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Case No. 2025-0404-JTL

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

DBMP LLC; JOHNSON & JOHNSON; PECOS RIVER TALC, LLC; RED RIVER TALC, LLC; J-M MANUFACTURING CO., INC.; THE DOW CHEMICAL COMPANY; ROHM AND HAAS COMPANY; and UNION CARBIDE CORPORATION,

Plaintiffs,

v.

C.A. No. 2025-0404-JTL

DELAWARE CLAIMS PROCESSING FACILITY, LLC; ARMSTRONG WORLD INDUSTRIES, INC. ASBESTOS PERSONAL INJURY SETTLEMENT TRUST; THE BABCOCK & WILCOX COMPANY ASBESTOS PI TRUST; CELOTEX ASBESTOS SETTLEMENT TRUST; FEDERAL-MOGUL ASBESTOS PERSONAL INJURY TRUST; THE FLINTKOTE ASBESTOS TRUST; OWENS CORNING FIBREBOARD ASBESTOS PERSONAL INJURY TRUST; OWENS-ILLINOIS ASBESTOS PERSONAL INJURY TRUST; PITTSBURGH CORNING CORPORATION ASBESTOS PERSONAL INJURY SETTLEMENT TRUST; UNITED STATES GYPSUM ASBESTOS PERSONAL INJURY SETTLEMENT TRUST; and WRG ASBESTOS PI TRUST,

Defendants.

**ORDER GRANTING DISMISSAL WITHOUT PREJUDICE**

1. The plaintiffs regularly face asbestos litigation. I have therefore called them the "Repeat Litigants."

2. When defending against asbestos litigation, the Repeat Litigants invariably seek to learn whether the claimant suffered other asbestos exposures. The

existence of other exposures can reduce the named defendants' liability, facilitate a more favorable settlement, or open avenues for contribution or indemnification.

3. Many asbestos manufacturers filed for bankruptcy and, as part of their plans of reorganization, created settlement trusts to handle existing and future claims. Parties with claims against those debtors cannot sue in court; they must apply for compensation from the settlement trusts. After handling claims for decades, the settlement trusts have amassed information about asbestos claims. When facing asbestos claims, the Repeat Litigants regularly subpoena the settlement trusts for information about the claimant's other potential exposures.

4. The defendants are ten settlement trusts, plus an entity to which many settlement trusts have outsourced the claims handling function. I have therefore called them the "Claim Processors." In January 2025, they gave notice to their past claimants that they intended to implement new document retention policies starting on April 15. The policies generally contemplate that on a rolling basis, data relating to resolved claims will be destroyed after one year. Implementing the policies will cause the destruction of the vast bulk of the existing claims data. Going forward, the policies will curtail the available claims data.

5. On April 14, 2025, the Repeat Litigants filed this lawsuit seeking a declaratory judgment that the Claim Processors have a duty to preserve the claims data (the "Preservation Claim"). They also sought injunctive relief barring the Claim Processors from implementing the policies.

6. The Claim Processors moved to dismiss the complaint. On the lone still-pertinent issue, they argued for dismissal under Rule 12(b)(6) on the theory that the Preservation Claim failed to state a claim on which relief can be granted.

7. Acting *sua sponte*, I asked the parties to address whether the complaint stated a claim for a bill of discovery.

a. I acted *sua sponte* because both I and the parties regarded the Preservation Claim as novel. It presented not just an issue of first impression, but a claim of first impression in Delaware. Outside of Delaware, jurisdictions are split on its viability. *Compare* Dkt. 34 at 47–51 (Repeat Litigants' collection of cases recognizing Preservation Claim), *with* Dkt. 32 at 40–43 (Claim Processors' collection of cases rejecting Preservation Claim). One of many key questions would be whether a duty to preserve documents could run in favor of third parties like the Repeat Litigants, such that the Repeat Litigants could invoke that duty as a basis for relief. As on the claim's existence, other jurisdictions have split on that question. *Compare* Dkt. 34 at 41, 47–49 (Repeat Litigants' collection of cases suggesting yes), *with* Dkt. 32 at 30–31, 40 (Claim Processors' collection of cases suggesting no).

