Team 13

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 PETITIONER

TEAM NUMBER 13
COUNSEL FOR PETITIONER

JANUARY 19, 2023

QUESTIONS PRESENTED

I. Does a bankruptcy court have the authority to approve non-consensual releases of direct claims held by claimants against non-debtor affiliates as part of a chapter 11 plan of reorganization when such releases result in the forced settlement of claims, foreclose any future claims from being brought against the non-debtor, and restrict the claimants' from receiving their day in court?

II. Are debts of the kind listed in 11 U.S.C. § 523(a), a provision that originally applies only to individual debtors, rendered non-dischargeable for a corporate debtor proceeding under subchapter V by 11 U.S.C. § 1192, which states that "a debtor," a defined term including both corporation and individuals, cannot discharge debts "of the kind specified in section 523(a)?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL COURT OF APPEALS CASES

DISTRICT COURT CASES

BANKRUPTCY COURT CASES

CONSTITUTIONAL PROVISIONS

STATUTES

OTHER AUTHORITIES

OPINIONS BELOW

The Thirteenth Circuit Court of Appeals' decision is available at No. 22-0909 and reprinted at Record 3. The bankruptcy court decided in favor of Penny Lane Industries, Inc., Respondent. On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed in favor of Penny Lane Industries, Inc., Respondent.

STATEMENT OF JURISDICTION

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

RELEVANT STATUORY PROVISIONS

This action requires statutory construction of certain provisions of Title 11 of the United States Code. The following sections are also restated in full in the Appendix.

The relevant portion of 11 U.S.C. § 1192 provides:

> If the plan of the debtor is confirmed under section 1191(b) of this title . . . the court shall grant the debtor a discharge of all debts provided in section 1141(d)(1)(A) of this title . . . except any debt—
>
> (2) of the kind specified in section 523(a) of this title.

The relevant portion of 11 U.S.C. § 523(a) provides:

> (a) A discharge under section . . . 1192 . . . of this title does not discharge an individual debtor from any debt-
>
> (6) for willful and malicious injury by the debtor to another entity or to the property of another entity.

The relevant portion of 11 U.S.C. § 524(e) provides:

> [D]ischarge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.

The relevant portion of 11 U.S.C. § 524(g) provides:

> (g)(1)(A) After notice and hearing, a court that enters an order confirming a plan of reorganization under chapter 11 may issue, in connection with such order, an injunction in accordance with this subsection to supplement the injunctive effect of a discharge under this section.

The relevant portion of 11 U.S.C. § 1123(b)(6) provides:

> (b) Subject to subsection (a) of this section, a plan may . . .
>
> > (6) include any other appropriate provision not inconsistent with the applicable provisions of this title.

The relevant portion of 11 U.S.C. § 1123(a)(5) provides:

> (a) Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall . . .
>
> > (5) provide adequate means for the plan's implementation . . . .

The relevant portion of 11 U.S.C. § 105(a) provides:

> (a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

STATEMENT OF THE CASE

This appeal arises from Respondent's attempt to confirm a bankruptcy reorganization Plan that improperly exploits the Bankruptcy Code and the federal courts to obtain benefits for itself and its solvent parent corporation that go beyond the benefits the Code provides at the expense of innocent tort victims.

I. FACTUAL HISTORY

Penny Lane Industries, Inc. (the "Debtor") is a manufacturer of plastic, glass and metal food containers wholly owned by Strawberry Fields Foods, Inc. ("Strawberry Fields"), a company that produces foods sold in supermarkets throughout the country. R. at 4. The petitioner, Eleanor Rigby ("Rigby"), asserts that the Debtor knowingly disposed of environmental pollutants in the city of Blackbird, Moot, contaminating the area's groundwater supply and causing Rigby's four-year-old daughter to die of leukemia. *Id.* On January 11, 2021, the Debtor filed this case under subchapter V of chapter 11 of the Bankruptcy Code to insulate itself from this litigation. *Id.* at 6.

Rigby alleges that the Debtor's improper disposal of pollutants infiltrated her hometown water supply. *Id.* at 5. Rigby asserts that the Debtor's then-Chief Executive Officer knew as early as 2014 that the waste dumping could contaminate the nearby community's water supply and cause serious injury to local residents. *Id.* Rigby also alleges that Strawberry Fields is liable because it knew, or should have known, of its subsidiary's alleged misconduct. *Id.* at 6.

