



IN THE SUPREME COURT OF THE STATE OF DELAWARE

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-)
Below/Appellants,)

v.)

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-Below/Appellees.)

No. 469, 2025

Court Below: Court of Chancery of
the State of Delaware

C.A. No. 2025-0404-JTL

APPELLANTS' JOINT OPENING BRIEF

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Asbestos Personal Injury Settlement Trust;
and WRG Asbestos PI Trust*

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4 Charles Alan Wright, <i>et al.</i> , <i>Federal Practice and Procedure</i> , §1029 (3d ed. 2023)	27
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6 James Wm. Moore, <i>Moore’s Federal Practice</i> §26.03 (3d ed. 2024)	27
4 Joseph Story, LL.D., <i>Commentaries on Equity Jurisprudence</i> , §1483 (Melville M. Bigelow ed., 13th ed. 1886)	<i>passim</i>
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9 William Meade Fletcher, *Fletcher Cyclopedia of the Law of Corporations* §4250 (Carol A. Jones ed. 2016).....27

NATURE OF PROCEEDINGS

Appellants are ten asbestos settlement trusts (the “Trusts”) and the company they have engaged to process claims for asbestos-related disease. Liability for these claims was channeled to the Trusts by way of court-approved reorganization plans. The court-approved plans establish standards for payment of qualified claims, requiring claimants to submit medical, social security, and other sensitive personal information (“Claims Data”) to each Trust against which a claim is made. As a result, the Trusts have collected Claims Data from hundreds of thousands of individuals. Virtually all this Claims Data was submitted by counsel for the claimants.

Possession of so much sensitive Claims Data makes the Trusts a prime target for hackers and puts both the claimants and the Trusts at risk of harm arising out of a data breach. To mitigate this risk, both state and federal law and regulations now mandate reduced retention of sensitive personal information (“Data Protection Laws”). The Trusts have accordingly adopted data retention policies (the “Policies”) which comply with these Data Protection Laws.

Appellees, manufacturers of asbestos-containing products, do not want the Trusts to implement the Policies. Like the Trusts, the manufacturers are subject to claims for asbestos-related harm, sometimes by an individual who also submitted a claim to one or more of the Trusts. When this occurs, Appellees may choose to

obtain the individual's Claims Data from the Trusts, rather than seeking it directly from the individual by way of routine inter-party discovery. Appellees contend that the Trusts' Policies could deprive them of this alternative approach to discovery in future third-party litigation. Their Complaint seeks a mandatory injunction requiring the Trusts to permanently retain all Claims Data.

The Trusts filed a Motion to Dismiss the Complaint (the "MTD") arguing, among other points, that Appellees lack standing and that the Trusts have no legal duty to preserve Claims Data for discovery by Appellees in possible future third-party litigation.

On October 24, 2025, the Court of Chancery issued its Opinion denying the MTD (the "Opinion"). Although the Court recognized that Appellees failed to identify a cognizable legal claim for relief, the Court held that Appellees had pled facts that could support a claim for an equitable bill of discovery (an "Equitable Bill") and denied the MTD, notwithstanding the fact that Appellees themselves did not seek an Equitable Bill, and the device was never even discussed in briefing by any party, or during argument, and instead was inserted into the case by the Court, *sua sponte*. Indeed, an Equitable Bill has never been applied in this way and has not been addressed at all in Delaware since 1956 (where it was denied).

On November 3, 2025, the Trusts sought leave to take an interlocutory appeal of the denial of the MTD. The Court of Chancery granted the application on November 14, 2025, and this Court accepted the appeal on December 23, 2025.

SUMMARY OF ARGUMENT

1. The trial Court erred in finding that Appellees had standing to bring a claim for a preservation order that: (a) prevents the Trusts from implementing their Policies; and (b) forces the Trusts to maintain the Claims Data, in perpetuity, for potential future use by Appellees in defense of claims that have not been filed or even identified. Appellees do not satisfy Article III standing requirements because: (1) they do not have a legally-protected interest in the Claims Data, or in the implementation of the Policies arising out of their alleged status as “future indirect beneficiaries”; (2) any alleged “injury” is hypothetical and conjectural rather than concrete, actual or imminent; (3) the implementation of the Policies will not “cause” any injury to the Appellees; and (4) the preservation order will not redress an “injury” as no injury exists. Relatedly, Appellees lack equitable standing.

2. The use of an Equitable Bill has not been discussed in any published opinion in Delaware since 1956 (when the request was denied). The trial Court *sua sponte* introduced the concept of an Equitable Bill into this case after briefing and argument on the MTD. Ultimately, the Court issued its Opinion, and held that an Equitable Bill could be used to implement a broad, permanent preservation order against a Delaware entity not otherwise in litigation in this state, premised upon phantom future litigation. This finding is contrary to Delaware law. Even if this Court concludes that Equitable Bills may still be available to Delaware litigants, the

Complaint here fails to establish the right to an Equitable Bill because Appellees have not pled: (1) an interest in a pending or anticipated case; (2) that the Claims Data they seek to preserve is material to their specific “cause of action” (which they also fail to identify); and (3) that the evidence they ask the Trusts to permanently preserve for their use cannot be obtained “effectively, conveniently and completely” through claimants and their counsel.

The trial Court’s novel use of the Equitable Bill to support permanent preservation orders against third-party entities domiciled in Delaware is a dangerous precedent. The Opinion essentially creates a new cause of action in Delaware, with far-reaching implications including: (1) the vast expansion of well-established limitations on third-party preservation obligations; (2) interference with Delaware entities’ internal governance; (3) compromising the privacy rights of individuals who are not parties to the Equitable Bill action; and (4) transforming the Court of Chancery into a national forum for discovery and preservation disputes.

3. The trial Court erred in denying the MTD based on an unpled claim for an Equitable Bill that was never briefed or argued, but was raised by the Court, *sua sponte*, in a letter to the parties. The Trusts were not on notice of this claim. Appellees never sought leave to (1) amend their Complaint pursuant to Court of Chancery Rule 15(a)(5) to add the Equitable Bill claim, or (2) to attempt to plead

sufficient facts to support such a claim. Because Appellees did not plead, brief, or argue the claim, it was waived.

STATEMENT OF FACTS

A. ASBESTOS LITIGATION AND ASBESTOS TRUSTS

Asbestos, a mineral that was widely used in the United States in industrial and commercial settings, has injured and killed millions of Americans and led to litigation that “has continued over decades and is projected to continue for decades more.” A025(¶38).

Because victims were usually exposed to multiple asbestos-containing products, “[m]ost asbestos cases in the tort system involve multiple defendant entities.” A025-26(¶40). The scale of this liability led some defendants to seek a discharge from liability under the United States Bankruptcy Code. A025(¶39).

Asbestos-related diseases do not usually manifest until years or decades after a victim is exposed to asbestos-containing products, at which point many corporate defendants have already filed for bankruptcy protection. To compensate such claimants, asbestos trusts, administered by Bankruptcy-Court-approved trustees, are formed under Chapter 11 plans of reorganization. A013(¶2), A029(¶49). The trusts compensate “claimants injured by exposure to the [relevant] [] [c]ompanies’ products”. A027(¶44). All present and future asbestos-related liability is legally channeled to the trusts, and each reorganization plan serves to “fully resolve the asbestos-related liabilities for the associated [] [c]ompany under section 524(g) of the Bankruptcy Code.” A013(¶2), A027(¶43). The trusts are not corporate

defendants or for-profit companies; they are limited funds whose sole purpose is to compensate victims of reorganized asbestos defendants.