b. Addressing the Preservation Claim thus meant crafting law from scratch. By contrast, there was a lot of law on the bill of discovery. Much of it was old, but it existed, and it seemed to fit the case. Between an old but seemingly established claim and a novel and undefined claim, I thought it would be more straightforward to analyze the former rather than blaze a trail on the latter.

c. I believed I could act *sua sponte* to raise the bill-of-discovery claim because Delaware law has rejected the theory of the pleadings, i.e., the requirement that a plaintiff must plead a particular legal theory. *See DBMP LLC v. Del. Claims Processing Facility, LLC* (*DBMP Chancery*), 349 A.3d 663, 698–700 (Del. Ch. 2025). A complaint does not have to plead a specific legal theory. A complaint has to plead a "short and plain statement of the claim showing that the pleader is entitled to relief," along with allegations sufficient to make it reasonably conceivable that the plaintiff could recover. Ct. Ch. R. 8(a)(2); *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs. LLC*, 27 A.3d 531, 535–36 (Del. 2011). The same rule applies in federal court: "[Federal] Rule 8(a)(2) does not require a claimant to set forth any legal theory justifying the relief sought on the facts alleged, or to set out any legal arguments in the pleadings." 2 *Moore's Federal Practice* § 8.04, Lexis (database updated 2026).

d. Nor do the parties' legal theories constrain the court's analysis of whether a claim has been pled. "When an issue or claim is properly before the court, the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law." *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99 (1991); *see Cardinal Chem. Co. v. Morton Int'l, Inc.*, 508 U.S. 83, 88 & n.9 (1993) (addressing legal question even where parties agreed on answer). As a leading civil procedure treatise explains, "the federal rules—and the decisions construing them—evince a belief that when a party has a valid claim, he should recover on it regardless of his counsel's failure to perceive the true basis of the claim at the pleading stage." 5 *Wright*

*& Miller's Federal Practice & Procedure* § 1219 (4th ed.), Westlaw (database updated Apr. 2026). Put simply, "[t]he court is not bound to analyze the case solely through the counts presented in the pleadings." *Bamford v. Penfold, L.P.*, 2022 WL 2278867, at *25 (Del. Ch. June 24, 2022), *aff'd sub nom. Manheim v. Ban*, 319 A.3d 268 (Del. 2024) (TABLE).

e. Seeking to avoid any due process objection, I asked *sua sponte* for supplemental briefing on the bill-of-discovery claim. That too is permissible. *See U.S. Nat'l Bank of Or. v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 445–47 (1993) (holding that the court of appeals properly ordered supplemental briefing on legal issue that no party raised or took a position on; explaining that a "court may consider an issue 'antecedent to . . . and ultimately dispositive of' the dispute before it, even an issue the parties fail to identify and brief" (quoting *Arcadia v. Ohio Power Co.*, 498 U.S. 73, 77 (1990))).

8. On October 24, 2025, I denied the Rule 12(b)(6) motion. I explained that through a bill of discovery, a "longstanding—although now somewhat forgotten—claim in equity," a court of equity can assist a petitioner in obtaining evidence for use in another pending or anticipated proceeding. *DBMP Chancery*, 349 A.3d at 688. I held that "[t]o plead a claim for a bill of discovery, a petitioner must demonstrate an interest in a pending or anticipated case [the first element], articulate how the evidence sought is material to the case [the second element], and show that the evidence cannot be obtained effectively, conveniently, or completely through other means, such as through discovery in [the] principal case [the third element]." *Id.*

a. I did not hold that the plaintiff asserting a bill of discovery had a burden to plead a specific litigation in which the discovery would be used. First, requiring a plaintiff to identify and plead a specific litigation fits poorly with the bill of discovery's use to obtain and preserve evidence when no litigation has yet been filed. Second, requiring a plaintiff to identify and plead a specific litigation fits poorly with the Rule 8 standard of notice pleading. *See Doe v. Cahill*, 884 A.2d 451, 458 (Del. 2005) ("[T]he threshold for the showing a plaintiff must make to survive a motion to dismiss is low."). Third, from a notice-pleading standpoint, the Repeat Litigants alluded to lots of existing and ongoing litigation. In fact, the entire reason for their lawsuit is that they constantly face new claims from asbestos litigants where the information the Claim Processors possess is relevant. The Claim Processors know this; they regularly receive subpoenas once a claimant has filed a lawsuit.

