No. 22-0909

IN THE

Supreme Court of the United States

IN RE PENNY LANE INDUSTRIES, INC., DEBTOR,

ELEANOR RIGBY, PETITIONER

v.

PENNY LANE INDUSTRIES, INC., RESPONDENT.

ON APPEAL FROM THE
UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

BRIEF FOR RESPONDENT

TEAM NUMBER 10
COUNSEL FOR RESPONDENT

JANUARY 19, 2023

QUESTIONS PRESENTED

I. Whether a bankruptcy court has the authority to approve non-consensual releases of direct claims held by third parties against non-debtor affiliates as part a chapter 11 plan of reorganization.

II. Whether a corporate debtor proceeding under subchapter V of chapter 11 of the Bankruptcy Code may, pursuant to 11 U.S.C. § 1192, discharge debts of types specified in subparagraphs (1) through (19) of 11 U.S.C. § 523(a).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

OPINIONS BELOW

The Thirteenth Circuit Court of Appeals' decision is available at No. 20-0803 and reprinted at Record 3. The Bankruptcy Court for the District of Moot decided in favor of Penny Lane Industries, Inc. On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed the lower court's decision in favor of Penny Lane Industries, Inc.

STATEMENT OF JURISDICTION

The formal statement of jurisdiction is waived pursuant to Competition Rule VIII.

STATEMENT OF THE CASE

This appeal arises from Petitioner's attempt to go against the clear authority granted to the bankruptcy court and the well-established statutory canons of construction. Petitioner's appeal jeopardizes the Bankruptcy Code's integrity and the bankruptcy court's authority in confirming chapter 11 plans.

I. FACTUAL HISTORY

Penny Lane Industries, Inc. (the "Debtor") is a manufacturer of plastic, metal, and glass food containers located in the City of Blackbird, Moot. R. at 3–4. Penny Lane is a wholly owned subsidiary of Strawberry Fields Food, Inc. ("Strawberry Fields"), a company that produces cereal and convenience foods and markets its products under several well-known brands sold in supermarkets throughout the country. R. at 4–5. Petitioner, Eleanor Rigby, filed suit against Penny Lane and Strawberry Fields, alleging that Penny Lane knowingly disposed of industrial chemicals and pollutants at its manufacturing facility in Blackbird; however, the source of the contamination is yet to be conclusively determined. R. at 5. Creditors, consisting primarily of residents of Blackbird and neighboring communities, allege that they have suffered death, illness, and serious injuries due to this pollution. R. at 3. No judicial determination has yet been made regarding any claims asserted against Penny Lane or Strawberry Fields in any forum. In anticipation of a veritable tsunami of litigation related to such allegations, Penny Lane filed for bankruptcy under subchapter V of chapter 11 of the Bankruptcy Code. *Id*.

Penny Lane sought and obtained a temporary injunction from the bankruptcy court. R. at 7. As a result, all pending litigation, including litigation against Strawberry Fields, was temporarily stayed. R. at 8. This injunction was deemed appropriate to facilitate negotiation of a global settlement. *Id*. After months of mediation, the result was the filing by Penny Lane of a heavily supported *Plan of Reorganization* (the "Plan"). R. at 4. Petitioner did not join in the settlement

reached; however, she did participate in the mediation. R. at 8. After a four-day confirmation hearing, the bankruptcy court confirmed the Plan. R. at 10. Ultimately, the Plan provides for the establishment of a creditors' trust that would be funded with Penny Lane's disposable income for five years, and far more significantly, $100 million to be paid by Strawberry Fields. R. at 8. In exchange for funding the global settlement, Strawberry Fields demanded a release all claims against Penny Lane as well as broad non-consensual releases of claims held by Penny Lane and by third parties against Strawberry Fields. R. at 4. This means the Plan expressly releases and discharges "any and all claims" that third parties "have asserted or might assert in the future against Strawberry Fields" to the extent that they are based on or related to Penny Lane's pre-petition conduct, its estate, or this chapter 11 case. R. at 8. This release is non-consensual and binds parties regardless of their participation in the bankruptcy case and regardless of whether they voted in favor of, or against, the Plan. *Id*. Rather than having the option to pursue their claims against Strawberry Fields for Penny Lane's pre-petition conduct, the claims will be channeled into the creditors' trust. R. at 9.

The court acknowledged that non-consensual releases of third-party direct claims, such as those granted to Strawberry Fields, are permitted only in extraordinary cases. R. at 10. This present case fits that bill because of its highly unusual and complex nature. *Id*. Additionally, the significant monetary contribution made by Strawberry Fields results in a meaningful distribution to creditors. *Id*. The court can take as a given that Petitioner and all other tort claimants are receiving more under the Plan than they would otherwise be able to recover by prosecuting their claims against Penny Lane and Strawberry Fields. R. at 11. The proposed distribution under the Plan is substantially greater than what creditors would receive if Penny Lane was liquidated. R. at 10. On top of this, the alternative of chapter 7 liquidation of Penny Lane would result in yet another closed

factory along the banks of the Liverpool River. R. at 12. Shutting down Penny Lane, a major employer, would only further exacerbate the already economically challenged Blackbird community. *Id*. The court was further persuaded by the overall creditor support of the Plan. R. at 10. The class of unsecured creditors overwhelmingly supported the Plan, with over 95% of the creditors who submitted ballots voting in favor of confirmation of the Plan. R. at 9.

Even though the bankruptcy court found that this was "an extremely difficult pill to swallow," there exists no other reasonably conceivable means to achieve the result accomplished by the Plan. R. at 10–11. The settlements memorialized within the Plan were fair and reasonable. R. at 10. Strawberry Fields was held accountable as the $100 million contribution was substantially greater than any likely recovery, representing a premium to "buy peace" and avoid negative publicity and reputational damage. *Id*. Failure to approve this Plan would likely result in complex and protracted litigation, whereas the mediated settlement offered a significant and immediate benefit to creditors. *Id*.

II. PROCEDURAL HISTORY

The United States Bankruptcy Court for the District of Moot faced two issues in this case and ruled in favor of Penny Lane on both. R. at 4. First, the court held that a bankruptcy court has the authority to approve non-consensual releases of direct claims held by third parties against non-debtor affiliates as part a chapter 11 plan of reorganization. *Id.* In so holding, the court determined that third-party releases may be included in chapter 11 plans. *Id.* Second, the bankruptcy court dismissed Petitioner's non-dischargeability action, concluding that the provisions of section 523 apply only in cases where the Debtor is an individual. *Id.* On appeal, the United States Bankruptcy Court for the District of Moot affirmed the bankruptcy court's rulings on both issues. *Id.* Petitioner timely appealed, and the Thirteenth Circuit likewise affirmed. *Id.*

STANDARD OF REVIEW

The questions presented are based on statutory interpretation of the Bankruptcy Code[1] and are therefore purely issues of law. Accordingly, the standard of review for this appeal is *de novo*. *See, e.g.*, *Texas v. Soileau (In re Soileau)*, 488 F.3d 302, 305 (5th Cir. 2007).

SUMMARY OF THE ARGUMENT

The Thirteenth Circuit correctly decided in favor of Penny Lane when it held first, that a bankruptcy court has the authority to approve non-consensual releases of direct claims held by third parties against non-debtor affiliates as part of a chapter 11 plan or reorganization, and second, that the section 523(a) exceptions to discharge apply only to individual debtors.

Petitioner's appeal asks the court to operate contrary to clear authority granted to the bankruptcy court and ignores well-established statutory canons of construction. The Thirteenth Circuit's holding that the bankruptcy court has the authority to include non-consensual releases of third-party direct claims against non-debtor entities in chapter 11 plans of reorganization should be upheld. Pursuant to this holding, Petitioner will be unable to pursue her direct claim against Strawberry Fields; rather, it will be channeled into the creditors' trust. R. at 9.

The Thirteenth Circuit correctly held that the bankruptcy court had the requisite jurisdiction and constitutional authority to include the non-consensual third-party releases because the confirmation of the Plan was a "core" proceeding and impacted the debtor-creditor relationship. The exercise of "core" statutory authority by a bankruptcy court can implicate the limits imposed by Article III. However, this exercise is permissible if it involves a matter integral to the restructuring of the debtor-creditor relationship. In determining whether that is the case, the content of the "core" proceeding at issue is taken into consideration. The confirmation of this Plan was a

[1] The Bankruptcy Code is set forth in 11 U.S.C. §§ 101 *et seq.* Specific sections of the Bankruptcy Code are identified herein as "Section __."

