DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

CLIFFORD BOYNES, et al., **Plaintiffs,** **v.** **LIMETREE BAY VENTURES, LLC et al.,** **Defendants.**	**1:21-cv-0253-WAL-EAH**
HELEN SHIRLEY, et al., **Plaintiffs,** **v.** **LIMETREE BAY VENTURES, LLC et al.,** **Defendants.**	**1:21-cv-0259-WAL-EAH**
MARY L. MOORHEAD, et al., **Plaintiffs,** **v.** **LIMETREE BAY VENTURES, LLC et al.,** **Defendants.**	**1:21-cv-0260-WAL-EAH**
BEECHER COTTON, et al., **Plaintiffs,** **v.** **LIMETREE BAY VENTURES, LLC et al.,** **Defendants.**	**1:21-cv-0261-WAL-EAH**

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ORDER

THIS MATTER comes before the Court on "Plaintiffs' Motion to Compel Non-Party Sedgwick Claims Management Services, Inc." filed on February 4, 2025 by Attorney Jacob Gower. Dkt. No. 943.[1] The motion is fully briefed. *See* Dkt. Nos. 943, 968, 969, 1003. In response to the motion, third-party Sedgwick Claims Management Services ("Sedgwick") moved to quash Plaintiffs' subpoena and, pursuant to LRCi 7.1(d), requested oral argument on the issue. Dkt. No. 968. The Court held a hearing on the motions on March 24, 2025. For the reasons that follow, the Court will grant Plaintiffs' motion to compel and deny Sedgwick's motion to quash.

BACKGROUND

According to their Consolidated Amended Complaint, Plaintiffs are a putative class made up of thousands of individuals who lived near the Limetree Bay Refinery (the "Refinery") when, in early 2021, it discharged hazardous, toxic chemicals into the air on at least four occasions. *See* Dkt. No. 529. Plaintiffs raise numerous tort claims alleging that the Refinery was rushed open without concern for proper management or safety. *Id*. at 4. When the Defendants attempted to restart the Refinery, which had been shut down for some time, they experienced several malfunctions, causing "flare outs." According to Plaintiffs, these flare outs were incidents in which oil was showered on local residents, sulfuric gases spewed into the community, and hydrocarbons shot into the air, each of which "had an immediate and significant health impact on multiple downwind communities." *Id*. at 5 (citing *In the Matter of Limetree Bay Terminals, LLC and Limetree*

[1] All citations to the docket in this Order refer to the docket in *Boynes v. Limetree Bay Ventures, et al.*, No. 1:21-cv-253.

Bay Refining, LLC, Clean Air Act Emergency Order, CAA-02-2021-1003 (EPA, Region 2) (May 14, 2021)).

Following the fourth, and largest, flare out, which "spewed a heavy 'pitch oil' on downwind communities," *id*. at 60, "Limetree hired the catastrophic response team of Sedgwick claims administrators to inspect properties for contamination." *Id.* at 63. Sedgwick is a claim-adjusting company that is hired by insurance agencies or private entities to adjust potential claims following natural disasters or other events. Dkt. No. 969 at 3. Its work requires "boots on the ground" in the form of claims adjusters, who go to each potentially affected home and create claims files for the effected individuals. *Id*. "Sedgwick physically inspected [thousands of St. Croix] properties for contaminations. Approximately 2,200 of the 2,300-2,400 homes inspected by Sedgwick were identified as contaminated." Dkt. No. 529 at 63. However, "Sedgwick abruptly stopped its work after a few weeks, before completing all inspections, because Limetree failed to pay Sedgwick for its services." *Id*. The 2,000 claims files Sedgwick created, and the underlying documentation and data taken while Sedgwick was on-the-ground in St. Croix, are the subject of this dispute.

I. Motion to Compel

After the fourth release incident, "Sedgwick's inspectors went door-to-door, inspected homes for the presence of oil, took pictures of any contamination, and documented the dimensions of the home and property in detail." Dkt. No. 943-1 at 2 (Memorandum in Support of Plaintiffs' Motion to Compel). "Sedgwick's inspections are the single greatest source of *contemporaneous* documentation of the impact of the oil releases on the downwind community" and therefore are "highly relevant and material to Plaintiffs' claims and to class certification." *Id*. (emphasis in original). **"**"The parties

agree that the Sedgwick Data provides the most reliable and complete picture of the extent of contamination.'" Dkt. No. 943 at 2 (quoting *Boynes v. Limetree Bay Ventures, LLC*, No. 2021-cv-0253, 2023 WL 4637319, at *10 (D.V.I. July 20, 2023)). That is why, in August 2024, Plaintiffs served Sedgwick with a subpoena *duces tecum* with several requests for production. *Id*. Among Plaintiffs' requests, Request for Production No. 4 sought the production of

> all Documents and Communications regarding the inspection or prospective inspection of any property on St. Croix during the Relevant Time Period. This specifically includes, but is not limited to, Documents and/or Communications identifying all properties Sedgwick planned, attempted to, and/or did inspect as well as any reports, spreadsheets and/or summaries thereof related to such inspections.

Id. (quoting Dkt. No. 943-2).

The motion to compel concerns only Request for Production No 4. *Id*. Sedgwick objected to the request for several reasons. In place of the requested documents, it produced a robust spreadsheet identifying the sites it inspected, but "refuse[d] to produce the underlying inspection records, including the templates, reports, and photographs." *Id*. According to Plaintiffs, Sedgwick's "core objection" was that it was owed more than $1 million by the bankruptcy estate of Limetree Bay Refining, LLC ("LBR") for the work it did to produce these documents and that by providing these documents to Plaintiffs, it will "lose the right to recover the amount due them." *Id*. Plaintiffs assert that they "do not believe they must securitize Sedgwick's unsecured bankruptcy claim" and that Sedgwick's objection "finds no support in Rule 45 or caselaw." *Id*. at 3.

Plaintiffs' counsel and attorneys for Sedgwick exchanged letters and met-and-conferred twice in an effort to resolve their dispute. Dkt. No. 943-1 at 4; Dkt. No. 943-7.

Plaintiffs offered to pay Sedgwick $25,000 to comply with the subpoena—the amount Sedgwick alleged it would cost to put the records into a producible format. "However, Sedgwick condition[ed] its compliance on it being paid (by Plaintiffs or otherwise) the $1 million invoice Limetree didn't pay before filing bankruptcy." Dkt. No. 943-1 at 2.

