

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case: 1:22-mc-00080
Assigned To : Kelly, Timothy J.
Assign. Date : 8/25/2022
Description: Misc.

IN RE:) Misc. No. _____
)
ALDRICH PUMP, LLC, et al.) Underlying Case: 20-BK-30608 (JCW)
) (U.S. Bankr. W.D.N.C.)
Debtor.)

**THE MANVILLE TRUST MATCHING CLAIMANTS’ MOTION TO QUASH OR
MODIFY SUBPOENA, OR ALTERNATIVELY FOR PROTECTIVE ORDER**

Movants The Manville Trust Matching Claimants, by counsel, submit this Motion to Quash or Modify Subpoena, or Alternatively for a Protective Order. The subpoena prompting this Motion, served by Aldrich Pump LLC and Murray Boiler LLC (collectively, “Aldrich”) targets a wealth of personal identifying information belonging to thousands of asbestos victims who have long since settled their claims against Aldrich.

Rule 45 requires quashing subpoenas that either target “protected” matters or subject a person to an “undue burden.” FED. R. CIV. P. 45(d)(3)(A)(iii)–(iv). Now come 8,022 asbestos victims whose highly personal information is sought (collectively, “the Matching Claimants”)¹, as nonparties, by and through the undersigned counsel,² to move this Court under Rule 45 to enter an

¹ The Certain Matching Claimants are a discrete subset of those claimants in the Trusts’ databases whose injured party datafields or related claimant datafields match (or may match) any (a) nine-digit SSN and (b) last name associated with a Aldrich Claimant in Aldrich’s database and who did not file their Trust claims pro se. *In re Aldrich LLC*, No. 20-30608, Bankr. W.D.N.C., Dkt. 1240 (“Order Granting Debtor’s Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts and Governing Confidentiality of Information Provided in Response”), at 5.

² A list of the law firms acting as counsel to the Matching Claimants in this proceeding are attached as Ex. A.

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Court for the District of Columbia

order quashing (or modifying) the subpoena served on the Manville Personal Injury Settlement Trust (“Manville Trust”) and its Virginia-based administrator Claims Resolution Management Corporation (“CRMC”).³

BACKGROUND

Asbestos Bankruptcy Trusts

Asbestos diseases like asbestosis, lung cancer, and mesothelioma afflict thousands of Americans who have inhaled asbestos dust. Most pernicious is mesothelioma, an “invariably fatal cancer of the lining of the lungs or abdomen associated with exposure to asbestos.” *Silver v. Johns-Manville Corp.*, 789 F.2d 1078, 1080 (4th Cir. 1986). To balance the need for “just and comparable compensation” for asbestos victims versus the “overwhelming liability” faced by struggling asbestos-producing companies, Congress authorized “asbestos bankruptcy trusts” under 11 U.S.C. § 524(g). *In re Flintkote Co.*, 486 B.R. 99, 131, 132–33 (Bankr. D. Del. 2012), quoting H.R. Rep. No. 103-835, Section 111, at 41. As a general matter, the trust assumes the liability of an asbestos tortfeasor and must use its assets to pay future claims and demands. *See In re Grossman’s Inc.*, 607 F.3d 114, 126 n.12 (3d Cir. 2010).

To make a claim, an asbestos victim must submit a wide array of personal information to a trust. For example, the Manville Trust may require, depending on the disease level claimed, “the submission of X-rays, detailed results of pulmonary function tests, laboratory tests, tissue samples, results of medical examination or reviews of other medical evidence....” Ex. C, Manville Personal Injury Settlement Trust, 2002 Trust Distribution Process, May 2021 Revision, at 13. *See also In re Western Asbestos Co.*, 416 B.R. 670, 709 (N.D. Cal. 2009) (claimants possessed a legally protected privacy interest in their claim information, which “in large part includes medical records,

³ The challenged subpoena is attached as Exhibit B hereto.

financial details, and other information of a highly personal nature”). The Manville Trust’s “distribution procedures” (“TDP”) also require evidence of meaningful and credible exposure to asbestos products made by each trust’s predecessor-tortfeasor. *See* Ex. C, at 14. Exposure evidence includes information like a claimant’s occupation(s), testimony, and/or affidavits identifying relevant asbestos-containing products. *Id.*

The Aldrich subpoenas at the heart of this miscellaneous action target a wealth of confidential, sensitive, personal identifying information, belonging to thousands of Matching Claimants, mesothelioma victims, who have long since settled their claims against Aldrich and its predecessors.⁴ Aldrich cannot demonstrate a basis for needing this discovery.

