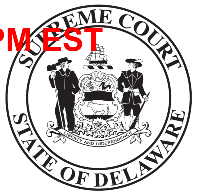
EFiled: Feb 24 2026 03:49PM EST
Filing ID 78535255
Case Number 469,2025



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

C.A. No. 2025-0404-JTL

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NATURE OF PROCEEDINGS

As former manufacturers of products that allegedly contained or allegedly were contaminated with asbestos, Plaintiffs face lawsuits from tens of thousands of claimants and hold contingent claims for contribution related to those cases. To defend those suits, Plaintiffs need information about claimants' exposures to other asbestos-containing products and any prior recoveries. There is no dispute that this information—the "Claims Data"—is highly relevant to the underlying suits.

The Claims Data plays a singular role in the unique context of asbestos litigation, with state legislatures enacting statutes, and courts issuing orders, establishing it is relevant and discoverable. Because the asbestos plaintiffs' bar often conceals the Claims Data to inflate their clients' recoveries, Plaintiffs regularly subpoena Defendants—the only reliable source of the information—to obtain it.

After multiple unsuccessful efforts to suppress discovery of the Claims Data, Defendants (and the plaintiff law firms that control them) tried a new tactic: Destroy the Claims Data to ensure there is nothing left to subpoena. The result, if permitted, would be an unprecedented spoliation of evidence. Plaintiffs thus sued, seeking a declaratory judgment that they have legal rights to discover the Claims Data and Defendants have a duty to preserve it. They also sought attendant injunctive relief. The Court of Chancery denied Defendants' motion to dismiss, finding Plaintiffs have standing and have stated a claim. This interlocutory appeal followed.

SUMMARY OF ARGUMENT

1. Denied. The Court of Chancery correctly found that Plaintiffs face an injury-in-fact from the imminent destruction of information relevant to cases they are defending and to indirect contribution claims they hold against Defendants. The Court correctly rejected Defendants' contention that Plaintiffs' injuries were "speculative" and "conjectural," finding it clear that destruction of the Claims Data would harm Plaintiffs across thousands of pending and future cases. The Court also correctly found that implementing Defendants' new policies would directly cause Plaintiffs' injury, and that the Court could squarely redress the threatened injury.

2. Denied. The Court of Chancery was also correct that it has the authority to grant an equitable bill of discovery, and that Plaintiffs have stated a claim for one. Courts of equity have had jurisdiction to grant bills of discovery *for centuries*. Defendants point to nothing that has taken that power away. As defendants in asbestos cases, Plaintiffs have an interest in litigation that is both pending and imminent. The Claims Data is indisputably relevant to Plaintiffs' claims and defenses in that litigation. And no adequate remedy at law exists to otherwise preserve this information. Notwithstanding Defendants' speculation and policy arguments about how the Court of Chancery's decision might apply in other contexts, the Court carefully tailored its conclusions to the unique context of asbestos litigation.

3. **Denied.** Plaintiffs never forfeited, much less waived, their claim to an equitable bill of discovery. The Complaint requested that the Court of Chancery employ its equitable powers to require Defendants to preserve the Claims Data. That is why Plaintiffs filed the action in a court of equity. Moreover, under Delaware's notice-pleading regime, plaintiffs must merely allege *facts* that support a claim for relief and are not limited to a particular legal *theory*. Defendants' forfeiture arguments are based on an antiquated theory of pleading that Delaware courts rejected decades ago. The facts alleged in the Complaint support a claim for an equitable bill of discovery, and that is sufficient. And Defendants make no claim that letting the case proceed under this theory caused them any prejudice.

4. Separate and apart from the equitable bill of discovery, Plaintiffs have stated a claim for a declaratory judgment, including facts supporting all the elements for an "actual controversy." Taking Plaintiffs' allegations as true, it is at least "reasonably conceivable" that the Court of Chancery can declare the rights and obligations that Plaintiffs requested and provide the injunctive relief sought in the Complaint.

STATEMENT OF FACTS

A. The first wave of asbestos litigation

Once hailed as a "miracle material," asbestos was used in a variety of commercial products in the twentieth century. Op.*2. Scientists came to discover, however, that it can present serious health risks. *Id.* The result has been what the U.S. Supreme Court has called an "elephantine mass" of litigation, *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 821 (1999), amounting to an "asbestos-litigation crisis," *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 597–98 (1997). Tens of thousands of cases are pending, and hundreds of thousands more are expected. A12(¶1), A18(¶10), A21(¶17), A25(¶38).

Typically, claimants sue dozens of manufacturers, and, if causation and liability can be proved, damages are determined according to likely fault. *See* Op.*3 & n.8; *see also In re Garlock Sealing Techs., LLC*, 504 B.R. 71, 73 (Bankr. W.D.N.C. 2014). Because claimants may have been exposed to "different manufacturers' products at different times and different places," product identification and allocation of fault become central issues, "further complicating … cases." Op.*3.

Early cases focused on owners of asbestos-mining operations and manufacturers of asbestos-based insulation. *Id.* These defendants had the largest market share of asbestos products, and they provided the greatest source of compensation. Minor manufacturers such as Plaintiffs, if sued in these early cases,

could show that the major producers of asbestos products were more likely to have caused claimants' injuries. *See Garlock*, 504 B.R. at 83.

B. The creation of Defendants and its effect on Plaintiffs

The most important defendant in the early asbestos tort litigation was Johns Manville Corporation, which "had—by far—the largest share of the United States asbestos market." *Id.* Manville filed for bankruptcy in 1982, and, in its reorganization, created and funded a settlement trust. Op.*3. The bankruptcy court issued a "channeling injunction" that required all present and future claimants to submit their claims to the trust instead of suing Manville. *See* A27(¶43). In 1994, Congress codified this approach in 11 U.S.C. § 524(g). Shortly thereafter, nearly all prominent defendants in asbestos litigation entered bankruptcy, creating trusts and obtaining channeling injunctions under § 524(g). A25(¶39); Op.*3.

Several of the trusts created by these "top-tier" defendants are Defendants here. A25(¶39). All Trust Defendants have their principal place of business in Delaware, and all but two are organized under Delaware law. A23–25(¶¶27–36). Like most asbestos trusts, these Defendants are controlled by members of the asbestos plaintiffs' bar who sit on their Trust Advisory Committees and manage the trusts to promote their own interests. *Furthering Asbestos Claim Transparency (FACT) Act of 2015: Hearing Before the Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. on the Judiciary*, 114th Cong. 15–

20 (2014) (written statement of Lester Brickman, Professor of Law, Benjamin N. Cardozo School of Law) (cited at A29(¶49 n.7) ("Plaintiffs' counsel, who have effective control over the … asbestos bankruptcy trusts[,] have used that power … to limit, if not preclude, defendants' ability to use discovery to access evidence that a tort plaintiff has filed trust claims."); *see also* A12(¶1), A28(¶45), A29(¶49), A49(¶88); Op.*6.

With the major manufacturers entering bankruptcy, counsel for asbestos claimants increasingly turned their litigation attention to minor participants. A25–26(¶40). These minor manufacturers' products often contained small amounts of less toxic forms of asbestos. *See Garlock*, 504 B.R. at 73, 83–84. But they were also outside the protection of bankruptcy so asbestos claimants could profitably sue them. A26(¶41). Many of these secondary targets are Plaintiffs here. A14(¶5), A25–26(¶¶39–42).