Each Trust has obtained approval from a federal bankruptcy court for its claim resolution procedures, which set forth the medical and asbestos exposure evidence that claimants must submit to be compensated by the Trust.

B. CLAIMS DATA

Data submitted to the Trusts by claimants “includ[es] various forms of evidence supporting the [claimants’] exposure allegations” relating to a companies’ products and “in many instances, sworn statements as to the accuracy of the trust submissions.” A013(¶3). Because claimants must show where they worked and how and when they were diagnosed, Claims Data necessarily includes sensitive personal data, such as medical records and social security information, as well as personal information of claimants’ family members and co-workers. A061-A079; A030(¶50).

Claims Data submitted by a claimant is sometimes sought by Appellees in personal injury lawsuits in the tort system and in section 524(g) asbestos bankruptcies. A017(¶9). Appellees sometimes obtain Claims Data relevant to a particular claim by subpoenaing a Trust. *Id.* Claims Data is provided to the Trusts by claimants and their counsel, who therefore have copies of the Claims Data they submitted.

C. THE TRUSTS UPDATE THEIR RECORD RETENTION POLICIES

Following widely publicized data breaches, many states (including Delaware) have adopted Data Protection Laws that (1) forbid organizations from collecting more personal data than needed for a legitimate purpose and (2) prohibit retention of that data longer than necessary.¹ These statutes often specifically refer to the type of medical and employment information the Trusts receive² and affirmatively require entities doing business in those states to destroy records when no longer needed.³ In compliance, the Trusts updated their record retention policies to

¹ See, e.g., Sample State Data Protection Laws in Compendium (Exs.5-26), filed herewith.

² See, e.g., Ex. 7 (covering “non-truncated Social Security number or tax identification number” and “information regarding an individual’s medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional”); Ex. 18 (covering “[s]ocial security number” and “Biometric data”); Ex. 24 (covering individual’s “name, social security number, date of birth, or government-issued identification number” and information that “relates to ... [t]he physical or mental health or condition of the individual ... [or] the provision of health care to the individual... [or] payment for the provision of health care to the individual.”); Ex. 25 (covering information combining “person’s first name or first initial and last name” and “Social Security number”); Ex. 26 (defining “[p]ersonal data” as “information that is linked or reasonably linkable to an identified or identifiable natural person.”).

³ See, e.g., Ex. 7 (providing for “disposal ... of records containing sensitive personally identifying information ... when the records are no longer to be retained pursuant to applicable law, regulations, or business needs.”); Ex. 24 (“A business shall destroy or arrange for the destruction of customer records containing sensitive personal information ... that are not to be retained by the business[.]”); Ex. 25 (requiring businesses to “destroy, or arrange for the destruction of, records containing personal information that are not to be retained by the person.”).

“enhance the protection of—and to not retain unnecessarily—personal and sensitive information” that has been “submitted to the Trusts by claimants . . .”—*i.e.*, the Claims Data.⁴

On January 15, 2025, the Trusts notified claimants whose claims have been resolved that they would stop retaining some Claims Data that was no longer needed. The Trusts stated they would implement this new policy “on a rolling basis” beginning on “April 15, 2025”.⁵ As stated in the Notices, the Policies require that all Claims Data will be retained by the Trusts for one year after a claim is resolved.⁶ The Notices advised claimants and their counsel that the Trusts would provide copies of their data if needed.⁷

Appellees sent a letter on April 1 asking the Trusts to cease implementing the Policies. A081-82. On April 11, the Trusts notified Appellees they intended to move forward, because the Policies “conform[] to applicable laws and serve[] to protect the vital privacy interests of the Trust claimants.” A084. The Trusts added that Appellees had “*not identified any person or entity . . . that has a pending legal*

⁴ See A061-79.

⁵ *Id.*

⁶ *Id.* In some cases, Claims Data and supporting documentation for resolved claims will be retained for 10 years because of Medicaid reporting and audit requirements.

⁷ *Id.*

right to confidential personal information about any particular individual Trust claimant.” *Id.* (emphasis added).⁸

To this day, Appellees still have never identified *any person or entity with any present legal right to the information at issue*. Appellees have not alleged that any documents will be destroyed in violation of any obligations under any pending subpoena. The Trusts are also not aware of any pending or threatened claim, *and Appellees do not identify any such claim*, as to which the Claim Data is relevant—let alone a claim to which Appellees are a party.

⁸ “The parties commendably agreed to preserve the status quo” by maintaining the Claims Data subject to the Policies during the pendency of this action. Op. at *8.

ARGUMENT

I. THE COURT-BELOW ERRED IN FINDING THAT APPELLEES HAD STANDING TO BRING A CLAIM AGAINST THE TRUSTS THAT WOULD REQUIRE MAINTAINING CLAIMANTS' DOCUMENTS IN PERPETUITY FOR DISCOVERY IN HYPOTHETICAL FUTURE CASES

A. Question Presented

Did the Court-below err in finding that Appellees have Article III or equitable standing to bring a claim against the Trusts prohibiting them from implementing the Policies, and requiring them to permanently maintain the Claims Data? This issue was preserved. A116-23; A291-302; Op. at *13-17.

B. Standard of Review

“[T]he Delaware Supreme Court reviews questions relating to standing under the *de novo* standard of review.” *Brookfield Asset Management, Inc. v. Rosson*, 261 A.3d 1251, (Del. 2021); *see also El Paso Pipeline GP Co. v. Brinckerhoff*, 152 A.3d 1248, 1256 (Del. 2016).

C. Merits of Argument

1. The Plaintiffs Cannot Satisfy the Elements of Standing

“The term ‘standing’ refers to the right of a party to invoke the jurisdiction of a court to enforce a claim or redress a grievance.” *Dover Hist. Soc’y v. City of Dover Plan. Comm’n*, 838 A.2d 1103, 1110 (Del. 2003) (citation omitted). Delaware courts consider standing as a threshold matter to “ensure that the litigation before the

tribunal is a ‘case or controversy’ that is appropriate for the exercise of the court’s judicial powers.” *El Paso Pipeline GP Co.*, 152 A.3d at 1256 (citation omitted).

“The party invoking the jurisdiction of a court bears the burden of establishing the elements of standing.” *Dover Hist. Soc’y*, 838 A.2d at 1109. Delaware courts apply “the concept of standing as a matter of self-restraint to avoid the rendering of advisory opinions at the behest of parties who are mere intermeddlers.” *Cont’l Auto. Sys., Inc. v. Nokia Corp.*, 2023 WL 1370523, at *6 (Del. Ch. Jan. 31, 2023) (citation omitted). Delaware courts generally refer to the constitutional requirements of Article III when analyzing standing.⁹ *Dover Hist. Soc’y*, 838 A.2d at 1109.

To satisfy Article III standing requirements:

(1) the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant and not the result of the independent action of some third party not before the court; and (3) it must be likely, as opposed to

⁹ The Court-below reasoned, “[s]tanding in the state courts is predominantly discretionary and prudential.” Op. at *13. There are certain special circumstances, such as taxpayer standing, where a plaintiff might have standing under Delaware law despite not satisfying Article III’s requirements. *Reeder v. Wagner*, 2009 WL 1525945, *2 (Del. June 2, 2009). Absent those circumstances, “Delaware’s standards for determining standing are ... the same as the requirements for establishing Article III standing in federal court.” *Albence v. Higgin*, 295 A.3d 1065 at 1086 (Del. 2022); *see also Albence v. Mennella*, 320 A.3d 212, 227 (Del. 2024) (rejecting the Court of Chancery’s permissive approach to standing for voters unable to establish a particular and concrete harm).

merely speculative, that the injury will be redressed by a favorable decision.