"core" proceeding which had content that was integral to this restructuring as it provided Penny Lane with the opportunity to be free of claims while providing a creditors' trust to compensate those who had raised such claims. R. at 8–9.

The Thirteenth Circuit correctly held that Petitioner's due process rights were not violated because the bankruptcy court did not adjudicate her claim against Strawberry Fields. A court does not make a ruling on claims when merely approving a global settlement. *MacArthur Co. v. Johns-Manville Corp*., 837 F.2d 89, 91-92 (2d Cir. 1988). A bankruptcy court properly issues third-party releases pursuant to its equitable powers when claims are channeled away and redirected to the proceeds of the settlement. *Id*. at 91. Similarly, the bankruptcy court here approved a Plan that redirected the claims to a creditors' trust without making a ruling on the merits of the claim.

The Thirteenth Circuit correctly held that the bankruptcy court had the requisite statutory authority through sections 105(a), 1123(b)(6), and 1123(a)(5) of the Bankruptcy Code to approve the non-consensual third-party release as a part of the chapter 11 plan of reorganization. Consistent with section 105(a)'s broad grant of authority, section 1123(b)(6)'s residual authority to permit the bankruptcy court to release third parties if the release is "appropriate" and not inconsistent with any provision of the Bankruptcy Code, and section 1123(a)(5)'s requirement that a plan provide adequate means for the plan's implementation, the releases are permitted.

Given the finding of requisite statutory and constitutional authority, the Thirteenth Circuit correctly held that this case met the limited, extraordinary circumstances such that non-consensual third-party claim releases were appropriate. Applying either test, the bankruptcy court made the requisite findings due to the complex nature of the case. R. at 10. A major factor that attributed to this determination was based on Strawberry Field's substantial contribution to the

global settlement which provided compensation to claimants in exchange for their releases. R. at 4. Without this contribution, the reorganization would not have been feasible. *Id*.

The plain language of section 523(a) is unequivocal and confirms that the exceptions to a debtor's discharge, including a discharge under section 1192, apply only to an individual. If this Court were to examine further, the existing case framework, the statutory and historical context, Congressional intent, and legislative history would lead to the same conclusion. First, it is well-settled law that the section 523(a) discharge exceptions apply only to individual debtors. Most courts have ruled that the exceptions to discharge in section 523(a) apply only to individual debtors. Second, if the Court were to inquire further into the relationship between sections 1192 and 523(a), it would conclude that the two sections have a harmonious relationship. The plain language of section 1192(2) refers to section 523(a), only incorporating the list of nondischargeable debts, without expanding or altering it; and the inclusion of section 1192 into section 523—and not the reverse—supports Congress's intent to limit the section 523(a) discharge exceptions only to individuals. Third, there is nothing fair or equitable in the discharge exception within the corporate non-consensual subchapter V context. Elimination of the "absolute-priority rule" *benefits*, not harms, general unsecured debtors in a Subchapter V corporate case by shielding the debtor from having any debts deemed nondischargeable. Fourth, a reading of section 1192 considering the statutory provisions regarding discharge under Chapter 12 and case law interpretations of Chapter 12 provisions is not warranted in this case. Unlike the Chapter 12 discharge provision, Chapter 11 takes care to distinguish between individual and corporate debtors, emphasizing the nature of the debtor, not the debt.

This Court should affirm on both issues.

ARGUMENT

This Court should affirm the Thirteenth Circuit's decision that the bankruptcy court has the authority to approve non-consensual releases of direct claims held by third parties against non-debtor affiliates as part of a chapter 11 plan or reorganization. This Court should also affirm the Thirteenth Circuit's decision that the section 523(a) exceptions to discharge apply only to individual debtors.

I. The Thirteenth Circuit Correctly Held That a Bankruptcy Court Has the Authority to Approve Non-Consensual Releases of Direct Claims Held by Third Parties Against Non-Debtor Affiliates as a Part of a Chapter 11 Plan of Reorganization.

The Thirteenth Circuit's holding that the bankruptcy court has the authority to include non-consensual releases of third-party direct claims against non-debtor entities in chapter 11 plans of reorganization should be upheld. Pursuant to this holding, Petitioner will be unable to pursue her direct claim against Strawberry Fields; rather, it will be channeled into the creditors' trust. R. at 9. When creating a plan of reorganization, the fundamental purpose is to prevent the debtor from going into liquidation to avoid subsequent job loss and potential misuse of economic resources. *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984). The two primary purposes of chapter 11 include maximizing recoveries of creditors and preserving viable businesses. *See In re Bonner Mall P'ship*, 2 F.3d 899, 916 (9th Cir. 1993). In fulfilling these purposes, the Thirteenth Circuit correctly determined that these releases may be included in the Plan because the bankruptcy court (A) had the requisite jurisdiction and constitutional authority, (B) did not adjudicate Petitioner's claims in violation of her due process rights, (C) had the requisite statutory authority, and (D) found that exceptional circumstances existed.

A. The bankruptcy court had the requisite jurisdiction and constitutional authority to include the non-consensual third-party releases in the chapter 11 plan.

The Thirteenth Circuit correctly held that the bankruptcy court had the requisite jurisdiction and constitutional authority because the confirmation of the Plan was "core" and impacted the debtor-creditor relationship. The federal district courts have original, but not exclusive, jurisdiction of all civil proceedings arising under title 11, and all proceedings arising in or related to cases under title 11. 28 U.S.C. § 1334(b). District courts may refer any or all such proceedings to the bankruptcy judges of their districts. *Stern v. Marshall*, 564 U.S. 462, 473 (2011); 28 U.S.C. § 157(a).

Congress did not delineate the scope of "related to" jurisdiction, but this choice of words suggests a grant of some breadth so that bankruptcy courts are able to efficiently deal with all matters connected to the estate. *Celotex Corp. v. Edwards*, 514 U.S. 300, 307-08 (1995). A proceeding is "related to" the bankruptcy case if the "outcome could conceivably have any effect on the estate being administered in bankruptcy." *Fire Eagle, L.L.C. v. Bischoff (In re Spillman Dev. Grp., Ltd.)*, 710 F.3d 299, 304 (5th Cir. 2013). Furthermore, an action is "related to" bankruptcy if the outcome could alter the debtor's rights or liabilities and impacts the handling of the bankruptcy estate in any way. *SPV OSUS, Ltd. v. UBS AG*, 882 F.3d 333, 340 (2d Cir. 2018). A contingent contribution claim may serve as the basis for "related to" jurisdiction. *Id*. at 341-42.

Regardless of whether the bankruptcy court has jurisdiction over proceedings, it cannot enter a final order releasing third-party claims unless it has constitutional authority to do so. *Stern*, 564 U.S. at 469, 486. Congress has permitted bankruptcy courts to enter final judgments in "core" proceedings. *Id*. at 486. The "core" versus "non-core" distinction is critical when assessing a bankruptcy court's constitutional authority to enter a final judgment disposing of that proceeding. *In re Purdue Pharma, L.P.*, 635 B.R. 26, 80 (S.D.N.Y. 2021). "Core" proceedings, as delineated in section 157(b)(2), are those that arise under Title 11 or arise in a case under Title 11. *Stern*, 564

U.S. at 476. When a matter is not a "core" proceeding, but rather is "related to" a bankruptcy case, bankruptcy courts have authority only to hear the matter and submit proposed findings of fact and conclusions of law. 28 U.S.C. § 157(c)(1).

Congress has authorized the appointment of bankruptcy judges to assist Article III courts in their work. *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 668 (2015). However, parties have a constitutional right to have their common law claims adjudicated by an Article III court. *Stern*, 564 U.S. at 469. If the claim did not "stem from the bankruptcy itself or would [not] necessarily be resolved in the claims allowance process," it must be decided by an Article III court. *Stern*, 564 at 487, 497. To assess whether the claim at issue would be resolved in the claims allowance process, the court looks to the content of the claim and what is necessary to resolve the original claim. *Id*. at 498-99. *Stern* teaches us that courts should focus on the content of the proceeding rather than the categorization when determining whether a bankruptcy court has acted within its constitutional authority. *Patterson v. Mahwah Bergen Retail Grp., Inc.*, 636 B.R. 641, 669 (E.D. Va. 2022).