C. The role of bankruptcy trusts and claims-processing facilities in processing and facilitating payment of asbestos claims

The asbestos trusts were created to benefit all holders of claims against the bankrupt companies, and they have a duty to treat all beneficiaries "fairly and equitably." A13–14(¶4). There are two categories of beneficiaries: "Direct Claimants" and "Indirect Claimants." *Id.* Direct Claimants are individuals who allege they have suffered asbestos-related harm caused by the products of the trusts'

predecessors. *Id.* Indirect Claimants are companies that have been sued by Direct Claimants and who thus have claims for reimbursement, contribution, subrogation, and indemnification against the predecessors of the bankruptcy trusts. *Id.* Indirect Claimants also include those that have not yet been sued but may be in the future. *Id.*; Op.*16. Plaintiffs, who are defendants in tens of thousands of asbestos cases pending in the United States, are thus both Indirect Claimants *against* the Trust Defendants and beneficiaries *of* those trusts. A13–14(¶¶4–5), A15–16(¶7), A18–19(¶11), A20–21(¶15), A26(¶42), A45(¶80), A48(¶¶85–86); Op.*15–16.[1]

The trusts have outsourced the administration and processing of claims to a few "claims-processing facilities," including the Delaware Claims Processing Facility, which handles all personal-injury claims submitted to the Trust Defendants and is the only non-trust Defendant here. A13(¶2), A23(¶26), A28(¶46).

D. The relevance and use of the Claims Data in tort and bankruptcy cases

In submitting a claim, an individual claimant must provide "a medical diagnosis of an asbestos-related disease; supporting medical records; documentation of the individual's exposure to asbestos (including work history, job site records, and witness statements); and proof of product use." A30(¶50). Often, claimants also

[1] Tort litigation against Plaintiff DBMP LLC is stayed while it seeks to resolve its pending and future asbestos liability in bankruptcy. A17–18 (¶ 9 & n.5); *see Herlihy v. DBMP LLC*, --- F.4th ---, 2026 WL 376481 (4th Cir. Feb. 11, 2026).

provide "sworn statements as to the accuracy of the trust submissions." A13(¶3). This information in turn "generates documents and information at the trust and claims processing facility level as these claims are reviewed." A30(¶50). Plaintiffs refer to all this information collectively as "Claims Data." A13(¶3), A30(¶50). All Claims Data is located in Delaware. A28–29(¶47).

The Claims Data is essential for Plaintiffs' defense. It can be used to determine an asbestos claimant's exposure to other asbestos products, a fundamental issue for assessing what caused a claimant's injury. A31–32(¶53), A36–37(¶61) (citing *Carroll v. John Crane Inc.*, 2017 WL 2912720, at *2 (W.D. Wis. July 7, 2017), and *Garlock*, 504 B.R. at 86). For multiple reasons, a claim's value declines when a manufacturer can show the claimant was exposed to other manufacturers' asbestos-containing products. A16–17(¶8). Plaintiffs here also need Claims Data to prosecute Indirect Claims. A18–19(¶11).

For these reasons, Plaintiffs regularly seek Claims Data in discovery, and they anticipate doing so for decades to come. A17–18(¶9 & n.5), A33(¶55 n.10), A37–38(¶¶64–66). But, as alleged in the Complaint and as the Court of Chancery found, the claimants and their tort counsel who submitted the Claims Data in the first instance are not reliable sources for obtaining it. A43–44(¶76); Op.*4–5 ("the settlement trusts constitute the only realistic source of information about other potential exposures and their severity"). Claimants suing manufacturers will deny

exposure to other products and conceal that they have asserted the same exposure when submitting claims to trusts. A32(¶54). As one court found, "some plaintiffs and their lawyers … withhold evidence of exposure to other asbestos products and … delay filing claims against bankrupt defendants' asbestos trusts until after obtaining recoveries from … viable defendants" like Plaintiffs here. A35–36(¶60).

All of this has led at least fifteen States to enact laws making Claims Data *automatically discoverable* in asbestos-related cases, including from the bankruptcy trusts directly. Op.*19; A34–35(¶¶56–57). And courts with high-volume asbestos dockets have issued standing orders doing likewise. A32–33(¶55).

E. Defendants' decision to destroy the Claims Data

Nevertheless, Defendants have continued to oppose access to this vital information. A17–18(¶9 & n.5), A32–35(¶¶55–57), A37–38(¶¶64–66). After a string of losses in the courts, Defendants feared that increased disclosure of the Claims Data—along with the consequent discovery that asbestos claimants and their counsel routinely withheld information in the tort system—would yield additional court findings of "'widespread' suppression of evidence." A15–16(¶7). Their solution was to enact new document retention policies that would systematically destroy the Claims Data. A39–42(¶¶67–73). As the Court of Chancery recognized, the Defendants' document-destruction policies, if implemented, would "result in the

destruction of the vast majority of existing Claims Data" and "eviscerate [Plaintiffs'] ability to obtain Claims Data to defend against asbestos claims." Op.*6.

Plaintiffs dispute as pretextual (and groundless) the largely after-the-fact excuses that Defendants' counsel have proffered as the genesis of these new policies. A12(¶1), A15–16(¶7), A18(¶10), A29(¶49), A49(¶88); Op.*6. Defendants claim they are merely seeking to comply with state data-retention laws. *See* Appellants' Joint Opening Brief ("Op.Br.") 9–10. But they have been retaining the Claims Data for decades, and many of the data-retention laws they invoke have been on the books throughout this time. *See* Defs.' Compendium, Exs. 8, 9, 11, 14, 16–21, 23–25. Also, it is not clear how at least some of the information, such as exposure to a product, is sensitive and confidential. And Defendants will continue to retain information "required for Trust purposes." *E.g.*, A61. Whatever that encompasses, presumably it includes some personal identifying information, and Defendants have not said otherwise.

F. The Court of Chancery's finding of jurisdiction, standing, and an adequately pleaded claim

1. Plaintiffs learned of Defendants' plan to destroy Claims Data in March 2025—a month before destruction was to begin. A39(¶67). They asked Defendants to halt implementation of the document-destruction policies and reminded them of their duty to maintain the data as relevant to ongoing asbestos proceedings. *Id.*; B2–

4. Defendants refused. A40–41(¶71). Other asbestos plaintiffs and defendants and even the attorneys general of fifteen States also asked them to stand down, to no avail. A41–42(¶¶72–73).

Facing the imminent destruction of this irreplaceable information, Plaintiffs sued. They sought a declaratory judgment that they had an interest in the Claims Data as parties to asbestos litigation and as Indirect Claimants against Defendants, A45(¶80), A48(¶85), and that Defendants owed them a duty to preserve it, A44–45(¶79), A46–47(¶¶82–83), A48(¶¶85–86). They also sought preliminary and permanent injunctions to ensure preservation of the Claims Data. A50(¶B).

2. Defendants moved to dismiss. Plaintiffs opposed, and ten States appeared as amici to urge the Court of Chancery to order preservation of the Claims Data as "highly relevant to ongoing and future litigation and identifying and preventing fraud, waste, and mismanagement." B16.

In support of their motion, Defendants first argued the Court of Chancery lacked subject-matter jurisdiction. The court below disagreed, finding some of their arguments "frivolous." Op.*7–13. Defendants have since abandoned their jurisdictional objections.

Next, Defendants argued lack of standing, claiming Plaintiffs' alleged injury—the loss of Claims Data to which they are entitled—is "'entirely hypothetical and conjectural.'" Op.*14. The court found that characterization "difficult to

understand." *Id.* It was at least "reasonably conceivable" that Plaintiffs had a right to the Claims Data, both as litigants that "consistently" subpoena it and as trust beneficiaries. Op.*14–16. Analogizing asbestos litigation to rainstorms happening across the globe and Plaintiffs' need for Claims Data to rain gear, the Court of Chancery found it inevitable that destroying Claims Data would harm Plaintiffs. Op.*16. The remaining standing elements of causation and redressability were "easy"—the document-destruction policies would cause Plaintiffs to lose all access to information they were entitled to, and enjoining destruction of the Claims Data would prevent that loss. *Id.* Plaintiffs also had standing in equity to seek a bill of discovery. Op.*16–17.

