



**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 REPLY BRIEF**

**YOUNG CONAWAY  
STARGATT & TAYLOR, LLP**

Edwin J. Harron (#3396)  
Kevin A. Guerke (#4096)  
Lauren Dunkle Fortunato (#6031)  
Renae P. Pagano (#6889)  
Rodney Square  
1000 North King Street  
Wilmington, DE 19801  
302.571.6600  
eharron@ycst.com  
kguerke@ycst.com  
lfortunato@ycst.com  
rpagano@ycst.com

*Attorneys for Defendant-  
Below/Appellant Delaware Claims  
Processing Facility, LLC*

**MORRIS JAMES LLP**

K. Tyler O'Connell (#4514)  
Kirsten A. Zeberkiewicz (#4573)  
Barnaby Grzaslewicz (#6037)  
Alena V. Smith (#6699)  
Samuel E. Bashman (#6751)  
3205 Avenue North Blvd., Suite 100  
P.O. Box 2306  
Wilmington, DE 19899  
302.888.6800  
toconnell@morrisjames.com  
kzeberkiewicz@morrisjames.com  
bgrzaslewicz@morrisjames.com  
asmith@morrisjames.com  
sbashman@morrisjames.com

*Attorneys for Defendants-Below/Appellants  
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*

Dated: March 16, 2026

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## **PRELIMINARY STATEMENT**

The circumstances of this appeal are undisputed: Appellees seek an open-ended order, divorced from any pending litigation, requiring the Trusts to indefinitely preserve sensitive personal data submitted by asbestos disease victims. In their Answering Brief,<sup>1</sup> Appellees speculate that, sometime in the future, some of this data might be relevant in cases in other courts, in other jurisdictions, and that it might be more convenient to obtain from the Trusts—who would not be parties in those cases—increments of this data, at times and to extents of their own choosing rather than directly from claimants or their counsel. But Appellees do not, and cannot, contest that continued preservation of that data in perpetuity risks compromising claimants’ sensitive personal information and exposing the Trusts to liability for failing to comply with Data Protection Laws<sup>2</sup>. Neither the Equitable Bill nor Appellees’ half-hearted attempt to have this Court reconsider the claim it *actually* pled for a declaratory judgment provide a legal basis supporting the unprecedented relief Appellees seek here.

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<sup>1</sup> Cited herein as “AB”.

<sup>2</sup> Capitalized terms used but not defined herein have the meanings set forth in the Opening Brief.

Appellees, and several Attorneys General<sup>3</sup> (the “Amici”) who have submitted a brief Amicus Curiae (the “Amicus Brief”)<sup>4</sup>, claim that failure to grant Appellees’ requested relief will lead to a parade of horrors whereby asbestos victims conspiring with the Trusts and the plaintiffs’ bar will abuse the U.S. tort system to the asbestos manufacturers’ detriment. But Appellees have not pled a single factual allegation supporting this claim. Instead, Appellees rely on the conclusory, one-sentence, “upon information and belief” assertion that the Trusts adopted the Policies in a nefarious attempt to hide information from Appellees, and that the Trusts’ stated purpose for adopting the Policies—data protection—is mere pretext. This is false, and there are no pled facts supporting Appellees’ claim. Indeed, Data Protection Laws make clear that the Trusts’ purpose is legitimate, and the Policies comport with modern best practices. In fact, two of the Amici States, Texas and Iowa, have comprehensive data privacy laws, and all of the Amici States have robust data breach laws. Indeed, Texas’ Attorney General has stated:

Texas law is clear that companies in possession of Texans’ personal information have a duty to safeguard that data. Given the frequency of cyberattacks today, it is simply unreasonable for companies to lack a comprehensive risk-

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<sup>3</sup> Those Attorneys General are from South Carolina, Alabama, Alaska, Arkansas, Georgia, Iowa, Louisiana, Mississippi, South Dakota, and Texas.

<sup>4</sup> Cited herein as “ACB\_\_”.

based data security program . . . I will continue to fight for our citizens' privacy and data security.<sup>5</sup>

The Policies are consistent with the laws of Texas, those of all the Amici States, and others.

The Answering and Amicus Briefs make baseless and false attacks against the Trusts and their trustees, many of whom are former judges, and all of whom (unlike Appellees) owe fiduciary duties to their Trusts' claimants. These attacks smack of desperation and feel like an attempt to manufacture a factual dispute that would suggest the case ought to proceed to discovery. But the law is clear: Appellees did not plead facts supporting an Equitable Bill (or any legal theory) requiring the Trusts to indefinitely retain claimants' sensitive and private data just in case Appellees may be involved in some future litigation against some unidentified claimant, and that claimant failed to retain her own data. If this speculative event occurs, Appellees have adequate legal remedies – against the claimant.

The Opinion should be reversed because Appellees lack standing, fail to state a claim supporting the Equitable Bill (and have waived any such claim by failing to plead, brief, or argue it), and fail to state a claim for a declaratory judgment.

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<sup>5</sup> See, AR005-006, (October 9, 2024 Press Release from Ken Paxton).

## ARGUMENTS IN REPLY

### I. APPELLEES DO NOT HAVE STANDING

The parties agree that Appellees must demonstrate that they satisfy the threshold Article III standing requirements.<sup>6</sup> Appellees cannot do so.

Appellees' speculative loss of Claims Data related to Trust claimants against whom Appellees have no pending litigation is not an injury-in-fact. Furthermore, it is undisputed that Appellees could obtain the Claims Data from a claimant should the hypothetical litigation materialize; and, if the claimant and counsel failed to retain or destroyed the Claims Data, then Appellees would have a legal remedy against them. As a matter of law, there is no causal connection between the Trusts' implementation of the Policies and Appellees' lack of access to any portion of the Claims Data that may be relevant to a future claim. Appellees also cannot demonstrate that they have "equitable standing".