b. Based on the complaint's allegations, I held that the complaint pled facts sufficient to support each element.

c. I did not reach the Preservation Claim. A complaint survives a Rule 12(b)(6) motion if it is reasonably conceivable that it states "*a* claim upon which relief can be granted." Ct. Ch. R. 12(b)(6) (emphasis added). A court need not evaluate every possible claim on which relief could be granted. Equally important, "[a] party does not have a right to a pleading-stage ruling" on every issue. *Spencer v. Malik*, 2021 WL 719862, at *5 (Del. Ch. Feb. 23, 2021); *accord In re Pattern Energy Gp. Inc. S'holders Litig.*, 2021 WL 1812674, at *46 & n.612 (Del. Ch. May 6, 2021). "The Court may defer until trial ruling on any defense listed in Rule 12(b) . . . ." Ct. Ch. R. 12(i).

It seemed best not to offer a pleading-stage ruling on the Preservation Claim when addressing that claim might not be necessary to decide the case.

9. The Claim Processors sought interlocutory appeal. Dkt. 70. I recommended that the interlocutory appeal be accepted, explaining that "[i]f the justices believe that the Court of Chancery should not be in the business of potentially issuing relief to preserve documents for use in other litigation—even in this seemingly unique setting and whether through a bill of discovery or otherwise—then it would be ideal to know that now." Dkt. 73.

10. The Delaware Supreme Court accepted the interlocutory appeal. No. 469, 2025, Dkt. 12. On July 31, 2026, the Delaware Supreme Court reversed *DBMP Chancery*, holding that the complaint failed to plead all of what the justices construed as the elements of a bill-of-discovery claim. *Del. Claims Processing Facility, LLC v. DBMP LLC* (*DBMP Supreme*), 2026 WL 2207474 (Del. July 31, 2026) (*en banc*).

a. To determine the elements for a claim for a bill of discovery, the Delaware Supreme Court turned to "two venerable treatises on equity and a handful of cases from other jurisdictions." *Id.* at *5. Based on those sources, the justices held that a claim for a bill of discovery has three elements: "(i) that the requesting party has an interest in the discovery, (ii) that the discovery sought is material to a specific pending or anticipated claim, and (iii) that a court of law cannot compel the discovery—that is, there is no adequate remedy at law." *Id.* at *8. That enumeration of the elements did "not differ radically from the Court of Chancery's formulation of the claim's elements," but "[o]ne variation is our qualification that pending and

anticipated claims must be specifically identified in the complaint or petition." *Id.* at *8 n.55.

b. Based on that version of the claim's elements, the Delaware Supreme Court held that the Repeat Litigants failed to adequately plead the second element. There, the Delaware Supreme Court "part[ed] with the Court of Chancery's conclusion that the [Repeat Litigants] adequately pleaded the existence of a pending or anticipated claim." *Id.* at *8. Applying their version of the requirement, the justices held that the complaint "does not identify a specific pending or anticipated claim." *Id.* They deemed inadequate the complaint's allegations regarding "tens of thousands of known asbestos-related personal injury claims and other legal proceedings across the country." *Id.*

11. The Repeat Litigants had asked the Delaware Supreme Court to affirm on the alternative ground that they had successfully pled the Preservation Claim. The Delaware Supreme Court noted that "[t]he [trial] court did not explicitly address the adequacy of the pleadings as to the [Repeat Litigants]' request for declaratory relief," but stated remand for consideration would be a "fruitless exercise" because the trial court "implicit[ly] reject[ed]" the claim. *Id.* at *4, *9–10. According to the justices, the "underlying logic of the Court of Chancery's decision denying the [Claim Processors]' motion to dismiss and its [interlocutory] certification . . . is that the issuance of an equitable bill of discovery was the only means by which the court could grant the relief sought." *Id.* at *9.

a. To support that conclusion, the Delaware Supreme Court pointed to my observation when analyzing the existence of subject matter jurisdiction that "'[t]his is a case where the court likely will have to use its equitable powers to craft a bespoke remedy, and a simple declaratory judgment cannot do the job.'" *Id.* at *9 n.61 (quoting *DBMP Chancery*, 349 A.3d at 682).