Last, Defendants contended that Plaintiffs had failed to state a claim on which relief can be granted. The Court of Chancery disagreed, finding that Plaintiffs had adequately pleaded the elements for an equitable bill of discovery. This "venerable" head of equity jurisdiction allows a court to "deploy its equitable powers to assist [a] petitioner in obtaining evidence for use in another pending or anticipated proceeding." Op.*17.

The Court of Chancery found Plaintiffs' Complaint alleged all of the elements for a bill of discovery. Because Plaintiffs must defend thousands of current and future asbestos claims, they "more than satisfied" the required "interest in a pending or anticipated case." Op.*18. Defendants could not "meaningfully dispute[]" that the

Claims Data—"the key to defending asbestos lawsuits"—was material to Plaintiffs' cases. Op.*19. And because asbestos claimants and their counsel were unwilling or unable to provide Plaintiffs with the information found in the Claims Data, there was no adequate way for Plaintiffs to obtain the needed discovery apart from Defendants.

3. Defendants sought interlocutory appeal, which this Court granted.

ARGUMENT

I. Plaintiffs have standing.

A. Question Presented

Plaintiffs allege they have the right to obtain the Claims Data, both because it is relevant to asbestos claims asserted against them and because they hold Indirect Claims against Defendants. The Claims Data is not reliably available elsewhere, and Defendants' document-destruction policies will permanently destroy it. Have Plaintiffs alleged standing, as the Court of Chancery held they have? A114–23; A168–89.

B. Scope of Review

This Court "exercises *de novo* review when evaluating a trial court's decision to deny a motion to dismiss." *Brookfield Asset Mgmt., Inc. v. Rosson*, 261 A.3d 1251, 1262 (Del. 2021).

C. Merits of the Argument

The Court of Chancery correctly held Plaintiffs have standing to bring their claims: Without judicial intervention, Plaintiffs face the immediate and permanent destruction of information they have a right to discover.

Plaintiffs who meet the requirements for standing in federal court have standing in Delaware court. *Albence v. Higgin*, 295 A.3d 1065, 1086–87 (Del. 2022). Under the federal standard, a complaint must allege "(i) the plaintiff has suffered an

injury-in-fact, i.e., a concrete and actual invasion of a legally protected interest; (ii) there is a causal connection between the injury and the conduct complained of; and (iii) it is likely the injury will be redressed by a favorable court decision." *Id.* at 1086 (quotation marks omitted). "At the pleading stage, general allegations of injury are sufficient to withstand a motion to dismiss because it is 'presume[d] that general allegations embrace those specific facts that are necessary to support the claim.'" *Dover Hist. Soc'y v. City of Dover Plan. Comm'n*, 838 A.2d 1103, 1110 (Del. 2003). The Court must accept well pleaded allegations as true. *Id.*[2]

Defendants challenge four aspects of the Court of Chancery's analysis, arguing (1) Plaintiffs face no injury-in-fact because they have no legally protected interests in the Claims Data; (2) Plaintiffs' injuries are "speculative," "hypothetical," and "conjectural," not actual and concrete; (3) Defendants' document-destruction

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[2] Standing here is considered under Rule 12(b)(6)'s standard, which assumes the truth of Plaintiffs' allegations, accepts even vague allegations, and draws all reasonable inferences in Plaintiffs' favor. *Albence v. Mennella*, 320 A.3d 212, 220–21 (Del. 2024); *Appriva S'holder Litig. Co. v. ev3, Inc.*, 937 A.2d 1275, 1284 n.14 (Del. 2007). Below, however, Defendants said they were challenging standing under Rule 12(b)(1), which permits courts to consider evidence outside the pleadings. MTD.20; *see Appriva*, 937 A.2d at 1284 n.14. Defendants point the Court to no extra-pleading material relevant to their standing arguments, but, regardless, Rule 12(b)(1) does not apply here. Defendants' standing arguments do not challenge the power of the Court of Chancery to issue preservation orders in general; instead, they claim that Plaintiffs do not qualify for one for case-specific reasons. *See Mennella*, 320 A.3d at 220–21. And their arguments are "intertwined with the facts central to the merits of the dispute." *Appriva*, 937 A.2d at 1285; *see* Op.Br.16.

policies would not cause Plaintiffs' injuries; and (4) Plaintiffs lack standing in equity. Defendants are wrong on all four points.

1. Plaintiffs alleged a legally cognizable injury.

To meet the injury-in-fact requirement, a plaintiff must allege injury to a "cognizable legal interest[]." *Dover Hist. Soc'y*, 838 A.2d at 1112. In other words, the defendant's challenged conduct must "affect" a plaintiff's "legal rights." *Nichols v. State Coastal Zone Indus. Control Bd.*, 74 A.3d 636, 644 (Del. 2013).

The Court of Chancery found that Plaintiffs alleged two bases for their interest in the Claims Data: (a) as defendants in asbestos suits, and (b) as Indirect Claimants against Defendants. Both findings were correct.

a. Plaintiffs are defendants in tens of thousands of asbestos personal-injury cases. *E.g.*, A14(¶5), A16–17(¶8), A26(¶42), A45(¶80). The Claims Data is critical to their defense. A30(¶50). It provides evidence (often the only evidence) of claimants' exposures to asbestos in other products or circumstances and their recoveries from other sources—both key to determining the value of asbestos claims against Plaintiffs. A13(¶3), A16–17(¶8), A42(¶74). Defendants do not even dispute the relevance of the Claims Data to Plaintiffs' cases. They instead *admit* that Plaintiffs "obtain Claims Data relevant to a particular claim by subpoenaing a Trust." Op.Br.8.

And because it is highly relevant to their defense of asbestos cases, Plaintiffs have an ongoing *right* to obtain this information. *See, e.g.*, Ct. Ch. R. 26(b)(1), 34(c), 45; Super. Ct. Civ. R. 26(b)(1), 34(c), 45; Fed. R. Civ. P. 26(b)(1), 34(c), 45; *In re Appraisal of Dole Food Co.*, 114 A.3d 541, 547–49 (Del. Ch. 2014) (tracing modern expansive discovery standards); *Chamison v. HealthTrust, Inc.-Hosp. Co.*, 1997 WL 695576, at *2 (Del. Ch. Oct. 29, 1997) (referring to "defendant's customary right to take discovery in preparing a defense"). The laws of over a dozen States and the standing orders of many courts expressly confirm this right to discover the Claims Data. *Supra* Statement D, at 9. Bankruptcy courts overseeing the reorganization of asbestos defendants have likewise found it relevant and discoverable, A17–18(¶9 & n.5), A37–38(¶¶64–66). Plaintiffs have thus alleged an invasion of their legally protected interests. *See Carlson v. United States*, 837 F.3d 753, 758 (7th Cir. 2016) (to show standing, plaintiff need only allege a "colorable claim of a right to obtain access to these documents").

Defendants' only response is that because they are not *party* to the underlying asbestos cases, they have no duty to preserve the Claims Data. Op.Br.14–15. This is both irrelevant and wrong.