However, bankruptcy courts, "as courts of equity, have broad authority to modify creditor-debtor relationships." *United States v. Energy Res. Co.*, 495 U.S. 545, 549 (1990). As shown in the holding of *Millennium*, the bankruptcy court possessed the constitutional authority to confirm the chapter 11 reorganization plan containing the non-consensual third-party release provisions without violating Article III. *In re Millennium Lab Holdings II, LLC*, 945 F.3d 126, 129 (3d Cir. 2019). Based on the exceptional facts of this case, the bankruptcy court was within constitutional bounds and permitted to confirm the plan because the existence of the releases was "integral to the restructuring of the debtor-creditor relationship." *Id*. at 129 (quoting *Stern*, 564 U.S. at 497). The bankruptcy court indisputably had authority as 28 U.S.C. section 157(b)(2)(L) provides that “core”

proceedings include confirmation of plans. *Millennium*, 945 F.3d at 137. The court looked to the content of the plan, rather than focusing on the categorization of "core" proceeding, to determine if the bankruptcy court was resolving a matter that was integral to the restructuring of the debtor-creditor relationship. *Id*. The release provisions were critical to the success of the plan because, without them, the released parties would not be willing to make their contribution, and the debtor would likely have had to shut down. *Id*.

Exacting standards must be satisfied if the releases are to be permitted. *Gillman v. Cont'l Airlines (In re Cont'l Airlines)*, 203 F.3d 203, 214 (3d Cir. 2000) (holding that the hallmarks of permissible non-consensual releases include fairness, necessity to the reorganization, and specific factual findings to support these conclusions). The bankruptcy court must exercise caution and diligence and has an obligation to approach the inclusion of these releases with the utmost care. *Millennium*, 945 F.3d at 139; *see also Patterson*, 636 B.R. at 655 (holding that the bankruptcy court was not entitled to include third-party releases as it exercised little to no analysis when releasing the claims of hundreds of thousands of potential plaintiffs not involved in the bankruptcy and protected those who had no role in the reorganization of the company).

The Thirteenth Circuit correctly held that the bankruptcy court had the requisite jurisdiction and the constitutional authority to approve the non-consensual third-party release as a part of the chapter 11 plan of reorganization. The bankruptcy court had the proper jurisdiction over these releases based on its authority to issue a final order confirming the Plan. R. at 4, 12. Since this is a "core" proceeding per 28 U.S.C. section 157(b)(2)(L), the bankruptcy court has proper jurisdiction as this type of proceeding arises in or under Title 11. R. at 12. At the very least, this confirmation order can be categorized as "related to" Title 11 because Penny Lane's conduct is something Strawberry Fields would likely have contribution and indemnification rights for. *Id*.

Additionally, the outcome of the confirmation order conceivably effects the estate being administered as it concerns the overall reorganization and survival of Penny Lane through their filing for bankruptcy. R. at 4. To further establish that "related to" jurisdiction is present, the outcome of this confirmation order provides for a discharge of all claims against Penny Lane such that it alters their options and greatly impacts the handling and administration of the bankruptcy estate. *Id*. However, as per the finding of proper jurisdictional authority in *Millennium*, this categorization as a "core" proceeding seems indisputable.

Furthermore, the categorization as a "core" proceeding grants the bankruptcy court the constitutional authority to enter a final judgment disposing of the confirmation plan that contains the third-party releases. R. at 12. It has been established that bankruptcy courts lack the constitutional authority to enter a final judgment on a state common law claim; however, this exercise of authority is permissible here as the confirmation of the Plan is matter that is integral to the restructuring of the debtor-creditor relationship. R. at 12–13. In determining whether the matter is integral, the content of the "core" proceeding at issue, including the third-party releases and their conditions, can be taken into consideration. R. at 12. Even if found that the third-party releases within the confirmation order fell into the categorization of "related to" rather than that of a "core" proceeding, both *Stern* and *Millennium* emphasize that the bankruptcy court is to focus on the content of the claim over its categorization to determine constitutional limitations. The dissent argues that Petitioner's claims do not appear to be integral to the restructuring of the debtor-creditor relationship, R. at 27. However, here, the confirmation order directly impacted the restructuring of the relationship between Penny Lane and its creditors as it provided for the creation of a creditors' trust that was conditioned on the non-consensual releases of claims against Penny Lane and corporate parent Strawberry Fields. R. at 4. Similar to *Millennium*, the releases were

critical to the success of the Plan as it would allow Penny Lane to avoid the alternative of chapter 7 liquidation. R. at 12. Additionally, the releases were critical to the success of the Plan as Strawberry Fields would not be willing to make their large contribution without securing this condition. R. at 4, 8. The releases were necessary to obtain the funding, complete the Plan, and secure the contributions to ensure the reorganization. R. at 4, 8, 10.

The dissent notes that the bankruptcy court does not have constitutional authority to render a final decision in a state law tort claim that was not necessarily resolved in determining a claim against the estate and that did not stem from the bankruptcy itself. R. at 27. Even though Petitioner's claim did not directly stem from the bankruptcy itself, the focus on the content of the proceeding reveals that these claims against Strawberry Fields arise from the same context in determining Penny Lane's bankruptcy estate. R. at 4. Looking at Petitioner's underlying claims and content of the of the Plan, it becomes obvious that Penny Lane's bankruptcy and the claims against Strawberry Fields are entwined such that the resolution of one coincides with the other. R. at 5. Petitioner's allegations include holding Strawberry Fields as liable and the global settlement expressly releases claims that are based on or related to Penny Lane's pre-petition conduct, its estate, or this chapter 11 case R. at 6, 8. Despite any concerns that there is a slippery slope created by further approval of non-consensual third-party releases, exacting standards must be met for the releases to be permitted. In contrast to *Patterson* where little to no analysis was done for the releases, the bankruptcy court exercised its diligence in holding a four-day confirmation hearing, finding specific facts which acknowledged the complex nature of this case, and assuring that the released claims could still be channeled into the trust. R. at 9, 10. The bankruptcy court acknowledged that this was "an extremely difficult pill to swallow," R. at 11; however, the fairness

and reasonableness of the settlements, a point which will be further delineated below, outweighed these concerns. R. at 10.

B. The bankruptcy court did not violate Petitioner's due process rights.

The Thirteenth Circuit correctly held that Petitioner's due process rights were not violated because the bankruptcy court did not adjudicate her claim against Strawberry Fields. The most fundamental right guaranteed by the due process clause allows one to be heard before the loss of their rights. *Patterson*, 636 B.R. at 653. Parties have a constitutional right to have their common law claims adjudicated by an Article III court, and that right cannot be abridged by Congressional action. *See Stern*, 564 U.S. at 469. The primary issue with the proposal of third-party releases is that there is no court-certified representative who acts on behalf of the other parties holding similar potentially releasable claims. *In re Aegean Marine Petroleum Network, Inc.*, 599 B.R. 717, 724 (Bankr. S.D.N.Y. 2019). The proposed resolution does not include the involvement of people who hold such claims; rather, the court is extinguishing those claims at the behest of people who would benefit from the releases. *Id*.

However, a court does not make a ruling on claims when merely approving a global settlement. *MacArthur*, 837 F.2d at 91-92. In *AOV*, the Court of Appeals for the D.C. Circuit found that a plan provision releasing the liabilities of non-debtors was unfair because the plan did not provide additional compensation to a creditor whose claim against a non-debtor was being released. *In re AOV Indus.*, 253 U.S. App. D.C. 186, 792 F.2d 1140, 1141 (1986). Therefore, it is necessary to provide adequate consideration to a claimholder being forced to release claims against non-debtors. *Id*. Even in instances of eminent domain which authorize an involuntary taking of property, due process only requires that the claimant receive compensation that is based on the actual value of the property being taken from them. *See, e.g.*, *First Eng. Evangelical Lutheran Church of Glendale v. Los Angeles Cty., Cal.*, 482 U.S. 304, 322 (1987);

MacArthur, 837 F.2d at 91 (holding that the bankruptcy court properly issued the third-party releases pursuant to its equitable powers as the claims were not extinguished; rather, they were simply channeled away and redirected to the proceeds of the settlement). It is an ancient but very much alive doctrine that a creditor has no right to choose which of two funds will pay his claim. *In re A.H. Robins Co.*, 880 F.2d 694, 701 (4th Cir. 1989).