Plaintiffs described several other objections made by Sedgwick: 1) that the request was overly broad, unduly burdensome, and not relevant; 2) that it need not produce its claims files because they are more easily and readily available by other means; and 3) that an order from the Bankruptcy Court for the Southern District of Texas immunizes Sedgwick from producing certain commercially privileged or protected matters until they are paid the $1 million they are owed. *Id*. at 3-4.[2]

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[2] The whole of Sedgwick's objection was:

> UNDUE BURDEN - Sedgwick generally objects to this request on the ground of undue burden. "[E]ven 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." See *First Sealord Sur. v. Durkin & Devries Ins. Agency*, 918 F. Supp. 2d 362, 383 (E.D. Pa. 2013) (citing *Mannington Mills, Inc. v. Armstrong World Indus., Inc.*, 206 F.R.D. 525, 529 (D.Del.2002) and Fed. R. Civ. P. 26(b)(2)(C)). With respect to undue burden, Federal Rule of Civil Procedure 45(d)(1) provides "[a] party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid undue burden and expense on a person subject to the subpoena." Federal Rule of Civil Procedure 45(d)(2)(ii) further states that if the Court ultimately enters an order requiring third-party production "the order must protect a person who is neither a party not a party's officer from significant expense resulting from compliance."
>
> Additionally, Federal Rule of Civil Procedure 45(d)(3)(B)(i) allows the court to quash or modify a third-party subpoena if it requires "disclosing . . . confidential research, development, or commercial information[.]" Accordingly, Sedgwick objects to this request as unduly burdensome on the grounds that on September 2, 2021, the United States Bankruptcy Court for the Southern District of Texas Houston Division issued an order in Case 21-32351 shielding Sedgwick from producing certain commercially privileged or protected documents comprising Sedgwick's work product due to the

fact that Sedgwick had not been paid for the same. . . . The documents protected by the Bankruptcy Order include the documents being requested in the instant request. Accordingly, requiring Sedgwick to produce the requested documents without compensation for the significant work product embodied in the same would contravene the Order and cause Sedgwick to lose the opportunity to potentially recover close to One Million Dollars ($1,000,000) it is owed for the data/documents requested because once that work product is produced there is no reason to pay Sedgwick for the same. Notably, in the *Application of Consumers Union of U.S., Inc.,* 27 F.R.D. 251, 254 (S.D.N.Y. 1961), the court substantially quashed the third-party subpoena at issue where "the plaintiff seeks in effect to obtain the benefit of an expert's work and conclusions free of cost." *Id.* As the court in *Ohle v. United States*, No. 08 CR. 1109 JSR, 2015 WL 5440640, at *13 (S.D.N.Y. Sept. 8, 2015) explained: "Ohle also will not be allowed to subpoena documents held by third parties who performed services for which Ohle has not paid." *Id.* As the court in *Davis v. Plains Pipeline LP*, No. 16CV01319, 2023 WL 3080563, at *9 (Cal.Super. Mar. 20, 2023) explained in the context of a third-party subpoena, the "*Snyder* and *Wright* [cases] collectively demonstrate that there are substantial interests in protecting third-party, non-engaged experts and their work product from discovery. *Snyder* and *Wright* couched this analysis in terms of burden. While coming to different conclusions based upon the particular facts presented, even in allowing discovery, the *Wright* court determined that the burden must be mitigated by reasonable compensation."

Sedgwick further objects to this request as unduly burdensome on the grounds of the significant expense to compile and produce the large amount of requested documents. As the Third Circuit Court of Appeal stated in *E.E.O.C. v. Kronos Inc.*, 694 F.3d 351, 372 (3d Cir. 2012), as amended (Nov. 15, 2012) "We also adopt the general proposition that a non-party should not be expected to bear as great an expense as a party when complying with a subpoena, a principle which finds support in the fact that Rule 45 distinguishes between reimbursement for parties and non-parties." (citing Fed.R.Civ.P. 45(c)(2)(B)(ii) (providing that a district court "must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance" with a subpoena). Further, Federal Rule of Civil Procedure 45(c)(2)(B) imposes mandatory fee shifting and directs the court to "protect" a nonparty from "significant expense resulting from inspection and copying commanded." *See R.J. Reynolds Tobacco v. Philip Morris, Inc.*, 29 F. App'x 880, 882–83 (3d Cir. 2002). Thus, district courts must determine whether the subpoena imposes expenses on a non-party and whether those expenses are significant. *Id.* (citing *James Wm. Moore*, 9 Moore's Federal Practice § 45.04[2] (3d ed.2001)). Significant expenses must be borne by the party seeking discovery. *Id.* An affidavit directed to the cost of production will be provided shortly.

Plaintiffs cite to Rules 26 and 45 for the proposition that discovery, even when sought from subpoenaed third parties, is broad and that the "party resisting discovery" bears the burden of explaining why the discovery request is inappropriate. *Id*. at 5 (citing Fed. R. Civ. P. 26 and Fed. R. Civ. P. 45). As to the general "undue burden" objection, the objection is insufficient because "courts routinely reject boilerplate objections" and "Rule 45 commands that objections be stated with specificity." *Id*. at 6 (citing *Livingston v. Berger*, 2020 WL 6585656, at *2 (D.V.I. Nov. 10, 2020) and other cases).

As to Sedgwick's reliance on the bankruptcy court order, Plaintiffs contend that "nothing in th[e Order] immunizes the inspection documents from Plaintiffs' subpoena." *Id*.

> Sedgwick further objects to this request as the documents requested are more easily and readily available from the Limetree Entities and/or Contractor Defendants, who are Defendants in this action, as opposed to Sedgwick, a third party. To that end, Federal Rule of Civil Procedure 45(d)(1) provides "[a] party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid undue burden and expense on a person subject to the subpoena." Pertinent factors weighed in the undue burden analysis include relevance, the need for the information requested, whether the information can be obtained by other means, burdens the subpoena may impose, the status of the recipient as a non-party, and the costs of compliance. *Id.* . . . Further, the Court has a responsibility to enforce this duty. *Ceuric v. Tier One, LLC*, 325 F.R.D. 558, 560 (W.D. Pa. 2018). Requesting documents in the possession of a defendant, from a third-party, does not meet the letter or the spirit of Federal Rule of Civil Procedure 45.
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> Subject to and without waiving the foregoing objections, see the spreadsheet summarizing Sedgwick's inspections at Bates Nos. Sedgwick 00323-357, which includes the complainants' names, property addresses, contact information, whether the property was inspected, whether an offer was made, whether the claim was settled and the amount for which the claim was settled.
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> Documents are being withheld on the basis of the foregoing objections.

Dkt. No. 943-8 at 5-7.

at 6-7. Moreover, Sedgwick "fails to explain how the production of responsive documents would cause it to forego a breach of contract cause of action, or any other cause of action." Plaintiffs assert that public disclosure is not an element of any relevant cause of action or an affirmative defense against one. *Id.* Finally, Sedgwick has the burden of demonstrating that the information sought is privileged or protected and that disclosure would be harmful. *Id*. at 7 (citing *MGP Ingredients v. Mars, Inc.,* 245 F.R.D. 497, 500 (D. Kan. 2007)). It must then demonstrate that "the risk of harm so greatly outweighs the need for discovery that even a limited disclosure cannot be compelled, which is an 'infrequent result.'" *Id*. (quoting *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 787 (3d Cir. 1994)). Accordingly, because Sedgwick cannot demonstrate how documents related to the inspection of a putative class member's home are privileged, it cannot rely on a claim of privilege to refuse this subpoena. *Id*.