Id. at 1110 (citation omitted). No requirements are satisfied here.

- a. Appellees Have Not Alleged an Injury in Fact
 - i. Appellees Do Not Have a “Legally Protected Interest”

In finding that Appellees alleged an “injury in fact,” the trial Court identified two “legally protected interests”: (1) an interest in preserving Claims Data, because Appellees “consistently subpoena” similar data, giving rise to an “omnipresent” duty to preserve; and (2) an interest, as a potential future Indirect Claimant, in the Trusts’ internal management decision to implement the Policies. This ruling is inconsistent with applicable law.

The trial Court agreed that “[a] third party generally does not have any ability to specify what information another party must retain or on what terms[,]” and noted that “a subpoena triggers a duty to preserve relevant information.” *Op.* at *14. Third-parties are not typically required to preserve evidence absent a subpoena, because “the restrictions that can be imposed in a motion for preservation may be expensive and voluminous” and the third-party’s interest in the litigation is minimal.¹⁰

¹⁰ *Capricorn Power Co. v. Siemens Westinghouse Power Corp.*, 220 F.R.D. 429, 436 (W.D. Pa. 2004). Furthermore, requiring third-parties to preserve evidence interferes with their property rights. *See, e.g., Fletcher v. Dorchester Mut. Ins. Co.*,

Nonetheless, the Court wrote that, because Appellees “consistently subpoena” the Trusts for information, it is “reasonably conceivable” that there may be “an ongoing obligation” to preserve the information. *Id.* at 15. But there is no precedent for this novel proposition.¹¹

The trial Court also found that Appellees have a legally protected interest in the governance of the Trusts—including the implementation of the Policies—as “Indirect Claimants”. However, Appellees do not allege that they are presently “Indirect Claimants”.¹² In fact, while Appellees state that they are “beneficiaries” of the Trusts, they do not point to any provision in the governing trust agreements that confers beneficiary status.¹³ In fact, there is none.

773 N.E.2d 420, 424–25 (Mass. 2002) (“Automatic imposition of such a duty [to preserve evidence] on all witnesses would interfere with a witness’s own property rights.”).

¹¹ The notion is contrary to the Sedona Conference’s guidelines, which advise that there is no continuing obligation for a third-party to preserve information either before receipt of a subpoena or *after* compliance with it. 22 Sedona Conf. J. at 1-2.

¹² To be “Indirect Claimants”, Appellees would have to file a contribution or indemnification claim. While the Court suggests that “contribution claims” are filed regularly, the Appellees do not allege that or identify any pending contribution or indemnification claim.

¹³ A plaintiff is expected to cite to the provisions from which the cause of action arises. The failure to do so “is not a technical foot fault” but is instead “a fundamental failure to give the [defendant] fair notice of the claim asserted against [him] as required by [] Rule 8.” *Enzolytics, Inc. v. Empire Stock Transfer Inc.*, 2023 WL 2543952, at *3 (Del. Ch. Mar. 16, 2023) (quoting *Ryan v. Buckeye P’rs, L.P.*, 2022 WL 389827, at *6 (Del. Ch. Feb. 9, 2022), *aff’d*, 285 A.3d 459 (Del. 2022) (alterations in original)).

Appellees attempted to rectify this problem by attaching certain “exemplar” Trust Documents (A163, A181) that, they claim, show some of them are intended beneficiaries of the Trusts as “defendants in currently pending and as-yet-unfiled tort lawsuits... where—*should* they have to pay damages—[they] *may* seek reimbursement from the Trusts...” (A180) (emphasis added). Appellees argue they are “*potential* holders of indirect claims under [these] documents” (A170) (emphasis added), but they never argue (or allege) that they have submitted any indirect claims.

The trial Court cited the purpose clause of a trust agreement to conclude that the Trusts’ adoption of the Policies implicates Appellees’ interests as possible future indirect claimants. *See Op.* at *15. But that clause simply states the Trust’s purpose is to “use the PI Trust Assets and income to pay the holders of all PI Trust Claims . . .” *See* A225. Nothing in the purpose clause or elsewhere suggests that Appellees are present indirect claimants, or that such status would permit them to influence or direct internal management of the Trusts. “Absent a requirement in the trust agreement, the consent of the beneficiaries of a trust is not required to any action taken by the trustee.” 76 Am. Jur. 2d Trusts § 329 (“Approval or consent of beneficiaries to trustee’s acts, generally”) (Nov. 2025 Update); *accord* 12 Del. C. § 3806(a) (“Management of statutory trust”).

ii. The Identified “Injury” Is Purely Hypothetical

Appellees also lack standing because they do not allege an “actual, concrete or imminent” injury “that is neither hypothetical nor conjectural.” *Emp. Ins. Co. of Wausau v. First State Orthopaedics, P.A.*, 312 A.3d 597, 608 (Del. 2024).

Appellees argue they alleged an injury-in-fact as “tort defendants” because they are facing “thousands of asbestos-related claims.” A195. But the Trusts are not parties to those tort cases. And Appellees fail to identify a single claim against them for which any Trust bears responsibility.

The trial Court nevertheless held that the *implementation* of the Policies, which is not “hypothetical or conjectural”, can constitute the required “injury”. Op. at *14. This ruling contravenes governing law because it conflates the *action* that Appellees are attempting to enjoin (the adoption of the Policies) with the speculative *harm* this action could allegedly cause (hypothetical prejudice that cannot otherwise be addressed in a future case). *See, e.g., Menella*, 320 A.3d at 221 (finding that risk of defeat and an inaccurate vote tally in future elections is not an “actual injury”); *Slaughter v. AON Consulting, Inc.*, 2012 WL 1415772, at *1 (Del. Super. Jan. 31, 2012) (a “reasonable fear of future harm” is not an injury for standing analysis).

b. The Implementation of the Policies Did Not Cause any “Injury”

Even if Appellees could identify an actual claim for which the Claims Data is relevant, Appellees cannot meet the second Article III standing requirement, because they cannot demonstrate the Policies caused any injury. To satisfy this test, “the injury has to be fairly traceable to the challenged action of the defendant and not the result of the independent action of some third party not before the court[.]” *Dover Hist. Soc’y*, 838 A.2d at 1110 (citation omitted).

Here, Appellees can seek and obtain all of the Claims Data they may later need directly from claimants and their counsel (who supplied it to the Trusts in the first place).¹⁴ The Trusts should not be required to permanently maintain Claims Data solely to convenience the Appellees. The hypothetical alleged “injury” from losing a Claims Data lending library is too attenuated. *See Diamond v. Reynolds*, 1986 WL 15374, at *2-3 (D. Del. Jan. 13, 1986) (finding lack of standing because causation between the injury and the defendant’s alleged wrong was too attenuated). Indeed, the much more likely and serious injury is that, if the Trusts are forced to

¹⁴ As explained below, the trial Court relied on findings in *In re Garlock Sealing Techs., LLC*, 504 B.R. 71 (Bankr. W.D.N.C. 2014), as well as select articles discussing asbestos litigation generally, to conclude that claimants and their counsel cannot be trusted to produce the Claims Data. None of those findings or conclusions are properly imputed to claimants and their counsel implicated by the Policies.

maintain Claims Data unnecessarily and forever, the claimants' information will be exposed to computer hackers.

2. Appellees Do Not Have Standing in Equity

The Court also erred in holding that Appellees have “standing in equity” because “[w]here traditional principles of equity recognize that a particular party may bring a claim, standing to bring that claim exists, independent of the federal test.” Op. at *16-17.¹⁵ The Court provided no authority or explanation for holding that, even if Appellees lack standing under normal standing tests and the trust agreements, standing “in equity” exists.