The Thirteenth Circuit correctly held that the bankruptcy court did not improperly adjudicate Petitioner's claim in violation of her due process rights as it made no ruling on the merits of her claim. Nothing in the Constitution or the Bankruptcy Code precludes an efficient and beneficial global resolution of a mass tort environmental disaster that leaves all stakeholders, including Petitioner, better off. R. at 12. In contrast to the scenario where there is no involvement of the third parties in creating this resolution, Petitioner participated in the mediation process. R. at 8. The dissent argues that when a court directs that a claim against a non-debtor be released, it takes away a property interest that belongs to that creditor without affording them due process. R. at 26. However, there are other instances, such as those of eminent domain, where due process only requires that adequate compensation be provided for the involuntary releases to be permissible. Unlike *AOV*, the bankruptcy court here found that the proposed distribution under the Plan is substantially greater than what the creditors would receive if Penny Lane was liquidated. R. at 10. Likewise, it is given that Petitioner and all other tort claimants are receiving more under the Plan than they would otherwise recover by prosecuting their claims against Penny Lane and Strawberry Fields. R. at 11. Similar to *MacArthur*, the bankruptcy court used its equitable powers to channel and redirect the claims of Petitioner and the creditors to the proceeds of the global settlement rather than simply extinguishing them or ruling on their merits. R. at 13.

C. The bankruptcy court had the requisite statutory authority to include the non-consensual third-party releases in the chapter 11 plan.

The Thirteenth Circuit correctly held that the bankruptcy court had the requisite statutory authority through sections 105(a), 1123(b)(6), and 1123(a)(5) of the Bankruptcy Code to approve the non-consensual third-party release as a part of the chapter 11 plan of reorganization. Despite the attempted bright line rule postured by some circuits that statutory authority does not exist, *Purdue Pharma*, 635 B.R. at 37, the Bankruptcy Code does not explicitly prohibit or authorize a bankruptcy court to enjoin a non-consenting creditor's claims against a non-debtor to facilitate a reorganization plan. *In re Cont'l Airlines*, 203 F.3d at 211. If Congress meant to limit the powers of bankruptcy courts, it would have done so clearly. *Airadigm Comm's., Inc. v. FCC (In re Airadigm Comm's., Inc.)*, 519 F.3d 640, 656 (7th Cir. 2008).

Section 105(a) grants a bankruptcy court the broad authority to issue "any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). This section grants the bankruptcy court the power to take appropriate equitable measures needed to implement other sections of the Bankruptcy Code. *See In re Granger Garage, Inc.*, 921 F.2d 74, 77 (6th Cir. 1990). Consistent with section 105(a)'s broad grant of authority, the Bankruptcy Code allows bankruptcy courts considerable discretion to approve plans of reorganization. *Energy Res. Co.*, 495 U.S. at 549. Section 105(a) provides authority for the bankruptcy court to release claims where the settling party provided funds for the bankruptcy estate, but would not have entered into the settlement in the absence of the releases, and where the bankruptcy court found that the releases were fair and equitable. *SE Prop. Holdings, LLC v. Seaside Eng'g & Surveying (In re Seaside Eng'g & Surveying)*, 780 F.3d 1070, 1078 (11th Cir. 2015). Thus, bankruptcy courts have broad equitable powers to approve settlements containing releases. *See Local Loan Co. v. Hunt*, 292 U.S. 234, 240 (1934) (holding that bankruptcy courts are essentially courts of equity, and their proceedings are inherently proceedings in equity).

Section 1123(b)(6) permits a reorganization plan to "include any other appropriate provision not inconsistent with the applicable provisions of this title." 11 U.S.C. § 1123(b)(6). This residual authority permits the bankruptcy court to release third parties if the release is "appropriate" and not inconsistent with any provision of the Bankruptcy Code. *In re Airadigm Comm's., Inc.*, 519 F.3d at 657. Thus, the bankruptcy court, as a forum for resolving large and complex mass litigations, has substantial power to reorder creditor-debtor relations needed to achieve a successful reorganization. *Class Five Nev. Claimants v. Dow Corning Corp. (In re Dow Corning Corp.)*, 280 F.3d 648, 656 (6th Cir. 2002). When a plan provides for the full payment of all claims, releasing claims against a non-debtor so as to not defeat reorganization is consistent with the bankruptcy court's primary function. *Id*. at 656-57.

Further authority for a reorganization plan's global settlement comes from the section 1123(a)(5) requirement that a plan "provide adequate means for the plan's implementation." 11 U.S.C. § 1123(a)(5). A plan of reorganization may propose actions to implement the plan notwithstanding contrary non-bankruptcy law or agreements. *Pac. Gas & Elec. Co. v. California ex rel. California Dept. of Toxic Substances.*, 350 F.3d 932, 937 (9th Cir. 2003). Section 1123(a)(5) has been held as an "empowering" statute that enlarges the scope and enhances the ability of a debtor to deal with property of the estate. *In re FCX, Inc.*, 853 F.2d 1149, 1155 (4th Cir. 1988).

Nevertheless, some courts, specifically the Fifth, Ninth, and Tenth Circuits, have found that the Bankruptcy Code does not permit non-consensual third-party releases against a non-debtor. *See Bank of N.Y. Tr. Co., NA v. Official Unsecured Creditors' Comm. (In re Pac. Lumber Co.)*, 584 F.3d 229, 251 (5th Cir. 2009); *In re Lowenschuss*, 67 F.3d 1394, 1401 (9th Cir. 1995); *In re W. Real Estate Fund, Inc.*, 922 F.2d 592, 600 (10th Cir. 1990). These Circuits generally base

this prohibition on section 524(e), which provides that "the discharge of the debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." 11 U.S.C. § 524(e). Even though this language explains the effect of a debtor's discharge, *see In re Pac. Lumber Co.*, 584 F.3d at 252, it does not prohibit the release of a non-debtor. *See In re Specialty Equip. Co.*, 3 F.3d 1043, 1047 (7th Cir. 1993) ("This language does not purport to limit or restrict the power of the bankruptcy court to otherwise grant a release to a third party."); *Republic Supply Co. v. Shoaf*, 815 F.2d 1046, 1050 (5th Cir. 1987) (holding that section 524 does not by its specific words preclude the release of a claim when it has been accepted and confirmed as an integral part of a plan of reorganization); *In re Airadigm Comm's., Inc.*, 519 F.3d at 656 (the natural reading of this provision does not foreclose a third-party release). Section 524(e) is merely a savings clause which clarifies that the debtor's discharge does not by itself discharge claims of others; rather, it limits the operation of other parts of the Bankruptcy Code and preserves rights that might otherwise be construed as lost after the reorganization. *Id*.

If Congress had meant to limit the powers of bankruptcy courts, it would have done so clearly, or it would have done so by creating requirements for plan confirmation as in 11 U.S.C. section 1129(a), which specifies what is needed for the court to confirm a plan. *In re Seaside Eng'g & Surveying*, 780 F.3d at 1078. Likewise, it would have used the mandatory terms "shall" or "will" rather than the definitional term "does." *In re Airadigm Comm's., Inc.*, 519 F.3d at 656. It would have omitted the prepositional phrase "on, or . . . for, such debt," ensuring that the "discharge of a debt of the debtor shall not affect the liability of another entity," whether related to a debt or not. *Id*.

Interpreting section 524(e) as prohibiting non-consensual third-party releases is inconsistent with section 524 as a whole. *See Specialty Equip.*, 3 F.3d at 1046. Section 524(g) sets

forth additional requirements, rather than an exception, for third-party releases in plans involving asbestos liabilities. *See In re Cont'l Airlines,* 203 F.3d at 211 n.6 (explaining that section 524(g) establishes procedure for resolving asbestos claims). Further, section 524(h)'s legislative history negates any argument that the addition of the asbestos-specific provisions infers that third-party releases were not previously permissible. *See* H.R. Rep. No. 103-834 (1994) (the special rule devised for the asbestos injunction mechanism is not intended to alter any authority bankruptcy courts may already have to issue injunctions in connection with a plan of reorganization).