Plaintiffs further reject Sedgwick's argument that by providing the requested documents, it would lose $1 million. *Id*. Rule 45(d)(1) states that "A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena." Fed. R. Civ. P. 45(d)(1). According to Plaintiffs, Sedgwick suggests this provision means that Plaintiffs should assume the $1 million debt if they want the requested documents. *Id*. at 8. Plaintiffs argue that that goes well beyond the requirements of Rule 45(d)(1). Rather, to mitigate the burden on Sedgwick caused by the subpoena, Plaintiffs have offered to cover the cost of converting the data into a produceable format, which is all Rule 45(d)(1) requires. *Id*.

Finally, Plaintiffs argue that Sedgwick's claim that the requested discovery is more easily and readily available elsewhere is unsupported. *Id*. at 11-12. Sedgwick admits that the reason it is withholding the requested documents is because those documents have value in their exclusivity. *Id*. at 12. Accordingly, Sedgwick's arguments depend on the requested

production *not* being easily and readily available elsewhere. *Id.* Moreover, none of the Defendants nor anyone else has the documentation in Sedgwick's possession. *Id*. They have produced less than 10% of the inspection documents they created, and they have several hardcopy documents that have never been shared. *Id*. Therefore, Plaintiffs conclude, all of Sedgwick's objections are meritless, so they should be ordered to produce the responsive documents. *Id*.

II. Sedgwick's Opposition

Sedgwick filed a response to Plaintiffs' motion that doubled as a motion to quash Plaintiffs' subpoena. Dkt. No. 969. Sedgwick asserts that it has been able "to recover a small portion of the amount it was owed through an adversary proceeding brought" during LBR's bankruptcy, but "it is still owed [] approximately One Million Dollars." *Id*. at 3 n.2. That amount owed is the basis of Sedgwick's motion to quash. *Id*. at 3.

Sedgwick states that to understand its arguments, it is "exceptionally important to understand" that the requested files are the subject of a previous court order, "which functionally made Sedgwick's claims files commercially confidential." *Id*. at 4. It attached the bankruptcy court order in question to its brief. Dkt. No. 969-3. Instead of requiring Sedgwick to produce to LBR the work product contained in its claims files and "balancing the need for information about Sedgwick's inspections with the need for confidentiality to facilitate payment," the bankruptcy court ordered Sedgwick to produce only a summary spreadsheet. Dkt. No. 969 at 4. Because the bankruptcy court directed LBR to "include Sedgwick in coverage or liability discussions with the Debtor's insurers to ensure that Sedgwick may preserve its rights of payments from any insurer," Sedgwick argues that the bankruptcy court order created "*de facto* commercial confidentiality" by recognizing that the claims files had to be withheld to avoid rendering them valueless. *Id*. at 5.

Additionally, despite the broad nature of discovery, "a non-party is treated more favorably than a party with respect to the expense of responding to discovery." *Id*. at 9 (citing *EEOC v. Kronos, Inc.*, 694 F.3d 351, 372 (3d Cir. 2012) ("We also adopt the general proposition that a non-party should not be expected to bear as great an expense as a party when complying with a subpoena, a principle which finds support in the fact that Rule 45 distinguishes between reimbursement for parties and non-parties.")).

Moreover, Sedgwick contends that Plaintiffs themselves are best positioned to provide the information requested because they "know how their homes were affected by the flare event" and because Sedgwick provided a spreadsheet of all of the claims they adjusted, which should help Plaintiffs contact the affected individuals. *Id*. at 2. Therefore, "Plaintiffs have abdicated their responsibility to 'take reasonable steps to avoid imposing undue burden and expense on a person subject to the subpoena.'" *Id*. at 11 (quoting Fed. R. Civ. P. 45(d)(1)).

Sedgwick further argues that a court must quash or modify a subpoena if the request "subjects a person to undue burden." *Id*. (quoting Fed. R. Civ. P. 45(d)(3)(A)(iv)). An undue burden arises when disclosure of the subpoenaed information "would cause a 'clearly defined and serious injury.'" *Id*. (quoting *City of St. Petersburg v. Total Containment, Inc.*, Case No. 06-cv-20953, 2008 WL 1995298, at *2 (E.D. Pa. May 5, 2008)). "[V]itiating the value of approximately One Million Dollars . . . of confidential commercial work product is a clearly defined and serious injury." *Id.* at 12. Having "set forth a 'clearly defined and serious injury' . . . the Court must conduct a balancing test in which it weighs Plaintiffs' interest in disclosure and Sedgwick's interest in non-disclosure to determine whether the burden on Sedgwick is, in fact, undue." *Id*.

> A court must consider '"(1) [the] relevance of the information requested; (2) the need of the party for the documents; (3) the breadth of the document request; (4) the time period covered by the request; (5) the particularity with which the party describes the requested documents; and (6) the burden imposed." *Wiwa v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004); *see also United States v. Int'l Bus. Mach. Corp.*, 83 F.R.D. 97, 104 (S.D.N.Y. 1979) (enumerating identical factors).

Id.

Sedgwick concedes that the first factor weighs in Plaintiffs' favor—the materials they seek are relevant. *Id*. However, since Plaintiffs can obtain identical information by contacting the individuals on Sedgwick's spreadsheet, the second factor, need, weighs against Plaintiffs. Moreover, the request is broad given that it covers over a million dollars in work-product and over 2,000 claims files; and the burden is great given the loss of value that providing the documents would cause. *Id*. at 12-13. Accordingly, this request clearly amounts to an undue burden. *Id*. at 13.

Sedgwick argues alternatively that if it is made to comply with the subpoena, its production should be subject to the principle that a third-party should only be required to produce its independent work product if it is paid "reasonable compensation." *Id*. at 14.

> Broadly speaking, compensation is required when compliance with a subpoena causes an actual property loss. The measure of compensation owed depends on the nature of the property. If the enforcement of a subpoena under Rule 45(d)(3)(B) causes no loss, then the amount of compensation reasonably owed will be zero. **If the loss to the owner of the information is substantial, then so will be the amount of compensation** even if the gain to the taker of the information is slight.

Id. at 16 (citing *United States Willis v. SouthernCare, Inc.*, No. CV410-124, 2015 WL 5604367, at *10–11 (S.D. Ga. Sept. 23, 2015) (emphasis added by Sedgwick)). Thus, even if Plaintiffs could demonstrate substantial need for the documents, the subpoena should be quashed absent reasonable compensation to Sedgwick for the claims files. *Id*.