Studies conducted by the United States government showed that, during the years 2013 through 2017, tens of thousands of local residents drank and bathed in water contaminated with toxins at concentrations 250 to 3,000 times the permitted level. *Id.* at 5. This type of exposure has been linked to sickness, birth defects and even death. *Id.* Various plaintiffs filed a total of 10,000 claims against the Debtor, totaling nearly $400 million in damages, including a $1 million claim by Rigby. *Id.* at 6. Many of the lawsuits named Strawberry Fields as a co-defendant. Unlike the Debtor, Strawberry Fields did not seek bankruptcy relief. *Id.*

Debtor obtained a temporary injunction from the bankruptcy court halting all actions against the Debtor's "current and former owners, officers, directors, employees and associated entities" related to the alleged conduct of the Debtor, including litigation against Strawberry Fields. *Id.* at 7–8. Rigby has been unable to pursue compensation for the death of her four-year old daughter from either Strawberry Fields or the Debtor because of this injunction.

Instead of allowing tort creditors like Rigby to litigate their claims, the Debtor's proposed Plan (the "Plan") will provide for a creditors' trust that will make distributions to creditors estimated at 30–40 cents on the dollar. *Id.* The global settlement would be funded by the Debtor's disposable (net) income for five years, and $100 million from Strawberry Fields. *Id.* In exchange for the funds, Strawberry Fields would receive a release and discharge of "any and all claims" that third parties "have asserted or might assert in the future against Strawberry Fields" to the extent that such claims are "based on or related to the Debtor's pre-petition conduct, its estate or this chapter 11 case." *Id.*

Although the litigation against the Debtor and Strawberry Fields is still pending and the allegations are disputed, the bankruptcy court found that the proposed distribution under the Plan is substantially greater than what creditors would receive under a chapter 7 liquidation and that the $100 million contribution was substantially greater than any likely recovery from Strawberry Fields. *Id.* at 10. The bankruptcy court reasoned that because over ninety-five percent of the creditors who submitted ballots voted in favor of confirmation and the Plan provides significant distribution without the expense of litigation, it was fair and reasonable, even though releases like this one are permitted only in extraordinary cases. *Id.* at 9, 10.

The only two objections to the Plan were by Rigby and Norwegian Wood Bank (the "Bank"). *Id.* at 9. The Bank, the only secured creditor, claimed that the Plan was not "fair and equitable" as required by sections 1191(b) and 1129(b)(2)(A) of the Bankruptcy Code (the "Code") because the Debtor undervalued its collateral at $1.5 million and proposed to treat the rest of the $3.5 million owed to the Bank as an unsecured claim. *Id.* Rigby objected on the grounds that the bankruptcy court had no authority to issue non-consensual third-party direct claim releases. *Id.* objected The bankruptcy court overruled the objections but noted that the proposed distribution can never compensate tort victims for their harm caused by the Debtor and Strawberry Fields. *Id.* at 11. Rigby also sought to have her $1 million claim deemed non-dischargeable. *Id.* at 7. The bankruptcy court granted a motion to dismiss on this issue, holding that even in a case filed under subchapter V, section 523(a) does not apply to corporate debtors. *Id.*

II. PROCEDURAL HISTORY

The bankruptcy court considered two issues in this case and ruled in favor of Respondent on both. *Id.* at 4. First, the court held that a bankruptcy court has authority to issue non-consensual releases of direct claims held by a non-debtor against a third party. *Id.* Second, the court held that the Debtor could receive a discharge for the debt specified in subparagraphs (1) through (19) of 11 U.S.C. § 523(a) when proceeding under subchapter V. *Id.* Petitioner timely appealed and the Thirteenth Circuit 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*. *Pierce v. Underwood*, 487 U.S. 552, 558 (1988).

---

[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 __."

SUMMARY OF THE ARGUMENT

This case arises from the Debtor and its parent company's attempt to gain benefits not contemplated by the Bankruptcy Code at the expense of innocent tort victims. This Court should reverse the Thirteenth Circuit's decision on both issues. First, bankruptcy courts do not have authority to issue non-consensual releases of direct claims held by third parties against non-debtors. Second, section 1192 precludes a corporate debtor in subchapter V from discharging the debts listed in section 523(a).