Standing is a threshold issue.¹⁶ It should not be conflated with the separate question of whether a complaint states a claim upon which relief may be granted, which is what the Court-below did here. In addition, this Court's precedents have explained that to extend equitable standing, it must be shown that a “complete failure of justice” otherwise would occur.¹⁷ There has been no such finding or showing, nor could there be. Standing “in equity” here is at odds with traditional standing requirements focusing on justiciability. *See supra*. Equity does not require that

¹⁵ Reasoning that “[s]tanding exists if the petitioner can state a claim on which relief may be granted.”

¹⁶ *See supra* 12.

¹⁷ *See, e.g., CML V, LLC v. Bax*, 28 A.3d 1037, 1045 (Del. 2011); *Schoon v. Smith*, 953 A.2d 196, 202 (Del. 2008).

hypothetical potential future indirect claimants have rights (*not* granted by the Trust Agreements) that interfere with the Trusts' operations. *Cf.* 12 *Del. C.* § 3828(b) (confirming policy of maximum freedom of contract).

The trial Court suggests that “traditional principles of equity recognize that a particular party may bring a particular claim” and therefore, because the Court found that Appellees pled an Equitable Bill claim, they have “equitable standing”. As set forth below, even under this (incorrect) standard, Appellees lack standing in equity because their unprecedented claim is not a properly pled claim for an “Equitable Bill”.

II. THE COURT ERRED IN RELYING UPON THE ARCHAIC EQUITABLE BILL TO IMPOSE PRESERVATION OBLIGATIONS ON NONPARTIES IN CONNECTION WITH HYPOTHETICAL FUTURE LITIGATION

A. Questions Presented

Did the Court err in finding that the Complaint alleged facts warranting resurrection of the arcane Equitable Bill and in finding that this cause of action, which has not been invoked in Delaware for almost 70 years, could serve as a vehicle to grant Appellees the right to require the Trusts to permanently maintain the Claims Data? This issue is preserved. A337-43; Op. at *17-30.

B. Standard of Review

“[T]he Court of Chancery’s legal conclusions are subject to *de novo* review.” *Lawson v. Meconi*, 897 A.2d 740, 743 (Del. 2006).

C. Merits of Argument

1. The Trial Court’s Resurrection of the Equitable Bill Is the Sole Basis for Denial of the MTD

At the MTD hearing, the Vice Chancellor stated that Appellees were “only here for the preservation order. And that’s where [] we all look around and say [] what’s the precedent for this? What’s the theory? What right do you have to get it? . . . I feel like you’ve done a great job creating the donut. But we still got the hole, which is the actual [] legal theory that we have to drive through the baked good.”¹⁸

¹⁸ A325-26.

The trial Court thus recognized that Appellees failed to identify any legal theory supporting the order they seek. In fact, there is no legal or equitable precedent for entry of a permanent, unlimited document preservation order against the Trusts.

a. The Court’s Authority to Issue Preservation Orders

The authority to issue preservation orders is part of a court’s “inherent authority *to manage its own proceedings*”;¹⁹ this authority exists to preserve “information *relevant to the claims and defenses brought before [it]*.”²⁰ “[B]ecause of [its] very potency, [this authority] must be exercised with restraint and discretion.”²¹ The preservation order Appellees seek does *not* seek to preserve information “relevant to the claims and defenses” before the trial Court.

Before the *sua sponte* identification of the Equitable Bill, Appellees asserted, without precedent, that the Court could exercise “its expansive power ... to prevent spoliation before it occurs.” *See* A209-10. Delaware (like most jurisdictions) has rejected a cause of action for intentional or negligent spoliation, even between parties in litigation. In *Lucas v. Christiana Skating Center, Ltd.*, the Court held that relief for loss of records should be sought only in the action where the records were

¹⁹ *Arkin v. Gracey-Danna, Inc.*, 2016 WL 3959611, at *1 (M.D. Fla. July 22, 2016) (emphasis omitted).

²⁰ *U. S. ex rel. Staggers v. Medtronic, Inc.*, 2022 WL 4078969, at *2 (D.D.C. Sept. 6, 2022) (emphasis added); *Am. Oversight v. Hegseth*, 788 F. Supp. 3d 14 (D.D.C. 2025) (same).

²¹ *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44-45 (1991).

relevant; the remedy would be “jury instructions as to permissible inferences, and not a separate cause of action.”²²

Appellees’ request here is two steps removed from applicable law. Spoliation is not an independent cause of action in Delaware. And there is no legal authority to support the idea that a third party, like Appellees, can obtain an order against a Delaware entity to permanently retain confidential records of non-party individuals because Appellees and some of those non-party individuals may someday be involved in litigation somewhere and Appellees fear that those individuals may not retain the records.

b. Third-Party Preservation Obligations

As the trial Court conceded,²³ absent a subpoena, “[p]ersons who are not themselves parties to litigation do not have a duty to preserve evidence for use by others,” unless there exists a “special relationship” or “special circumstances” triggering a third-party duty to preserve.²⁴ To succeed on a third-party duty to preserve claim, a plaintiff must establish such a special relationship or special

²² 722 A.2d 1247, 1249 (Del. Super. Ct. 1998).

²³ Op. at *15.

²⁴ *Fletcher*, 773 N.E.2d at 424; see also *Linlor v. Polson*, 2017 WL 7310076, at *2 (E.D. Va. Dec. 6, 2017), report and recommendation adopted by 2018 WL 661486 (E.D. Va. Feb. 1, 2018), *aff’d*, 738 Fed. Appx. 167 (4th Cir. 2018); *Wilson v. Beloit Corp.*, 921 F.2d 765, 767 (8th Cir. 1990); *Encompass Ins. Co. v AMCO Ins. Co.*, 2020 WL 2395164, at *2 n. 2 (D. Ariz. May 12, 2020).

circumstances.²⁵ The trial Court’s Opinion suggests, without citation to authority, that there is a special relationship or circumstances here either because the Appellees could be future indirect claimants,²⁶ or because of the prevalence of asbestos litigation and the “omnipresent” subpoenaing of information²⁷. But these notions are hypothetical and conjectural and do not give rise to third-party preservation duties.

²⁵ *Mazloun v. D.C. Metro. Police Dep’t*, 522 F. Supp. 2d 24, 55 (D.D.C. 2007).

²⁶ In their MTD briefing, Appellees cited Ninth Circuit cases (not discussed in the Opinion) involving inmates’ claims against prison officials where the prison was accused of spoliation, to argue that the Trusts are “interested parties” in the hypothetical asbestos proceedings. *See Gay v. Parsons*, 2024 WL 4224893 (N.D. Cal. Sept. 17, 2024); *Ramos v. Swatzell*, 2017 WL 2857523 (C.D. Cal. June 5, 2017), *report and recommendation adopted by* 2012 WL 2841695 (C.D. Cal. June 30, 2017); *Pettit v. Smith*, 45 F. Supp. 3d 1099, 1106 (D. Ariz. 2014). These cases are plainly inapt, as the special relationship was a prisoner/employee/employer relationship, and only the third-party employers had the evidence.