#### A. Appellees Fail to Establish an "Injury in Fact" Because They Do Not Have a Legally Protected Interest

The Court of Chancery erred in finding that Appellees had a legally protected interest arising from (1) a right to the Claims Data stemming from Appellees' frequent asbestos litigation, or (2) their alleged status as future contingent indirect claim holders. Neither of these purported bases supports a court order requiring the

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<sup>6</sup> AB14.

Trusts to retain in perpetuity Claims Data of hundreds-of-thousands of claimants who have no pending claims against any Appellee.

**1. The Frequency of Asbestos Litigation Does Not Justify the Requested Relief**

Appellees and the Amici argue that because the Claims Data is “critical” to the defense of future asbestos personal-injury cases, Appellees have “an ongoing right to obtain” the Claims Data from the Trusts.<sup>7</sup> Appellees contend that if a Trust claimant brings a claim against an Appellee in the future, a small portion of the Claims Data (relating to the individual claimant’s Trust claim) *may* be relevant to the defense of this hypothetical claim. It does not follow, however, that Appellees “have an ongoing right to obtain” the Claims Data of hundreds-of-thousands of claimants *from the Trusts*. Every authority that Appellees cite in support of this notion is inapt.<sup>8</sup>

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<sup>7</sup> AB17.

<sup>8</sup> The Amici and Appellees point to several states’ Transparency Laws as evidence claims data generally is relevant to asbestos claims and must be made available to Appellees. However, the Transparency Laws do not oblige *the Trusts* to preserve Claims Data (let alone in perpetuity). Instead, they place statutory obligations *on asbestos plaintiffs*, in addition to common law obligations, to preserve and disclose all relevant information, including their prior asbestos-related claims. *See, e.g.*, W. Va. Code Ann. §55-7F-4(a) (as cited in ACB11) (“For each asbestos action filed in this state, *the plaintiff* shall provide all parties with a sworn statement identifying all asbestos trust claims that have been filed by the plaintiff . . .”); Iowa Code Ann. § 686A.3 (as cited in ACB11) (requiring *a plaintiff and plaintiff’s counsel* to file a sworn statement “that an investigation of all asbestos trust claims has been

In support of their “ongoing right” argument, Appellees cite two cases and discovery rules that do not stand for that proposition. Instead, those authorities discuss the discovery obligations of *parties*.<sup>9</sup>

Appellees also cite *Carlson v. United States*,<sup>10</sup> arguing that to establish standing, Appellees need only allege “a colorable claim of a right to obtain access” to the Claims Data.<sup>11</sup> But under the law, Appellees *do not have* a right to obtain access to the Claims Data *from the Trusts*.<sup>12</sup>

A third-party’s obligation to preserve and produce evidence is triggered by a subpoena; the obligation begins when the subpoena is received and ends after compliance.<sup>13</sup> Appellees make no attempt to address or distinguish the Trusts’

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conducted and that all asbestos trust claims that may be made by the plaintiff or any person on the plaintiff’s behalf have been filed.”) (Emphases added).

<sup>9</sup> See *In re Appraisal of Dole Food Co.*, 114 A.3d 541, 547–49 (Del. Ch. 2014) (discussing discoverability of a party’s pre-suit valuation materials relevant to appraisal action); *Chamison v. HealthTrust, Inc.-Hosp. Co.*, 1997 WL 695576, at \*2 (Del. Ch. Oct. 29, 1997) (discussing defendant’s motion to stay discovery sought by plaintiff).

<sup>10</sup> 837 F.3d 753 (7th Cir. 2016).

<sup>11</sup> AB17.

<sup>12</sup> *Carlson* found standing existed because the requested grand jury transcripts were “public records to which the public may seek access.” 837 F.3d at 758. The Claims Data here consists of highly private personal information of non-parties, to which Appellees currently have *no right*.

<sup>13</sup> 22 Sedona Conf. J. at 1-2.

authorities<sup>14</sup> confirming this widely accepted principle. Nor do Appellees cite contradictory authority—because it does not exist. Perhaps recognizing this, Appellees argue that standing “focuses on whether a *plaintiff* has suffered an injury-in-fact, not whether the *defendant* has violated a legal duty”.<sup>15</sup> This supposed distinction makes no difference. Appellees cannot suffer an injury-in-fact from the potential loss of something to which they have no legal entitlement in the first place.<sup>16</sup>

Appellees next suggest that the Trusts’ third-party status is irrelevant because the Trusts receive subpoenas in asbestos litigation and, “under Delaware law, a duty to preserve evidence is triggered when litigation is filed or there is a reason to anticipate litigation”.<sup>17</sup> Again, Appellees ignore the third-party distinction, citing a single case that does not involve third-parties.<sup>18</sup> Neither Appellees nor the trial Court

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<sup>14</sup> See, OB14, n.10; 15, n.11.

<sup>15</sup> AB17.

<sup>16</sup> Arguing that the Trusts improperly focus on their own legal duties rather than Appellees’ “injury”, Appellees cite *Dover Hist. Soc’y v. City of Dover Plan. Comm’n*, 838 A.2d 1103, 1110 (Del. 2003). There, homeowners in a Historic District with “aesthetic standards” codes and guidelines had standing to enforce them. See *id.* (finding “an enforceable right in the ‘aesthetic benefit’ derived from the Historic District”). Appellees do not have a similar “enforceable right”.

<sup>17</sup> AB18 (internal citation omitted).

<sup>18</sup> *Beard Rsch., Inc. v. Kates*, 981 A.2d 1175, 1185 (Del. Ch. 2009) (granting adverse inference due to *defendant’s* spoliation, noting that “[a] party in litigation or who has reason to anticipate litigation has an affirmative duty to preserve evidence that might be relevant to the issues in the lawsuit”).

cite *anything* supporting that *third-parties* have ongoing preservation obligations. To find otherwise would be an existential change.

