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

BRIEF OF NON-PARTIES SOUTH CAROLINA, ALABAMA, ALASKA, ARKANSAS, GEORGIA, IOWA, LOUISIANA, MISSISSIPPI, SOUTH DAKOTA, AND TEXAS AS *AMICI CURIAE* IN SUPPORT OF APPELLEES AND AFFIRMANCE

Date: March 13, 2026

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IDENTITY AND INTEREST OF AMICUS CURIAE[1]

Amici curiae are sovereign States. Through their Attorneys General, the Amici States regularly file amicus briefs in a wide variety of cases, including in cases that raise important questions of state law, that impact state citizens, and that present matters of significant public interest or concern.

Amici States write to draw attention to two significant legal and policy concerns presented by Defendants-Appellants' claims and Plaintiffs-Appellees' actions. First, the data and documents that the Defendants plan to systematically destroy are highly relevant to ongoing and future litigation. Second, the destruction of this claim data would thwart state asbestos-trust transparency laws. Accordingly, the outcome of this case will have a significant impact on asbestos litigation, and on the judicial systems, in the courts of Amici States.

[1] Under Supreme Court Rule 28(c), the States affirm that no party's counsel authored any part of this brief. No one, apart from the States or its counsel, contributed money intended to fund this brief's preparation or submission.

SUMMARY OF ARGUMENT

The American civil jury trial system is, at its core, a search for truth. To that end, there exists "a well established policy of pretrial disclosure which is based on a rationale that a trial decision should result from a *disinterested search for truth* from *all the available evidence* rather than tactical maneuvers based on the *calculated manipulation of evidence and its production*." *Olszewski v. Howell*, 253 A.2d 77, 78 (Del. Super. Ct. 1969) (emphasis added); Honorable Daniel L. Herrmann, *The New Rules of Procedure in Delaware*, 18 F.R.D. 327, 339 (1956) ("Broad and liberal discovery has revolutionized litigation in Delaware courts. … The objection to the 'fishing expedition' is repudiated, surprise has been reduced to a minimum and the 'sporting theory of justice' has been eliminated in the *interest of the ascertainment of truth*.") (emphasis added).

Discovery—and the retention of discoverable information—is particularly important in asbestos litigation, which "presents unique challenges to the judicial system." *Minnesota Pers. Inj. Asbestos Cases v. Keene Corp.*, 481 N.W.2d 24, 25–25 n. 2 (Minn. 1992). Asbestos dockets are often large and complex. *Id.* (noting there were "approximately 30,000 asbestos cases pending in the federal courts and over 60,000 pending in the state courts").[2] Because of the long latency period for

[2] *See, e.g.*, *In re Asbestos Prods. Liab. Litig. (No. VI)*, 771 F. Supp. 415, 416 (J.P.M.L. 1991) (ordering that 26,639 actions pending in 87 federal district courts be centralized in a single forum).

mesothelioma and other diseases caused by asbestos, and the fact that plaintiffs often were exposed to many different asbestos-containing products by many different manufacturers, asbestos cases pose unique problems for plaintiffs and defendants alike. Faulty memory, poor record keeping, and the death of key witnesses only adds to the complexity of establishing (or rebutting) causation in asbestos cases.

With respect to defendants specifically, because of the dynamics of asbestos litigation, some defendants are at times induced to settle weak claims of liability, even if there is little evidence that a particular plaintiff's asbestos-related disease was caused by a product manufactured by the defendant. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 597–98 (1997) (discussing the "asbestos-litigation crisis" and remarking that "transaction costs exceed the victims' recovery by nearly two to one" and "exhaustion of assets threatens and distorts the process").

This problem for defendants is only compounded in the (hopefully rare) cases where gamesmanship, hiding the ball, and obfuscation, rather than truth seeking, can and do occur. *See generally Lester Brickman, Fraud and Abuse in Mesothelioma Litigation*, 88 TUL. L. REV. 1071 (2014); *see also In re Garlock Sealing Techs., LLC* was decided. 504 B.R. 71, 85–86 (Bankr. W.D.N.C. 2014). ("The withholding of exposure evidence by plaintiffs and their lawyers was significant and had the effect of unfairly inflating the recoveries against Garlock from 2000 through 2010.").