²⁷ Appellees cited two cases (not discussed in the Opinion) for the proposition that “industry-wide events can make litigation reasonably likely” giving rise to a third-party duty to preserve. The cited cases do not support that. Moreover, the Trusts are not “industry participants.” Further, the cases involved potential defendants—not third parties. *See, e.g., Livingston v. Isuzu Motors, Ltd.*, 910 F. Supp. 1473, 1494 (D. Mont. 1995) (holding evidence of missing data was relevant and properly admitted at trial); *Phillip M. Adams & Assocs., LLC v. Winbond Elec. Corp.*, 2010 WL 3767318 (D. Utah Sept. 16, 2010) (concerning duties of defendant with actual knowledge of pending litigation implicating his work).

2. Even if the Equitable Bill is Still Recognized in Delaware, Its Application Should Be Limited and Its Invocation Here is Error

The trial Court recognized that the use of the Equitable Bill many decades ago involved narrow and limited orders of production, not expansive preservation orders. Indeed, neither the Opinion nor Appellees cited any case where an Equitable Bill was used to impose broad third-party document preservation obligations in connection with theoretical future litigation.²⁸ Delaware law does not support an Equitable Bill on the pled facts.

a. Origins of the Equitable Bill of Discovery

“The equitable bill of discovery afforded the primary means of discovery in civil litigation prior to the adoption of the Federal Rules of Civil Procedure and state rules and statutes based thereon.”²⁹ “The origin of the [Equitable Bill] may be traced to old, rigid common-law rules under which an adverse party could not be compelled

²⁸ For precedent that the Equitable Bill can support preservation orders, the Opinion cites cases ordering potential defendants to preserve specified, limited evidence relating to specific, known claims soon to be filed. *See Lewis v. Weaver*, 969 So.2d 586, 587–88 (Fla. Dist. Ct. App. 2007) (ordering inspection of dock before repairs where plaintiff was injured); *Johnson v. Spartanburg Cnty. School Dist.*, 2008 WL 9846826, at *1 (S.C. Ct. App. Oct. 27, 2008) (ordering school district to keep specific evidence regarding alleged assault).

²⁹ Existence and nature of cause of action for equitable bill of discovery, 37 A.L.R. 5th 645 (1996) (“ALR”) (citing Pomeroy, *Equity Jurisprudence* (“Pomeroy”), §193 (5th ed. 1941)). Relevant sections are included in the Compendium filed herewith.

to produce documents for use in litigation.”³⁰ “To cure this shortcoming, equity courts created the bill of discovery as an exercise of auxiliary jurisdiction to compel discovery in aid of actions at law.”³¹

While “in general” it was necessary “that an action should be already commenced in another court[,]”³² there were “exceptions” of “rare occurrence” where “the object of discovery is to ascertain who is the proper party against whom the suit should be brought.”³³ In these “rare” cases, the discovery received by plaintiff was targeted and narrow.³⁴ Courts of equity did not “entertain a bill for a discovery to assist a suit in another court if the latter [wa]s of itself competent to grant the same relief; for in such a case the proper exercise of the jurisdiction should be left to the functionaries of the court where the suit [wa]s depending.”³⁵

³⁰ *Id.*

³¹ *Id.*

³² 4 Joseph Story, LL.D., *Commentaries on Equity Jurisprudence*, §1483 (Melville M. Bigelow ed., 13th ed. 1886) (“Story”). Relevant sections are included in the Compendium filed herewith.

³³ *Id.*; *see also* Pomeroy §197(b) (even if “no action is yet commenced . . . discovery may be needed to determine the proper parties, or properly to frame the allegations of the plaintiff’s pleading.”).

³⁴ *See Angell v. Angell*, 57 E.R. 33 (1822) (granting bill before action commenced where witness living abroad might die before trial); *Moodaly v. Moreton*, 21 E.R. 425 (1785) (commissions to examine witnesses needed to identify proper defendant).

³⁵ Story § 1495.

As courts of law became empowered to grant discovery in actions before them, the Equitable Bill was “expressly or impliedly abolished in most states and in federal courts by statutes and court rules providing for examination and discovery proceedings before trial.”³⁶

Although an Equitable Bill has generally been rendered obsolete and unavailable,³⁷ it is recognized as a potential *limited* claim in some modern courts.³⁸ By 1938, federal and nearly all state courts combined law and equity jurisdiction.³⁹

³⁶ 9 William Meade Fletcher, *Fletcher Cyclopedia of the Law of Corporations* §4250 (Carol A. Jones ed. 2016). Suits in equity—Bill of Discovery; *see also* 4 Charles Alan Wright, *et al.*, *Federal Practice and Procedure*, §1029 (3d ed. 2023) (“[t]he rules replace the bill of discovery in equity to the extent that they provide relief [] formerly obtainable by such a bill.”); 6 James Wm. Moore, *Moore’s Federal Practice* §26.03 (3d ed. 2024) (“The bill of discovery is a remnant of the pre-rules system...”).

³⁷ Including in Illinois; Iowa; Kansas; North Carolina and Tennessee. *See, e.g.*, *Guertin v. Guertin*, 561 N.E.2d 1339 (Ill. App. 1990); *Hardenbergh v. Both*, 73 N.W.2d 103 (Iowa 1955); *Pyramid Life Ins. Co. v. Gleason Hospital, Inc.*, 360 P.2d 858 (Kan. 1961); *News & Observer Pub. Co. v. North Carolina*, 322 S.E.2d 133 (N.C. 1984); *Harrison v. Greenville Ready-Mix, Inc.*, 417 S.W.2d 48 (Tenn. 1967).

³⁸ *See Temple v. Chevron U.S.A. Inc.*, 840 P.2d 561 (Mont. 1992) (“there may be limited circumstances and situations, not covered by the modern rules, in which equity may require the availability of the equitable bill of discovery[.]”); *see also Shorey v. Lincoln Pulp & Paper Co.*, 511 A.2d 1076, 1078 (Me. 1986) (permitting bill to access premises, but observing “modern discovery rules and liberal pleading requirements virtually eliminate the need to resort to an independent action in the form of an equitable bill of discovery[.]”); *Venezia Lakes Homeowners Ass’n, Inc. v. Precious Homes at Twin Lakes Prop. Owners Ass’n*, 34 So. 3d 755, 756 (Fla. 3d DCA 2010) (A bill is proper only in “narrow and limited circumstances.”)

³⁹ With the exceptions of Delaware, Mississippi, Tennessee and New Jersey. Russel Fowler, *A History of Chancery & Equity: From Medieval England to Today*,

Prior to the Opinion, *Curran v. Craven* (from 1956) was the most recent Delaware case considering the Equitable Bill.⁴⁰ The petitioners invoked the “historic jurisdiction of equity courts to grant bills of discovery” to compel production of a Delaware state psychiatrist’s report for use in a pending petition for *certiorari* before the United States Supreme Court.⁴¹ After noting that Equitable Bills could only be used to aid a suit “wholly civil in nature,” the Court reasoned the record could be subpoenaed by the Superior Court.⁴² The Court of Chancery refused to grant the bill, in part because discovery could be obtained from the court in the main action. Now, the result should be the same—this Court should hold the Equitable Bill is unavailable to Appellees because they can obtain discovery from claimants and their counsel in any future hypothetical litigation.

b. Appellees Do Not Adequately Plead a Claim Satisfying the Court’s Equitable Bill Factors.

Even if the Equitable Bill still exists, Appellees do not show they deserve it.

The Opinion states, “[t]o plead a claim for a bill of discovery, a petitioner must demonstrate an interest in a pending or anticipated case, articulate how the evidence sought is material to the case, and show that the evidence cannot be

Tennessee Bar Journal (Feb. 2012).

⁴⁰ 125 A.2d 375 (Del. Ch. 1956).

⁴¹ *Id.* at 376.