Prior History of Trust Subpoenas

This Subpoena is the third in a series that asbestos-related companies, all of whom are named debtors in bankruptcy in the Western District of North Carolina, have served on asbestos liability trusts. and the third time that many of the Matching Claimants have sought to quash them. Aldrich’s counsel in its bankruptcy case are counsel to the debtors in a trio of bankruptcy cases pending in the Western District of North Carolina: *In re Bestwall, LLC*, 20-BK-30080 (Bankr. W.D.N.C.); *In re DBMP, LLC* 20-BK-30080 (Bankr. W.D.N.C.); and *Aldrich*. In each case, the debtor has undertaken the same discovery tactics, and has served a nearly identical subpoena on asbestos liability trusts in Delaware and Virginia, seeking nearly identical identifying data.

In May 2021, then representing Bestwall LLC, a successor to asbestos liability like Aldrich, Debtor’s counsel served a similar subpoena on the Manville Trust. At the same time, Bestwall served the same subpoena on nine Delaware asbestos liability trusts (“the Delaware Trusts”). In

⁴ Aldrich’s predecessors include former Trane Technologies Company LLC, successor by merger to Ingersoll-Rand Company (a former New Jersey Corporation) (“Old IRNJ”), and the former Trane U.S. Inc. (“Old Trane”).

both the Virginia and Delaware cases, thousands of asbestos victims joined in a motion to quash. *In re Bestwall, LLC*, Misc. No. 1:21-mc-00014-RDA-MSN (E.D. Va.); *In re Bestwall, LLC*, Case No. 1:21-mc-00141 (D. Del.).

In the Delaware *Bestwall* case, the district court granted the motion to quash the substantively identical discovery sought by Bestwall LLC. *See In re Bestwall, LLC*, Case No. 1:21-mc-00141 (D. Del. Jun. 1, 2021), *Memorandum and Order Granting Motion of Third-Party Asbestos Trusts to Quash or Modify Subpoenas* [Docket Nos. 29 and 30]. The Court found that the discovery sought in the subpoena was overbroad and did not adequately protect the privacy of the claims data. The Court further held that any revised subpoena must: (i) limit the production of Trust Claimants' data to a random sample of no more than 10% of the mesothelioma victims at issue; (ii) authorize the Delaware Claims Processing Facility, or a neutral third party, to anonymize the Trust Claimants' data before producing it, and (iii) include additional protections consistent with the "Access Decision," *In re Owens Corning*, 560 B.R. 229 (Bankr. D. Del. 2016).⁵ *Id.*, *Dkt.* 33. After the Motion to Quash in Delaware was granted, Bestwall withdrew its subpoena to the Manville Trust.

Bestwall appealed the granting of the Motion to Quash to the United States Court of Appeals for the Third Circuit, *In re Bestwall, LLC* (No. 21-2263). Oral argument was held on March 15, 2022.

⁵ In the Access Decision, the Delaware Bankruptcy Court held that 1) access would be granted solely for a three-month period, after which the exhibits had to be destroyed, 2) the requesting parties were prohibited from sharing the identity of individuals by name or other identifying mean, and 3) an independent facilitator would be appointed to oversee production of the exhibits and insure protection of privacy data. *Id.* Bestwall has appealed the decision to the Court of Appeals for the Third Circuit.

Next, in *DBMP*, successor entity debtor DBMP—represented by the same counsel—served a similar subpoena on the Manville Trust and the Delaware Trusts, seeking similar information. Again, the matching claimants filed motions to quash the subpoena, on largely the same grounds as in *Bestwall*. *In re DBMP LLC*, No. 22-139-CFC (D. Del. Dkt. 1); *In re DBMP, LLC*, 1:22-mc-00009-LMB-TCB (E.D. Va. Dkt. 1). In the Eastern District of Virginia, the court granted Debtor’s motion to transfer the matter back to the United States Bankruptcy Court for the Western District of North Carolina (“the Bankruptcy Court”), where the Motion to Quash was denied. The Delaware District Court has not yet ruled on the Motion to Quash.