III. Plaintiffs' Reply

Plaintiffs maintain that they have done exactly what Rule 45 requires by agreeing to pay $25,000 to cover the actual costs of producing the requested discovery. Dkt. No. 1003 at 2. But Sedgwick's demand that Plaintiffs take responsibility for LBR's alleged debt is not a lawful basis to resist this highly relevant subpoena. *Id*. Because Sedgwick has conceded that these documents are relevant, it bears the burden of excusing its noncompliance with the subpoena. *Id*. at 2-3.

Sedgwick must show good cause, but its broad allegations of harm without "a particular and specific demonstration of fact" do not meet this burden. *Id*. at 3. Sedgwick has not substantiated its conclusory claim that it is owed $1 million with any evidence (such as a contract, invoice, affidavit, records from the bankruptcy proceeding, or accounting records). *Id*. Moreover, even assuming the debt is real, Sedgwick has not demonstrated how producing the responsive documents would "irreparably hamstr[i]ng . . . its debt collection efforts." *Id*. at 4.

Plaintiffs argue that "Rule 45(d)(1) requires that 'a party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.' Fed. R. Civ. P. 45(d)(1) (emphasis added)." *Id*. Plaintiffs have done that with their offer to provide $25,000. But Sedgwick misapplies Rule 45 "by conflating an undue burden imposed by a subpoena with a separate financial dispute. Rule 45 protects third parties from discovery burdens imposed by the requesting party, not from their ordinary business losses." *Id*. Plaintiffs also argue that Sedgwick did not create the requested documents for an independent business purpose, but in the course of its contractual obligation to LBR. *Id*. Therefore, they

say, cost-shifting is not appropriate. *Id*. (citing *Cohen v. City of New York*, 255 F.R.D. 110, 126 (S.D.N.Y. 2008)).

Sedgwick's argument that Plaintiffs can easily obtain the requested information on their own is also flawed. *Id.* at 5. To individually track down the thousands of people Sedgwick has already spoken with and issue the hundreds or potentially thousands of subpoenas necessary to get access to the information in Sedgwick's possession would be "a burden exponentially greater than simply obtaining the existing claims files from Sedgwick." *Id*. at 5-6. Additionally, even if Plaintiffs took that route, they would be without some of the most important pieces of evidence in Sedgwick's possession: contemporaneous, standardized, and comprehensive records of property conditions immediately following the flare outs. *Id*. at 6. To require Plaintiffs to recreate what Sedgwick already has done would undermine "Rule 1's mandate for the just, speedy, and inexpensive determination of every action." *Id*.

Finally, Sedgwick's reliance on the bankruptcy court's order to suggest that the documents in question are commercially sensitive and confidential does not withstand scrutiny. *Id*. Nothing about Sedgwick's methods were proprietary or confidential. *Id*. And the bankruptcy court order did not make Sedgwick's documentation commercially confidential—it merely resolved a procedural dispute related to LBR's bankruptcy in a proceeding that Plaintiffs were not a party to. *Id*. The order imposed no protection or restriction on other uses of the claims files, nor did it declare the claims files privileged, confidential, or exempt from discovery in other proceedings. *Id*. at 7.

IV. The Hearing

On March 24, 2025, the Court held a hearing on the motion to compel and motion to quash. Attorneys Jacob Gower and Daniel Charest appeared on behalf of Plaintiffs.

Attorneys Lisa Kömives and Llyod Lim appeared on behalf of Sedgwick. Attorney Carl Beckstedt appeared on behalf of Defendant Limetree Bay Terminals, LLC ("LBT").

Plaintiffs opened with a brief argument explaining why they were entitled to the claims files, which mostly restated the content of their motion to compel. They clarified that they were seeking three groups of documents from Sedgwick: 1) the template form Sedgwick's inspectors filled out by hand when they were on-site at the properties they visited; 2) the typed-up version of that template, which was on a standardized report sheet; and 3) pictures taken of the properties during Sedgwick's site visits. Plaintiffs also explained why they could not rely solely on the spreadsheet that Sedgwick turned over. The spreadsheet provided the name, address, and phone number of each person contacted and identified whether that person was offered a settlement and whether they accepted that settlement. *See* Dkt. No. 943-3. But the spreadsheet lacks key information necessary for Plaintiffs to litigate their case, including the longitude and latitude of the home's surveyed, contemporaneous photos, contemporaneous notes from the days just after the flare event, and detailed specifications about the affected homes. Moreover, the spreadsheet did not even indicate whether the surveyed home had been contaminated with oil. That information is critical, particularly during impending class-certification hearings. Plaintiffs further explained that the summary spreadsheet, without the underlying data it was derived from, would be subject to numerous evidentiary objections and so was insufficient as a replacement for the actual files.

Sedgwick responded by arguing that the requested documents were commercially confidential and that, therefore, Plaintiffs' subpoena must be quashed unless Plaintiffs can show a substantial need for the documents and then reasonably compensate Sedgwick for the cost of the documents. To demonstrate what reasonable compensation

it was entitled to, Sedgwick called Roland Riviere, a Senior General Executive Adjustor for Sedgwick, as a witness. The Court concluded, and the parties agreed, that his testimony proved premature because it was difficult for Sedgwick to introduce certain evidence and to make its case for reasonable compensation without first addressing how the bankruptcy court order conferred confidentiality onto Sedgwick's claims files. However, his testimony did lead to the revelation that Sedgwick had sued LBT for breach of contract. Attorney Kömives explained that Sedgwick and LBT settled that suit for a confidential sum. Sedgwick's attorneys stated that they now believe reasonable compensation for the production of the requested documents to be the entire bill owed by the Limetree Bay entities,[3] less payments already made on that bill through the settlement, which equaled $680,000.

Following Mr. Riviere's testimony, Sedgwick called Attorney Lloyd Lim as a witness to explain how the bankruptcy court order conferred commercial confidentiality on Sedgwick's claims files. Sedgwick hired Attorney Lim to pursue LBR during its bankruptcy proceedings in an effort to obtain payment for the work it performed for the Limetree Bay entities. During those proceedings, LBR moved to compel Sedgwick to produce the same documents now being sought by Plaintiffs. Sedgwick opposed that motion and the bankruptcy court held a hearing on the issue. Ultimately, Sedgwick and LBR submitted an agreement to the bankruptcy court regarding how to move forward on LBR's motion. They proposed that Sedgwick would produce the spreadsheet it later produced to Plaintiffs while retaining the actual documents and files requested. The

[3] At the hearing, the Court learned that Sedgwick believes that it was hired by LBT, not LBR. LBT disputed that claim. Because it is not clear which company hired and owes money to Sedgwick, the Court will refer to both companies as "the Limetree Bay entities" when appropriate.

bankruptcy court accepted the agreement, and its order incorporated the terms of that agreement.