⁴² *Id.* at 377.

obtained effectively, conveniently, or completely through other means, such as through discovery in [the] principal case.” Op. at *17. Appellees may seize upon the word “conveniently.” However, the legal authority cited by the trial Court for this adverb does not support it.

The Court-below cites three sources for the “effectively, conveniently or completely” test—sections of the Story and Pomeroy treatises and a Connecticut case cited in “accord”.⁴³ These sources are unhelpful. Neither Pomeroy nor Story mention “convenience” as supporting an Equitable Bill. In fact, Pomeroy Section 197a (titled “Necessity that Legal Relief be Inadequate”) confirms that the bill was unavailable where the main court is “able to give ...the needed relief by compelling the disclosure of facts or the production of documents”. Likewise, *Goldberg*, a 2014 Connecticut case granting a limited Equitable Bill for video footage taken on a school bus evidencing the suspected bullying of a nonverbal autistic child, does not support that an Equitable Bill should be granted if it is more “convenient” than normal discovery methods.⁴⁴ In fact, *Goldberg* recites the phrase “effective, convenient *and* complete”--not “or”, as the trial Court wrote. Story also suggests

⁴³ The Court-below cites Story §§ 1490, 1493, 1497, 1508, 1511; Pomeroy §§ 197, 197(a), 198; and *Goldberg v. Reg'l Sch. Dist. #18*, 2014 WL 7662507 (Conn. Super. Ct. Dec. 17, 2014).

⁴⁴ The *Goldberg* Court reasoned that the petitioner must allege, *inter alia*, “specific facts showing the petitioner *has probable cause for an action* to which the requested discovery *is material and necessary*”. (emphasis added).

the correct test is more rigid and does not consider “convenience”, stating “Courts of Equity *will not* entertain a bill for discovery to assist a suit in another court if the latter is of itself competent to grant the same relief” because “the proper exercise of the jurisdiction should be left to the functionaries of the court where the suit is depending.”⁴⁵

Those modern courts that still recognize the Equitable Bill have noted it is not available simply because it makes things more “convenient” for the petitioner. *RAV Bah. Ltd. v. Marlin Three, LLC*, 333 So. 3d 1158, 1161-63 (Fla. Dist. Ct. App. 2022) (“Convenience has never been the bill’s purpose”).

Regardless of the origins of the test in the Opinion, Appellees cannot satisfy it.

i. The Complaint Did Not Adequately Plead “An Interest in a Pending or Anticipated Case”

The first prong requires Appellees to “demonstrate an interest in a pending or anticipated case.” Op. at *18. No pending or anticipated case is alleged here. The notion that a threat of future litigation meets the “pending and anticipated” requirement is contrary to other precedent the Court cited, stating that “in general” a bill of discovery should be ancillary to “an action . . . already commenced in another court” with “rare” exceptions. Story § 1483.⁴⁶ It is also contrary to the way

⁴⁵ Story §1495.

⁴⁶ The Court (Op. at *18) cites Story §1495 for support that an Equitable Bill is

the “pending or anticipated case” prong is applied in practice. *See, e.g., Berger v. Cuomo*, 230 Conn. 1 (Conn. 1994) (noting that the main action the bill of discovery is filed in support of should be “already brought *or about to be* brought”) (emphasis added).

The lower Court further reasoned, without citation, that Appellees have an interest in pending or anticipated contribution claims, which they bring “routinely” in response to an “ongoing barrage of asbestos claims...” But no such facts are alleged in the Complaint.

ii. Appellees Have Not Pled That the Claims Data Is Material to Any Anticipated Claim

The Opinion also states Appellees properly pled the second element—the “evidence sought is material to the case”—because “the complaint supports a

appropriate pre-litigation where it “may be indispensable to enable the party rightly to frame his action and declaration.” None of the “rare” cases cited by Story for this proposition sought a broad preservation order for a potential future case. *See, e.g. Moodaly*, 21 E.R. 425 (granting narrow bill to confirm identity of a defendant); *Angell*, 57 E.R. 33 (granting narrow bill before action commenced where witness living abroad might die before trial); *Mendes v. Barnard*, 21 E.R. 192 (1735) (allowing bill “only praying a commission to enable the plaintiff to go to law”); and *City of London v. Levy*, 32 E.R. 408 (1803) (denying bill and reasoning “it has never yet been, nor can it be, laid down, that you can file a bill, not venturing to state, who are the persons, against whom the action is brought; not stating such circumstances as may enable the Court, which must be taken to know the law, and therefore the liabilities of the Defendants, to judge”). Moreover, Story §1490 states that a petitioner must demonstrate a “present” interest-*i.e.*, that is “capable and proper to be vindicated in some judicial tribunal”—not “the possibility of a future title”; *accord* Pomeroy §198.

reasonable inference that the Claims Data is key to defending asbestos lawsuits”. Op. at *19. Relevant cases on “materiality” do not support this conclusion.

In Connecticut (one of the only states regularly recognizing Equitable Bills in the modern era), to satisfy the materiality element, a petitioner must demonstrate that the request “is *confined to facts material to the plaintiff’s cause of action[.]*” See, e.g., *Berger*, 230 Conn. at 337 (emphasis added); see also *Garfinkle v. Jewish Family Service of Greater New Haven, Inc.*, 2019 WL 1938591, at *2 (Conn. Super. Ct. Apr. 8, 2019) (“[t]he plaintiff’s right to discovery does not extend to all facts which may be material to the issue, but is *confined to facts which are material to his own title or cause of action.*”) (citation omitted; emphasis added).

Here, Appellees are not seeking discovery but are seeking permanent preservation of Claims Data for all claimants (hundreds of thousands of people). Thus, even if a small fraction of that information may someday be relevant in a lawsuit asserted by a past Trust claimant, the lion’s share of Claims Data will never be relevant to any claim or defense. What is sought in the Equitable Bill is not “confined to facts material to [plaintiff’s] own title or cause of action.”

Furthermore, to demonstrate materiality, courts require Equitable Bill petitioners to “describe with such details as may be reasonably available the material [sought].” See, e.g., *Berger* 230 Conn. at 337 (citation omitted). The ability to “describe” the information sought means it should be “specific.” *Seguna v.*

Transamerica Premier Life Ins. Co., 2018 WL 9849872, at *2 (Fla. Dist. Ct. App. Dec. 3, 2018) (finding life insurance beneficiary’s request for the policy and identified information was sufficiently “specific”); *Smith v. Hartford Firefighters, Local 760, Intern. Ass’n Firefighters, AFL-CIO*, 1997 WL 150654, at *8 (Conn. Super. Ct. Mar. 17, 1997) (holding that request for depositions was “far too broad” and limiting discovery to targeted interrogatories). Appellees have not pled facts describing with *any* “specificity” what they need because they do not know if any claimant subject to the Policies will ever assert a claim against them or if any of the Claims Data will be relevant to any such hypothetical claim.