Finally, now, in this case, successor entity debtor Aldrich has filed the third version of the Subpoena.

The only district court to consider a Motion to Quash this onslaught of subpoenas targeting victims of asbestos-induced mesothelioma has granted the Motion to Quash on the grounds that the subpoena was overbroad and failed to adequately protect claimant data. *Bestwall*, Dkt. 29, 30, 33]. This Court should grant the same motion, on the same grounds.

The Subpoenas

Like the debtor in *Bestwall*, Aldrich moved the Bankruptcy Court to estimate its liability for certain current and future mesothelioma claims. It seeks evidence to support its theory that the dollar amount of its estimated liability for the present and future asbestos personal injury claims is lower than the dollar amount it paid in settlements prior to its bankruptcy.

To obtain this evidence, Aldrich moved the Bankruptcy Court (the “Subpoena Motion”) for authority to subpoena electronically stored data concerning approximately 12,000 mesothelioma victims that Aldrich’s predecessors resolved claims with through settlement or verdict prior to its bankruptcy. Ex. D (Subpoena Motion). The Subpoena Motion was directed

to, and sought data from DCPF, the Delaware clearinghouse for claims against the Delaware Trusts; the Manville Trust; and Verus Claims Services, LLC (“Verus”), a New Jersey entity that processes claims for eight other trusts.⁶ *Id.* ¶¶15-17.

On July 1, 2022, the Bankruptcy Court entered an order granting the Subpoena Motion, thereby allowing Aldrich to serve the subpoenas it requested (the “July 1 Order”). Ex. E. In granting the Subpoena Motion, the Bankruptcy Court did not consider or address the requirements of the Delaware Court’s decision in *Bestwall*. Nor did it require Aldrich to limit its requested production to a random 10% sample of the mesothelioma claims at issue and to incorporate meaningful anonymization. The July 1 Order, like the Subpoena Motion, did not specify the authority under which Aldrich could issue subpoenas. *Id.* ¶3.

Pursuant to the Aldrich Subpoenas, Aldrich’s estimation expert, Bates White LLC (“Bates White”), is to create a “matching key.” *Id.* ¶6. The matching key is a comprehensive, searchable list of approximately 12,000 claimants who asserted mesothelioma claims against Aldrich or its predecessor. *Id.* For each claimant, the matching key lists the claimant’s last name and Social Security number (“SSN”) and assigns a numerical identifier. *Id.*

Bates White is to deliver the matching key to Manville, which is required to notify counsel for Trust Claimants on the matching key that the relevant Trusts have received a subpoena and that their data will be produced unless they file a motion to quash. *Id.* ¶9. If they do not file a motion to quash, Manville must produce to Bates White the following confidential data for each Trust Claimant on the matching key:

- A. Claimant Pseudonym;
- B. Claimant’s law firm (with email and address of contact person);

⁶ The Subpoena is also directed at Paddock Enterprises, LLC (“Paddock”), another chapter 11 debtor seeking to resolve current and future claims relating to asbestos exposure.

- C. Date claim filed against Trust;
- D. Date claim approved by Trust, if approved;
- E. Date claim paid by Trust, if paid;
- F. If not approved or paid, status of claim; and
- G. All exposure-related fields, including:
 - i. Date(s) exposure(s) began;
 - ii. Date(s) exposure(s) ended;
 - iii. Manner of exposure;
 - iv. Occupation and industry when exposed; and
 - v. Products to which exposed.

Id. ¶10.⁷

Once produced, Bates White may use the data and matching key to (i) “match and combine the [Trust-produced data], on a claimant-by-claimant basis, with data from [Aldrich’s] database or other sources” and (ii) “provide sufficient identifying information from the Matching Key to an Authorized Representative to permit such Authorized Representative to match data from the [Trust-produced data] with and analyze individual claims.” *Id.*, ¶ 12(b).

⁷ Unlike in *Bestwall*, the Aldrich Subpoena does not expressly seek the Trust Claimants’ personal information (e.g., SSNs, names, addresses). This purported change is of little practical difference. The “exposure-related fields” Aldrich seeks may still contain personally identifiable information. Regardless, because Manville must match the Trust Claimants’ names and SSNs to names and SSNs provided by Aldrich prior to production, Manville is releasing claimant identifying information. Ex. B ¶¶7-8.