b. The justices also inferred that I "found the claim so unconvincing that [I] *sua sponte* raised a long-dormant equitable discovery tool." *Id.* at *10.

c. The justices last cited my ruling recommending interlocutory certification, where I commented that I would not relish crafting a remedy, then discovering on appeal that the justices disagree with the trial court "intervening in the first place." Dkt. 73. To the justices, "[t]his statement signals to us that the Court of Chancery would view as case dispositive a reversal of its decision that the [Repeat Litigants] adequately pleaded an equitable-bill-of-discovery claim." *DBMP Supreme*, 2026 WL 2207474, at *9.

12. The Delaware Supreme Court "reversed and remanded with direction to enter judgment for the defendants dismissing the action." *Id.* at *10. The high court did not specify whether the trial court must dismiss the action with or without prejudice.

13. On August 17, 2026, the Repeat Litigants moved for reargument. They argued that the Delaware Supreme Court should grant them leave to amend their complaint "to satisfy the newly articulated test for an equitable bill of discovery." No. 469, 2025, Dkt. 43 at 6. They also argued that their request for declaratory relief

should be adjudicated, and if the Delaware Supreme Court "does not wish to do so in the first instance, it should remand for Chancery to do so." *Id.* at 5. The Delaware Supreme Court denied the motion without opinion, observing without elaboration that "it appears to the Court that the motion is without merit." No. 469, 2025, Dkt. 45 (*en banc*).

14. The Delaware Supreme Court issued its mandate soon after. No. 469, 2025, Dkt. 46. The mandate incorporated the merits ruling and the denial of reargument. The mandate to the clerk of court below was "[c]ase closed." *Id.*

15. On August 20, 2026, the Repeat Litigants moved for dismissal without prejudice so they can pursue the Preservation Claim and the claim for a bill of discovery in future proceedings. Dkt. 79.

16. "It is well-settled that when an appellate court remands for further proceedings, the trial court must proceed in accordance with the appellate court's mandate as well as the law of the case established on appeal." *Cede & Co. v. Technicolor, Inc.*, 884 A.2d 26, 38 (Del. 2005); *accord Ins. Corp. of Am. v. Barker*, 628 A.2d 38, 40 (Del. 1993). "The trial court must implement both the letter and the spirit of the mandate . . . taking into account the appellate court's opinion . . . and the circumstances it embraces." *Technicolor*, 884 A.2d at 38 (alterations in original) (internal quotation marks omitted). "Although the trial court on remand is not constrained by the mandate as to issues not addressed on appeal, the trial court is required to comply with the appellate court's determinations as to all issues expressly or implicitly disposed of in its decision." *Id.*; *accord Barker*, 628 A.2d at 40.

17. "The law of the case doctrine embraces the same principles arising from the mandate rule." *Technicolor*, 884 A.2d at 39–40; *accord Barker*, 628 A.2d at 40. Under the doctrine, "findings of fact and conclusions of law by an appellate court are generally binding in all subsequent proceedings in the same case in the trial court or in a later appeal." *Barker*, 628 A.2d at 40 (internal quotation marks omitted); *accord Technicolor*, 884 A.2d at 39.

18. "Under the principles governing the law of the case, as well as the mandate rule, a trial court is free to make any order or direction in further progress of the case, not inconsistent with the decision of the appellate court, as to any question not settled by the decision." *Barker*, 628 A.2d at 41 (internal quotation marks omitted).

19. In reversing and remanding "with direction to enter judgment for the defendants dismissing the action," the Delaware Supreme Court did not direct the trial court to dismiss the action with or without prejudice. *DBMP Supreme*, 2026 WL 2207474, at *10. In terms of the high court's mandate, nothing in its letter or spirit specifies the form of dismissal. The Claim Processors' invocation of the law of the case doctrine falls flat for the same reason: There has been no ruling on that issue.

20. Whether the dismissal should be with or without prejudice raises a material issue. A dismissal with prejudice can bar a later suit. A dismissal without prejudice means that an "otherwise final judgment does not operate as a *res judicata* bar to preclude a subsequent lawsuit on the same cause of action." *Braddock v. Zimmerman*, 906 A.2d 776, 784 (Del. 2006).