Amici States have an interest in asbestos *claimants* being fairly and adequately compensated for the injuries and harm they have suffered, but Amici States also have a compelling interest in ensuring that asbestos *defendants* are treated fairly and afforded their full panoply of rights under state and federal law. The absence of such fairness and rights is not only harmful to an individual defendant, but also harms local and state economies, discourages investment and development, and causes the citizenry to lose trust in the civil justice system.

This case is ultimately about fairness and truth-seeking. There is no dispute that the Claims Data that Defendants-Appellants seek to destroy is relevant both to the claims and defenses presently at issue in state-court asbestos dockets across the country, but also to future litigation. And yet, despite the relevancy and importance of these documents, Defendants-Appellants ask this Court to allow them to systematically destroy this evidence. This Court should reject their request.

Amici strongly agree with the Court of Chancery's conclusion that Plaintiffs-Appellants' have standing to bring this claim. Under this Court's precedent, to establish standing—i.e., to be entitled to enter the courthouse door—a plaintiff must have suffered an injury in fact. Plaintiffs-Appellants' suffer injury if the Claims Data is destroyed, as rightly held by the Court of Chancery. *DBMP LLC v. Delaware Claims Processing Facility, LLC*, A.3d , 2025 WL 3013006, at *14 (Del. Ch. Oct. 24, 2025) ("The complaint adequately pleads that if the Claim Processors implement

the Data Policies, then the bulk of the Claims Data will be destroyed, and the Repeat Litigants will no longer have access to it. As a result, they will be unable to defend cases effectively. They will face greater liability and settle more cases for higher amounts than if the information remained available. That injury is sufficiently concrete, particularized, actual, and imminent."). Exactly *how* the data will be preserved, and *who* must bear the cost of retaining and storing the data, can be worked out on the merits before the Court of Chancery. *Id.* at *12 ("As the Claim Processors have pointed out, it could well be inequitable to require them to maintain the Claims Data at their own expense, largely for the benefit of the Repeat Litigants. An injunction might need to be conditioned on the Repeat Litigants' agreement to pay the cost of retaining the Claims Data."). But at a minimum, Plaintiffs-Appellants have pled a legal harm—the right to discover and retain the Claims Data, *see Garlock*, 504 B.R. at 85–86—and a corresponding legal right to bring suit for declaratory relief.

Amici States file this brief to offer two primary points for this Court's consideration: (1) the trusts allegedly plan to destroy data and documents that are highly relevant to ongoing and future litigation; and (2) the trusts' alleged plans circumvent state transparency laws. Both points raise significant legal and policy concerns that are of great interest to the States.

ARGUMENT

I. The Trusts Allegedly Plan To Destroy Data And Documents That Are Highly Relevant To Ongoing And Future Litigation.

Courts from across the country have concluded that data and documents held by asbestos trusts are discoverable and relevant in separate litigation. *See, e.g.*, *Willis v. Buffalo Pumps, Inc*., No. 12CV744-BTM DHB, 2014 WL 2458247, at *1 (S.D. Cal. June 2, 2014) ("Federal and state courts have routinely held that claims submitted to asbestos bankruptcy trusts are discoverable."); *Golik v. CBS Corp.*, 472 P.3d 778, 787 (Or. App. 2020) (affirming grant of new trial where plaintiff's counsel deliberately withheld from disclosure an asbestos bankruptcy trust claim affidavit, because the affidavit was relevant as to causation and lack of the evidence prejudiced the defendant); *see also* W. Shelley, J. Cohn & J. Arnold, *The Need for Transparency Between the Tort System and Section 524(g) Asbestos Trusts*, 17 NORTON J. OF BANKR. LAW & PRAC. 257, 274 (2008) ("A growing number of courts are recognizing defendants' legitimate interest in discovering information about plaintiffs' trust claims.").