It is irrelevant because the standing inquiry focuses on whether a *plaintiff* has suffered an *injury*-in-fact, not whether the *defendant* has violated a legal *duty*. Thus, in *Dover Historical Society*, this Court found that property owners in a historical

district had standing to challenge a certificate to construct a building that would damage the district's aesthetics, and it did not matter whether the planning commission that issued the certificate owed the property owners any duty. 838 A.2d at 1114.

And it is wrong because, under Delaware law, a duty to preserve evidence is triggered when litigation is filed or there is "a reason to anticipate litigation." *Beard Rsch., Inc. v. Kates*, 981 A.2d 1175, 1185 (Del. Ch. 2009) (collecting cases). Defendants have already received subpoenas from Plaintiff DBMP. A17–18(¶9 & n.5), A37–38(¶¶64–66). Plaintiffs regularly seek Claims Data from Defendants, A14(¶5), A17–18(¶9), A43–44(¶¶75–76), and Defendants should anticipate their doing so for decades to come, A25(¶38). The Court of Chancery's finding that Defendants will have an ongoing obligation to preserve and produce the Claims Data under repeated subpoenas was thus grounded in Plaintiffs' allegations, not a "novel proposition." Op.Br.13.

Nor are Defendants mere "third parties," with no interest in the underlying asbestos cases. *See* Op.Br.14–15 & nn.10–11. Whether a third party is an "interested party" is a factually intensive inquiry that considers relationships between parties and who has control over the relevant evidence. *Gay v. Parsons*, 2024 WL 4224893, at *4 (N.D. Cal. Sept. 17, 2024). Defendants are controlled by the asbestos plaintiffs' bar, who have been involved with asbestos litigation for decades and have a clear

and direct interest in seeing the Claims Data destroyed. Moreover, Defendants are successors to the major asbestos manufacturers that would be codefendants with Plaintiffs but for bankruptcy-court channeling injunctions, Op.*24, and thus they have a "special relationship" with Plaintiffs, *see* Op.Br.24 n.26. Indeed, one of the main reasons why Plaintiffs are primary targets of asbestos litigation is because Defendants' predecessors entered bankruptcy. A25–26(¶¶40–42). As one leading asbestos attorney put it, after the first wave of bankruptcies, asbestos litigation has become an "endless search for a solvent bystander." *Medical Monitoring and Asbestos Litigation—A Discussion with Richard Scruggs and Victor Schwartz*, 1-7:21 Mealey's Asbestos Bankr. Rep. 5 (2002).

And as successors to these codefendants, Defendants are also "industry participants," fully knowing that "industry-wide events" have made it inevitable they will face Direct and Indirect Claims, which further obligates them to preserve the Claims Data. *See* Op.Br.24 n.27. And because they are the "only" parties that "ha[ve] the evidence" relevant to parties with whom they have a special relationship, Defendants are "interested parties" in the asbestos litigation and have a corresponding duty to preserve relevant evidence. *See* Op.Br.24 n.26; *see also* A32(¶54), A35–36(¶60); Op.*4–5.

b. Plaintiffs asserted another legal interest in the Claims Data—their status as beneficiaries of the Trust Defendants and holders of Indirect Claims against them.

See supra Statement C, at 6–7. Plaintiffs hold contingent Indirect Claims for contribution stemming from the *thousands* of pending and future asbestos cases filed against them. *See* Op.*16 (Indirect Claims defined to include future rights to payment). They need the Claims Data to establish the basis for and amount of their Indirect Claims. A14(¶5), A18–19(¶11), A20–21(¶15), A48(¶85); Op.*15–16; A181–82 & n.17. And as trust beneficiaries, Plaintiffs have an interest in ensuring Defendants retain and use the Claims Data to perform their cross-Trust audit obligations and ferret out fraudulent claims that, if unchecked, reduce funds available for meritorious claims (including Indirect Claims). A43(¶75), A44(¶77).

Defendants do not contest that all Indirect Claimants actually have a protected legal interest in the Claims Data. They just assert that Plaintiffs neglected to allege they are Indirect Claimants or trust beneficiaries. Op.Br.15. That is specious. A13–14(¶¶4–5) (alleging Plaintiffs have "Indirect Claims" and are "beneficiaries"); *see also* A18–19(¶11), A20–21(¶15), A27–28(¶44), A48(¶85). Defendants also had notice of the trust documents' terms because the Complaint repeatedly refers to the terms of the organizing trust documents and incorporates them by reference. *E.g.*, A13–14(¶4), A18–19(¶11), A20–21(¶15), A44(¶77); *see Hiller & Arban, LLC v. Rsrvs. Mgmt., LLC*, 2016 WL 3678544, at *6 (Del. Super. Ct. July 1, 2016) ("a plaintiff is not required to attach all documents" and must simply provide "fair notice"). And when Defendants refused to accept Plaintiffs' allegations as true and

contested the terms of the trust documents, Plaintiffs *attached* them to their response to Defendants' motion to dismiss, and Defendants did not object. A163 n.3.[3]

Defendants also complain that Plaintiffs in their Complaint do not allege they have *submitted* Indirect Claims to the trusts. Op.Br.16. That is beside the point. As alleged and explained, Plaintiffs are Indirect Claimants, which means that they at a minimum have current contingent claims against the trusts. That gives them an interest in the Claims Data, one that Defendants' actions threaten.

2. Plaintiffs' harms are actual and imminent.

The Court of Chancery correctly found that the planned destruction of the Claims Data gives Plaintiffs an actual or imminent injury. Under this requirement, a plaintiff's alleged injury must have already occurred or be about to occur, rather than being hypothetical or conjectural. *Emps. Ins. Co. of Wausau v. First State Orthopaedics, P.A.*, 312 A.3d 597, 608 (Del. 2024).

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[3] Defendants cite a Court of Chancery opinion to nevertheless argue that Plaintiffs should have cited *specific provisions* of the trust agreements to show their status as Indirect Claimants, even though "'general allegations of injury are sufficient'" for standing. *Dover Hist. Soc'y*, 838 A.2d at 1110; *see* Op.Br.15 & n.13. That contract-dispute case did not even involve standing. It held only that the plaintiffs there asserting contract claims should cite specific contract provisions to put defendants on notice of the claims asserted against them. *See Enzolytics, Inc. v. Empire Stock Transfer Inc.*, 2023 WL 2543952, at *3 (Del. Ch. Mar. 16, 2023). But Defendants are not defending against a contract claim, nor are they "a *pro se* individual who does not speak English and resides in a foreign country." *Id.*

Defendants claim that Plaintiffs' injury is "purely hypothetical," Op.Br.17, but that requires ignoring the Complaint's allegations, the broad nature of asbestos litigation, and common sense. Plaintiffs have a legal right to obtain the Claims Data, and Defendants have vowed to destroy it. The Court of Chancery did not find this issue even close. Op.*14.

Plaintiffs' alleged injury-in-fact is the *certain* loss of information to which they are *entitled*. That is enough. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 433 (2021) (material risk of harm from dissemination of personal information sufficient to confer standing). It need not be the resulting pocketbook harm they face in asbestos cases, although it is that too, and the Court of Chancery in any event did not conflate the two. *See* Op.Br.17. It rightly found that destroying the Claims Data would have the "identified effects" *both* of Plaintiffs' "no longer hav[ing] access to" data they have a right to obtain *and* of their "fac[ing] greater liability and settl[ing] more cases for higher amounts." Op.*14. That Plaintiffs *also* face pecuniary harm from the loss of the Claims Data is additional support for standing. *See, e.g.*, A15–17(¶¶7–8), A18–19(¶11), A25–26(¶40), A37(¶62), A43(¶75), A48(¶86).