The Thirteenth Circuit correctly held that sections 105(a), 1123(b)(6), and 1123(a)(5) provide the requisite statutory authority to approve of the releases. Given that bankruptcy courts have broad equitable powers to approve releases, section 105(a) further buttresses this ideal by providing the bankruptcy court broad authority to carry out necessary and appropriate provisions. R. at 12, 14-15. As shown in *In re Seaside Eng'g & Surveying*, the bankruptcy court had the authority to release these claims under section 105(a) as the Plan provides that Strawberry Fields, in absence of these releases, would not have entered into the settlement. R. at 4. Additionally, the bankruptcy court found that the releases were fair and equitable because the resulting trust allows claimants to receive more than they would otherwise be able to recover in pursuing further litigation, the $100 million contribution was substantially greater than any likely recovery from Strawberry Fields, failure to approve of the settlement would likely result in protracted, complex litigation, and the Plan offered significant and immediate benefit to creditors. R. at 10-11. In exercising their broad equitable powers, the bankruptcy court approved the Plan. R. at 11.

As for section 1123(b)(6), only two limitations apply. R. at 14. The first, appropriateness, goes to the standard applied to global settlement provisions and is not at issue here. *Id*. Thus, the only restriction is that it not be inconsistent with other Bankruptcy Code provisions. Since the

global settlement feature is permitted in the Plan, section 1123(a)(5) not only authorizes, but requires, the inclusion of the releases and channeling the claims to the trust as they are crucial to securing Strawberry Fields' contribution, which is necessary for the Plan's implementation. R. at 14.

Petitioner and the dissent, in alignment with the Fifth, Ninth, and Tenth Circuits, views the Bankruptcy Code as expressly prohibiting non-consensual third-party releases. R. at 25. Relying on section 524(e), they argue that the Bankruptcy Code does not allow for the release of any person or entity by the bankruptcy court if they are not themselves the subject of a bankruptcy discharge. *Id*. However, as shown in *Specialty Equipment*, the language of section 524(e) does not purport to limit the power of bankruptcy courts to grant third-party releases; rather, it is merely a savings clause which clarifies that the debtor's discharge does not by itself discharge the claims of others. R. at 15. Additionally, if Congress had wanted to limit the bankruptcy court, which hold broad equitable powers, it would have used mandatory terms and clear language to do so. *Id*. Petitioner's reading of section 524(e) is also inconsistent with section 524 as a whole. *Id*. Section 524(g), which sets forth special rules for third-party releases in plans involving asbestos liabilities, is not an exception to section 524(e) but instead imposes additional requirements on asbestos-related releases. *Id*. Further both section 524(h), which applies to already confirmed asbestos plans, and the statute's legislative history, as displayed in the House Report, negate any argument that the addition of asbestos-specific provisions infers that third-party injunctions were not previously permissible *Id*.

The dissent considers non-consensual third-party releases as the functional equivalent of debtor discharge, permitting non-debtors to obtain the benefits of bankruptcy without bearing the responsibilities. R. at 25. However, Strawberry Fields still bears the responsibility as they are under

public scrutiny whilst contributing millions of dollars, in order to "buy peace" and avoid negative publicity or any further reputational damage. R. at 10. Considering that the due process requirements are met based on the adequate compensation, Strawberry Fields is not escaping without the proper accountability. R. at 11.

D. Exceptional circumstances existed such that the inclusion of the non-consensual third-party releases were appropriate as a part of the chapter 11 plan.

Given the finding of requisite statutory and constitutional authority, the Thirteenth Circuit correctly held that this case had exceptional circumstances such that non-consensual third-party claim releases were appropriate. Pursuant to the majority position of circuit courts, bankruptcy courts have the authority to assert non-consensual releases of third-party direct claims against non-debtor entities in limited, extraordinary circumstances. *See In re Seaside Eng'g & Surveying*, 780 F.3d at 1078 (explaining that most circuits, such as the Second, Third, Fourth, Sixth, and Seventh Circuits hold that such releases are permissible, and the First, Eleventh, and D.C. Circuits indicated that they agree with the "pro-release" circuits).

These circuits permit the releases but have splintered on the governing standard. *See Deutsche Bank AG v. Metromedia Fiber Network, Inc.*, 416 F.3d 136, 142 (2d Cir. 2005) (permitting release if it is "important" to reorganization); *In re Cont'l Airlines*, 203 F.3d at 214 (holding that the hallmarks of permissible non-consensual releases include fairness, necessity to the reorganization, and specific factual findings to support these conclusions); *In re Dow Corning Corp.*, 280 F.3d at 657-58 (setting out a seven-factor balancing test and holding that non-consensual releases are permissible only in unusual circumstances as they are dramatic measures to be used cautiously); *Behrmann v. Nat'l Heritage Found., Inc.*, 663 F.3d 704, 711-12 (4th Cir. 2011) (adopted Sixth Circuit's seven-factor test); *In re Seaside Eng'g & Surveying*, 780 F.3d at 1079 (adopted the Sixth Circuit's seven-factor test).

For circuits that base their analysis on the importance, necessity, and fairness of the releases, a central focus is on whether the reorganization's global settlement, which made the reorganization feasible, is based on substantial financial contributions from non-debtor parties to in turn provide compensation to claimants in exchange for the release of their liabilities. *In re Cont'l Airlines*, 203 F.3d at 212-13. For circuits that use the seven-factor balancing test to determine whether there are "unusual circumstances" that make the releases appropriate, discretion may be used to determine which factors are relevant. *Behrmann*, 663 F.3d at 712. The bankruptcy court may enjoin a non-consenting creditor's claims against a non-debtor when the following are present: (1) There is an identity of interests between the debtor and the third party, usually an indemnity relationship, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete the assets of the estate; (2) The non-debtor has contributed substantial assets to the reorganization; (3) The injunction is essential to reorganization, namely, the reorganization hinges on the debtor being free from indirect suits against parties who would have indemnity or contribution claims against the debtor; (4) The impacted class, or classes, has overwhelmingly voted to accept the plan; (5) The plan provides a mechanism to pay for all, or substantially all, of the class or classes affected by the injunction; (6) The plan provides an opportunity for those claimants who choose not to settle to recover in full and; (7) The bankruptcy court made a record of specific factual findings that support its conclusions. *In re Dow Corning Corp.*, 280 F.3d at 658.

The Thirteenth Circuit correctly held that the requisite exceptional circumstances existed such that the non-consensual third-party releases were appropriate. In analyzing this Plan in a circuit that uses importance, necessity, and fairness as a governing standard, these releases are acceptable as they are based on a substantial financial contribution from Strawberry Fields in order to provide compensation for those with claims. R. at 4. These releases are vitally important to the

reorganization as the success of Penny Lane is conditioned on the releases being granted. R. at 4, 12. Additionally in terms of fairness, the release of third-party claims is conditioned on Strawberry Fields providing a sufficient trust for the creditors who will be able to receive a significant distribution. R. at 8. As aligned with the fundamental purpose of reorganization, this plan allows Penny Lane to continue its business operations, which preserves substantial jobs in the Blackbird community. R. at 12.

As for a circuit that uses the seven-factor test, this Plan would also meet the governing standard. An indemnity relationship exists between Penny Lane and Strawberry Fields, and the suit against Penny Lane would likely deplete the assets of their estate. R. at 12. As established, Strawberry Fields has contributed substantial assets, $100 million, to the reorganization. R. at 8. These assets are undeniably vital to the reorganization which hinges on Strawberry Fields being released from these third-party claims. R. at 4, 8, 12. Additionally, the class of unsecured creditors overwhelmingly supported the Plan. R. at 9. Over 95% of the creditors who participated in the ballot process were in favor of this Plan. *Id*. There is no challenge by Petitioner to the factual finding that all tort claimants are receiving more under the Plan than they would be able to recover by prosecuting their claims against Penny Lane and Strawberry Fields to conclusion. R. at 11. Lastly, the bankruptcy court made a record of all the findings that supported its conclusions as it determined that this Plan helps to resolve a highly unusual and complex case while preserving jobs in the community, is supported by those who would be affected the most, and allows claimants to fully recover without litigation fees R. at 10, 11, 12. The non-consensual third-party releases are unquestionably an essential element of Penny Lane's ultimate reorganization and crucial to the buttressing of the economic improvement of Blackbird. R. at 4, 12.