Appellees next argue that they have a legally protected interest in the Claims Data because the Trusts “are interested parties” due to their alleged “control[] by the asbestos plaintiffs’ bar”, which Appellees contend gives the Trusts a “clear and direct interest in seeing the Claims Data destroyed.”<sup>19</sup> This slur is highly unseemly and patently false. There are no pled facts that support this conclusory aspersion.<sup>20</sup> Appellees cite no precedent to support that a settlement fund entity’s relationship to its claimants is the type of relationship that results in the imposition of heightened preservation obligations vis-à-vis Appellees.<sup>21</sup>

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<sup>19</sup> AB18-19.

<sup>20</sup> Appellees’ allegation that the Trusts are “controlled” by “the plaintiffs’ bar” is conclusory. *Cf. Atallah v. Malone*, 2023 WL 4628774 , at \*14 (Del. Ch. July 19, 2023) (disregarding conclusory allegations that directors breached their duty of loyalty “by simply accepting the terms dictated by management” and acting as a “rubberstamp[]”); *In re USG Corp. S’holder Litig.*, 2020 WL 5126671, at \*23 (Del. Ch. Aug. 31, 2020) (finding conclusory allegations that directors lacked independence insufficient to plead breach of fiduciary duty claim).

<sup>21</sup> The Ninth Circuit cases Appellees cite on the “interested” third-party doctrine found “interested” third-party *employers* of individual defendants (specifically departments of correction and parole boards) who had *the only copy of the evidence at issue*. *See, e.g., Gay v. Parsons*, 2024 WL 4224893 (N.D. Cal. Sept. 17, 2024); *Ramos v. Swatzell*, 2017 WL 2857523 (C.D. Cal. June 5, 2017); *Pettit v. Smith*, 45 F. Supp. 3d 1099 (D. Ariz. 2014). The Trusts are not claimants’ employers. And Appellees can seek Claims Data from claimants and their attorneys. And, not all jurisdictions recognize a preservation obligation for even “interested” third-parties.

In a final gasp, Appellees advance the novel argument that the Trusts are obligated to preserve the Claims Data as “industry participants”.<sup>22</sup> The Trusts have never been asbestos “industry participants”. To the contrary, they are Bankruptcy Court-implemented and supervised settlement funds established for the sole purpose of fairly and equitably paying claimants harmed by the debtors’ conduct. As the Trusts discussed and Appellees do not dispute, their argument for broad, industry-wide preservation obligations lacks supporting precedent.<sup>23</sup>

## **2. Appellees Are Not Entitled to Claims Data from the Trusts as “Indirect Claimants”**

Appellees also fail to establish that they are Trust beneficiaries with a legally protected interest in accessing Claims Data. To be *actual*, present “Indirect Claimants”, as Appellees claim, Appellees would have to file a contribution or indemnification claim against the Trusts. The Appellees never allege they have filed any such claim. According to their own characterizations, they are at most “*potential* holders” of indirect claims.<sup>24</sup>

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*See, e.g., Gay*, 2024 WL 4224893, at \*4 (so reasoning). No Delaware case has applied the Ninth Circuit’s “interested” third-parties doctrine.

<sup>22</sup> AB19.

<sup>23</sup> Confusingly, for their “industry participants” argument, Appellees only cite a footnote in the Opening Brief (24 n.27) distinguishing the only cases Appellees have cited on this issue.

<sup>24</sup> *See* OB16 (citing A170).

Instead, Appellees argue conclusorily that a supposed interest in “ensuring [the Trusts] retain and use the Claims Data to perform their cross-Trust audit obligations” *creates* a legally protected interest in the Claims Data. AB20. But Appellees have no concrete interest in the Trusts’ claims audit process, and Appellees point to no authority suggesting otherwise.

To the extent that Appellees have potential future Trust claims, their interests are represented by the Bankruptcy-court approved future claimants’ representatives<sup>25</sup>, not by the Court of Chancery through an indefinite discovery preservation order.

Furthermore, even if Appellees could establish that they are *present* beneficiaries, such status would not confer on Appellees the ability to influence or direct the management of the Trusts.<sup>26</sup>

### **B. The Implementation of the Policies Does Not Cause an Actual Injury**

Appellees acknowledge that, to have standing, their injury cannot be “hypothetical nor conjectural.”<sup>27</sup> Appellees do not distinguish the authorities

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<sup>25</sup> Rather than challenging the Policies in Court, under Section 6.1 of the Trust Agreements (A254-255), potential future claimants can raise any issues with the future claimants’ representative who is designated to represent them.

<sup>26</sup> *See* OB15-16.

<sup>27</sup> AB21.

demonstrating that a speculative harm cannot confer standing.<sup>28</sup> Instead, Appellees simply assert that the injury-in-fact “is the certain loss of information to which they are entitled.”<sup>29</sup> As explained above, Appellees do not have a present legal right (*i.e.*, “entitlement”) to access the Claims Data; thus the “certain loss” of some subset of that data, which might be relevant in a hypothetical case, is not a current harm.<sup>30</sup>

Any harm that Appellees have identified is hypothetical and speculative. Appellees assert they do not have to identify any specific claim for which some Claims Data may be relevant, relying on the trial Court’s reasoning that the “ambient level of asbestos litigation out there” creates a “reasonable inference” that the harm will eventually occur. AB23. But the law is clear that even a reasonable fear of some future harm is not itself an injury conferring standing.<sup>31</sup>

### **C. The Policies Are Not the Cause of any Alleged Injury**

Even if Appellees could identify an actual injury, they cannot establish causation. Appellees argue without any foundation that they can only obtain the

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<sup>28</sup> See OB17.

<sup>29</sup> AB22.