Attorney Lim's testimony further revealed three critical facts. First, he explained that after Sedgwick settled its lawsuit against LBT, the case was dismissed without prejudice and could be reopened if certain conditions precedent were met. Because LBT objected to the disclosure of the contents of its settlement agreement, Sedgwick did not provide details about the agreement, nor did it explain what conditions would need to be met to reopen the suit. Second, Attorney Lim testified that compliance with Plaintiffs' subpoena would not hamper Sedgwick from reopening its lawsuit against LBT if the conditions precedent were met. Third, he testified that, if it were made to comply with Plaintiffs' subpoena, Sedgwick would not lose any more money than it has already lost as a result of the Limetree Bay entities' nonpayment, excluding the cost of producing the documents, which cost Plaintiffs have offered to pay.

Attorney Lim also testified that Sedgwick was subpoenaed by an individual plaintiff, in a separate but similar case. Sedgwick complied with that subpoena. Attorney Kömives argued that that case was different from this case because the very nature of the claims files' commercial confidentiality comes from their "commercial value in this lawsuit to these parties." Plaintiffs argued that that admission revealed that Sedgwick was merely attempting to shakedown Plaintiffs or their counsel for money owed to them by LBT or LBR based on a contract that Plaintiffs had no part in.

After arguing that the requested documents were commercially confidential and therefore subject to reasonable compensation, Sedgwick presented its argument that the motion had to be quashed because it was unduly burdensome. Attorney Kömives first explained that Sedgwick had suffered a clearly defined and serious injury: if LBT gained

access to the claims files, the files would immediately lose all value. And because LBT was a party to this case and would be entitled to the documents in discovery, there was no way a protective order could keep LBT from accessing the documents. Moreover, while noting that Plaintiffs were not requesting any proprietary information, Sedgwick maintained that the claims files were commercially confidential and therefore that their release would violate the bankruptcy court order's confidentiality provision. Additionally, Plaintiffs would be getting the value and benefit of Sedgwick's work for nothing, which would be an inequitable windfall.

Sedgwick then argued that the factors a court considers when confronted with a clearly defined and serious injury weigh in favor of quashing the subpoena. It argued that the Plaintiffs' request was too broad, in that it was a request for *all* of Sedgwick's claims files, and that Plaintiffs could not demonstrate a need for the requested documents given that Plaintiffs could recreate the entirety of Sedgwick's work on their own. Plaintiffs responded that the breadth of the request was minimal given that they had already significantly narrowed their request to include only the claims files. Moreover, although Plaintiffs acknowledged that they could, theoretically, go house-to-house and retake the dimensions of each house visited by Sedgwick if they were given the coordinates, they would lose a significant amount of important data by not being able to obtain contemporaneous measures and images of the houses from the days shortly after the flare event. They noted that owners may have sold their properties, torn their properties down, made changes to their properties, or done any number of other things that would limit the usefulness of data collected four years after the fact. Furthermore, they argued that information prepared by a third-party was much more useful in court than information gathered by Plaintiffs for the purposes of litigation. Finally, they contended

that it would be a significant and costly undertaking to do all of that work when the documents were readily available through this subpoena.

The Court asked whether Plaintiffs would be satisfied if Sedgwick provided only the coordinates of the homes searched and the photos taken during Sedgwick's adjusting. Sedgwick said it would be willing to provide just the photos and coordinates to Plaintiffs. Plaintiffs responded that that would not be sufficient because of the significant burden that would be placed on Plaintiffs if they had to recreate the contents of Sedgwick's files from scratch.

Attorney Kömives also sought a long-term recess in the hearing in order to get clarification on two issues. First, she wanted to take the bankruptcy court's order back to the bankruptcy court to obtain an interpretation on whether the order imbued the claims files with commercial confidentiality. Although she admitted that this Court was capable of interpreting the order, she argued that because there were matters unique to bankruptcy proceedings that significantly affected how the order should be read, it was more appropriate to have that court interpret its own order. Plaintiffs objected, arguing that it would take months for that process to play out and that it was unnecessary for the bankruptcy court to interpret the order because it plainly does not create commercial confidentiality over Sedgwick's claims files. Attorney Kömives further sought to introduce the confidential settlement agreement between LBT and Sedgwick and so sought to obtain a ruling from this Court as to whether the settlement agreement's confidentiality clause barred the admission of the agreement in this hearing. Plaintiffs again objected that such a process could take months and further argued that it was unnecessary for Sedgwick to introduce the settlement agreement because Attorney Lim

already testified that regardless of whether Sedgwick was compelled to provide the claims files, its position with relation to LBT would not be altered.

The Court determined that it would not recess the hearing. It ruled that it was capable of interpreting the bankruptcy order without the need for a months-long recess and that the contents of the confidentiality order were immaterial given Attorney Lim's testimony that the conditions upon which Sedgwick could sue LBT for the remainder of the contract were unaffected by the disclosure of the claims files to Plaintiffs.

DISCUSSION

I. Legal Background

Federal Rule of Civil Procedure 45 defines when courts must quash a subpoena and provides guidance on what courts should do when a subpoena is seeking commercially confidential information. *See* Fed. R. Civ. P. 45(d). "[I]t is well settled that decisions on matters pertaining to subpoena compliance rest in the sound discretion of the trial court[.]" *Etzle v. Glova*, No. 3:22-CV-00139, 2023 WL 2578254, at *3 (M.D. Pa. Mar. 20, 2023) (citing *R.J. Reynolds Tobacco v. Philip Morris Inc.*, 29 F. App'x 880, 881 (3d Cir. 2002)) (Magistrate Judge ruling on motion to compel).

A. When Quashing or Modifying a Subpoena is Required

The extent of discovery permissible under Rule 45 is governed by the same shifting burdens of proof and persuasion as discovery under Rule 26. *Id.*, at *4 (citing *Mannington Mills, Inc. v. Armstrong World Indus., Inc.*, 206 F.R.D. 525, 529 (D. Del. 2002)). Accordingly, courts considering a subpoena are "required to apply the balancing standards—relevance, need, confidentiality, and harm. And 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

benefits." *Id*. Thus, a court "must" quash or modify a subpoena if it "subjects a person to undue burden." Fed. R. Civ. P. 45(d)(3)(A)(iv).