STATEMENT OF GROUNDS AND AUTHORITIES

A district court where subpoena compliance is required “must quash or modify” a subpoena that [1] requires disclosure of privileged or other protected matter, or [2] subjects a person to undue burden. FED. R. CIV. P. 45(d)(3)(A)(iii)–(iv). The Subpoena requires production of the data here in the District of Columbia; accordingly, this is the proper forum for such a motion. *See, e.g., Guice v. FTC*, No. 20-mc-87 (CKK), 2021 U.S. Dist. LEXIS 69036 (D.D.C. Apr. 9, 2021) (denying motion to quash for lack of jurisdiction where production was in another district); *Adams v. Symetra Life Ins. Co.*, No. 19-MC-401-EFM-ADM, 2020 U.S. Dist. LEXIS 16253 (D. Kan. Jan. 28, 2020) at *7 (same); *Whiteamire Clinic, P.A. Inc. v. Cartridge World N. Am., LLC*, No. 1:16CV226, 2021 U.S. Dist. LEXIS 259825 (N.D. Ohio Oct. 27, 2021) (same). A party issuing “a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” FRCP 45(d)(1). A person affected by a subpoena, whether a nonparty or party, can move to quash or modify, or for a Rule 26(c) protective order.

Whether a subpoena imposes an “undue burden” depends on the specific facts of the case and courts “ ‘must balance the interests served by demanding compliance with the subpoena against the interests furthered by quashing it.’ ” *Dell Inc. v. Decosta*, 233 F. Supp. 3d 1, 3 (D.D.C. 2017), quoting *In re Ex Parte Application of Kleimar N.V.*, No. 16-MC-355, 220 F. Supp. 3d 517, 2016 U.S. Dist. LEXIS 165297, 2016 WL 6906712 at *3 (S.D.N.Y. Nov. 16, 2016) (quoting *Anwar v. Fairfield Greenwich Ltd.*, 297 F.R.D. 223, 226 (S.D.N.Y. 2013)).

Any person with a personal right or privilege in subpoenaed information can challenge the subpoena. *Albert v. Clark Constr. Grp. (In re Shelton Fed. Grp., LLC)*, Nos. 15-00623, 17-10026, 2018 Bankr. LEXIS 2492, at *4 (Bankr. D.D.C. Aug. 20, 2018); *Singletary v. Sterling Transport*

Co., Inc., 289 F.R.D. 237, 239 (E.D. Va. 2012), quoting *U.S. v. Idema*, 118 F. App'x 740, 744 (4th Cir. 2005); *Vengosh v. Jacobs Eng'g Group, Inc.*, 2020 WL 5709256, at *4 (E.D.N.C. 2020) (collecting cases and finding because third party movants assert a right or privilege, movants have standing); WRIGHT & MILLER, FED. PRACTICE & PROCEDURE § 2463.1 (3d ed. 2016). Federal courts recognize a personal right in records “likely to contain highly personal and confidential information” like Social Security numbers, legally confidential medical records, and family member information. *Singletary*, 289 F.R.D. at 240; accord *Barrington v. Mortgage ID, Inc.*, 2007 WL 4370647, at *2 (S.D. Fla. 2007); *Richards v. Convergys Corp.*, 2007 WL 474012, at *1 (D. Utah 2007); *Beach v. City of Olathe*, 2001 WL 1098032, at *1 (D. Kan. 2001).

As with all civil discovery, the scope of a subpoena is limited by Rule 26’s proportionality principles. FED. R. CIV. P. 26(b)(1); *Watts v. S.E.C.*, 482 F.3d 501, 507 (D.C. Cir. 2007); *Dep’t of the Treasury v. Pension Benefit Guar. Corp.*, 301 F.R.D. 20, 25 n.3 (D.D.C. 2014) (holding that relevancy standard remains the same for subpoenas of non-parties); *Virginia Dep’t of Corrs. v. Jordan*, 921 F.3d 180, 188-9 (4th Cir. 2019) (collecting cases); *Vengosh*, 2020 WL 5709256, at *3 (concluding when evaluating subpoenas issued to third parties, courts “will give extra consideration to the objections of a non-party, non-fact witness in weighing burdensomeness versus relevance.”).