<sup>30</sup> Appellees cite *TransUnion LLC v. Ramirez*, 594 U.S. 413, 433 (2021), as recognizing a “material risk of harm from dissemination of personal information sufficient to confer standing”. AB22. If anything, this authority supports protecting the claimants’ interest in their personal data, rather than sublimating the claimants’ interests to the Appellees’ document preservation preferences.

<sup>31</sup> See OB17.

Claims Data from the Trusts, and not the claimants who may bring future tort claims, because *other* claimants of a small number of *other* trusts and their counsel were found to have “suppress[ed] [] evidence in the tort system”, A106(¶7), or “selectively disclosed exposure evidence”, A025-26(¶40). Appellees claim that due to the liberal pleading standard, courts cannot reject allegations in a complaint. But courts can—and must—reject *improperly pled, conclusory* allegations. The allegations made by Appellees regarding the “reliability” of some claimants (who are unidentified and wholly untethered from the Appellees and Trusts here) are insufficient to reasonably infer that any of the actual Trust claimants or their counsel here are unreliable.<sup>32</sup> Even if future misconduct by future claimants does occur, the courts in any such cases could provide relief by either compelling claimants to produce the relevant documents or, for example, by making an adverse inference if they failed to do so. Appellees do not argue otherwise.

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<sup>32</sup> Fraud must be plead with particularity. *Valley Joist BD Hldgs., LLC v. EBSCO Indus., Inc.*, 269 A.3d 984, 988 (Del. 2021). Here, Appellees are imputing the alleged past fraud of other claimants to the Trusts’ claimants, and claim to need relief from supposed future fraud in litigation that has not been filed. Then they insist the Court must assume that, because of this potential future misconduct, Appellees will only be able to access Claims Data from the Trusts. There is nothing “reasonable” about these inferences.

#### **D. There Is No Equitable Standing**

The Court-below and Appellees improperly conflate the ability to state a claim upon which relief can be granted with the threshold question of standing.

Appellees suggest that “[i]f a plaintiff has stated a claim in equity, of course it has alleged an injury cognizable in equity” for purposes of establishing standing. AB25. This is not the law. For example, in the fiduciary duty context where issues of standing often arise, the fact that a plaintiff otherwise stated a claim in equity does not override the necessity to satisfy standing requirements.<sup>33</sup> The Court of Chancery is only empowered to expand standing “in equity” beyond the ordinary confines of standing when not doing so would result in a “complete failure of justice”.<sup>34</sup> Neither Appellees nor the Court-below cite anything suggesting otherwise.<sup>35</sup> Appellees have not established that there would be a “complete failure of justice” if this Court does not permit the standing requirements to be expanded to include Appellees here.

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<sup>33</sup> See, e.g., 8 Del. C. § 327 (providing continuous ownership requirement to bring derivative action); *In re Massey Energy Co. Deriv. and Class Action Litig.*, 160 A.3d 484 (Del. Ch. May 4, 2017) (finding that stockholders lacked standing under continuous ownership rule to bring derivative breach of fiduciary duty claim).

<sup>34</sup> See OBn.16

<sup>35</sup> Appellees cite *Klaasen v. Allegro Dev. Corp.* 106 A.3d 1035, 1046 n.70 and *Beard Rsch., Inc.*, 8 A.3d at 601, neither of which discuss standing and instead discuss whether a claim for breach of fiduciary duty has been adequately pled.

## II. APPELLEES FAIL TO STATE A CLAIM FOR AN EQUITABLE BILL OF DISCOVERY

Appellees make the strawman assertion that the Trusts are “invit[ing] this Court to find that the Court of Chancery has somehow lost its power to grant litigants” an Equitable Bill.<sup>36</sup> This is false.<sup>37</sup> Instead, the Trusts correctly state that, “[e]ven 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 adequately pled it, and the circumstances presented here do not merit its application. OB4-5. The Order accepting this interlocutory appeal recognized that this case presents novel issues.<sup>38</sup> Key among those issues is whether the Equitable Bill may be applied in an unprecedented way that creates a cause of action for permanent preservation orders against entities domiciled in Delaware.

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<sup>36</sup> AB27.

<sup>37</sup> Appellees also incorrectly claim the Trusts state the Equitable Bill “has been eliminated in most jurisdictions”. (AB28n.5) In fact, the Trusts wrote the Equitable Bill has “generally been rendered obsolete and unavailable” (OB27), which is accurate. Appellees inaccurately cite 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) (“Barron”), as confirming that “most jurisdictions find that the equitable bill is still available.” AB28. However, according to Barron, most jurisdictions “that *have considered*” the Equitable Bill found it was still available, and *more states have not considered it than have*. See *id.* §§3;4(a), (b). Of the twenty-one states that Barron says have addressed the Equitable Bill, (1) fifteen have found that it still exists (*id.*); and (2) (of those fifteen) five limit it to parties or persons “with an interest” (*id.* §5). No state has allowed an Equitable Bill in circumstances like these.

<sup>38</sup> See December 23, 2025 Order ¶6.

OB5. The Trusts are *not* trying to divest the Court of Chancery of its ability to utilize the “traditional equitable power” to invoke the Equitable Bill in appropriate circumstances.<sup>39</sup> Rather, the Trusts have shown the Equitable Bill was never intended to be used in *these* circumstances, and this Court is the final arbiter on this issue.<sup>40</sup>

**A. Appellees Do Not Plead a Claim Satisfying the Equitable Bill Factors**

**1. The Complaint Did Not Plead an Interest in a Pending or Anticipated Case.**

The Court-below ruled, and it is undisputed, that the action for which discovery is sought via the Equitable Bill must be pending and imminent. Op. 18. Here, there is no identified pending or imminent action. Appellees instead assert they “are already defendants in thousands of pending asbestos cases” as justification the Equitable Bill’s application. AB30. They do not explain why they could not discover the Claims Data or raise any discovery issues in the event there is such a pending case.