To overcome a claim of undue burden, the subpoenaing party bears the initial burden of establishing that the requested materials are relevant. *In re Domestic Drywall Antitrust Litig.*, 300 F.R.D. 234, 239 (E.D. Pa. 2014). After relevance is established, "[t]he party seeking to quash the subpoena bears the burden of demonstrating that the requirements of Rule 45 are satisfied." *Kaplan v. Gen. Elec. Co.*, No. 2:22-CV-05296, 2025 WL 583112, at *2 (D.N.J. Feb. 23, 2025). "If the subpoenaed nonparty . . . asserts that disclosure would subject it to undue burden under Rule 45(d)(3)(A), it must show that disclosure will cause it a 'clearly defined and serious injury.'" *Domestic Drywall*, 300 F.R.D. at 239 (quoting *City of St. Petersburg*, 2008 WL 1995298, at *2). "This burden is particularly heavy to support a motion to quash as contrasted to some more limited protection such as a protective order." *Id*.; *see also Kaplan*, 2025 WL 583112, at *2 ("This has been described as a heavy burden.") (internal quotation marks omitted); *First Sealord Sur. v. Durkin & Devries Ins. Agency*, 918 F. Supp. 2d 362, 383 (E.D. Pa. 2013) (same).

"If the subpoenaed nonparty demonstrates a 'clearly defined and serious injury,' for a claim of undue burden . . . the Court [then] conducts a balancing test . . . in which it weighs the subpoenaing party's interest in disclosure and the subpoenaed nonparty's interest in non-disclosure[.]" *Domestic Drywall*, 300 F.R.D. at 239. The Court must specifically consider and balance:

> the relevance of the documents, the need for the documents, the breadth of the document request, the time period covered by the request, the particularity with which the documents are described, and the burden imposed. *In re Domestic Drywall Antitrust Litig.*, 300 F.R.D. at 252. The onus of establishing undue burden, however, is on the party challenging the subpoena.

Vitalis v. Sun Constructors, Inc. No. 2005-cv-0101, 2020 WL 4912298, at *17 (D.V.I. Aug. 20, 2020).

B. Court Considerations When a Subpoena Seeks Commercially Confidential Information

If a movant cannot demonstrate undue burden, the court may still be required to quash or modify a subpoena if adherence to the subpoena would require the movant to "disclos[e] a trade secret or other confidential research, development, or commercial information." Fed. R. Civ. P. 45(d)(3)(B)(i). Alternatively, a court may order the production of the confidential documents under specified conditions if the serving party "(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and (ii) ensures that the subpoenaed person will be reasonably compensated." Fed. R. Civ. P. 45(d)(3)(C).

1. What is Commercially Confidential Information?

Under Rule 45, "[c]onfidential commercial information is information which, if disclosed, would cause substantial economic harm to the competitive position of the entity from whom the information was obtained." *Diamond State Ins. Co. v. Rebel Oil Co.*, 157 F.R.D. 691, 697 (D. Nev. 1994) (citing *Zenith Radio Corp. v. Matsushita Elec. Indus. Co.*, 529 F. Supp. 866, 889-91 (E.D. Pa. 1981)). "The person asserting confidentiality has the burden of showing that the privilege applies to a given set of documents." *Id*.

The Southern District of New York identified two relevant areas where information may be considered commercially confidential. *See Cohen*, 255 F.R.D. at 118. First, there are situations when the subpoenaed party can demonstrate that the dissemination of confidential information will place it at a competitive disadvantage, such as when enforcement of a subpoena would force a company to disclose client information

or proprietary technical documents. *Id*. (collecting cases). "In these circumstances, the commercial value of the information at issue can generally be protected by a protective order limiting the purposes for which the information can be used and the extent to which it can be disseminated." *Id*.

Second, there are cases in which there is no competitive risk, but the subpoenaed party has expended its own time and effort to accumulate the requested information. *Id*. These situations often arise when the subpoenaed party is an independent research organization. *Id*. at 118-19. In these cases, "the right to compensation for information obtained by subpoena arises . . . where the information was created for purposes independent of litigation." *Id.* at 120.

2. If Information is Commercially Confidential, What Is Considered "Reasonable Compensation"?

Domestic Drywall addressed the question of whether a subpoenaed third-party was entitled to compensation beyond what it was reasonably owed for the expenses imposed by complying with the subpoena. 300 F.R.D. at 249. Plaintiffs in *Domestic Drywall* sued numerous drywall manufacturers alleging that they colluded to increase their prices, violating antitrust law. *Id*. at 237-38. To assist in proving their allegations, Plaintiffs subpoenaed a third-party research organization that compiled information about the drywall industry. *Id*. The subpoena sought reports, and the information upon which those reports were based, for the period covering the alleged antitrust violation. *Id*. The third-party had amassed the requested data through costly surveys and interviews with sources across the drywall industry and ordinarily sold its reports for a set rate to interested businesses. *Id*. The third-party contended that the subpoena imposed an "undue burden" on it and that the requested reports were "proprietary and

confidential." *Id*. at 239-40. It argued that fulfilling Plaintiffs' request "would amount to a 'taking' of its unretained expert opinion." *Id*. Plaintiffs argued that the documents were necessary because they contained "what [we]re likely to be the only contemporaneous" documents related to Plaintiffs' claims. *Id*. at 240.

The court found no controlling Third Circuit precedent on the question of whether a party should be compensated for "the disclosure of intellectual property covered under Rule 45(d)(3)(B)," and so looked to *Klay v. All Defendants*, 425 F.3d 977, 983 (11th Cir. 2005) for guidance. *Id*. at 250-51 (citing). In *Klay*, the Eleventh Circuit noted that Rule 45(d)(1)[4] speaks in terms of compensation for expenses "*resulting* from the inspection and copying commanded." 425 F.3d at 983-84 (emphasis added). That narrow language is absent from Rule 45(d)(3)(C), suggesting that—if the subpoena is for commercially confidential information or non-retained expert opinions—the drafters did not intend to necessarily limit a subpoenaed person's reasonable compensation to just those expenses incurred in complying with the subpoena. *Id*. at 984. At the same time, the court noted that reasonable compensation does not always require more than the costs a third-party expends to comply with the subpoena. *Id*. Moreover, the court rejected an argument that a subpoenaing party must pay the same fee that the subpoenaed third-party would normally charge its clients for the same information. *Id*. at 986; *see also Domestic Drywall*, 300 F.R.D. at 251. Instead, the court determined that:

> [t]he gain to the party seeking confidential information through a subpoena is not the measure of compensation reasonably owed to the owner of that information. The measure is the loss to the owner of the property. If the enforcement of a subpoena under Rule 45[(d)](3)(B) causes no loss, then the amount of compensation reasonably owed will be zero. If the loss to the owner of the information is substantial,

[4] *Klay* addressed an earlier version of Rule 45, where what is today Rule 45(d) was then Rule 45(c). All citations to Rule 45 in this Order are to the modern Rule.

> then so will be the amount of compensation even if the gain to the taker of the information is slight.