A potential invasion of privacy—in itself grounds to quash under Rule 45(d)(3)(A)(iii)—also affects whether a burden is “undue.” *Jordan*, 921 F.3d 180, 188-9 (collecting cases). “A nonparty should not have to do the work of tailoring a subpoena to what the requesting party needs.” *Id.* “[T]he requesting party should have done that before serving it.” *Id.*

ANALYSIS

The underlying bankruptcy and litigation from which the subpoena stems have an unquestionably complicated procedural history. But resolution of the instant motion turns on straightforward application of the Civil Rules and settled decisional law. The Court must quash (or modify) the subpoena because it foists an undue burden onto both the Manville Trust and the Movants. Aldrich has not come close to the requisite showing of need necessary to outweigh the grave confidentiality concerns inherent in the subpoena.

I. A Disproportionately Undue Burden: Aldrich Needs Only a Small Percentage of Matching Claimant Information, yet it Seeks a Sweeping Amount of Confidential Information.

Federal law categorically recognizes that a subpoena that subjects “a person” to undue burden “must” be quashed or modified. FED. R. CIV. P. 45(d)(3)(A)(iv). Independently, a subpoena that requires disclosure of “protected matter” like social security numbers, full name, family information, and dates of birth “must” be quashed or modified. Fed. R. Civ. P. 45(d)(3)(A)(iii).

Rule 45 works in tandem with Rule 26’s proportionality requirement, and the substantive bases for denying discovery are similar. *Jordan*, 921 F.3d at 188-90; *Singletary*, 289 F.R.D. at 241; *In re ThompsonMcMullan, P.C.*, 2016 WL 1071016, at *4 (E.D. Va. 2016); *Mannington Mills, Inc. v. Armstrong World Indus., Inc.*, 203 F.R.D. 525, 529 (D. Del. 2002). A court balancing undue hardship against the need for requested information may consider the relevance of the materials, the requesting party’s need for the information, the confidentiality of the information sought, the breadth of the request, the recipient’s nonparty status, and the burden imposed. *Jordan*, 921 F.3d at 189–90; *Singletary*, 289 F.R.D. at 241; *In re ThompsonMcMullan, P.C.*, 2016 WL 1071016, at *4.

Even if the information sought is relevant, discovery is not allowed where no need is shown, or where compliance is unduly burdensome, or where the potential harm caused by production outweighs the benefit. *Jordan*, 921 F.3d at 188–90; *Singletary*, 289 F.R.D. at 241. The burdens of a subpoena are not just financial; for example, “a subpoena may impose a burden by invading privacy or confidentiality interests.” *Jordan*, 921 F.3d at 189.

Here, Aldrich has failed to show that the sweep of confidential information sought is proportional to its purported needs.

II. Too Loose a Fit: Aldrich’s “Need” for the Data does not Comport with its Legal Theories. Only a Small Percentage of the Confidential Information Sought is Relevant, and it is Aldrich’s Unmet Burden to Identify that Percentage.

Aldrich claims to need a vast amount of information showing “alternative exposures,” *i.e.*, claimants’ exposures to asbestos for which its predecessors were not responsible. *See In re Aldrich LLC*, No. 17-31795, Bankr. W.D.N.C., Dkt. 1237, 8–10. Under Aldrich’s new theory-of-the-case, it overpaid in the tort system because the withholding of alternative exposure evidence infected its assessment of case values.

The Manville Trust was not created as an information clearinghouse for potential bankruptcy petitioners. It is up to Aldrich, as the party seeking confidential and settlement-related information, to make a well-tailored, particularized showing of relevance before that information is produced. *See Jordan*, 921 F.3d at 189 (“A more demanding variant of the proportionality analysis” applies in assessing undue burden *vis-à-vis* a nonparty); *id.* (“The information sought must likely (not just theoretically have marginal benefit in litigating important issues.”).

Without revealing specific information uniquely in its control—the claimant cases for which it depended on asbestos-exposure information—Aldrich falls far short of the heightened

showing of relevance and need required to command production of confidential information. The Court should quash the subpoena.