21. When a plaintiff has opposed a motion to dismiss without amending its complaint, dismissal will be with prejudice "unless the Court for good cause shown dismisses the complaint without prejudice." Ct. Ch. R. 15(a)(5)(B). The good-cause standard focuses on whether "a with-prejudice dismissal would be unjust." *Sciabacucchi v. Malone*, 2021 WL 3662394, at *4 (Del. Ch. Aug. 18, 2021). Courts also consider the prejudice that a non-preclusive dismissal might cause the defendant. *See Franklin Balance Sheet Inv. Fund v. Crowley*, 2006 WL 3095952, at *5–6 (Del. Ch. Oct. 19, 2006).

22. The Repeat Litigants have shown good cause for dismissal without prejudice.

a. As a threshold matter, the Claim Processors argue that the Repeat Litigants waived any argument for a without-prejudice dismissal. Not so. "[A]t the time a claim is dismissed . . . the plaintiff may request that such a dismissal be without prejudice." *Sciabacucchi*, 2021 WL 3662394, at *4. No court has dismissed the case yet. The Delaware Supreme Court instructed the trial court to dismiss the case. Facing dismissal, the Repeat Litigants moved for dismissal without prejudice. They made their motion at an appropriate time. There was no waiver.

b. On the facts presented, a dismissal without prejudice is just because "Delaware law has a strong preference for deciding cases on the merits, rather than on procedural grounds." *Franklin Balance Sheet Inv. Fund*, 2006 WL 3095952, at *5; *accord Dolan v. Williams*, 707 A.2d 34, 36 (Del. 1998) ("In Delaware, public policy favors permitting a litigant a right to a day in court." (citing Del. Const.

art. I, § 9)); *Dishmon v. Fucci*, 32 A.3d 338, 346 (Del. 2011) ("Delaware has a strong public policy that favors permitting a litigant a right to a day in court."). *See also Keener v. Isken*, 58 A.3d 407, 408 (Del. 2013) (reversing trial court for having "failed to give adequate weight to the policy in favor of deciding cases on the merits" when it refused to reopen summary judgment entered against appellants after they missed response deadline).

c. Conversely, a with-prejudice dismissal would be unjust. Dismissal with prejudice may be unjust when a motion to dismiss involves "an issue that has yet to be resolved . . . in a written Delaware decision." *Otto Candies, LLC v. KPMG, LLP*, 2019 WL 1856766, at *4 (Del. Ch. Apr. 25, 2019). The rationale for a with-prejudice dismissal assumes that a plaintiff facing a motion to dismiss has "enough information from which to decide whether to stand on the complaint as alleged or, instead, to re-plead." *Stern v. LF Cap. P'rs, LLC*, 820 A.2d 1143, 1146 (Del. Ch. 2003). When motion-to-dismiss briefing takes the parties into "uncharted waters," that policy can "yield to the Court's broader policy of liberal amendments." *Otto Candies*, 2019 WL 1856766, at *4.

d. When the Delaware Supreme Court "announces a new rule of law or clarifies pleading standards that apply to the plaintiff's cause of action," it can make sense to give the plaintiff an opportunity to try to state a claim under the new standard. *See White v. Panic*, 783 A.2d 543, 555 (Del. 2001). Put differently, when the plaintiff "did not have the benefit of [the Delaware Supreme Court's] clarifications at the time of the original complaint," a court may "grant[] the plaintiff an opportunity

to amend the complaint in accordance with our opinion." *Id.* at 556 (citing decision permitting plaintiff to replead where the Delaware Supreme Court "clarified the law" in a manner it "had not explicitly recognized . . . in our earlier cases").

e. Here, the Delaware Supreme Court sought to "discern" the elements of a bill-of-discovery claim. *DBMP Supreme*, 2026 WL 2207474, at *5, *8. The justices held that "pending and anticipated claims must be specifically identified in the complaint or petition." *Id.* at *8 n.55. Before *DBMP Supreme*, Delaware law did not establish that particularized pleading requirement. Court rules typically identify when particularized pleading is required to put parties on notice. *See* Ct. Ch. R. 9; *id.* 23.1. No rule put the Repeat Litigants on notice. This case seemed to be one where the default rule of notice pleading under Rule 8 would apply. Now that the Repeat Litigants know they have to plead under a heightened standard, it would be unjust if they never had the opportunity to meet it.