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<sup>39</sup> AB28.

<sup>40</sup> Thus, Appellees’ citations (at OB39) about limits on divesting the Court-below of “traditional equitable powers” are inapt. *Cf. Diebold Comput. Leasing, Inc. v. Com. Credit Corp.*, 267 A.2d 586, 591 (Del. 1970); *DuPont v. DuPont*, 85 A.2d 724, 729 (Del. 1951).

The notion that Appellees are frequently the subject of litigation is not the same as an interest in “pending” or “anticipated” litigation justifying the use of the Equitable Bill. In fact, Appellees here are not even seeking “discovery” of any specific Claims Data. Instead, they are seeking the permanent preservation of hundreds-of-thousands of individuals’ Claims Data based on the premise that a small fraction of that data *might* be useful to a hypothetical case that *might* be brought against them by one or more claimants who have not been identified. There is no precedent permitting an Equitable Bill to be used for this purpose. Appellees’ argument that the Claims Data may be useful to an “indirect claim” that they *may, someday* bring suffers from the same problem.

## **2. The Claims Data is Not Material to Any Anticipated Claim**

Appellees, like the Court-below, contend that, because similar claims data has been deemed relevant in *other* asbestos litigation, a finding it is material should be imputed to *this case*. Precedent belies this assertion. To demonstrate materiality in the context of an Equitable Bill, the request must be “confined to facts material to *the plaintiff’s cause of action*[;]” and “does not extend to all facts [that] *may* be material to the issue.”<sup>41</sup> Thus, the Equitable Bill can only be used to obtain discovery “material” to a specific claim. Here, Appellees cannot contest that *the vast majority*

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<sup>41</sup> See, e.g., *Garfinkle v. Jewish Family Service of Greater New Haven, Inc.*, 2019 WL 1938591, at \*2 (Conn. Super. Ct. Apr. 8, 2019).

of the Claims Data that they seek to preserve will *never* be “material” (or even relevant) to any cause of action.

Appellees do not meaningfully engage with precedent or explain how they could have adequately pled the materiality prong for an Equitable Bill when they fail to identify the information that they seek with *any* specificity.<sup>42</sup> Instead, they claim irresponsibly that the Trusts are “the reason” why Appellees often do not know which claimants have submitted trust claims. AB32. Appellees do not plead a single specific allegation of any alleged conduct by any of the Trusts that would support the inflammatory proposition that they “seek to hide” information from Appellees.<sup>43</sup>

### **3. The Evidence Sought Can Be Obtained Through Other Means.**

The Court-below and Appellees contend that the Claims Data cannot be obtained “effectively, conveniently or completely” through other means. They take the position that the Trusts should serve as a perpetual free lending library for Appellees, contrary to the mandates of Data Protection Laws, because it makes

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<sup>42</sup> See OB32-33.

<sup>43</sup> Appellees point (AB32) to a professor’s inapt opinion at a Congressional hearing that *the Manville Trust* “zealously guard[s] [claims data] and seek[s] to hide it from” asbestos defendants. With no well-pled facts, Appellees just ask the Court to assume the worst about the Trusts here.

access to the Claims Data more convenient for Appellees.<sup>44</sup> That is not the appropriate standard.

Appellees contend that, without the preservation order, they cannot obtain needed documents because claimants and their counsel cannot be trusted to maintain or provide access to the Claims Data.<sup>45</sup> These allegations rely entirely on the imputation of the findings of the *Garlock* court and conclusory generalizations. The Trusts were not parties in *Garlock*, and the findings made by that court about the parties before it can have no bearing here. Those findings certainly should not serve as the basis for imposing sweeping and permanent preservation obligations that are inconsistent with data privacy best practices and Data Protection Laws of Amici States and others. Likewise, the Court-below's conclusion that "it will be impossible to obtain the evidence", improperly relies on statements (1) outside the pleadings,

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<sup>44</sup> Appellees quibble with the Trusts' argument that "convenience" is not a proper consideration, citing two 1800s cases, before courts of law could order discovery without the assistance of equity. Neither case was cited in the Opinion. Modern cases considering the Equitable Bill have held that "convenience is not the bill's purpose". *RAV Bah. Ltd. v. Marlin Three, LLC*, 333 So. 3d 1158, 1161-63 (Fla. Dist. Ct. App. 2022).

<sup>45</sup> Appellees claim that the Court-below never acknowledged that the Appellees could "seek the documents from the claimants"; however, the Court noted that it is the *claimant* that provides the Trusts with the Claims Data (Op. 11-12), and that claimants' counsel "have more information about likely exposures than the claimants themselves" (Op. 11).

(2) that cannot be relied upon for the truth of their contents or (3) that cannot be imputed to the Trusts or the claimants.<sup>46</sup>

Appellees could also petition to reopen the bankruptcy proceedings. Appellees claim that, even if they could reopen the bankruptcy proceedings, it would be a “circuitous process” because it would require Appellees to reopen “each bankruptcy,” which is “not nearly as efficient as proceeding in equity.”<sup>47</sup> AB36. Appellees have never explained why they could not seek coordination among the members of the Bankruptcy Court in deciding any such issues.<sup>48</sup> Ultimately, their view is: it is *just more difficult for them* than forcing the Trusts to maintain hundreds-of-thousands of claimants’ private information, ignoring the harm to the Trusts and claimants from potentially violating Data Protection Laws and risking a data breach. That is not how the Equitable Bill is applied.

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<sup>46</sup> OBn.47;50.

<sup>47</sup> Appellees argue the Trusts have “forfeited” this argument because they failed to “cite any authority in support” thereof. However, the possibility of reopening the bankruptcy proceedings was discussed at length during the argument below and in the Opening Brief. AR020-021, AR022-024, OB34. Appellees ask the Court to simply assume a path forward in the bankruptcy Court is unavailable (or perhaps less “convenient”).