III. Heavy Confidentiality Concerns: Data Security, and a Chilling Effect on Settlements.

The Manville Trust subpoena solidifies Aldrich’s plan to combine extraordinarily sensitive, separately maintained claims files of the Manville Trust (along with the ten Delaware trusts’ claims files) and pool them into a *single, consolidated* database. Aldrich’s plan presents myriad confidentiality concerns: the dangers of data aggregation, the particular susceptibility of the Moving Claimants, a potential chilling effect on Congressionally-approved trust claims, and the particular unsuitability of Bates White as a recipient of confidential data.

The risk that such a merged database, once created, could be used in a manner detrimental to the privacy interests of movants, particularly if it is misappropriated or inadvertently disclosed (*e.g.*, because of a data breach), is profound. “[T]he compilation of otherwise hard-to-obtain information alters the privacy interest implicated by disclosure of that information,” and a “computerized summary located in a single clearinghouse of information” warrants particular scrutiny. *U.S. Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 763-64 (1989). Aggregation of public data presents privacy and security concerns, because the “unrestrained power to assemble data that reveal private aspects of identity is susceptible to abuse.” *United States v. Jones*, 565 U.S. 400, 416 (2012) (Sotomayor, J., concurring); *see also U.S. Dep’t of Defense v. Fed. Labor Relations Auth.*, 510 U.S. 487, 500 (1994) (“An individual’s interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form.”); *Havemann v. Colvin*, 537 F. App’x 142, 147–48 (4th Cir. 2013) (recognizing privacy interest in nondisclosure of

information, even if otherwise public, in a format that could be combined with other available data to identify specific individuals).

Centralizing the Matching Claimants' private data into a single database, regardless of security measures, creates a powerful analytical tool that may be abused to discern patterns and reveal insights about individual claimants on subjects unrelated to the subpoenaed purpose. The aggregation of this data puts more Trust data (in both the number of claimants and the amount of data per claimant) at risk of inadvertent disclosure or misappropriation, and amplifies the potential consequences of a single data breach. The theft of a single file could compromise personal data concerning more than 12,000 people.

IV. Sampling is more than sufficient for Aldrich's needs.

As the *Bestwall* court held, sampling is necessary to protect the Trust Claimants' data and appropriate for Aldrich's estimation proceeding and the July 1 Order's "Permitted Purposes." *In re Bestwall, LLC*, Case No. 1:21-mc-00141 (D. Del.) Dkt. 29, 33. Sampling is a widely utilized litigation technique. As the Manual for Complex Litigation recognizes, "[a]cceptable sampling techniques, in lieu of discovery and presentation of voluminous data from the entire population, can save substantial time and expense, and in some cases provide the only practicable means to collect and present relevant data." MANUAL FOR COMPLEX LITIG. § 11.493 (4th ed. 2020). For these reasons, courts routinely encourage sampling. *See, e.g.*, June 17, 2021 Order (*Bestwall* Dkt. 33); *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 454–55 (2016) (sampling to establish hours worked in a class action lawsuit); *Nat'l Union Fire Ins. Co. of Pittsburgh v. Porter Hayden Co.*, 2012 U.S. Dist. LEXIS 23716, at *6 (D. Md. Feb. 24, 2012) (limiting disclosure to a random sample of 10% of the claimants at issue); *Fed. Hous. Fin. Agency v. JPMorgan Chase & Co.*, 2012 U.S. Dist. LEXIS 173768, at *5, *7-10 (S.D.N.Y. Dec. 3, 2012) (approving 4% sample to establish

fraud liability); *In re Garlock Sealing Techs.*, 504 B.R. 71, 95 (Bankr. W.D.N.C. 2014) (adopting estimation approach based on questionnaire responses from a claimant sample).

There is no need for Aldrich to receive the protected data of approximately 12,000 Trust Claimants to undertake this analysis, especially when balanced against the need to protect the sensitive, confidential information of 12,000 sick, elderly people. Sampling will not modify the substance or quality of the data Aldrich receives--only decrease the volume. Aldrich would be able to discern the exact same patterns from a sample as it would from data for the entire claimant population.⁸ This Court should adopt the *Bestwall* ruling, and limit Aldrich to a 10% sample of Manville claimant data.

V. The anonymization scheme proposed by Aldrich is ineffective.

Aldrich's Subpoena also inappropriately incorporate a nugatory "anonymization" scheme that permits Aldrich's consultant to aggregate the Trust Claimant data, post-production, with data from Aldrich's database and other sources into a single, consolidated clearinghouse, while holding a matching key that de-anonymizes the data.

