against the same defendants. As this litigation continues into another decade, some jurisdictions and legislatures are taking measures to address issues commonly seen. KCIC will continue to monitor developments. Please subscribe to the KCIC blog, [Risky Business](#), to stay up to date with KCIC's latest analyses.





## ABOUT KCIC

KCIC is a technology and consulting firm that helps companies manage their product liabilities by providing a full range of financial, strategic and operational services. Bringing decades of industry knowledge and technical expertise, KCIC leads the industry not only in claims administration, but also in corporate policyholder insurance policy analysis and archaeology, liability forecasting, insurer billing and allocation, credit analysis, expert reporting, and a variety of other custom solutions.

KCIC's technology and service are at the forefront of the industry. Its claims administration system, the Ligado Platform, brings everyone together on one platform. All information can be efficiently and accurately shared through its secure online system.

KCIC does its best work when partnering with clients to combine leading-edge technology and consulting expertise to create innovative solutions. The combination of experience and technical capability provides clients a full understanding of their liability data and insurance coverage, and allows them to make better, more strategic decisions for their business.

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