<sup>48</sup> Appellees’ concerns are hyperbolic. Appellees could resolve these logistical issues by filing a motion to coordinate. *See, e.g.,* 9A Charles Alan Wright, et al., *Federal Practice and Procedure*, § 2383 (3d ed. 2025) (“Consolidation – Discretion of Court”) (discussing courts’ ability to consolidate or coordinate actions involving common questions of law or fact); AR022-024.

**B. Policy Considerations Strongly Support Rejection of the Court-Below’s Invocation of the Equitable Bill**

Appellees contend that the policy concerns regarding using the Equitable Bill to impose broad document and data preservation orders on Delaware-domiciled entities not otherwise in litigation in this State are illegitimate. However, none of Appellees’ arguments adequately addresses the far-reaching implications that arise for Delaware Courts if a litigant is allowed to use the Equitable Bill to create what is essentially a new cause of action.<sup>49</sup>

Appellees argue that the Opinion was “carefully circumscribed” and would not have broad application outside of the context of asbestos litigation. The Trusts disagree. While the Court-below described asbestos litigation as “unique”, there is nothing in its three-part test that would limit its use to asbestos litigants. As discussed *supra*, the Court-below does not limit the Equitable Bill to parties. The Opinion allows a plaintiff to pursue the Equitable Bill when litigation elsewhere is only anticipated, and filing an Equitable Bill action in the Court of Chancery is more

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<sup>49</sup> Appellees suggest there is nothing “new” about using an Equitable Bill to preserve evidence. While there are a handful of cases where the Equitable Bill was utilized to preserve specific evidence for an identified potential action, there has never been a case—and neither Appellees nor the Court-below identify one—that has utilized the Equitable Bill to issue a broad preservation order like Appellees seek here.

“effective, convenient, *or* complete” than seeking discovery through the normal rules of procedure.

Appellees also are dismissive of concerns that the Equitable Bill invoked by the Court could impede internal governance decisions of Delaware entities. Appellees distinguish the cases cited by the Trusts as involving *different governance decisions* than the one at issue here. Regardless of the specific governance decision, Delaware courts are “loathe to interfere with the internal management of corporations or to interfere with their business decisions.”<sup>50</sup> The Court-below’s decision impedes the Trusts’ implementation of Policies of the kind mandated by Data Protection Laws.

Next, Appellees dismiss the Trusts’ concerns about the equities of this case—specifically, that unless the Policies can go into effect, hundreds-of-thousands of claimants’ personal data will continue to be at risk unnecessarily. Appellees suggest that the Trusts’ concerns are “groundless” and “pretext[ual]”. AB37. No such facts are well-pled. The Court is not obliged to blind itself to the obvious fact that the Policies were adopted following increased concern for data breaches and the resulting, widespread adoption of Data Protection Laws.<sup>51</sup> The States of some of the

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<sup>50</sup> *Reading Co. v. Trailer Train Co.*, 1984 WL 8212, at \*4 (Del. Ch. Mar. 15, 1984).

<sup>51</sup> Appellees claim the Policies were adopted “[a]fter a string of losses in the courts” because the Trusts “feared that increased disclosure of the Claims Data—

Amici have statutes that *require* entities like the Trusts to minimize the amount of personal data they retain, including the type of information that comprises the Claims Data.<sup>52</sup> Some of those same statutes explicitly require anyone doing business in those States to destroy records containing “personal information” when no longer needed by the data-holder.<sup>53</sup> Unsurprisingly, many of these same Amici have stressed the importance of data minimization following recent data breaches.<sup>54</sup> And notably, more states have adopted Data Protection Laws than Trust Transparency Laws.<sup>55</sup>

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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”. AB9. For this inflammatory and ridiculous proposition, Appellees point to one 2014 case—*Garlock*—not “a string” of cases. The Policies were proposed in 2025, following well-publicized data breaches and the adoption of Data Protection Laws. *See, e.g.*, Compendium filed with Opening Brief (“Compendium”) (Exs. 5-26) (Sample State Data Protection Laws).

<sup>52</sup> *See* OBn.2 citing Compendium Exs. 7, 18, 24.

<sup>53</sup> *See* OBn.3 citing Compendium Exs. 7, 24.

<sup>54</sup> *See, e.g.*, AR005-006, (Ken Paxton, Texas,—cited in introduction); AR008-012 (Chris Carr, Georgia), (“[W]e must encourage organizations to be proactive and to protect themselves and consumers through the most effective and up-to-date privacy measures”); AR016-017 (Brenna Bird, Iowa), (noting that, as part of a settlement with 50 attorneys general, Marriott was required to reduce data “being collected and retained”).

<sup>55</sup> Twenty in the former case and sixteen in the latter. *Compare* A172 with <https://pro.bloomberglaw.com/insights/privacy/state-privacy-legislation-tracker/#states-with-comprehensive-data-privacy-laws>. Every state in the country has a data breach law.

Appellees state that “the Court of Chancery is more than equipped to fashion a remedy that balances the[se] competing concerns.” AB38. Appellees ignore the point: while the Court could impose conditions on an injunction, it cannot prevent a data breach from occurring. If a data breach occurred, claimants would be subjected to harm that courts have recognized may be irreparable.<sup>56</sup> Appellees offer no explanation why it is equitable to burden individual non-party claimants with the risk of a data breach, which would in effect prioritize Appellees’ hypothetical interests over the tangible interests of claimants and the Trusts.