II. The Thirteenth Circuit Correctly Held That the Section 523(a) Exceptions to Discharge Apply Only to Individual Debtors.

The Thirteenth Circuit correctly held that the section 523(a) exceptions to discharge apply only to individual debtors. First, the law establishes that the section 523(a) discharge exceptions apply only to individual debtors. Second, there are no inconsistencies between sections 1192 and 523(a), because (1) the plain language of section 1192(2) refers to 523(a), only incorporating the list of nondischargeable debts, without expanding or altering it; and (2) the inclusion of section 1192 into section 523—and not the reverse—supports Congress's intent to limit the section 523(a) discharge exceptions only to individuals. To the extent that there are tensions between the two provisions, courts apply the "general/specific" canon of construction, which gives precedence to the more specific provision over the more general provision. However, the "general/specific" canon applies only when conflicting provisions are irreconcilable, or when the attribution of no permissible meaning can eliminate the conflict, which is not the case here. Third, there is nothing fair or equitable in the discharge exception within the corporate non-consensual subchapter V context. Finally, a reading of section 1192 considering the statutory provisions regarding discharge under Chapter 12 and case law interpretations of Chapter 12 provisions is not warranted here.

As correctly determined by the Thirteenth Circuit, section 523(a) exceptions to discharge apply only to individual debtors based on (A) well-settled, supporting law; (B) the plain language of the statutes and support by Congressional intent and legislative history; and (C) the lack of fairness and equity in the discharge exception within the corporate non-consensual subchapter V context.

A. The law establishes that the section 523(a) discharge exceptions apply only to individual debtors.

The law establishes that the section 523(a) discharge exceptions apply only to individual debtors. Section 523(a) of the Bankruptcy Code provides that a discharge under the newly enacted

§ 1192 does not discharge an individual debtor from debt resulting from any of the various exceptions set forth under § 523(a)(1)-(19). 11 U.S.C. § 523(a)(1)–(19). This section "excludes from discharge debts arising from the debtor's bad acts and, thus, reflects the traditional human-focused justification for the discharge – to 'relieve the honest debtor from the weight of oppressive indebtedness.' *Williams v. United States Fid. & Guar. Co.*, 236 U.S. 549, 550 (1915) (emphasis added)." R. at 16. Section 1192 in turn provides, in pertinent part, that if a debtor confirms a plan under the section 1191(b) cramdown provision for Subchapter V cases, the bankruptcy court "shall grant the debtor a discharge" of certain debts "except any debt…of a kind specified in § 523(a)." 11 U.S.C. § 1192. This provision establishes the discharge standard for debtors proceeding under Subchapter V of Chapter 11. 11 U.S.C. § 1192. If a debtor invokes the Subchapter V cramdown provision to confirm a plan, the debtor receives a discharge under § 1192. *See* 11 U.S.C. § 1181(c) ("If a plan is confirmed under § 1191(b) of this title [the cramdown provision], section 1141(d) of this title shall not apply, except as provided in section 1192 of this title."). A discharge under § 1141(d) "does not discharge a debtor who is an individual from any debt excepted from discharge under section 523 of this title." 11 U.S.C. § 1141(d)(2). Section 1192 does not similarly limit its application to individual debtors.

Subchapter V provides a streamlined reorganization approach for small business; under this provision, courts must resolve the threshold inquiry regarding whether a corporate debtor can receive a discharge of its debts. *Gaske v. Satellite Restaurants, Inc. Crabcake Factory USA (In re Satellite Restaurants, Inc. Crabcake Factory USA)*, 626 B.R. 871 (Bankr. D. Md. 2021). Although the Lower Court's sister circuits have previously addressed this issue, courts ultimately disagree on whether the section 523(a) discharge exceptions apply to corporate Subchapter V debtors. *See,*

e.g., *Cantwell-Cleary Co., Inc. v. Cleary Packaging, LLC (In re Cleary Packaging LLC)*, 630 B.R. 466 (Bankr. D. Md. 2021), *rev'd* 36 F.4th 509 (4th Cir. 2022).

As a matter of apparent first impression, the Bankruptcy Court addressed whether any portion of a non-individual debtor's debt may be excepted from discharge under Subchapter V of Chapter 11. *In re Satellite Restaurants, Inc. Crabcake Factory USA*, 626 B.R. 871 (Bankr. D. Md. 2021). In *Gaske v. Satellite Restaurants*, nineteen plaintiff-employees claimed that their former corporate employer violated several labor laws by failing to pay them earned wages. The defendant-employer (Satellite Restaurants) then filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code and elected to proceed under Subchapter V of Chapter 11. *In re Satellite Restaurants, Inc. Crabcake Factory USA*, 626 B.R. 871 at 873. Satellite Restaurants thereafter filed its Chapter 11, Subchapter V Plan of Reorganization, seeking to invoke the Subchapter V cramdown provision. *Id.* The plaintiff-employees then brought an adversary proceeding against their former employer, arguing that the debt from unpaid wages was non-dischargeable. *Id.* at 872. In response, Satellite Restaurants argued that section 523 is inapplicable to non-individual debtors under Subchapter V. *Id.* at 873. The Bankruptcy Court began its examination with a statutory construction analysis of sections 1192 and 523(a), noting that, "[a]s with any dispute regarding the application or interpretation of a statute, the first rule of statutory construction is to examine the language of the statute itself." *Id.* at 875. Another seminal rule of statutory construction is that "every word must be given meaning so that no word in a statute is rendered superfluous." *Id.* at 876. Following this framework, the Court determined that, section 523(a), by its plain language, is clear and unambiguous, and applies only to individual debtors. *Id.* The Bankruptcy Court also highlighted Congress's inclusion of the section 1192 discharge to the preamble of section 523(a) and related intent in enacting Subchapter V was to "streamline the bankruptcy process by which

small business debtors reorganize and rehabilitate their financial affairs." *Id.* (citing 290 H.R. Rep. No. 116-171, at p. 1 (2019), https://www.congress.gov/116/crpt/hrpt171/CRPT-116hrpt171.pdf.). The Court found that such evidence of Congress's intent further clarifies that the section 523 exceptions were not intended to extend to corporate or non-individual debtors. *Id.* ("When giving effect to every word of the statute, the plain language of section 523(a) is unequivocal and confirms that the exceptions to a debtor's discharge, including a discharge under section 1192, apply only to an individual.")

Within the same year, the Fourth Circuit again addressed the tension between sections 1192(2) and 523(a), this time between a corporation—a non-individual—and its debtor. *In re Cleary Packaging, LLC*, 36 F.4th 509 (4th Cir. 2022). Like the plaintiff-employees in *Satellite Restaurants*, in this case the plaintiff-corporation argued that the debt owed by the defendant-debtor was non-dischargeable. *Cantwell-Cleary Co., Inc. v. Cleary Packaging, LLC*, 630 B.R. 466 (Bankr. D. Md. 2021). The plaintiff in this case similarly argued that the language provided in section 523(a)—within section 1192—encompassed all debtors under Subchapter V, including non-individuals. *Id.* Consistent with the *Satellite Restaurants* Court, the Bankruptcy Court examined the statute's plain language and held that the dischargeability exceptions that were incorporated into section 1192(2) from section 523(a) applied only to individual debtors, not corporate debtors. *Id.* However, the Fourth Circuit Court of Appeals later reversed the Bankruptcy Court on appeal. *See In re Cleary Packaging, LLC*, 36 F.4th 509 (4th Cir. 2022).