f. Depriving the Repeat Litigants of that opportunity would be significant because the Repeat Litigants said that "they could easily identify thousands of relevant, pending cases." Mot. ¶ 12 (citing Supr. Ct. Oral Arg. 25:00–25:45 ("We have pleaded that we are regularly sued in . . . tens of thousands of these cases, and that we will have every reason to expect we'll continue to be sued in the future. . . . If for some reason it matters when we get into discovery for the remedy, we can happily identify all those cases . . . ."")). Had the Repeat Litigants known that particularized pleading would be required, they could have specifically identified the pending cases.

23. The Claim Processors argue that the Repeat Litigants cannot show good cause because *DBMP Supreme* did not announce a new pleading requirement. They argue that existing law already reflected the high court's holding. To the contrary, authorities across jurisdictions differed, and legal authorities in the First State had not imposed that pleading standard. The justices acknowledged a "dearth of caselaw" and turned to two treatises and cases from other jurisdictions as "helpful guide[s]" as they "attempt[ed] to discern the conditions" for a bill-of-discovery claim. *DBMP Supreme*, 2026 WL 2207474, at *5. Using those sources, the Delaware Supreme Court established a pleading requirement that did not previously exist under Delaware law. It is also a pleading requirement that operates as an exception to the default rule of notice pleading. There was no reason for the Repeat Litigants to anticipate it. Not only that, but the Repeat Litigants sought to proceed under the Preservation Claim, where notice pleading did apply. I was the one who thought it would be easier to analyze the complaint under the extant albeit older law governing a bill of discovery rather than tailoring a cause of action from whole cloth. The Repeat Litigants would thus face trebled injustice if held to a heightened pleading standard that did not previously exist, for a claim they did not strive to plead, where heightened pleading runs contrary to Delaware's general rule of notice pleading.

24. So far, the analysis has considered the bill of discovery. For purposes of the Preservation Claim, it would be all the more unjust to dismiss with prejudice. Plaintiffs "are entitled to a final determination of their claims." *State Dep't of Servs.*

*for Child., Youth & Their Fams. v. Cedars Acad.*, 1991 WL 260775, at *2 (Del. Ch. Dec. 5, 1991). No court has addressed the Preservation Claim.

a. The Claim Processors maintain that the Delaware Supreme Court rejected the Preservation Claim, but that is inaccurate. The high court interpreted my decision as "implicit[ly] reject[ing]" the claim, then relied on that interpretation to conclude that remand for consideration of the claim would be a "fruitless exercise." *DBMP Supreme*, 2026 WL 2207474, at *9–10.

b. I did not reject the Preservation Claim. I simply did not reach it. If anything, I suggested when addressing the Claim Processors' argument that the Repeat Litigants lacked standing that it was "reasonably conceivable [the Claim Processors] have an ongoing obligation to retain the Claims Data because they must reasonably anticipate litigation in which the Claims Data will be sought." *DBMP Chancery*, 349 A.3d at 685–86.

c. I did not implicitly reject the Preservation Claim by commenting when addressing the Claim Processors' motion to dismiss for lack of subject matter jurisdiction that "'[t]his is a case where the court likely will have to use its equitable powers to craft a bespoke remedy, and a simple declaratory judgment cannot do the job.'" *DBMP Supreme*, 2026 WL 2207474, at *9 n.61 (quoting *DBMP Chancery*, 349 A.3d at 682). The Claim Processors argued that this court lacks jurisdiction over a declaratory judgment claim without some separate basis for equitable jurisdiction. I agreed, explaining that "[w]hen evaluating whether equitable jurisdiction exists in a declaratory judgment action, the question remains whether there is any underlying

basis for equity jurisdiction measured by traditional standards." *DBMP Chancery*, 349 A.3d at 679 (internal quotation marks omitted). Under that standard, jurisdiction arises "if the petitioner can demonstrate a need for equitable relief to implement the remedy." *Id.* at 680 (internal quotation marks omitted). I held that the Repeat Litigants' requests for preliminary and permanent injunctions supported subject matter jurisdiction. The comment about those forms of relief was part of the subject-matter-jurisdiction analysis, not a comment on the strength of the Preservation Claim.