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<sup>56</sup> See, e.g., *Mackey v. Belden, Inc.*, 2021 WL 3363174, at \*12 (E.D. Mo. Aug. 3, 2021) (finding threat of data breaches could constitute an irreparable harm); *Lothamer Tax Resolution, Inc. v. Kimmel*, 2025 WL 2490380, at \*8 (W.D. Mich. Aug. 29, 2025) (finding “the potential reputational harm of a data breach” was “likely to irreparably harm [plaintiff’s] business”); *Commonspirit Health v. Emerge Clinical Solutions, LLC*, 2022 WL 17903800, at \*3 (N.D. Tex. Dec. 23, 2022) (finding “hundreds of thousands of patients would likely suffer irreparable harm from a data breach” of their medical information).

### III. APPELLEES WAIVED ANY CLAIM THEY MAY HAVE HAD FOR AN EQUITABLE BILL

While it is true, as Appellees note, that “[u]nder a notice-pleading regime, courts construe pleadings liberally,” AB39, “a plaintiff must still plead each of the essential elements of his claim.”<sup>57</sup> That means that “plaintiff’s allegations should at least ‘put the defendants on fair notice in a general way of the cause of action asserted[.]’”<sup>58</sup> The Complaint, drafted by experienced counsel for sophisticated parties, did not provide notice of an Equitable Bill claim; Appellees either were unaware of or decided not to make the argument until the Court-below raised it *sua sponte*.<sup>59</sup>

Appellees contend that the Trusts take issue with their Complaint only because it fails to “explicitly invoke[e] the words ‘bill of discovery’”. AB38. Not so. Appellees not only failed to characterize their claim as an Equitable Bill, they also did not invoke its elements or attempt to plead its doctrinal predicates. Had Appellees intended to pursue such relief, the Trusts were entitled to notice of that theory, so they could properly test it under Rule 12.

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<sup>57</sup> *In re Asbestos Litig. Est. of Franco v. CSX Transp., Inc.*, 2015 WL 4399960, at \*2 (Del. Super. Ct. July 13, 2015).

<sup>58</sup> *Busch v. Westell Tech., Inc.*, 2023 WL 2333823, at \*4 (Del. Ch. Mar. 2, 2023) (cleaned up).

<sup>59</sup> At the MTD hearing, trying to ascertain the Appellees’ legal basis, the Court-below asked: “what’s the precedent for this? What’s the theory? What right do you have to get it?” A325-26. Appellees did not raise the Equitable Bill in response.

Appellees do not engage with Delaware precedent confirming that unpled claims are waived.<sup>60</sup> Nor is there any disputing that, when faced with a motion to dismiss, unless a complaint is amended under Rule 15(a)(5), the Court will not consider an unpled theory.<sup>61</sup> Instead, Appellees point to cases such as *Johnson v. City of Shelby*<sup>62</sup> for the proposition that a pleading suffices even if it does not specifically mention the legal theory or statutory underpinning of a claim. However, the Court of Chancery recently noted that it may not entertain a legal theory not timely raised, and distinguished *Johnson* as a case excusing a “foot fault” where plaintiffs pleaded the facts and the constitutional violation but omitted the statutory citation.<sup>63</sup> By contrast, the *Kim* plaintiffs (like Appellees here), “failed to raise their legal theory at a basic level,” so the Court declined to consider it.<sup>64</sup>

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<sup>60</sup> Appellees argue that “forfeiture, not waiver, is the only issue raised here” because Appellees did not “voluntarily relinquish” the Equitable Bill. AB39n.7. Delaware Courts have held that an allegation not pleaded in a complaint or addressed in briefing or at argument is waived—not forfeited. *See* OBn.59; *see also, Sorrento Therapeutics, Inc. v. Mack*, 2023 WL 5670689, n.210 (Del. Ch. Sept. 1, 2023); and *Emerald P'rs v. Berlin*, 726 A.2d 1215, 1224 (Del. 1999). The effect is that supposed rights and issues not timely asserted are not considered.

<sup>61</sup> *See* OBn.62.

<sup>62</sup> 574 U.S. 10 (2014) (per curium).

<sup>63</sup> *Kim v. FemtoMetrix*, 2025 WL 2300402, at \*9 & n.92 (Del. Ch. Aug. 8, 2025) (internal citations omitted).

<sup>64</sup> *Id.*

Appellees also assert the Trusts were not prejudiced by being forced to proceed under the Equitable Bill theory. Again, not so. 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.” OB43. Appellees’ failure to provide notice of their claim prejudiced the Trusts who were not able to fully brief or address the Equitable Bill at argument.<sup>65</sup> The Court-below raised the Equitable Bill, *sua sponte*, only after the conclusion of the hearing on the MTD and only after independently researching historical treatises and authorities that were never cited by Appellees. The Trusts were prejudiced by this breakdown in the adversarial system, which forced the Trusts to respond reactively, after the fact, to a theory that was not introduced by their opponent. Put simply, the Trusts never had the opportunity to make points in this brief to the Court-below.

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<sup>65</sup> The Court-below allowed each side a single, simultaneously-filed, 5,000-word supplemental submission on historical equitable remedies (not just the Equitable Bill).

#### IV. APPELLEES FAIL TO STATE A CLAIM FOR A DECLARATORY JUDGMENT

As noted herein, Appellees only asserted one claim—a claim for declaratory judgment.<sup>66</sup> Prior to raising the Equitable Bill *sua sponte*, the Court-below struggled to identify a legal theory permitting the relief that Appellees sought. A.325-326. Without the Equitable Bill, the legal theory underlying Appellees’ alleged right to a broad preservation order against the third-party Trusts and, *ipso facto*, the alleged right to a declaration of entitlement to such an order, is still impossible to identify.<sup>67</sup>

As the Trusts briefed below, to establish a right to seek a declaratory judgment, the Appellees must show both that: (1) their claim is ripe<sup>68</sup> and (2) they

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<sup>66</sup>Appellees’ reliance on their declaratory judgment claim undercuts their waiver arguments. Appellees argue the declaratory judgment claim can succeed independently of the success of the Equitable Bill. If the Equitable Bill is truly separate, then it was waived because it was never pled. If it is not separate, then the declaratory judgment count rises or falls with the Equitable Bill claim and cannot be salvaged by reciting the “actual-controversy” factors of a declaratory judgment.