Although the Bankruptcy Court adopted the *Satellite Restaurants* court's reasoning, the Fourth Circuit largely ignored the lower court's plain language reading and interpretation of the statute, and common principles of statutory construction and interpretation to arrive at their conclusion. The *Cleary* Court ultimately concluded differently from both the lower court and the

Satellite Restaurants court, holding instead that the section 523(a) discharge exceptions did *not* apply only to individuals. *In re Cleary Packaging, LLC*, 36 F.4th 509 at 517. The Fourth Circuit relied on other Bankruptcy Code chapters and their form of a "close textual analysis and contextual review" of section 1192(2) to conclude that it provides discharges to both individual and non-individual debtors. *Id.*

The *Cleary* Court's flawed analysis was rightly exposed in a third case concerning whether section 523(a)'s discharge exceptions apply only to individual debtors, not corporations in Subchapter V. *In re GFS Industries, LLC*, 2022 WL 16858009 (Bankr. W.D. Tex. 2022). The *GFS* Court disagreed with the *Cleary* decision and determined that the relationship between sections 1192(2) and 523(a) compels the conclusion that, in the Subchapter V context, section 523(a) dischargeability actions apply only to individuals. *In re GFS Industries, LLC*, 2022 WL 16858009, at *3. Following the framework established first in the *Satellite Restaurants* decision, the *GFS* court began its examination with a plain language reading of § 1192, finding that the provision "grants a corporate Subchapter V debtor a discharge of debts provided the debtor meets the statutory requirements." *Id.* Based on the plain language reading, the Court observed that (1) "§ 1192(2)'s reference to § 523(a) only incorporates the list of nondischargeable debts, without expanding it"; (2) "the inclusion of § 1192 in § 523(a) would be rendered meaningless under any other interpretation"; and (3) "corporate debtors proceeding under Chapter 11 historically have been immune to dischargeability actions under § 523(a)." *Id.* at *4.

Next, the *GFS* Court disagreed with the Fourth Circuit's argument that section 1192(2)'s "cross-reference to § 523(a) does not refer to any kind of debtor addressed by § 523(a) but rather to a kind of debt listed in § 523(a)," noting instead that Congress amended § 523(a) to include § 1192 into the limiting language, leading to the *GFS* Court's conclusion to the contrary. *Id.* at *8.

The *GFS* Court found that the *Cleary* decision misapplied the "general/specific" canon of construction to construe the relationship between section 1192(2) and section 523(a), which ultimately led to *Cleary*'s incorrect conclusion that section 1192(2)'s inclusion of all debtors should control.

As bankruptcy courts often begin examinations of this issue with a plain language analysis, we urge this Court to do the same. Notwithstanding the Fourth Circuit's holding in *In re Cleary*, most courts have ruled that the exceptions to discharge in section 523(a) apply only to individual debtors both before and after the *Cleary* decision. *See Avion Funding, LLC v. GFS Indus., LLC (In re GFS Indus., LLC)*, 2022 WL 16858009 (Bankr. W.D. Tex. Nov. 10, 2022); *Jennings v. Lapeer Aviation, Inc. (In re Lapeer Aviation, Inc.)*, 2022 WL 1110072 (Bankr. E.D. Mich. April 13, 2022); *Catt v. RTECH Fabrications, LLC (In re RTECH Fabrications, LLC)*, 635 B.R. 559 (Bankr. D. Idaho 2021); *In re Cleary Packaging LLC*, 630 B.R. 466 (Bankr. D. Md. 2021), *rev'd* 36 F.4th 509 (4th Cir. 2022); *In re Satellite Restaurants, Inc. Crabcake Factory USA*, 626 B.R. 871 (Bankr. D. Md. 2021). Moreover, as the subsequent *Gaske* decision and Thirteenth Circuit both directly address, *In re Cleary* is littered with flawed reasoning and misapplied principles. As established below, Penny Lane Industries, Inc. is a non-individual manufacturer of plastic, glass and metal food containers. R. at 3–4. Penny Lane is a wholly owned subsidiary of Strawberry Fields, a company that produces cereal and convenience foods and markets its products under several well-known brands sold in supermarkets throughout the country. R. at 4. Therefore, existing law supports a finding that the exceptions to discharge under section 523(a) do not apply to corporate debtors in a traditional Chapter 11 case.

B. There are no inconsistencies between sections 1192 and 523(a), because (1) the plain language of section 1192(2) refers to section 523(a), only incorporating the list of nondischargeable debts, without expanding or altering it; and (2) the inclusion of section 1192 into section 523—and not the reverse—supports Congress's intent to limit the section 523(a) discharge exceptions only to individuals.

As an initial matter, there are no inconsistencies between sections 1192 and 523(a), because (1) the plain language of section 1192(2) refers to section 523(a), only incorporating the list of nondischargeable debts, without expanding or altering it; and (2) the inclusion of section 1192 into section 523—and not the reverse—supports Congress's intent to limit the section 523(a) discharge exceptions only to individuals.

1. The plain language reflects that the § 523(a) discharge exceptions apply only to individual debtors in Subchapter V proceedings and is supported by Congressional intent and legislative history.

The plain language reflects that the § 523(a) discharge exceptions apply only to individual debtors in Subchapter V proceedings and is supported by Congressional intent and legislative history. By its plain language, the appearance of section 1192 in section 523(a) illustrates a harmonious relationship. To the extent that there are inconsistencies between these two statutes, courts may elect to apply the "general/specific" canon, which gives precedence to the more specific provision over the more general provision. *See In re GFS Indus., LLC,* 2022 WL 16858009, at *8. However, the "general/specific" canon applies only "when conflicting provisions simply cannot be reconciled—when the attribution of no permissible meaning can eliminate the conflict." *Id.* (*citing* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 69, 183 (2012)). Here, the more specific provision is section 1192, which addresses only Subchapter V cases; the more general provision is section 523(a), which references numerous discharge provisions of the Bankruptcy Code. *See* 11 U.S.C. § 1192. Given that the two statutes can be harmonized and thus do not produce inconsistencies, the general/specific canon is not applicable here. Applying this canon of construction, as the dissent below does, misconstrues the rule, and

thus produces an incorrect interpretation of the statutes. Therefore, to the extent there is any tension between sections 1192 and 523(a), courts should look no further than the plain language of the statutes.

In examining the plain language of sections 1192(2) and 523(a), the inclusion of the word "individual" in the introductory paragraph of section 523(a) is difficult to overlook. *See* 11 U.S.C. § 523(a). To interpret the relevant statutes as applying to both individuals and non-individuals is thus inconsistent with statutory cannons of construction. Additionally, the word "individual" cannot be interpreted to mean a single corporate debtor. "Every word must be given meaning so that no word in a statute is rendered superfluous." *In re Satellite Restaurants, Inc. Crabcake Factory USA*, 626 B.R. 871 at 876. Further, "[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Id.* Interpreting the word "individual" to mean "single corporation" would render the word "individual" superfluous since the statute would evoke an identical understanding without the inclusion of the word "individual," should the term be read to mean a single corporate debtor. This reading is thus inconsistent with statutory cannons of construction.

2. Concluding that section 523(a) discharge exceptions apply only to individual debtors in Subchapter V proceedings is supported by Congressional intent and legislative history.

Concluding that section 523(a) discharge exceptions apply only to individual debtors in Subchapter V proceedings is supported by Congressional intent and legislative history. Congressional intent and existing legislative history support the lower court's reading of the relevant statute because congressional intent is best expressed by the language of the statute itself, and the language of the statute is clear and mandates a contrary result than that reached by the Fourth Circuit in *In re Cleary*. The Thirteenth Circuit noted that in enacting the Bankruptcy Code, Congress rejected prior law and carefully decided to grant corporations a complete discharge in

Chapter 11. R. at 16. More significantly, existing legislative history establishes that corporations (non-individuals) have not been subject to section 523(a) dischargeability exceptions since the inception of the Bankruptcy Code. This was partly to remedy former challenges with implementing a corporate exception to discharge that arose under the previous scheme. *In re Rtech Fabrications, LLC*, 635 B.R. at 565 (citing *In re Cleary Packaging, LLC*, 630 B.R. at 474). Therefore, the decision to eliminate the absolute priority rule in a cramdown situation is not likely the result of Congress's intent to "reintroduce all the problems with exceptions to the discharge of a corporation that it eliminated over 50 years earlier." *In re GFS Indus., LLC*, 2022 WL 16858009, at *9 (citing Hon. Paul W. Bonapfel, Guide to the Small Business Reorganization Act of 2019, (2022), https://www.ganb.uscourts.gov/sites/default/files/sbra_guide_pwb.pdf). By contrast, the lack of legislative history begets no indication that Congress intended for the ambiguous language of sections 1192(2) and 523(a) to rebut the presumption that Congress does not make a fundamental change in settled law without clearly signaling that intention.