These trust materials may be used for a wide variety of purposes, including for purposes of determining causation and damages. *See Carroll v. John Crane Inc*., No. 15-CV-373-WMC, 2017 WL 2912720, at *2 (W.D. Wis. July 7, 2017) ("[T]he court agrees any [bankruptcy trust] claims plaintiffs have asserted that other entities are responsible for the development of [the plaintiff's] mesothelioma *are* potentially

relevant for purposes of deciding causation and damages.") (emphasis in original); *Little v. Budd Co.*, 339 F. Supp. 3d 1202, 1222 n. 7 (D. Kan. 2018) (concluding that affidavits submitted by the plaintiff to several asbestos bankruptcy trusts describing "his other exposures to asbestos-containing products appear relevant to determining causation and damages questions"), *aff'd sub nom. Little v. Budd Co., Inc.*, 955 F.3d 816 (10th Cir. 2020); *see also* Shelley, *supra*, 17 NORTON J. OF BANKR. LAW & PRAC. at 277 ("As nonbankruptcy courts are increasingly recognizing, fundamental fairness requires that tort system defendants be afforded access to claiming and payment information concerning the 524(g) trusts. From the liability perspective, tort defendants should be permitted to access and use this information to help to demonstrate that they do not bear legal liability for a plaintiff's injuries or, where liability is established to some degree, to put into perspective their relative fault in relation to the overall culpability of all tortfeasors. Additionally (or, in some states, alternatively), defendants should be allowed dollar-for-dollar credit for the payments made (or to be made) to claimants by the 524(g) trusts.").

Recognizing the value of such information, many state trial courts, including those in Delaware, have at various times required "full disclosure of trust claims as part of their case management orders." Peggy L. Ableman, *The Garlock Decision Should Be Required Reading for All Trial Court Judges in Asbestos Cases*, 37 AM. J. TRIAL ADVOC. 479, 481 (2014). Full disclosure of trust claims is important

because, as noted by Judge Ableman—who once was "solely responsible for the asbestos docket in Delaware"—asbestos plaintiffs and their counsel often display "dishonesty at its highest level," by "trying to defraud" the court and defendants. Brickman, *supra*, 88 TUL. L. REV. at 1115 n. 192–93 (2014) (quoting Pretrial Hearing Transcript at 3, 7, *In re Asbestos Litig.: Ltd. to Montgomery*, No. 09C-11-217 ASB (Del. Super. Ct. Nov. 7. 2011)).

The bankruptcy court in *Garlock* convincingly demonstrated the relevance—and value—of these types of materials when it discussed how a defendant can successfully use trust materials in its litigation strategy. There, the court observed: "In contrast to the cases where exposure evidence was withheld, there were several cases in which Garlock obtained evidence of Trust claims that had been filed and was able to use them in its defense at trial. In three such trials, Garlock won defense verdicts, and in a fourth it was assigned only a 2% liability share." 504 B.R. at 86.

And importantly, the absence of trust materials—whether through gamesmanship, intentional withholding, or deliberate destruction—can unfairly prejudice defendants. See *Golik*, 472 P.3d at 787 (new trial granted because defendant was prejudiced by intentional withholding of bankruptcy trust claim affidavit). The *Garlock* Court listed multiple examples of how the absence of such materials prejudiced Garlock in cases across the country. 504 B.R. at 85. In many of the cited examples, "some plaintiffs and their lawyers" sought to "withhold evidence of exposure to

other asbestos products and to delay filing claims against bankrupt defendants' asbestos trusts until after obtaining recoveries from Garlock (and other viable defendants)." *Id*. at 84. By delaying the filing of trust claims, defendants would necessarily not have access to information pertaining to those claims. *Id*. ("It was a regular practice by many plaintiffs' firms to delay filing Trust claims for their clients so that remaining tort system defendants would not have that information."). These examples led the court to conclude that "the pattern exposed in those cases appears to have been sufficiently widespread to have a significant impact on Garlock's settlement practices and results." *Id*. at 85.