While the trial Court pointed to existence of Trust Transparency Statutes and the findings in *Garlock* in holding that Appellees established materiality here, neither source supports that any of the Claims Data is material to any hypothetical future lawsuit initiated by an (unknown) Trust claimant.⁴⁷

⁴⁷ The factual findings in *Garlock* cannot fairly be imputed against the Trusts. *See Lebanon County Emp’ees Ret. Fund v. Collis*, 311 A.3d 773, 800 (Del. 2023) (declining judicial notice, noting the “unfairness that attends a trial court’s acceptance of another court’s factual finding in another case involving other parties”); *see also Grayson v. Warden*, 869 F.3d 1204, 1225–26 (11th Cir. 2017) (findings from one court do not “transform the findings into indisputable adjudicative facts subject to judicial notice[.]”); *United States v. Jones*, 29 F.3d 1549, 1553–55 (11th Cir. 1994) (“If it were permissible for a court to take judicial notice of a fact merely because it has been found to be true in some other action, the doctrine of collateral estoppel would be superfluous.”)

iii. The Evidence Sought Can Be Obtained Through Other Means

The trial Court also reasoned the Claims Data “cannot be obtained effectively, conveniently or completely through other means, such as through discovery in the principal case.” Op. at *19-20. While “a majority of jurisdictions” limit “bills of discovery to instances where no other remedy of law exists”,⁴⁸ the Opinion acknowledges that the Appellees could seek the documents from claimants or their counsel, or seek to reopen the bankruptcy proceedings to prevent implementation of the Policies.⁴⁹ Op. at *19-20, 27. Nonetheless, the Court held that an Equitable Bill is available because it would be more “complete, practical or efficient” for the Trusts to preserve the documents. Op. at *20. This Court should reject the notion that it would be “practical and efficient” to require the Trusts to permanently maintain millions of private records of hundreds of thousands of individuals, based on the unpredictable possibility that a specific individual *may* be involved in a future lawsuit against one of the Appellees.

Adequate remedies at law already exist, as the court presiding over any future claim can address issues concerning evidence in cases before it.

⁴⁸ *Romano v. V.I. Government Hospitals & Health Facilities Corp.*, 2014 WL 4723159, *4 (V.I. May 28, 2014) citing 37 A.L.R. 5th 645 (1996) (collecting cases); Story §§ 1483, 1495.

⁴⁹ One of the Appellees has an open bankruptcy case where it presumably could seek the bankruptcy court’s guidance.

The Opinion suggests that Appellees have adequately pled that any Claims Data that they might seek would not, in fact, be available from claimants and their counsel because “(1) the nature of asbestos injuries created inherent uncertainty about when exposures may have occurred, their severity, and which products were involved, (2) long latency periods mean that memories fade, and (3) asbestos personal injury lawyers typically refresh their clients’ recollections only about exposures involving the named defendants, so the injured claimants lack information about other exposures.” Op at *20. But these “facts” are either not in the Complaint, are taken from the *Garlock* court’s findings implicating parties not involved here, or are the trial Court’s conclusions about asbestos litigation and its participants generally from a selection of articles.

The trial Court (and the Complaint) relied on findings in *Garlock* as support for the proposition that “cases of actual fraud exist with some lawyers withholding evidence of exposure to bankrupt manufacturers’ products until after obtaining recoveries through the court system.” Op. at *4. The trial Court and Appellees essentially impute the *Garlock* court’s findings to the Trusts and its claimants, which is impermissible.⁵⁰

⁵⁰ “The Complaint itself must contain sufficient factual allegations to demonstrate it plausibly alleges the asserted claim without requiring the Court or the parties to conduct independent research into these other cases to determine their bases . . .” *Brooks v. Reynolds*, 2021 WL 4556019, at *5 (D. Colo. Aug. 18, 2021), *report and recommendation adopted by* 2021 WL 4272718 (D. Colo. Sept. 21, 2021); *see also*

The Opinion also cites a law review⁵¹ to support that: (1) claimants cannot provide the information because “memories fade,” and (2) their lawyers “focus[] on solvent defendants,” so those exposures are the only ones that “plaintiff’s lawyers [have] an incentive to discuss with the client.” Op. at *5. This is not pled in the Complaint, nor is the article mentioned. Even if it were, it would be “improper to take judicial notice of [that] article[] for the truth of” the assertions made therein. *Totta v. CCSB Financial Corp.*, 2021 WL 4892218, at *3 (Del. Ch. Oct. 20, 2021); *see also Windsor I, LLC v. CWCapital Asset Mgmt. LLC*, 238 A.3d 863, 873 (Del. 2020).

There are no well-pled allegations supporting that a given claimant and her lawyers could not produce any relevant Claims Data to the Appellees, which would constitute “an adequate remedy at law”.

For all of these reasons, the Appellees have not adequately pled that the “effectively, conveniently or completely” element of an Equitable Bill is satisfied here.

Davis v. Bifani, 2007 WL 1216518 (D. Colo. Apr. 24, 2007). Similarly, the factual findings in *Garlock* are not subject to judicial notice as indisputable facts. *Collis*, 311 A.3d at 800; *see also Grayson*, 869 F.3d at 1225–26; *United States v. Jones*, 29 F.3d 1549, 1553–55 (11th Cir. 1994).

⁵¹ *Asbestos Trust Transparency*, 87 Fordham L. Rev. 107 (2018).

3. The Creation of a Functionally New Cause of Action Imposing Broad Document Preservation Orders on a Delaware Entity Not Otherwise in Litigation in this State Will Have Far Reaching Implications

Prior to the resurrection of the Equitable Bill in this unprecedented manner, there was no viable cause of action supporting the issuance of a broad third-party preservation order under the facts pled here. The Complaint admits that there is no *actual* case pending where the Appellees, the Trusts, and/or the claimants are parties with discovery obligations. Despite this, the Opinion resurrects the Equitable Bill to create a standalone claim, not to order targeted discovery, but as a functionally “new” cause of action to impose broad document and data preservation orders on Delaware-domiciled entities who are not otherwise in litigation in this State.

Using the Equitable Bill for the remedy sought here also permits Appellees to interfere with internal governance decisions of the Trusts, contrary to principles of Delaware law discouraging judicial interference with the internal affairs and governance of Delaware entities.⁵²

⁵² *Barry v. Full Mold Process, Inc.*, 1975 WL 1949 (Del. Ch. June 16, 1975) (“[J]udicially sanctioned interference with the internal affairs of a[n] [entity] is an exceedingly delicate matter and such power should not be exercised except where necessary to protect the vital interests of stockholders”); *Bernstein v. Vestron, Inc.*, 1986 WL 3138 (Del. Ch. March 11, 1986) (noting the “general preference” of the court “not to interfere with the ongoing management” of Delaware entities); *Reading Co. v. Trailer Train Co.*, 1984 WL 8212 (Del. Ch. March 15, 1984) (“courts should be loathe to interfere with the internal management of corporations or to interfere with their business decisions”).

The preservation order sought by Appellees is also inconsistent with requirements of Data Protection Laws and could compromise personal information of hundreds of thousands of claimants who are not parties here.⁵³ Courts do not enjoin parties from complying with settled law.⁵⁴

Finally, the order sought would be inequitable to claimants. The inability to implement the Policies harms the interests of numerous non-party Trust claimants, most of whom are not Delawareans, in maintaining the privacy of their personal identifying information.⁵⁵

The resurrection of the Equitable Bill, as fashioned by the trial Court, could be used by plaintiffs to circumvent ordinary discovery requirements. The Opinion does not limit Equitable Bills to parties, nor require that the “material evidence” sought be identified with specificity. It would also allow a claim to be pursued when

⁵³ The Trusts owe fiduciary duties to claimants that include protecting their personal Claims Data. The Appellees owe claimants no such duties. The preservation order sought by Appellees potentially forces the Trusts to violate those duties.

⁵⁴ *Indiana Protection and Advocacy Services Commission v. Indiana Family and Social Services Administration*, 2024 WL 4117222 (Ind. Dist. Ct. Sept. 9, 2024) (refusing to order state agency to violate Medicaid law); *In re Insulin Pricing Litig.*, 2024 WL 416500 (D.N.J. Feb. 5, 2024) (rejecting injunction that would require defendants to violate federal law).