The Court of Chancery also dispensed with Defendants' contention that Plaintiffs' alleged harm is "hypothetical" and "conjectural" because they have not identified specific claims to which the Claims Data would be relevant. Op.*14; *see* Op.Br.17. Defendants offer no authority or logic for their suggestion that Plaintiffs

must identify each (or any) of the thousands of claims affected by the spoliation this action seeks to avoid, and, again, "general allegations of injury are sufficient to withstand a motion to dismiss." *Dover Hist. Soc'y*, 838 A.2d at 1110. It is *at least* a reasonable inference, *supra* Arg. I.C, at 15 n.2, that Defendants' new policies will harm Plaintiffs. As the Court of Chancery reasoned, the harm is actually inevitable: While Plaintiffs "do not know what specific Claims Data they need or when specific asbestos plaintiffs will sue," they do "know that many asbestos plaintiffs will sue and that they will need Claims Data to defend those cases." Op.*16; *see also id.* (reasonably conceivable, given "the nature of asbestos litigation," that Plaintiffs "presently enjoy the status of Indirect Claimants"); B30–33 (given the "ambient level of asbestos litigation out there," a court could "infer[] that there are cases out there for which this stuff would be relevant"), B40–41 (recognizing Plaintiffs' Complaint establishes that it "indeed is almost statistically certain that [they] will need to access this type of data in current or to be filed claims").

3. Plaintiffs alleged that Defendants' document-destruction policies caused their injury.

Defendants argue they are not the cause of Plaintiffs' injury—that Plaintiffs' imminent loss of the Claims Data is not "fairly traceable" to their document-destruction policies. *Dover Hist. Soc'y*, 838 A.2d at 1110.

The Court of Chancery rightly found this issue "easy" too. Op.*16. Plaintiffs have a right to the Claims Data, information that is irreplaceable and that only Defendants reliably possess. A42–44(¶¶74–77). The *only* cause for the threatened loss of this information is Defendants' plan to destroy it.

Defendants' response is that Plaintiffs could get this information from asbestos claimants and their counsel. Op.Br.18. If on a motion to dismiss courts could *reject* the allegations of a complaint, Defendants might have a point. But accepting Plaintiffs' allegations as true means that asbestos claimants and their counsel are *not* a reliable source of information for the Claims Data. A17–18(¶9), A25–26(¶40), A32(¶54), A35–37(¶¶60–62), A42–44(¶¶74–77); Op.*5, *16.[4] And there is in any event no ground for Defendants' assertions that the Claims Data is available from claimants or their counsel.

4. Plaintiffs have standing in equity to bring this case.

Last, Defendants take issue with the Court of Chancery's finding that because Plaintiffs *stated a claim* for an equitable bill of discovery, they have *standing* in

[4] The Court of Chancery did not "impute[]" to Defendants findings from the *Garlock* case or information from law-review articles. Op.Br.18 n.14; *see also* Op.Br.33 n.47. Plaintiffs repeatedly alleged that the deceptive practices the bankruptcy court in *Garlock* recognized are also present here, A15–17 (¶¶ 7–8), A35–37 (¶¶ 59–63), and the Court of Chancery merely accepted these allegations as true, Op.*2, as it was required to do. This information, and the information taken from asbestos-litigation scholarship, simply provides context for Plaintiffs' claims.

Delaware court to bring that equitable claim regardless of whether they satisfy the federal standard for standing.

Defendants mainly complain that the Court of Chancery did not cite a case in this two-paragraph belt-and-suspenders part of its opinion. Op.Br.19. It does not matter (because Plaintiffs satisfy the federal standard, as detailed above), but the court's reasoning was in any event sound: If a plaintiff has stated a claim in equity, of course it has alleged an injury cognizable in equity.

Take, for example, the bill of discovery itself, which the Court of Chancery held Plaintiffs have adequately pleaded here. It requires a plaintiff to claim an *interest* in pending or anticipated litigation, a *need* for relevant evidence, and an *inability* to obtain that evidence effectively, conveniently, or completely through other means. Op.*17. A plaintiff who can make such allegations has necessarily alleged a cognizable right (interest in discovery material) and an injury to it (the threatened loss of adequate access to those materials without equity's intervention). Or, as another example, consider a claim for breach of fiduciary duty, "'perhaps the quintessential equitable claim.'" *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1046 n.70 (Del. 2014). To state such a claim, a plaintiff must allege "(1) that a fiduciary duty existed and (2) that the defendant breached that duty." *Beard Rsch., Inc. v. Kates*, 8 A.3d 573, 601 (Del. Ch. 2010), *aff'd sub nom. ASDI, Inc. v. Beard*

Rsch., Inc., 11 A.3d 749 (Del. 2010). A sufficiently alleged breach necessarily alleges an invasion of the plaintiff's rights.

Defendants also quote the "complete failure of justice" standard for *extending* equitable standing to a *new context*. Op.Br.19. That has no bearing on this case—the equitable bill of discovery is a "longstanding," "venerable doctrine." Op.*17–18, *20–21. And even if that test did apply, this case passes it. Defendants seek to destroy evidence that dozens of state legislatures, state courts, and federal courts have found to be relevant and discoverable, evidence that is indispensable to resolving the asbestos claims asserted against Plaintiffs, all to compromise the accurate resolution of thousands of cases and to further "widespread" fraud perpetrated by the asbestos plaintiffs' bar that controls Defendants. A15–16(¶7). Failing to preserve the Claims Data would result in a complete failure of justice.

II. The Court of Chancery may grant an equitable bill of discovery, and Plaintiffs stated a claim for one.

A. Question Presented

Plaintiffs have alleged that they are defendants in thousands of asbestos personal-injury cases and imminently will be defendants in many more, and that they hold contingent Indirect Claims against Defendants. To defend and prosecute those cases, they need the Claims Data. The only way to obtain it is from Defendants, and no adequate remedy at law could prevent Defendants from destroying it. May the Court of Chancery grant Plaintiffs a bill of discovery on these allegations, as that court held it may? A336–55; B57–75.

B. Scope of Review

This Court "exercises *de novo* review when evaluating a trial court's decision to deny a motion to dismiss." *Brookfield Asset Mgmt.*, 261 A.3d at 1262.

C. Merits of the Argument

1. This Court should decline Defendants' invitation to eliminate the equitable bill of discovery.

Defendants do not question that the bill of discovery is one of the traditional heads of equity jurisdiction. Op.Br.41; *see Ex parte Boyd*, 105 U.S. 647, 657–58 (1881). Yet they invite this Court to find that the Court of Chancery has somehow lost its power to grant litigants a bill of discovery. *See* Op.Br.4, 28; Appl. Interloc. Appeal. 5, 8. This Court should refuse the invitation.

The Court of Chancery possesses "'all the general equity jurisdiction of the High Court of Chancery of Great Britain as it existed prior to the separation of the colonies.'" *In re Arzuaga-Guevara*, 794 A.2d 579, 584 (Del. 2001). As Defendants recognize, the equitable bill of discovery is a "centuries-old doctrine." Op.Br.41; *see also* Op.*20. Litigants could apply to a court of equity to compel discovery related to a pending or anticipated action at law, whether from an opposing party or a third party. Op.*18, *24. Today's liberal discovery rules usually make a bill of discovery unnecessary, but most jurisdictions find that the equitable bill is still available. Rupert F. Barron, Annotation, *Existence and nature of cause of action for equitable bill of discovery*, 37 A.L.R.5th 645 § 3 (2026 update) (bill of discovery's continued availability is the "majority view").[5]

The only way for the Court of Chancery to be divested of a traditional equitable power is if the General Assembly enacts a new remedy that is "equivalent and expressly made exclusive." *Diebold Comput. Leasing, Inc. v. Com. Credit Corp.*, 267 A.2d 586, 591 (Del. 1970); *see also DuPont v. DuPont*, 85 A.2d 724, 729 (Del. 1951) (Court of Chancery's equitable powers guaranteed by Delaware constitution). The court below applied this rule to the equitable bill of discovery and found that no adequate, much less exclusive, remedy exists today. Op.*20–22 & n.107.