The very existence of a matching key flies in the face of *Bestwall's* pre-production anonymization requirement, and indeed the notion of true anonymization at all. The core purpose of pre-production anonymization is to prevent the Trust Claimants from being identified after production. But a matching key allows the Trust Claimants and their corresponding

⁸ Nor can Aldrich's counsel, the same counsel who represented the debtor in *Bestwall*, disagree. In *Bestwall*, the debtor admitted that using a 10% sample would "provide an efficient mechanism by which the parties and th[e] [Bankruptcy] Court can address issues presented by the estimation proceeding" and argued that approving the 10% sample "offers a practicable and fair way to proceed [and] will save time and expense" Ex. F. ¶24 (Bestwall Mot. to Approve Resolved Claim Sample). Aldrich's own consultant, Bates White, further opined that a 10% sample was "reliable" "for performing analyses related to ... liability estimation." Ex. G., ¶11 (Decl. of Jorge Gallardo-Garcia).

confidential data to be de-anonymized and re-identified in an instant. No key decrypting the Trust Claimants' data should exist, much less held by the same entity with access to a vast consolidated database of Trust Claimant data, an entity which seeks to also hold additional aggregated databases, such as from the Delaware Trusts, or Verus, or Paddock, containing Trust Claimant data and their corresponding matching keys.

With such de-anonymized data, the Manville database has significant commercial value, particularly to experts and insurers in the business of pricing asbestos liability, as they would otherwise need to devote significant resources to estimating conclusions easily gleaned from facts at Manville Trust.⁹ Bates White specializes in providing analysis to companies and law firms, “guid[ing] clients to make better decisions about issues involving asbestos, environmental pollution, and other mass tort liabilities.” It holds out its “Environmental and Product Liability” practice as a “market leader” in liability forecasting. *See* Bates White Economic Consulting, “Environmental and Product Liability,” <https://www.bateswhite.com/practices-Environmental-Product-Liability.html> (last visited August 22, 2022). “When the purpose of a discovery request is to gather information for use in proceedings other than the pending suit, discovery properly is denied.” *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 352 (1978).

Bates White’s history and the commercial value it gleans from information from (and for) the tort system amplify the risk of a data breach. The mass production of such aggregated, non-

⁹ To illustrate, the leaders of Bates White previously ran a side business called the Litigation Resolution Group (“LRG”). For a price, LRG would assume the asbestos liabilities of companies that chose to remain in the tort system. *See* Ex. H., Litigation Resolution Group Website (no longer available), at 4 (“LRG’s product offers companies an attractive and more cost-effective alternative to Section 524(g) that provides for a quicker time line to resolution and enables the company to retain procedural control of the litigation throughout the process.”). Access to the Trust’s data would enable a business like LRG to more accurately quantify companies’ expected asbestos liabilities—and would therefore be hugely valuable.

anonymized data to Bates White, an organization with a pecuniary interest in data related to asbestos liability weighs in favor of an extremely particularized showing of need. Aldrich has not made that showing.

As to the Trust claimants, they are *the* target demographic for identity theft plots. Because of the latency period of asbestos disease, the claimant group largely comprises widow and widower senior citizens. According to the Department of Justice, seniors are “some of our nation’s most vulnerable citizens.” *See* U.S. DEP’T OF JUSTICE, “Elder Justice Initiative (EJI),” <https://www.justice.gov/elderjustice>. The Justice Department takes scams against seniors so seriously it has created a “Transnational Elder Fraud Strike Force,” which works to warn seniors of the myriad data dangers they face. *See* U.S. Dep’t of Justice, “Senior Scam Alert,” <https://www.justice.gov/elderjustice/senior-scam-alert>. In this era of runaway identity theft and data protection dangers—the Russian intelligence penetration of government and businesses via SolarWinds, the Colonial Pipeline hack, the Equifax data breach, *etc.*—forced disclosure and aggregation of thousands of seniors’ personal data will create a juicy target for malevolent actors.