A bankruptcy plan that allows for non-consensual non-debtor releases goes beyond the scope of a bankruptcy court's authority. These releases are barred under the Code, are unconstitutional exercises of the Bankruptcy power, and promote inequitable outcomes. Specifically, section 524(e) of the Code expressly prohibits these releases by providing that "discharge of a 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). The sole exception, section 524(g), applies only in asbestos cases, and thus is not relevant here. Moreover, general, residual provisions like sections 105(a) and 1123(a)(5) of the Code do not grant bankruptcy courts the authority to confirm non-consensual non-debtor releases. The substantive right to these releases is not contemplated anywhere in the Code. And, even if it was, these releases are unconstitutional.

Non-consensual non-debtor releases raise a panoply of constitutional issues. First, under the Constitution's Bankruptcy Clause, only Congress has the authority to permit these releases. Congress has not allowed these releases in the Bankruptcy Code; federal courts cannot unilaterally authorize this practice. Second, bankruptcy courts lack subject matter jurisdiction over Rigby's claim against Strawberry Fields because the claim is not "related to" the bankruptcy case. Even if bankruptcy courts did have subject matter jurisdiction, these releases have been authorized by lower federal courts and not by Congress. This is an impermissible exercise of federal common law-making power under *Erie*. Third, non-consensual releases would essentially function as a final judgment on Rigby's claim without a trial, violating her Seventh Amendment right to a jury trial and her Due Process rights.

While Rigby is being deprived from her day in court, Strawberry Fields will receive the benefit of a release from all current and hypothetical future claims brought on this issue, without availing itself of the burdens of the bankruptcy process. This forced settlement is inequitable. Instead, parties should rely on *consensual* third-party releases to ensure both sides have input into the release process.

The question of whether the discharge exceptions in section 523(a) apply to corporate debtors proceeding under subsection V of the Code is easily answered by the plain and unambiguous language of section 1192. When statutory language is unambiguous, the Court's interpretive analysis is complete. Section 1192 states in pertinent part that "the court shall grant the *debtor* a discharge of all debts . . . except any *debt* . . . of the *kind* specified in section 523(a)." (emphasis added). "Debtor" is explicitly defined in subchapter V to include both an individual and a corporation, and the Code defines debts as liability on a claim. There is no textual support to the claim that the "kind" of debt necessarily includes the identity of the debtor. Thus, section 119's reference to debts "of the kind specified in section 523(a)" functions as a shorthand for the twenty-one types of debt listed under section 523(a), but it does not include section 523(a)'s original restrictions on the identity of the debtor.

Further, the statutory context in which section 1192 appears supports the application of section 523(a) non-discharge provisions to corporate debtors. Respondents reading of sections

523(a) and 1192 would create superfluity throughout the code, running afoul of the critical maxim that the court strives to give meaning to each word of the statute. Additionally, the application of section 523(a) is in accord with the interpretation of near identical language in section 1228, and it is canon of statutory construction that the courts strive to give the same meaning to the same words. Finally, the Court should give priority to section 1192 as a specific provision over the general provision of section 523. Because the language of section 1192 unambiguously supports the application of section 523(a) to corporate debtors in subchapter V, the Court's analysis is complete.

Even if the Court goes beyond the unambiguous language of the statute, the application of the non-discharge provisions of section 523(a) to corporate debtors is in accord with legislative history and policy. Direct evidence of legislative history pertaining to the enactment of section 1192 is sparse. However, the plain language of section 1192 applies the non-discharge provisions of section 523(a), and the courts presume Congress says in a statute what it means. By rendering some debts non-dischargeable for corporate debtors, Congress did not break markedly with existing law. Some kinds of debt were already non-dischargeable for corporate debtors in chapter 11. Further, Congress selected near identical language to that used in section 1228, and the courts presume Congress was aware of the way that section has been interpreted. Therefore, the application of section 523(a) to corporate debtors in subchapter V is in accord with legislative history. Additionally, because the absolute priority rule does not apply, application of section 523(a) non-discharge provisions to corporate debtors ensures fairness and holds culpable debtors responsible. Similarly, this reading upholds the equality of creditors. In contrast, Respondent's reading improperly incentivizes non-consensual reorganization plans.