[5] Thus, Defendants' claim that the bill of discovery has been eliminated in most jurisdictions (Op.Br.27, 32) is simply wrong.

Defendants offer nothing in response. They never engage with *Diebold*'s standard for determining whether the Court of Chancery's equitable power has been limited, nor do they attempt to point this Court to any adequate or exclusive remedy that has been substituted for the bill of discovery. *See* Op.Br.39.

Defendants do contend that Delaware does not recognize a spoliation tort. Op.Br.22–23. That, however, only *reinforces* the conclusion that a bill of discovery is needed here, because no adequate remedy at law exists to prevent the destruction of the Claims Data that Plaintiffs are entitled to obtain. *Cf.* Op.*21 n.107.

2. Plaintiffs stated a claim for a bill of discovery.

On a motion to dismiss for failure to state a claim,

> (i) all well-pleaded factual allegations are accepted as true; (ii) even vague allegations are "well-pleaded" if they give the opposing party notice of the claim; (iii) the Court must draw all reasonable inferences in favor of the non-moving party; and (iv) dismissal is inappropriate unless the "plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof."

Erste Asset Mgmt. GmbH v. Hees, 341 A.3d 1008, 1025 (Del. 2025).

The court below carefully traced the history and scope of the equitable bill of discovery and summarized its elements as follows: A petitioner must allege (a) "an interest in a pending or anticipated case," (b) "articulate how the evidence sought is material to the case," and (c) "show that the evidence cannot be obtained effectively, conveniently, or completely through other means, such as through discovery in the

principal case." Op.*18. Those elements are correct, and, as the court below recognized, Plaintiffs pleaded allegations establishing all three.

a. As asbestos defendants and as Indirect Claimants, Plaintiffs have an interest in both pending and anticipated litigation.

The Court of Chancery correctly found that Plaintiffs alleged an interest in pending or anticipated litigation. This element is designed to weed out "unjustified fishing expedition[s]." Op.*18. Only a petitioner who "'has a right to maintain or defend an action in another court,'" or who "'is about to sue or is liable to be sued therein'" can seek a bill of discovery. *Id.* A claimant must show that a "'real cause of action'" is "'pending or imminent.'" *Id.*

Plaintiffs are already defendants in thousands of pending asbestos cases (and a bankruptcy debtor in a case where the bankruptcy court already found the Claims Data relevant). A12(¶1), A14(¶5), A17–18(¶9 & n.5), A18(¶10), A21(¶17), A25(¶38), A26(¶42), A45(¶80). "They have a right to defend those cases." Op.*18. They also hold Indirect Claims against Defendants. A13–14(¶¶4–5), A15–16(¶7), A18–19(¶11), A20–21(¶15), A26(¶42), A45(¶80), A48(¶¶85–86); Op.*15–16. Though bankruptcy channeling injunctions funnel those claims out of the tort system and to the trusts, they are "'real cause[s] of action'" that are "'pending or imminent.'" Op.*18.

Here, Defendants argue that the additional asbestos litigation that Plaintiffs anticipate is not sufficiently "imminent" to justify a bill of discovery. Op.Br.30–31. That argument is doubly flawed: Defendants simply ignore Plaintiffs' allegations that thousands of asbestos cases *are pending* against them. And they ignore the Complaint as to the imminence of future asbestos cases. Plaintiffs allege that they are *constantly* sued, with potentially hundreds of thousands of claimants waiting to come forward in the next few decades. A14(¶5), A20–21(¶15), A21(¶17), A25(¶38), A26(¶42), A48(¶85); *see also* Op.*3 n.14. The only reasonable inference from these allegations is that suits against Plaintiffs are *certain*, on almost a daily basis, for years to come.

b. The Claims Data is undoubtedly material to Plaintiffs' cases.

Below, Defendants did not "meaningfully dispute[] [the materiality] element." Op.*19. Plaintiffs have alleged that the Claims Data is "the key to defending asbestos lawsuits." *Id.* They need it to adequately value and defend the asbestos claims, to value their asbestos liability in bankruptcy, and to assert their Indirect Claims. The dozens of state statutes and discovery orders finding this information relevant and discoverable make the question easy.

Here, Defendants do not argue that Plaintiffs' description of the Claims Data is insufficiently "specific." Op.Br.32; *see* A30(¶50). Instead, they object primarily

that Plaintiffs have not identified the individual claimants whose information they seek from the Claims Data. Op.Br.31–33. On Defendants' telling, Plaintiffs should request preservation of information only related to individual claimants who have both sued Plaintiffs and submitted trust claims.

As noted above, and as the Court of Chancery found, Defendants ignore reality. Given the ubiquity of asbestos litigation across the country and the extent to which claimants submit claims to Defendants, there can be no dispute that a broad destruction of Claims Data would inevitably impact Plaintiffs across hundreds (or, more likely, thousands) of cases. Op.*16; B30–33, B40–41. Moreover, Defendants are *the reason* Plaintiffs often do not know which claimants have submitted trust claims—they "'zealously guard [the Claims Data] and seek to hide it from'" Plaintiffs. A42(¶74). So Plaintiffs cannot know which asbestos claimants have filed trust claims, which portions of the Claims Data relate to pending suits, or even which specific claimants' information will be destroyed under Defendants' new policies. All Plaintiffs know is that asbestos claimants usually submit trust claims to several trusts. *See Garlock*, 504 B.R. at 84 (average of 21 different trusts per individual claimant). It is only through preservation and later discovery of the Claims Data that Plaintiffs will demonstrate matches between the Claims Data and their asbestos cases (or Indirect Claims).

So the Claims Data *is* "'confined to facts material to'" Plaintiffs' defenses, Op.Br.32 (quoting *Berger v. Cuomo*, 644 A.2d 333, 337 (Conn. 1994)), and in no way seeks to "delve into [Defendants'] affairs," *Berger*, 644 A.2d at 337. At the motion to dismiss stage, it is enough that Plaintiffs "know that many asbestos plaintiffs [have sued or] will sue and that they will need Claims Data to defend those cases." Op.*16.

c. The Claims Data cannot be otherwise preserved.

The Court of Chancery correctly found that Plaintiffs have no adequate means at law to obtain the Claims Data. Op.*19–20.

Defendants suggest that Plaintiffs might be able to seek discovery related to individual claimants in specific cases. Op.Br.34. But they will never be able to do so if the Claims Data is *destroyed*. Op.*19–20. Obtaining discovery about specific claimants in pending cases will provide no relief for Plaintiffs in the hundreds of thousands of claims they will face in future cases.

And Plaintiffs cannot seek preservation orders in the thousands of individual cases located outside of Delaware, where courts would lack the jurisdiction to enjoin Defendants from destroying the Claims Data. *See, e.g.*, *In re Grand Casinos, Inc. Sec. Litig.*, 988 F. Supp. 1270, 1273 (D. Minn. 1997) (denying request for preservation order against third parties, noting "we are aware of no authority which would subject third-persons to our jurisdiction"); Donald J. Wolfe, Jr. & Michael A.