Interpreting section 1192 to mean that, "where a non-consensual confirmation occurs under section 1191(b), the twenty-one *kinds* of debt that are excepted from discharge in section 523(a) are excepted from the subchapter V debtor's discharge" falls victim to the same fatal flaw that the *Cleary* Court adopted in their reasoning. R. at. 30. *In re Cleary* pointed to "the combination of the terms 'debt' and 'of the kind' in § 523(a) to illustrate that Congress intended to reference only the list of non-dischargeable debts found in that section. *In re Cleary Packaging, LLC*, 36 F.4th 509 at 515. The Fourth Circuit explained that section 1192(2) applies by its terms only to "debts of the kind" specified in section 523(a), focusing only on the *nature of the debt*—as the dissent does—and not on the *nature of the debtor*. Although this interpretation is not implausible, Congress explicitly amended section 523(a) to include section 1192 in its limiting language. *See In re GFS*

Indus., LLC, 2022 WL 16858009, at *4. Therefore, Congress's intent to focus on the debtor, and not the debt, is clear. Further, as the dissent acknowledged, Congress's intention to make the list of debts applicable to non-individual debtors was apparent in the traditional Chapter 11 discharge, section 1141. *See* 11 U.S.C. §§ 1141(d)(2), (6) (distinguishing the scope of the discharge between individual and corporate debtors). This illustrates that Congress was aware and able to effectively make this distinction between individual and corporate debtors. The lack of such language in section 1192, coupled with the section 523(a) language that unequivocally applies to individuals, indicates that a distinction between individual and corporate debtors in section 1192 is unneeded. Therefore, the language of section 1192 is instructive of Congress's intention to limit its scope only to individual debtors.

As a policy consideration, applying the section 523(a) discharge exceptions to both individuals and corporations would disturb the focus of Chapter 11, which is reorganization. A reorganization constitutes continuation of the business and the restructuring of its debt. Expanding the scope of the statute beyond individuals would extinguish the purpose of a corporate debtor filing under Subchapter V.

C. There is nothing fair or equitable in the discharge exception within the corporate non-consensual subchapter V context.

There is nothing fair or equitable in the discharge exception within the corporate non-consensual subchapter V context. R. at 22. ("A discharge exception does not promote fairness in the corporate non-consensual subchapter V context.") According to the Fourth Circuit, Congress purposefully incorporated section 523(a) into the discharge exceptions of section 1192 and therefore intentionally extended section 523(a) discharge exceptions to all subchapter V debtors, individual and corporate debtors alike. *In re Cleary Packaging, LLC*, 36 F.4th 509 at 516. The Fourth Circuit defended its argument by invoking fairness and equity principles, observing that

Subchapter V was established apparently in response to perceived problems created by the "absolute-priority rule" applicable in chapter 11 cases. *Id.* at 514. The Court explained that such problems arose from strict adherence to the absolute-priority rule in chapter 11 cases that "could preclude reorganizations in which the continuing management of the bankruptcy estate by a business's owners would be essential to a successful reorganization because such owner's retention of estate property would violate the priority rule." *Id.* Yet, the Fourth Circuit—and the dissent below—neglected to explain why invoking fairness and equity principles should affect the scope of the discharge available to Subchapter V debtors except implicitly as a vengeful exchange.

Elimination of the "absolute-priority rule," which requires that any non-consensual plan must provide that a dissenting class of unsecured creditors be paid in full before any junior class can receive payment, does not revoke the benefits provided to debtors under Subchapter V. On the contrary, the "absolute-priority rule" posed a major impediment to the reorganization of corporate debtors, because the owner of a corporation could not retain its ownership under a Chapter 11 plan unless all classes of creditors were paid in full or voted to accept the plan. R. at 21. Paying all classes of creditors in full is rarely possible. R. at 21. Eliminating the rule thus *benefits*, not harms, general unsecured debtors in a Subchapter V corporate case by shielding the debtor from having any debts deemed nondischargeable.

D. A reading of section 1192 considering the statutory provisions regarding discharge under Chapter 12 and case law interpretations of Chapter 12 provisions is not warranted here.

Finally, a reading of section 1192 considering the statutory provisions regarding discharge under Chapter 12 and case law interpretations of Chapter 12 provisions is not warranted here. The Fourth Circuit, in *In re Cleary*, is the only federal appellate court that has discussed the applicability of the Chapter 12 discharge exceptions with regard to corporations. *See In re Cleary Packaging, LLC*, 36 F.4th 509. The Fourth Circuit's analysis was largely driven by analogizing

Chapter 12's similar language, finding that because the language in the relevant sections of Chapters 11 and 12 are "virtually identical," the two provisions should be interpreted the same way. *Id.* at 517. In its point-by-point analysis of the *Cleary* Court's flawed reasoning, the *GFS* Court distinctly opposed the assertion that allowing a section 523(a) dischargeability action against a corporation in Chapter 12 should be extended in Subchapter V proceedings simply because the language provided in the controlling discharge in Chapter 12 cases and section 1192(2) is substantially similar. *In re GFS Industries, LLC*, 2022 WL 16858009, at *6. *In re GFS* established that, despite some similarities between discharges under Chapters 11 and 12 of the Bankruptcy Code, Chapter 11 explicitly distinguishes individual debtors from corporate debtors, whereas Chapter 12 does not. *See In re GFS Industries, LLC*, 2022 WL 16858009, at *9.

The dissent notes that "the chapter 12 discharge provision, section 1228, contains substantially the same language as section 1192, and the prefatory language of section 523(a) refers to section 1228 and section 1192 in the same way." R. at 33. Consistent with the dissent's view, the essence of Petitioner's argument is that the § 1192(2) phrase "any debt … of the kind specified in section 523(a)" incorporates only the specific subcategories listed in the twenty-one subsections and does not incorporate the introductory language limiting section 523 to individual debtors. R. at 18. Petitioner's position, and the dissent, thus echo the faulty *Cleary* analysis, which relied on other courts' interpretations of section 1228(a)(2) to be applicable in both individual and corporate Chapter 12 cases. The *Cleary* Court incorrectly concluded that finding that the nearly identical language in section 1192(2) must be read as Congress's intent to make discharge exceptions applicable in all subchapter V cases, regardless of whether the debtor is an individual or corporate entity. *In re Cleary Packaging, LLC*, 36 F.4th 509, at 516. Petitioner's reasoning thus falls victim to the same flaws, because unlike Chapter 12's section 1228(a)(2), Chapter 11's section

1141(d) purposefully distinguishes individual and corporate discharges. Although the Chapter 12 discharge provision contains similar language to section 1192, the integrity of Chapter 12's purpose remains intact under this position.

In sum, we urge this Court to recognize that the answer to the issues presented may significantly impact Chapter 11 cases; specifically, whether a qualifying small business corporate debtor will make a Subchapter V election. As established, (A) the law establishes that the section 523(a) discharge exceptions apply only to individual debtors; (B) there are no inconsistencies between sections 1192 and 523(a), because (1) the plain language of section 1192(2) refers to section 523(a), only incorporating the list of nondischargeable debts, without expanding or altering it; and (2) the inclusion of section 1192 into section 523—and not the reverse—supports Congress's intent to limit the section 523(a) discharge exceptions only to individuals; (C) there is nothing fair or equitable in the discharge exception within the corporate non-consensual subchapter V context; and (D) a reading of section 1192 considering the statutory provisions regarding discharge under Chapter 12 and case law interpretations of Chapter 12 provisions is not warranted here.

Against the backdrop of different approaches across circuits, we ask this Court to clarify Congress's intent in this framework in its capacity as faithful agents of the legislature. Finally, we also urge this Court to recognize the unnecessary and potentially expensive area of litigation surrounding non-dischargeability that the Fourth Circuit has invited, and to establish a formal precedent for courts and debtors to follow henceforth.

CONCLUSION

For the foregoing reasons, we ask this Court to affirm the Thirteenth Circuit's holding.