Klay, 425 F.3d at 985. In sum, the Eleventh Circuit held that "compensation is required when compliance with a subpoena causes an actual property loss." *Id*. at 984. The *Domestic Drywall* court adopted *Klay*'s reasoning in whole. 300 F.R.D. at 251.

II. Application

Rule 45 is designed, in part, to minimize the burden of discovery on nonparties. If a party moves to compel the production of subpoenaed documents, the court may order the subpoenaed party to produce the requested documents, but "the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance." Fed. R. Civ. P. 45(d)(2)(B)(ii); s*ee also Kronos*, 694 F.3d at 372 ("We also adopt the general proposition that a non-party should not be expected to bear as great an expense as a party when complying with a subpoena, a principle which finds support in the fact that Rule 45 distinguishes between reimbursement for parties and non-parties."); Fed. R. Civ. P. 45(d)(1) ("A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.").

The parties agree that Plaintiffs' offer to pay Sedgwick $25,000 for the cost of compiling and producing the claims files sufficiently covers Sedgwick's burden in complying with the subpoena. Accordingly, the issues before the Court are whether it must quash the subpoena as unduly burdensome on Sedgwick or whether it must direct Plaintiffs to provide additional reasonable compensation to Sedgwick for the documents turned over.

A. The Court Is Not Mandated to Quash or Modify the Subpoena

A subpoena must be quashed if compliance with the subpoena would cause the subpoenaed party an undue burden.[5] Sedgwick has not demonstrated that compliance with this subpoena would impose an undue burden. Therefore, the Court is not required to quash the subpoena under Rule 45(d)(3)(A)(iv).

Sedgwick concedes that the requested materials are relevant, so it bears the burden of demonstrating that the "*disclosure will cause* it a clearly defined and serious injury." *Domestic Drywall*, 300 F.R.D. at 239 (emphasis added) (internal quotation marks omitted). The Court does not dispute that Sedgwick has been injured. It did significant work on behalf of a company that has, apparently, failed to pay Sedgwick for that work. However, adherence to this subpoena in no way caused that injury. And, according to Sedgwick's own witness, compliance with the subpoena would not exacerbate the injury. Before Sedgwick was subpoenaed it was owed over $1 million for the work it performed on behalf of the Limetree Bay entities. Whether Sedgwick turns the requested documents over or not, it is still owed that money (or some portion of it). Attorney Lim testified that compliance with the subpoena would not alter Sedgwick's ability to pursue the money, nor would it leave Sedgwick any worse off than it would have been had the subpoena

[5] A court must also quash a subpoena when compliance "requires disclosure of privileged or other protected matter, if no exception or waiver applies." Fed. R. Civ. P. 45(d)(3)(A)(iii). Sedgwick referred to the requested materials in its written filings as "commercially privileged work product." See Dkt. No. 969 at 15, 16, and 7 n.4. However, Sedgwick has not argued that the subpoena must be quashed under Rule 45(d)(3)(A)(iii), nor has Sedgwick shown that the requested materials are barred from disclosure because of any privilege. *See* 9A Charles Allen Wright & Arthur R. Miller, *Fed. Prac. & Proc. Civ.* § 2463.1 (3d ed. 2024) ("Whoever asserts privilege has a burden of proof when information subject to a subpoena is withheld on that claim of privilege."). Therefore, the Court will not consider quashing the subpoena under Rule 45(d)(3)(A)(iii).

never been sent, aside from the burden of producing the documents, which costs Plaintiffs have already agreed to cover.

Sedgwick had a contract with either LBR or LBT that it had every right to enforce. And, in fact, Sedgwick did sue to enforce its contract. Sedgwick then determined that it was better for it to settle the matter for some sum owed rather than press LBT for the entire balance owed under the contract. Plaintiffs cannot be faulted for that, nor can they be required to pay the difference lost in that settlement. Additionally, Sedgwick retains some right to file another lawsuit for the remainder of what its owed if some conditions precedent are met, none of which conditions, according to Attorney Lim, relate to the release of the claims files to Plaintiffs for the purposes of this litigation. For that reason, Sedgwick cannot meet the high burden of proof required to demonstrate that the injury caused by disclosure is clearly defined.

Furthermore, even had Sedgwick met the high burden required to show that disclosure would cause a clearly defined and serious injury, the balance of factors still weighs in favor of disclosure. At the hearing, Sedgwick acknowledged that of the five factors the Court must consider—relevance, need, breadth, time period, particularity, and burden, *see Vitalis*, 2020 WL 4912298, at *17—the only factors that might weigh against disclosure were that the Plaintiffs did not need the requested documents and that their request was overly broad.

However, despite Sedgwick's assertions to the contrary, Plaintiffs demonstrated a significant need for the documents. Plaintiffs conceded at the hearing that they could ostensibly recreate Sedgwick's work from scratch. But they emphasized that much of the significance of the requested materials come from the documents' contemporaneity. The Court agrees that the documents, which described the putative class-members' homes

exactly as they were immediately following the fourth flare out, are necessary for their contemporaneity alone. *See Domestic Drywall*, 300 F.R.D. at 245 (discussing need for certain materials even where third-party had proprietary interest because the materials were contemporaneous to the issues of the lawsuit); *see also id*. at 251-52 (finding no undue burden on third-party). However, even beyond the contemporaneousness of the documents, the Court notes that it would impose a needless and costly hardship on Plaintiffs to attempt to recreate Sedgwick's work from scratch, four years after the flare out events. *Id*. at 245 (piecing together the information that could otherwise easily be obtained via subpoena would be "a hunt for a needle in a haystack," which would surely "constitute undue, and likely fruitless, hardship that Plaintiffs need not undertake" given the availability of the requested documents).

To the extent that Plaintiffs' request for production is broad insofar as Plaintiffs are requesting the entire claims files, rather than, for example, just the photographs Sedgwick's employees took, the Court finds the breadth of the request is reasonable because, as discussed above, Plaintiffs have demonstrated a significant need for exactly what they are requesting. Moreover, Plaintiffs' putative class includes every person Sedgwick's claims adjustors spoke to. It would be nonsensical for Plaintiffs to request just a handful of the claims files when they demonstrated that each file would help them prosecute their case.

Sedgwick admitted that the documents were relevant, that they covered a short time period, that the request was clear and particularized, and that Plaintiffs' offer to pay $25,000 covered the burden imposed by the request. Accordingly, the Court finds that the balance of factors weighs in favor of disclosure.

B. Sedgwick Is Not Entitled to Additional Compensation

Finding no undue burden, the Court must determine whether the subpoena is targeting commercially confidential information and, if it is, whether compensation is appropriate. Fed. R. Civ. P. 45(d)(3)(C)(ii); *see also Domestic Drywall*, 300 F.R.D. at 249. The Court finds that the materials requested are not commercially confidential and that, even if they were, Sedgwick would not be entitled to additional compensation.