Pittenger, *Corporate and Commercial Practice in the Delaware Court of Chancery* § 16.02[b] (2d ed. 2024) ("injunctions operate in personam"); Edward A. Hannan, *Using Quasi In-Rem Jurisdiction to Prevent Pre-Suit Loss or Alteration of Evidence*, 65 Def. Couns. J. 247, 248 (1998) (noting courts "enjoy judicial power over all property *within their borders*, real or personal") (emphasis added). An order from the Court of Chancery requiring preservation of the Claims Data is the *only* way to preserve this irreplaceable information.

Defendants' primary argument is that Plaintiffs could seek the Claims Data from individual claimants and their counsel. Op.Br.34–36. This fails for the reasons discussed above—assuming the truth of Plaintiffs' allegations, they *cannot* reliably get this information from individual claimants or their lawyers. *Supra* Arg. I.C.3, at 23–24.[6] And the Court of Chancery never "acknowledge[d] that [Plaintiffs] could seek the documents from claimants," Op.Br.34; it found that the Complaint alleged *the opposite*, Op.*20.

Defendants also quibble with the standard the Court of Chancery applied here, saying that it should not have used the word "conveniently" when discussing whether Plaintiffs have an adequate remedy at law. Op.Br.29–30. This makes no

[6] Again, the Court of Chancery did *not* "impute" information from *Garlock* or law reviews to this case. *Supra* Arg. 1.C.3, at 24 n.4. It took Plaintiffs' allegations as true and showed that their allegations are also plausible.

difference because the court below was not focused on what might be the easiest way for Plaintiffs to obtain the Claims Data. Rather, it found that, if Defendants implement their document-destruction policies, "it will be impossible to obtain the evidence." Op.*19.

And the Court of Chancery was right to consider "convenience"—not in the sense of asking whether proceeding in equity would be slightly easier, but in the sense of asking whether proceeding at law would be inadequate due to excessive burdens—because convenience has long been an important consideration for entertaining equitable actions. *See, e.g.*, *Dock v. Dock*, 36 A. 411, 412 (Pa. 1897) (reversing dismissal of bill for discovery and other equitable relief because "remedy at law [was] neither *convenient* nor adequate") (emphasis added); *Glenney v. Stedwell*, 1876 WL 12107 (N.Y. Feb. 1, 1876) ("The bill of discovery in chancery … proceeded … in the class of cases where a party had no other competent and *reasonably convenient* means of proving facts") (emphasis added).

Last, Defendants "casually mention[]" that the Claims Data might be preserved by reopening the bankruptcy proceedings in which Defendants were created, yet they "fail[] to cite any authority in support of [this] argument," so have forfeited it. *Ploof v. State*, 75 A.3d 811, 822 (Del. 2013); *see* Op.Br.34 & n.49. Besides, it is meritless, because, as the Court of Chancery found, reopening the bankruptcy cases would not provide an *adequate* remedy at law. The cases have been

closed for years, most for over a decade, and the trusts' document-retention policies do not present bankruptcy-law issues. Op.*27. Even if Plaintiffs could reopen, they would need to do so in *each* bankruptcy, a "circuitous process" not nearly as "efficient" as proceeding in equity. *Id.* And any refusal to reopen would mean Plaintiffs have *no* remedy at law. *Id.*

3. Defendants' policy arguments are unavailing.

Defendants fall back on a bevy of policy arguments, most involving rhetoric divorced from the facts. Op.Br.37–40. This Court should reject them all.

Defendants warn of a flood of discovery-related litigation in Delaware. Op.Br.38–39. But they do little to explain how that might occur, and this alarmism is checked by the Court of Chancery's carefully circumscribed opinion. The court below was clear that its decision turned on the singular and unprecedented nature of asbestos litigation as alleged in the Complaint. Op.*30. As the court below recognized, a host of courts and legal commentators have found that asbestos litigation "'unique[ly]'" presents unprecedented "'challenges … to traditional court rules and legal principles.'" Op.*30; *see also, e.g.*, *In re Owens Corning*, 305 B.R. 175, 217–19 (D. Del. 2004) (collecting cases and scholarship).

Here, the uniqueness of asbestos litigation "dr[ove] the outcome," Op.*30: (1) asbestos claimants and their counsel cannot be relied on to supply relevant evidence; (2) Defendants are the only reliable repository of this evidence; (3) normal

discovery rules cannot ensure preservation of irreplaceable data; and (4) many States have altered their codes to ensure the availability of the Claims Data. The Chancery Court's decision is the only result that can prevent the deletion of relevant, discoverable evidence whose destruction would work a fraud in *thousands* of judicial proceedings. Defendants fail to engage with any of the Court of Chancery's reasoning.

Defendants also say that proceeding under a bill of discovery would "interfere[] with the internal affairs and governance of Delaware entities." Op.Br.37. That hardly describes this case. Defendants' cited cases dealt with classic issues of corporate governance like whether to appoint a receiver, distribute a debt offering, or enter into a debt-restructuring agreement. Op.Br.37 n.52. A declaratory judgment that Defendants owe Plaintiffs a duty to preserve the Claims Data and an accompanying preservation order could hardly be more different. And this Court should roundly reject Defendants' groundless suggestion that the Court of Chancery should refrain from providing a remedy, even if the equities of a case demand it, simply because the defendant is a corporation or some other sort of business entity.

Defendants raise concerns about the equities of the case, pointing to the supposed danger of a data breach and the expense of maintaining the Claims Data. Op.Br.18–19, 34, 38. All of this is at best premature (as well as being groundless). On Plaintiffs' telling, Defendants' purported fear of a breach is another pretext for

deleting data that exposes the fraud of the asbestos plaintiffs' attorneys who control them, and those allegations control. Discovery will demonstrate whether the equities of the case lie where Plaintiffs have alleged. And the Court of Chancery is more than equipped to fashion a remedy that balances the competing concerns. Op.*12, *29 (discussing possible remedies, all to be decided later).

Defendants call the bill of discovery contemplated here a "new" cause of action. Op.Br.37. That is again inapt. True, the bill of discovery has often been used to produce evidence, not preserve it. *See* Op.Br.25. But preservation is also a common use of the bill. Op.*26 & nn.133–35. And as the Court of Chancery observed, it would be an odd result if equity possessed the power to order production of evidence but did not possess the lesser power to order preservation. *See* Op.*26–27. And a court of equity "'always has had, and always must have, a certain power and freedom of action, not possessed by the courts of law, of adapting the doctrines which [it] administers.'" Op.*25. Defendants offer nothing in response.

4. Plaintiffs did not forfeit, much less waive, their claim for a bill of discovery.

Defendants end with a cursory argument that Plaintiffs "waived" their claim for a bill of discovery by not explicitly invoking the words "bill of discovery" in the

Complaint, and that the Court of Chancery failed to address Defendants' arguments on this issue.[7] Op.Br.41–43. Not so.

The Court of Chancery's opinion has an *entire section* addressing Defendants' "contention that [Plaintiffs] failed to plead a specific claim for a bill of discovery." Op.*27–29. The Court dismissed Defendants' arguments as "hearken[ing] back" to an "antiquated theory of pleading" that a plaintiff must "pick a legal theory at the outset of the case and stick with it." Op.*27. The Federal Rules of Civil Procedure (and the Delaware rules that follow them) have "definitively rejected" that approach in favor of "notice pleading." Op.*27, *29; *see also* 5 *Wright & Miller's Federal Practice & Procedure* § 1219 (4th ed. 2025 update) (tracing these developments); Op.*29 n.150 (listing cases of this Court reaffirming notice pleading).