<sup>67</sup> Absent an underlying legal theory supporting entitlement to relief, Appellees cannot be entitled to a declaratory judgment. *See, e.g., Angel v. Warrior Met Coal Inc.*, 2021 WL 2692430, at \*9 (Del. Ch. June 30, 2021) (dismissing declaratory judgment claim as moot in part because of dismissal of underlying claim upon which declaratory judgment claim was based).

<sup>68</sup> *See XL Specialty Ins. Co. v. WMI Liquidating Tr.*, 93 A.3d 1208, 1217-18 (Del. 2014) (dismissing declaratory judgement claim on ripeness grounds noting a “dispute is not ripe where the claim depends on “uncertain and contingent events that may not occur.”).

have an underlying legal right<sup>69</sup> to receive a broad preservation order against the third-party Trusts. Appellees can establish neither. Appellees have only pled a hypothetical and speculative harm contingent upon the occurrence of future events and conduct that may never materialize;<sup>70</sup> and Appellees have no present right to force the third-party Trusts to preserve *any* portion of the Claims Data—let alone the Claims Data of hundreds-of-thousands of claimants.<sup>71</sup>

Furthermore, issuing preservation orders is part of a court’s “inherent authority to manage *its own* proceedings.”<sup>72</sup> Courts “have the inherent power to issue orders preserving information relevant to the *claims and defenses brought before them*.”<sup>73</sup> There are no “claims and defenses” before the Court of Chancery for which the Claims Data is relevant. Thus, absent a viable Equitable Bill claim, which is lacking here, the Court-below lacks authority to issue a preservation order

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<sup>69</sup> See, e.g., *Reddy v. 2nd Chance Treatment Ctrs., LLC*, 2024 WL 5088687, at \*9-11 (Del. Ch. Dec. 12, 2024) (holding that sellers were not entitled to declaratory judgment where contract imposed no legal duty on buyers).

<sup>70</sup> See, e.g., *Multi-Fineline Electronix, Inc. v. WBL Corp.*, 2007 WL 431050, at \*8 (Del. Ch. Feb. 2, 2007) (“Generally speaking, an action is not ripe for adjudication when it is ‘contingent ... [and requires] the occurrence of some future event before the action’s factual predicate is complete.’”) (alterations in original).

<sup>71</sup> See, *supra*, 4-9.

<sup>72</sup> *Arkin v. Gracey-Danna, Inc.*, 2016 WL 3959611, at \*1 (M.D. Fla. July 22, 2016) (emphasis added).

<sup>73</sup> *U. S. ex rel. Staggers*, 2022 WL 4078969, at \*2 (D.D.C. Sept. 6, 2022) (emphasis added); *Am. Oversight v. Hegseth*, 2025 WL 1721995 (D.D.C. June 20, 2025) (same).

for discovery in other courts (a reality it recognized by raising the Equitable Bill *sua sponte*).

Even if Appellees had an otherwise valid declaratory judgment claim (and they do not), in these circumstances a Delaware Court should still exercise its discretion to decline to hear it due to concerns of comity and judicial efficiency.<sup>74</sup> Nothing cited by Appellees suggests that the Court of Chancery should be charged with ensuring that the Trusts maintain records for potential use in asbestos cases pursuant to voluminous discovery orders issued in other courts, and reviewing and indefinitely enforcing Appellees' (incorrect) interpretation of the Transparency Laws of other jurisdictions with asbestos litigation. Setting a precedent that parties can seek permanent injunctions in the Delaware Court of Chancery that implicate the discovery process in litigation that may or may not occur in foreign jurisdictions could potentially overwhelm the Court of Chancery's already crowded docket and interfere with principles of comity.

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<sup>74</sup> See, e.g., *Band's Visit Nat'l Tour LLC*, 307 A.2d 387, at 422 (Del. Super. Ct. 2023) (citing *Intermec IP Corp. v. Transcore, LP*, 2021 WL 3620435, at \*25 (Del. Super. Ct. Aug. 16, 2021)) ("The Court 'has discretion to decline declaratory judgment jurisdiction'").

## CONCLUSION

The Court should reverse the decision by the Court-below with prejudice.

### **YOUNG CONAWAY STARGATT & TAYLOR, LLP**

/s/ Kevin A. Guerke

Edwin J. Harron (#3396)  
Kevin A. Guerke (#4096)  
Lauren Dunkle Fortunato (#6031)  
Rena P. Pagano (#6889)  
Rodney Square  
1000 North King Street  
Wilmington, DE 19801  
302.571.6600  
eharron@ycst.com  
kguerke@ycst.com  
lfortunato@ycst.com  
rpagano@ycst.com

*Attorneys for Defendant-  
Below/Appellant Delaware Claims  
Processing Facility, LLC*

Dated: March 16, 2026

### **MORRIS JAMES LLP**

/s/ K. Tyler O'Connell

K. Tyler O'Connell (#4514)  
Kirsten A. Zeberkiewicz (#4573)  
Barnaby Grzaslewicz (#6037)  
Alena V. Smith (#6699)  
Samuel E. Bashman (#6571)  
3205 Avenue North Blvd., Suite 100  
P.O. Box 2306  
Wilmington, DE 19899  
302.888.6800  
toconnell@morrisjames.com  
kzeberkiewicz@morrisjames.com  
bgrzaslewicz@morrisjames.com  
asmith@morrisjames.com  
sbashman@morrisjames.com

*Attorneys for Defendants-Below/Appellants  
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*