1. Sedgwick's Claims Files Are Not Commercially Confidential

Sedgwick acknowledged that the requested documents are not proprietary. Instead, Sedgwick argues that it is the bankruptcy court's order that imbues its claims files with commercial confidentiality. But a plain reading of that order reveals that that is not the case.

As an initial matter, the bankruptcy court order reflects an agreement between Sedgwick and LBR. *See* Dkt. No. 964-8 ("this Court having heard on the record regarding the agreement among the parties as to the Motion, which agreement is reflected in the terms of this Order"). This indicates that the issue was not fully litigated before the bankruptcy court. More importantly, the order does not mention anything about the requested information being commercially confidential. Rather, it provides that Sedgwick has an unsecured claim on what it was owed for the work it did: approximately $1,115,000. *Id*. The Order also provides that Sedgwick may pursue payment from LBT for unpaid amounts stemming from Sedgwick's alleged contract with LBT, and that Sedgwick may eventually attempt to seek payment from LBR's insurers. *Id*. Nothing in the order addresses Sedgwick's property or proprietary interest in its reports and data. Instead, it addresses how Sedgwick can obtain payment for the work it did. The order does not

speak to any protections or limitations on Sedgwick's data and reports in general or in other litigation.

Despite Sedgwick's claims to the contrary, the Court can see no interpretation of the order that creates *de facto* commercial confidentiality. Nevertheless, Sedgwick claims that that is because this Court is not well-positioned to understand the nuances of the order. However, such argument is unavailing because even if the materials were commercially confidential, Sedgwick still would not be entitled to reasonable compensation for them.

2. Sedgwick Is Not Entitled to Reasonable Compensation Under Rule 45(d)(3)(B) Because Disclosure Would Not Cause It Any Loss

Assuming, *arguendo*, that the Court did recess the hearing and the bankruptcy court ruled that, despite the order's plain language, there was an underlying understanding in the order that Sedgwick's claims files were commercially confidential, the inquiry into whether Sedgwick must comply with the subpoena would not end. Rather, the Court would then have to determine whether Plaintiffs demonstrated a "substantial need for the . . . material that cannot be otherwise met without undue hardship." Fed. R. Civ. P. 45(d)(3)(C)(i). As discussed above, Plaintiffs have demonstrated that need. Accordingly, the Court would need to ensure that Sedgwick was "reasonably compensated" for complying with the subpoena.

The Court finds the reasoning in *Klay* to be sound and proceeds according to its principles. *Cf. Domestic Drywall*, 300 F.R.D. at 251 (adopting the reasoning in *Klay* to resolve motion to quash); *Cohen*, 255 F.R.D. at 118-19 (same).[6] Therefore, Sedgwick's

[6] The Court further agrees with the *Cohen* court's holding that "the right to compensation for information obtained by subpoena arises in circumstances where the information was

reasonable compensation would be equal only to the losses caused to it by complying with the subpoena. *See Klay*, 425 F.3d at 985 ("If the enforcement of a subpoena under Rule 45[(d)](3)(B) causes no loss, then the amount of compensation reasonably owed will be zero."); *see also Domestic Drywall*, 300 F.R.D. at 251; *Cohen*, 255 F.R.D. at 120. Sedgwick acknowledged that if it were made to comply with the subpoena, its only losses would be resultant of producing the requested documents, which it has averred would be $25,000. Plaintiffs have agreed to cover those costs. Because Sedgwick has acknowledged that compliance with the subpoena would not *cause* it any other losses, it would not be entitled to any additional reasonable compensation, even if the requested materials were commercially confidential.

3. Sedgwick's Equity Argument Is Unavailing

Toward the end of the hearing on the motions to compel and quash the subpoena, Sedgwick argued that, although it might not suffer a loss directly from this subpoena, it would be inequitable for Plaintiffs to receive these documents for free when Sedgwick has not been paid for them. To an extent, the Court sympathizes with Sedgwick. But "the duty to provide evidence 'has long been considered to be almost absolute.'" *Klay*, 425 F.3d at 986 (quoting *In re Grand Jury Subpoena Duces Tecum*, 555 F.2d 1306, 1308-09 (5th Cir. 1977)). Moreover, as Sedgwick acknowledged in its brief "'[b]roadly speaking, compensation is required when compliance with a subpoena *causes an actual property*

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created for purposes independent of litigation." 255 F.R.D. at 120. While the claims files at issue were made for purposes independent of *this* litigation, the files were clearly made with litigation in mind. Moreover, the files' sole value comes from the fact that the documents are crucial evidence in this case. Accordingly, it is difficult to consider Sedgwick's claims files as having been created "for purposes independent of litigation." *Id*. But the Court need not make a finding on that issue to reach its conclusion, and so does not make such a finding.

loss.'" Dkt. No. 968 at 16 (emphasis added) (quoting *United States ex rel. Willis v. Southerncare, Inc.*, No. CV410-124, 2015 WL 5604367, at *11 (S.D. Ga. Sept. 23, 2015)). Where Sedgwick will not suffer any additional loss because of the subpoena, it would be even more inequitable to force Plaintiff to pay the Limetree entities' bill for necessary documents that would otherwise languish unused on Sedgwick's shelves. That is particularly so where there is no dispute that Plaintiffs would be entitled to these documents—at no cost—had Sedgwick been paid for the work it performed.

III. A Protective Order Is Not a Viable Solution

The Court considered the viability of a protective order that would allow Plaintiffs to utilize the Sedgwick documents for their needs without having to disclose the documents to the LBT entities. However, based on Plaintiffs' representations regarding the documents' intended use, such an order would be fruitless, given the rules governing evidence and discovery.

CONCLUSION

The Court finds that Sedgwick has not met its burden in seeking that Plaintiffs' subpoena for its claims files be quashed or modified. Sedgwick did not demonstrate that disclosure of the requested materials would impose an undue burden or that it was entitled to reasonable compensation for the files. Therefore, the Court will grant Plaintiffs' Motion to Compel.

Accordingly, it is hereby **ORDERED:**

1. Plaintiffs' Motion to Compel, Dkt. No. 943, is **GRANTED.**
2. Sedgwick's Motion to Quash the Subpoena, Dkt. No. 968, is **DENIED.**
3. Sedgwick shall turn over the requested documents to Plaintiffs within two weeks of this Order. Upon receipt of the documents, Plaintiffs shall pay

Sedgwick $25,000 to mitigate the burden imposed by complying with the subpoena.

4. Nothing in this Order shall be construed as providing the Limetree entities with the right to avoid payment on any amount they duly owe to Sedgwick.

ENTER:

Dated: May 16, 2025

/s/ Emile A. Henderson III
EMILE A. HENDERSON III
U.S. MAGISTRATE JUDGE