The Trust claimants have other valid reasons for keeping their information private. Not every asbestos victim is blessed with saintly family members or benevolent neighbors. Keeping an influx of money private is a choice that should be left to each claimant, not to Aldrich. Moreover, Matching Claimant submissions to the Manville Trust are a *de facto* communication in furtherance of settlement negotiations. Permitting a third party like Aldrich to sift through such settlement communications will have a chilling effect on other settlements, to the detriment of the policies served by the Rules of Evidence, *see* Rule 408, and the bankruptcy system itself, *see In re Flintkote Co.*, 486 B.R. at 132–33. *See also Jordan*, 921 F.3d at 190 (a person’s “interest in protecting their privacy” factors into the undue burden analysis); *Ford Motor Co. v. Edgewood*

Properties, Inc., 257 F.R.D. 418, 423 (D.N.J. 2009) (parties seeking to discover settlement-related communications must make a “heightened, more particularized showing of relevance”); *Food Lion, LLC v. Dairy Farmers of Am., Inc.* 2020 WL 6947921, at *3–4 (M.D.N.C. 2020) (same); *CHS Inc. v. ABM Healthcare Support Servs., Inc.*, 2021 WL 149861, at *2–3 (W.D. Va.) (same).

In light of the heavy concerns inherent in the confidential information it seeks, Aldrich’s new litigation strategy deserves the same skepticism as its efforts to sow doubt into scientific literature. The subpoena inadequately protects claimant information from misuse, and there are scant penalties against Aldrich (or its agents) for dissemination. That is especially true here, where Aldrich seeks a sweepingly broad information dump unmoored from a tailored showing of relevance. The Court should quash the subpoena.

VI. In the alternative, the Court should issue a protective order adopting the protections of the Bestwall ruling.

A requesting party must tailor a subpoena to its needs before serving it. *Jordan*, 921 F.3d at 190. In the absence of quashing, a Rule 26 protective order (or Rule 45 subpoena modification) can be an appropriate remedy for minimizing the release of confidential information. *Singletary*, 289 F.R.D at 241–42; *Malibu Media, LLC v. John Does 1-11*, Civil Action No. 12-cv-0237, 2012 U.S. Dist. LEXIS 94648 (D.D.C. July 10, 2012)(denying motion to quash but granting protective order to protect nonparty).

Federal Rule of Civil Procedure 26 provides that “for good cause” a court may issue a protective order “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c)(1). The party requesting the protective order bears the burden of showing good cause “by demonstrating specific evidence of the harm that would result.” *Jennings v. Family Mgmt.*, 201 F.R.D. 272, 275 (D.D.C. 2001); *Alexander v. FBI*, 186 F.R.D. 71, 75 (D.D.C. 1998). Protective orders may “deny discovery completely, limit the

conditions, time, place, or topics of discovery, or limit the manner in which the confidential information is to be revealed.” *Univ. of Mass. v. Roslin Inst.*, 437 F. Supp. 2d 57, 60 (D.D.C. 2006).

Under either Rule 45 or Rule 26, a subpoena that seeks irrelevant information is both overbroad and a *de facto* “undue burden,” and should be quashed. *See AF Holdings, LLC v. Does 1-1058*, 752 F.3d 990, 995 (D.C. Cir. 2014); *Singletary*, 289 F.R.D at 241–42; *Albert*, 2018 Bankr. LEXIS 2492, at *4. Movants have more than demonstrated evidence of the harm that would result if their data is released without adequate protections in place. Accordingly, the Court may issue a protective order, in lieu of granting the Motion to Quash, implementing the protections of sampling and pre-production anonymization.

CONCLUSION

The *Bestwall* court was correct. The Subpoena being served in this case is overbroad, and fails to adequately protect the claimants’ data. This Court should adopt the reasoning of the *Bestwall* ruling, and limit the production of data to a 10% sample, and require the pre-production anonymization of the data by the Manville Trust, or a third party.

For the foregoing reasons, the Manville Trust Matching Claimants pray this Court grant their Motion to Quash, and for such other relief as to the Court seems proper.

Dated: August 23, 2022

Respectfully submitted,

/s/ David I. Bledsoe-----

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CERTIFICATE OF GGOD FAITH CONFERENCE

I certify that pursuant to Local Rule 7(m), I discussed this Motion in a good faith conference with opposing counsel prior to its filing.

/s/David I. Bledsoe
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CERTIFICATE OF SERVICE

I certify that on August 23, 2022, I served a copy of the foregoing by email on:

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