d. In making that comment, I was addressing the Claim Processors' contention that a declaratory judgment, standing alone, would provide the Repeat Litigants with an adequate remedy at law. If so, then equitable jurisdiction would not exist. In response, I explained that a declaratory judgment would have "issue- and claim-preclusive effect," but it would not be self-executing, so a "permanent injunction against implementing the Data Policies would be a natural remedy to implement the declaratory judgment." *Id.* When I stated that a "declaratory judgment cannot do the job," I was commenting on whether a declaratory judgment alone could give the Repeat Litigants an adequate remedy. That statement about injunctive relief addressed why this court had subject matter jurisdiction over a declaratory judgment claim. It was not an assessment of the merits of the Preservation Claim.

e. Nor did I find the Preservation Claim "so unconvincing that [I] *sua sponte* raised a long-dormant equitable discovery tool." *DBMP Supreme*, 2026 WL 2207474, at *10. To the contrary, I thought the Preservation Claim could have merit

but that it was novel and would be hard to address. Because it raised issues of first impression, it meant crafting law from scratch. By contrast, there was a lot of law on the bill of discovery. Thinking that a path to relief existed through the bill of discovery, I took the more conservative course.

f. When recommending the interlocutory appeal, I also did not intend to suggest that the Preservation Claim had no possible merit, nor do I think that is the logical implication of my comment on the application. Supreme Court Rule 42 mandates that the trial court provide "its own assessment of the most efficient and just schedule to resolve the case," including "whether and why the likely benefits of interlocutory review outweigh the probable costs." Supr. Ct. R. 42(b). To provide my assessment, I explained that I would not relish proceeding through trial on the bill-of-discovery claim only to find out on appeal that the justices disagreed with the trial court "intervening in the first place[,] . . . whether through a bill of discovery *or otherwise*." Dkt. 73 (emphasis added).

g. When making this statement, I was focused on the sunk costs of a post-trial adjudication in the event of a post-judgment reversal on a legal issue. By using the disjunctive "or," I was anticipating two possibilities. One was that, after judgment, the Delaware Supreme Court might say that there was no basis for relief on a bill of discovery, but that the Preservation Claim might be viable. In that scenario, there would be sunk costs from the post-trial adjudication plus the need to go back to start to analyze the more difficult Preservation Claim. *Cf. Bandera Master Fund LP v. Boardwalk Pipeline P'rs LP*, 2025 WL 3537343 (Del. Dec. 10, 2025)

(remanding for consideration of claims that trial court did not reach after reversal of trial court's post-trial grant of judgment on an issue of law). It seemed to me that an interlocutory appeal would be prudent to avoid that scenario.

h. But I was also concerned about the policy implications of the case. It seemed to me that the Delaware Supreme Court might not want the Delaware Court of Chancery to be in the business of helping parties preserve discovery for use in litigation in other courts and other jurisdictions. It therefore seemed possible that the justices could say after judgment that there was no basis for any type of relief under any theory ("or otherwise"). In that latter scenario, the one piece of good news would be that I would not have a trial-level do-over. But everything that happened at the trial-court level would still have been in vain. I have presided over cases through final judgment only to learn on appeal that a claim suffered from a fatal legal flaw. To head off the possible investment of significant resources by the parties and the trial court, I hoped to learn about any case-dispositive legal flaws sooner rather than later.

i. Importantly, my comment about the Delaware Supreme Court potentially disagreeing about an eventual grant of relief on "a bill of discovery or otherwise" was part of the analysis of the costs and benefits of interlocutory appeal that Supreme Court Rule 42 mandates. It was not an assessment of the merits of the Preservation Claim, any more so than it was an assessment of the merits of the bill of discovery. That section of the Rule 42 analysis addresses *when* the trial court thinks the appeal should happen, not how the trial court thinks it will come out.

j. Last, the Claim Processors argue that the Delaware Supreme Court rejected the Preservation Claim. The Delaware Supreme Court did not reach that claim, relying instead on what the justices interpreted as my "implicit rejection." The justices questioned the possibility of a "broad preservation order," but a declaratory judgment and a broad preservation order are different concepts. *DBMP Supreme*, 2026 WL 2207474, at *10. The Repeat Litigants might secure narrow or litigation-specific preservation orders. They might secure injunctive relief. They might even only end up with a declaratory judgment that they would have to implement by other means. Questioning the availability of a broad preservation order is not the same as rejecting a claim on the merits.