And yet, despite the importance and relevance of the Trust Data to the claims and defenses at issue in asbestos litigation across the country, Defendants-Appellants allegedly plan to systematically destroy the data. Such should not occur, and this Court should affirm the Court of Chancery's order denying Defendants-Appellants' motion to dismiss.

II. The Trusts' Document-Destruction Plans Circumvent State Transparency Laws.

The examples discussed in *Garlock* were not unique to that case according to subsequent research, which uncovered similar patterns of suppression of trust materials in cases across the country. *See* Mark A. Behrens, *Asbestos Trust Transparency*, 87 FORDHAM L. REV. 107, 115 (2018) ("Since the *Garlock* decision was issued, numerous reports have confirmed that '[w]e are now past the time when [the case examples in *Garlock*] can be referred to as mere anomalies.'") (quoting Ableman, *supra*, 37 AM. J. TRIAL ADVOC. at 488). And unsurprisingly, these attempts to circumvent the disclosure of trust materials had similar consequences for defendants. *See* Behrens, *supra*, 87 FORDHAM L. REV. at 114 ("By delaying asbestos trust filings until a personal injury case is resolved, a plaintiff can suppress evidence of trust-related exposures that defendants could use at trial, including evidence that would attach fault to a former insulation defendant. Delayed trust claim submissions also can deny judgment defendants setoffs they would otherwise be entitled to receive for trust payments to plaintiffs.").

In response to these problems, state legislatures across the country passed asbestos trust transparency laws. These transparency laws sought to address the gamesmanship problem identified by the court in *Garlock* in which plaintiffs' firms delayed filing trust claims. As a result, many of these laws generally require trust claims "to be filed before trial and disclosed." Behrens, *supra*, 87 FORDHAM L. REV.

at 117; *see*, *e.g.*, Iowa Code Ann. § 686A.3 (requiring a plaintiff and plaintiff's counsel to file a sworn statement after an asbestos action is filed "that an investigation of all asbestos trust claims has been 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"); W. Va. Code Ann. § 55-7F-4(a) ("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 or by anyone on the plaintiff's behalf, including claims with respect to asbestos-related conditions other than those that are the basis for the asbestos action or that potentially could be filed by the plaintiff against an asbestos trust.").

In mandating disclosure of these trust claims, some laws expressly specify that trust materials are presumptively discoverable. *See*, *e.g.*, Tenn. Code Ann. § 29-34-604(a) ("Trust claims materials and trust governance documents are presumed to be relevant and authentic and are admissible in evidence."). And many of the laws protect the right of defendants to seek discovery against the trusts. *See*, *e.g.*, Ala. Code § 6-5-694(b) ("A defendant in an asbestos action may seek discovery from an asbestos trust. The plaintiff may not claim privilege or confidentiality to bar discovery and shall provide consent or other expression of permission that may be required by the asbestos trust to release the information and materials sought by the defendant.").

All of these laws—whether explicitly or implicitly—recognize that trust claims and trust materials are relevant to asbestos actions and generally contemplate that trust materials should be available to litigants. By systematically destroying documents and data regarding prior claims, Defendants-Appellants' new retention policies thus necessarily circumvent the intent of these transparency laws. Indeed, absent judicial intervention, the trusts' new retention policies will effectively thwart state transparency laws.

Further, certain states' laws require that trust materials be "available" to all parties. *See* W. Va. Code Ann. § 55-7F-4(b) ("The plaintiff shall make available to all parties all trust claims materials for each asbestos trust claim that has been filed by the plaintiff or by anyone on the plaintiff's behalf against an asbestos trust, including any asbestos-related disease"); Utah Code Ann. § 78B-6-2405(5) (same); Tenn. Code Ann. § 29-34-603(b) (same). Because the Defendants-Appellants' alleged policies present the real risk of frustrating state transparency laws, including the transparency laws of several of the Amici States, this Court should affirm the Court of Chancery's order denying Defendants-Appellants' motion to dismiss.

CONCLUSION

Amici respectfully ask this Court to affirm the Court of Chancery's order denying Defendants-Appellants' motion to dismiss.

Respectfully submitted,

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