Under a notice-pleading regime, courts construe pleadings liberally. *See* Ct. Ch. R. 8(e); *In re Est. of Simmons*, 2016 WL 590373, at *4 n.22 (Del. Ch. Feb. 11, 2016) ("Court of Chancery Rule 8 makes clear that a party need not plead a particular theory or 'cause of action' in support of a claim."). This means that a complaint "will be judged by the quality of its substance *rather than according to its form or label* and, if possible, it will be construed to give effect to all its allegations." 5 *Wright &*

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[7] Forfeiture, not waiver, is the only issue raised here—Plaintiffs never voluntarily or intentionally relinquished their claim to a bill of discovery. *See Purnell v. State*, 254 A.3d 1053, 1101 (Del. 2021).

Miller § 1286 (emphasis added) (footnote omitted) (discussing corresponding Federal Rule 8(e)). A pleading is sufficient "even if it points to *no legal theory* or even if it points to *the wrong legal theory* as a basis for that claim, as long as 'relief is possible under any set of facts that could be established consistent with the allegations.'" *Tolle v. Carroll Touch, Inc.*, 977 F.2d 1129, 1134 (7th Cir. 1992) (emphases added). Thus, for example, even after *Twombly* and *Iqbal*, which do *not* apply in Delaware, *Winshall v. Viacom Int'l, Inc.*, 76 A.3d 808, 813 n.12 (Del. 2013), federal plaintiffs can adequately state a § 1983 claim without even mentioning the statute in their complaint, *Johnson v. City of Shelby*, 574 U.S. 10 (2014) (per curiam).

Because the Complaint alleged facts that satisfy the elements for a bill of discovery, *supra* Arg. II.C.2, at 29–36; Op.*18–20, Plaintiffs did not forfeit their claim to the equitable bill, *see Lubrin v. Hess Oil V.I. Corp.*, 109 F.R.D. 403, 405 (D.V.I. 1986) (although plaintiff "did not style his complaint as an equitable bill for discovery," it was enough that he "request[ed] equitable injunctive relief seeking the equivalent result").

Defendants' claim that they lacked notice that Plaintiffs stated a claim for a bill of discovery fares no better. Op.Br.5, 42. The Court of Chancery allowed supplemental briefing specifically on the issue of the bill of discovery before issuing its ruling. And nowhere do Defendants claim they have been or will be prejudiced by proceeding under this theory. Indeed, the Court of Chancery found that Plaintiffs'

“failure to request a bill of discovery explicitly did not prejudice” Defendants, Op.*29, and they do not contest that finding, Op.Br.41–43.

III. Plaintiffs stated a claim for a declaratory judgment.

A. Question Presented

Plaintiffs alleged in their Complaint they are entitled to declaratory and injunctive relief. In denying Defendants' motion to dismiss, the Court of Chancery asked only whether Plaintiffs had adequately stated a claim for an equitable bill of discovery. In addition to affirming that result, this Court can affirm on the additional ground that Plaintiffs stated a claim for a declaratory judgment. Should it do so? A203–12; B70–75.

B. Scope of Review

This Court reviews denials of a motion to dismiss *de novo*. *Brookfield*, 261 A.3d at 1262.

C. Merits of the Argument

On appeal, any question fairly presented below may be presented for review. *Floreani v. FloSports, Inc.*, --- A.3d ---, 2025 WL 3275207, at *13 (Del. Nov. 24, 2025). This Court may decide any such issue, and it may "affirm on the basis of a different rationale than that which was articulated by the trial court." *Id.*

The Court of Chancery correctly found that Plaintiffs had stated a claim for an equitable bill of discovery. But that was not the only claim that Plaintiffs pleaded—they also stated a claim for a declaratory judgment and sought related injunctive relief, and they urged the Court of Chancery to deny dismissal on these

grounds. A203–12; B70–75. Defendants had full opportunity to address Plaintiffs' declaratory-judgment claim, A124–41, but the Court of Chancery relied on the equitable bill of discovery to deny Defendants' motion to dismiss.[8] In addition to finding that Plaintiffs stated a claim for a bill of discovery, this Court should also affirm on the ground that Plaintiffs have pleaded a claim for a declaratory judgment.

To state a claim for declaratory relief, a plaintiff must allege that an "actual controversy" exists between the parties. *In re Peierls Fam. Inter Vivos Trs.*, 77 A.3d 249, 267 (Del. 2013).

> (1) It must be a controversy involving the rights or other legal relations of the party seeking declaratory relief; (2) it must be a controversy in which the claim of right or other legal interest is asserted against one who has an interest in contesting the claim; (3) the controversy must be between parties whose interests are real and adverse; (4) the issue involved in the controversy must be ripe for judicial determination.

Id. And the Court of Chancery has the equitable power to provide injunctive relief to enforce a declaratory judgment. *See, e.g.*, *In re Aerojet Rocketdyne Hldgs., Inc.*, 2022 WL 2180240, at *17 n.189 (Del. Ch. June 16, 2022) (issuing permanent injunction "as a corollary of the declaratory judgment," to "provide protection

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[8] The Court of Chancery did *not* "recognize[] that [Plaintiffs] failed to identify a cognizable legal claim for relief." Op.Br.2, 22. Quite the opposite. It credited the Complaint's allegations as establishing the rights and obligations Plaintiffs sought in their claim for declaratory *relief* and questioned only whether a declaratory judgment *by itself* would suffice to protect Plaintiffs' interests and the legal theory supporting a preservation order. *See* B38–42, 45.

against future harm and make any necessary enforcement more readily available") (*citing*, *inter alia*, *Steffel v. Thompson*, 415 U.S. 452, 482 (1974)); B70–75.

This case involves an actual controversy. As explained above, Plaintiffs claim fundamental rights to the Claims Data, both as litigants entitled to discover it and as trust beneficiaries whose interests will be compromised by its destruction. Defendants clearly have an interest in contesting Plaintiffs' claimed rights—that is why they are here. Because Defendants claim ownership of the Claims Data and the right to destroy it, the parties' interests are real and adverse. And this controversy is ripe because Defendants will destroy the Claims Data absent court intervention.

Below, Defendants' primary objection to Plaintiffs' entitlement to a declaratory judgment was that the Complaint does not identify specific tort-system claims or claimants for which the Claims Data would be relevant (or subpoenas related to such claims). A125–29. Again, as the Court of Chancery found, Plaintiffs allege "omnipresent" asbestos litigation, and that they constantly subpoena Defendants. Op.*15–16. At the motion to dismiss stage, where even "vague" allegations are sufficient, there is no need to identify specific claims and subpoenas—Defendants have "notice" that Plaintiffs claim an interest in the Claims Data that Defendants intend to destroy. *In re Match Grp., Inc. Deriv. Litig.*, 315 A.3d 446, 458 (Del. 2024). And as explained above, it is Defendants' own fault that

Plaintiffs do not know which individual claimants have submitted claims to the trusts. *Supra* Arg. II.C.2.b, at 32.

Plaintiffs' Complaint asks for a declaration that Plaintiffs have a legal interest in the Claims Data, and that Defendants have a corresponding duty to preserve it. A44–49(¶¶78–89). Plaintiffs have already explained their rights in the Claims Data and why Defendants owe them a duty to preserve this information. *Supra* Arg. 1.C.1, at 16–21. Taking as true the facts alleged, Plaintiffs have stated a claim for the requested declaratory relief. This Court should affirm on this basis as well.

CONCLUSION

This Court should affirm.

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Dated: February 24, 2026

CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2026, true and correct copies of Appellee's Answering Brief were caused to be served on the following counsel of record via File & Serve*Xpress*:

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