25. When considering whether good cause exists for a without-prejudice dismissal, a court should also consider the potential prejudice that the defendant might suffer. Every defendant feels prejudice from being sued, so the fact that the case would go forward does not equate to prejudice for purposes of the rule. The question is whether there is something else about the case going forward that would cause prejudice. Most commonly, a dismissal without prejudice may come so late in the proceeding that the defendant might be prejudiced by having to go through everything a second time. But when a "case is procedurally in its early stages," that can "mitigat[e] any prejudice that might occur" to the defendant. *Franklin Balance Sheet Inv. Fund*, 2006 WL 3095952, at *5. This case has not progressed past the motion-to-dismiss stage, so any prejudice to the Claim Processors is mitigated. The Claim Processors do not argue to the contrary.

26. The Claim Processors offer up a slew of other arguments.

a. First, the Claim Processors contend that because the Delaware Supreme Court rejected the Repeat Litigants' request on reargument for leave to amend, the trial court must dismiss with prejudice. Nothing in the Delaware Supreme Court's denial of reargument says that. The Claim Processors' argument also conflates reargument under Supreme Court Rule 18 with dismissal under Court of Chancery Rule 15(a)(5)(B). Those procedural settings involve different courts applying different standards under different rules.

b. Second, the Claim Processors argue that when "'the pleader has stood upon his pleading,'" "'amendment will not be permitted'" after the appellate court orders dismissal. Opp. ¶ 27 (quoting *Barker*, 628 A.2d at 43). That argument confuses amendment with dismissal without prejudice.

c. Third, the Claim Processors argue that Delaware does not permit motions to address the nature of the dismissal after a Delaware Supreme Court's decision. They cite *Homeland Insurance*, where the Delaware Supreme Court reversed without remand. When the defendant asked the Superior Court to enter an order of dismissal with prejudice, the Superior Court held it had no authority to conduct further proceedings because the justices "reversed . . . but did not remand the case." *Homeland Ins. Co. of N.Y. v. Corvel Corp.*, 2019 WL 1553951, at *1 (Del. Super. Apr. 9, 2019). Here, the Delaware Supreme Court remanded.

d. Fourth, the Claim Processors argue that because the Delaware Supreme Court's instructions were silent on the nature of the dismissal, it had to be

a with-prejudice dismissal under Court of Chancery Rule 41(b). *See* Ct. Ch. R. 41(b) ("[u]nless the Court in its order for dismissal otherwise specifies, a dismissal under this paragraph and any dismissal not provided for in this Rule . . . operates as an adjudication upon the merits"). The Court of Chancery Rules do not bind the Delaware Supreme Court. This court's Rule 41 applies to a dismissal order in this court. If this court entered an order that was silent on the nature of the dismissal, then it would operate as a dismissal with prejudice. But the court has not entered a dismissal order. That is what this motion is about. *See Sciabacucchi*, 2021 WL 3662394, at *3 ("The nature of a dismissal is determined at the time the Court orders the dismissal . . . .").

e. Fifth, the Claim Processors argue that if the Delaware Supreme Court intended to permit the trial court to dismiss without prejudice, its mandate could have said so. That reasoning cuts both ways: If the Delaware Supreme Court intended for the trial court to dismiss *with* prejudice, its mandate also could have said so. *See, e.g.*, *Doe*, 884 A.2d at 468 ("we reverse . . . and remand . . . with instructions to dismiss the plaintiff's claim with prejudice" (emphasis omitted)). The mandate's silence leaves that issue to the trial court. *See Barker*, 628 A.2d at 41.

27. Good cause exists for a without-prejudice dismissal. The action is dismissed without prejudice.

*/s/ J. Travis Laster*
Vice Chancellor J. Travis Laster
November 11, 2026