⁵⁵ While the Court notes it could impose conditions on an injunction, no conditions could prevent data breaches from occurring. The conditions would simply ensure that Appellees fund insurance to pay damages *after* the harm has occurred. It is not equitable to require individual claimants to shoulder that risk, nor to prioritize the interests of Appellees (as hypothetical future indirect claimants) over the interests of non-hypothetical claimants.

litigation is only “anticipated[.]” Op. at *18-20. Thus, an Equitable Bill will be invoked by a potential litigant to enjoin Delawareans whenever the litigant can allege the Bill is more “effective, convenient or complete” than discovery contemplated by applicable rules of procedure.

The Court-below states that “[t]he General Assembly can only limit the Court of Chancery’s jurisdiction by statute if the legislature substitutes a legal remedy that ‘is both adequate and exclusive’”,⁵⁶ and “the General Assembly has never enacted legislation attempting to limit the Court of Chancery’s power to issue a bill of discovery.”⁵⁷ This Court is the final arbiter of the appropriate scope of the Court of Chancery’s equitable authority and remedial powers. *See, e.g., In re Tesla, Inc. Deriv. Litig.*, 2025 WL 3689114, at *9 (Del. Dec. 19, 2025) (The Delaware Supreme Court “reviews *de novo* whether an equitable remedy exists or was applied using the correct standards[.]”); *C & J Energy Servs., Inc. v. City of Miami Gen. Emps.*, 107 A.3d 1049,1054, 71 (Del. 2014) (stating that the Court of Chancery did not properly exercise its equitable authority and noting that, “[a]lthough the equitable authority of our Court of Chancery is broad, it is not uncabined and must be exercised with care and respect for the rights of litigants”). While the Court of Chancery has broad

⁵⁶ Op. at *20 (internal citation omitted).

⁵⁷ Op. at *21.

authority to craft an equitable remedy, caution and restraint are appropriate when the supposed equitable relief sought is contrary to other principles of Delaware law.⁵⁸

⁵⁸ See, e.g., *Stroud v. Grace*, 606 A.2d 75, 87 (Del. 1992) (“We emphasize that the Court of Chancery must act with caution and restraint when ignoring the clear language of the General Corporation Law in favor of other legal or equitable principles”); *Alabama By-Products Corp. v. Neal*, 588 A.2d 255, 258, n.1 (Del. 1991) (“[t]he invocation of equitable principles to override established precepts of Delaware corporate law must be exercised with caution and restraint.”).

III. THE COURT-BELOW ERRED IN DENYING THE MTD BASED ON AN UNPLED CLAIM THAT APPELLEES WAIVED AND THE COURT RAISED *SUA SPONTE*

A. Question Presented

Did the Court-below err in finding that Appellees properly pled a claim raised *sua sponte* by the Court and not identified in Appellees' pleading, briefing, or argument, and by not finding that any such unpled claim was waived? The issue was preserved. A351-54; Op. at *27-29.

B. Standard of Review

“The Delaware Supreme Court exercises *de novo* review when evaluating a trial court’s decision to deny a motion to dismiss.” *Rosson*, 261 A.3d at 1262; *see also In re Santa Fe Pac. Corp. S’holder Litig.*, 669 A.2d 59, 70 (Del. 1995).

C. Merits of Argument

The Court-below erred in denying the Trusts’ motion to dismiss based on an unpled – Court supplied – claim.

Appellees did not plead an Equitable Bill claim, nor did they argue it in response to the MTD. Instead, the theory emerged for the first time, *sua sponte*, based on the Court’s independent research into a centuries-old doctrine that neither party cited, nor relied upon, and that no litigant in Delaware had previously invoked in close to seventy years.

It is undisputed that Appellees did not plead an Equitable Bill. Appellees’ Complaint pled a single cause of action: “Declaratory Judgment.” They did not

characterize their claim as an Equitable Bill, invoke the elements of such a cause of action, or attempt to plead the doctrinal predicates required for one.

When an allegation is not made in the complaint, it is waived.⁵⁹ Nor may plaintiffs amend their pleadings via briefing – supplemental or otherwise.⁶⁰ When a plaintiff intends to assert a cause of action, the claim must be *at the very least* mentioned in the complaint because not doing so amounts to a fundamental failure to give defendant fair notice of the claims asserted.⁶¹

Under Court of Chancery Rule 15(a)(5), a plaintiff facing a motion to dismiss must either file an amended complaint by the due date for its answering brief, or stand on its pleading; if the plaintiff elects to stand on the complaint and the motion is granted, dismissal is with prejudice,⁶² subject to a limited exception. To avoid

⁵⁹ See *Morgan v. Cash*, 2010 WL 2803746, at *8, n. 64 (Del. Ch. July 16, 2010) (allegation not pleaded in complaint “must be rejected, because, by failing to raise this allegation in her complaint, [plaintiff] has waived the claim”).

⁶⁰ See *Cal. Pub. Emp. Ret. Sys. v. Coulter*, 2002 WL 31888343, at *12 (Del. Ch. Dec. 18., 2002) (“Arguments in briefs do not serve to amend the pleadings.”).

⁶¹ *Kim v. FemtoMetrix, Inc.*, 2025 WL 2300402, at *9 (Del. Ch. Aug. 8, 2025).

⁶² *Id.*; see also, *MCG Capital Corp. v. Maginn*, 2010 WL 1782271, at *5 (Del. Ch. May 5, 2010) (refusing to analyze stockholders as controllers because theory was not raised in the complaint, and the complaint was not amended under Rule 15(aaa)); *Orman v. Cullman*, 794 A.2d 5, 29 n. 59 (Del. Ch. 2002) (refusing to consider unpled claim raised in brief because, under Rule 15(aaa), “[s]hould a plaintiff become aware that the allegations set forth in his complaint are inadequate to support his claim, he should request leave of the Court to amend his complaint rather than attempt to expand its scope through briefing[.]”); *Feuer v. Dauman*, 2017 WL 4817427, at *4 (Del. Ch. Oct. 25, 2017) (dismissing complaint where certain claims not asserted in

dismissal with prejudice, plaintiffs must show “good cause.” This is a “stringent standard,”⁶³ met in rare circumstances like where a plaintiff files the wrong version of a complaint inadvertently excluding a claim,⁶⁴ or where subsequent factual developments create an additional claim.⁶⁵ Appellees did not file the wrong complaint, and all of the relevant facts remain the same. Appellees simply did not pursue the Court supplied Equitable Bill. The Court-below did not consider Rule 15(a)(5) or address Appellees’ forfeiture of the Equitable Bill; this was legal error.

Appellees’ counsel did not argue an Equitable Bill theory because they were unaware of it or chose not to pursue it. Either way, the Trusts had no reason to anticipate that an unpled, un-briefed, archaic, and obscure equitable doctrine would become the decisive basis for denying dismissal.

complaint and complaint was not amended pursuant to Rule 15(aaa)).

⁶³ *Stern v. L.F. Capital Partners, LLC*, 820 A.2d 1143, 1144 (Del. Ch. 2003).

⁶⁴ *See TVI Corp. v. Gallagher*, 2013 WL 5809271, at *22 (Del. Ch. Oct. 28, 2013).

⁶⁵ *Inter-Marketing Group USA, Inc. v. Armstrong*, 2019 WL 417849, at *9 (Del. Ch. Jan. 13, 2019).

CONCLUSION

For the foregoing reasons, the Trusts respectfully request that this Court reverse the trial Court's Opinion denying the motions to dismiss, and that the Complaint be dismissed with prejudice.

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