



Case Alert: Delaware Court protects claimant data sought by Bestwall

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The U.S. District Court for the District of Delaware recently affirmed that discovery of personal information about asbestos-trust claimants requires reasonable protections to safeguard the claimants' privacy interests and prevent misuse of their sensitive data. In a memorandum opinion quashing subpoenas issued by a North Carolina bankruptcy court seeking the personal information of 15,000 claimants from nine asbestos trusts ("the Trusts"), the Delaware court followed Third Circuit and Delaware precedent in concluding that asbestos settlement trusts should not be treated as clearinghouses for claimant personal information, and that requests for such data must be subject to reasonable restrictions on scope, use, and disclosure. On June 1, 2021, the Delaware District Court denied Bestwall LLC's motion to transfer the subpoena dispute back to North Carolina and granted the Trusts' motion to quash the subpoenas. *In re Bestwall LLC*, Misc. No. 21-141 (CFC), 2021 WL 2209884 (D. Del. June 1, 2021). The motion to quash was granted without prejudice to Bestwall's right to reissue the subpoenas with narrower parameters.

The Delaware District Court noted that "Bestwall is the debtor in a pending chapter 11 bankruptcy case" in the Western District of North Carolina and sought the discovery to support its "contention that the Bankruptcy Court should adopt a low estimation of the total value of its liability for present and future asbestos personal injury claims." Specifically, Bestwall sought "to show that the evidentiary value of the amount it paid to settle approximately 15,000 pre-bankruptcy mesothelioma claims is tainted because a significant percentage of the roughly 15,000 claimants withheld information about other alleged asbestos exposure, which resulted in Bestwall overpaying for its share of such claimants' damages."

Although the subpoenas were issued out of the North Carolina Bankruptcy Court, the Trusts filed motions to quash in the Delaware District Court, the jurisdiction in which compliance was requested. Bestwall sought to transfer the motions to quash so they would be heard in North Carolina by the court that had approved issuance of the subpoenas. The Delaware District Court concluded that the motions to quash were properly before it under Federal Rule of Civil Procedure 45(f) because the Trusts did not consent to their motions being transferred to North Carolina and Bestwall failed to show "exceptional circumstances" that outweighed the Trusts' interest in having the motions decided in Delaware, the situs for most of the Trusts and the data at issue, which was maintained on behalf of the Trusts by the Delaware Claims Processing Facility ("DCPF").

The Delaware District Court noted that each of the nine asbestos Trusts is a limited fund that was established pursuant to section 524(g) of the Bankruptcy Code for the sole purpose of paying victims of asbestos-related diseases. Each Trust is governed by certain Trust Distribution Procedures ("TDP") that determine how the trustees are to administer, maintain, and operate the Trust. The TDPs were incorporated into the respective debtors' confirmed plans and approved by a U.S. Bankruptcy Court, which for six of the nine Trusts was the Delaware Bankruptcy Court.



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The TDPs each include express provisions that state the information provided by trust claimants was intended to be confidential, treated as made during a settlement discussion, and protected by privileges, including those applicable to settlement discussions. Several affected claimants and other parties had filed joinders seeking similar relief to the motions to quash or requesting a protective order. The Delaware District Court noted that transferring the dispute to North Carolina would deprive the Trusts of the opportunity to have their fiduciary and data-protection obligations to claimants defined by the Delaware court that had implemented those obligations and that had jurisdiction over the confidential data at issue.

The Delaware District Court also agreed with the Trusts with respect to their substantive objections to the subpoenas. Bestwall asked for a vast amount of personal data from the 15,000 claimants they previously paid, such as the injured party's Social Security Number, date of birth, and diagnosis; the full name and Social Security Number of any claimant who is not the injured party; the date the claim was filed, approved, paid, and any other relevant status; exposure related fields including date, manner, occupation and industry, and products; and the mode of review under which the claims were selected, approved, and paid. Bestwall contended these data fields were necessary to determine if they overpaid claimants who had already recovered in other actions related to asbestos exposure.

The Trusts requested entry of an order that would limit the production of data to no more than 10% of the 15,000 claimants at issue and that the DCPF or a third-party neutral anonymize the data before producing it to Bestwall or Bates White, LLC, a firm that aggregates and analyzes data that Bestwall had retained as its liability consultant. Further, the Trusts requested that the order prohibit Bestwall from re-associating the claimants' personal information with the anonymized data. The Trusts argued that Bestwall's request for information from all 15,000 claimants was overbroad and that a random sample of about 10% of the claimants would provide a statistically significant sample of the claims.

The Delaware District court noted that its bankruptcy court previously had addressed a request from Honeywell International Inc. and Ford Motor Company, who similarly sought extensive access to claimants' personal information from asbestos settlement trusts, including three of the Trusts in the instant action. *See In re Owens Corning*, 560 B.R. 229 (Bankr. D. Del. 2016). The bankruptcy court granted only limited access, citing concerns about identity theft and exposure of private medical information. The court permitted Honeywell and Ford access to claimant data only for three months and required that the data be destroyed thereafter because "the Trusts are not to serve as information clearinghouses or 'public libraries' for entities that wish to obtain confidential claimant information for their own commercial purposes." Additionally, the court prohibited Honeywell and Ford from sharing any identifying information in the claims data. The court further determined that an independent facilitator would be appointed (at Honeywell's and Ford's cost) to oversee production of the documents, including, but not limited to removing



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certain unnecessary records and all but the last four digits of Social Security Numbers. Honeywell and Ford appealed the decision, but it was affirmed by the Delaware District Court and the U.S. Court of Appeals for the Third Circuit. *See In re Motions Seeking Access to 2019 Statements*, 585 B.R. 733 (D. Del. 2018), affirmed by *In re AC&S Inc.*, 775 Fed. App'x 78 (3d Cir. 2019).

The Delaware District Court noted that Bestwall had demonstrated a legitimate purpose in accessing claimants' information (that of aiding in plan formation and estimation) and the North Carolina Bankruptcy Court had already set in place a number of protections for the claimants' personal information. However, the Delaware District Court determined that precedent required additional safeguards, including, but not limited to, the appointment of an independent facilitator to oversee the document production. Accordingly, the Delaware District Court denied Bestwall's motion to transfer and granted the Trusts' motion to quash the subpoenas.