For these reasons, the policies of bankruptcy support the application of section 523(a) to corporate debtors in subchapter V proceedings.

This Court should reverse the Thirteenth Circuit on both issues.

ARGUMENT

This Court should reverse the Thirteenth Circuit's decision and hold that a bankruptcy court does not have 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 of reorganization. This Court should also hold that a corporate debtor proceeding under subchapter V is precluded from discharging debts of the types specified in subparagraphs (1) through (19) of 11 U.S.C. § 523(a).

I. NON-CONSENSUAL THIRD-PARTY RELEASES ARE NOT AUTHORIZED BY THE BANKRUPTCY CODE, AND, EVEN IF THEY WERE, SUCH RELEASES ARE UNCONSTITUTIONAL AND PROMOTE INEQUITABLE POLICY OUTCOMES.

In some bankruptcy cases, creditors have asserted claims against the Debtor and against third parties to the bankruptcy, including parent or sibling companies. Creditors then attempt to incorporate releases of these third-party claims into their reorganization plans to avoid liability. These releases can be consensual (effectively a settlement) or non-consensual (effectively a forced settlement). In this case, the *non-consensual* release in the Plan ensured that creditors receive compensation (here, 30-40 cents on the dollar) for their claims brought against the third-party at issue in exchange for the extinguishing of their claims. *See* R. at 8.

By authorizing non-consensual releases, "bankruptcy courts have, entirely at their own behest, invented the immense, extraordinary power to impose mandatory non-opt-out settlements of mass tort victims' claims" against solvent non-debtors who have not subjected themselves to the bankruptcy process. Ralph Brubaker, *Mandatory Aggregation of Mass Tort Litigation in Bankruptcy*, 131 Yale L.J.F. 960, 961 (2021).

The Thirteenth Circuit incorrectly concluded that non-consensual third-party releases are authorized by the Code. Forced settlements like this one are not only barred by the Code, they are unconstitutional, and promote inequitable policy outcomes. This court should reverse the Thirteenth Circuit's decision in this case and hold that non-consensual third-party releases cannot be authorized by the bankruptcy courts.

A. No statutory authority exists for approving non-consensual third-party releases, and residual provisions, such as sections 105(a), 1123(a)(5), and 1123(b)(6) of the Bankruptcy Code, do not provide authority.

An analysis of non-debtor releases must begin with the language of Bankruptcy Code. *See United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1998). When the statutory language is unambiguous, judicial inquiry is complete. *See Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992) (citations omitted) ("[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.").

1. Non-debtor releases are prohibited under section 524(e) of the Bankruptcy Code, and the single exception, section 524(g), is not applicable in this case.

Section 524(e) states that "discharge of a 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). Strawberry Fields, the corporate parent, is not a party to the bankruptcy dispute; they are an "other entity" under section 524(e) and have not submitted themselves to the bankruptcy process. They are a "bystander" and cannot take advantage of bankruptcy discharges. *See Landsing Diversified Props.-II v. First Nat'l Bank & Tr. Co. of Tulsa (In re W. Real Est. Fund, Inc.),* 922 F.2d 592, 600 (10th Cir. 1990)) ("Congress did not intend to extend . . . [the] benefits [of section 524(e)] to third-party bystanders"); R. at 25 (McCartney, J., dissenting) ("[S]ection 524(e) expressly and unambiguously prohibits the release of any person or entity by the bankruptcy court where that person or entity is not itself the subject of a bankruptcy discharge."); *Bank of NY*

Trust Co., NA v. Off. Unsecured Creditors' Comm. (In re Pac. Lumber Co.), 584 F.3d 229, 252 (5th Cir. 2009) ("In a variety of contexts this court has held that Section 524(e) only releases the debtor, not co-liable third parties"). Because Strawberry Fields is a "bystander," the discharge of the Debtor should not affect Strawberry Fields' liability for claims brought against it. Indeed, third-party releases are "the functional equivalent" of a discharge. R. at 25 (McCartney, J., dissenting). Any other reading of the statute would allow third parties to receive the benefits of the bankruptcy process without having submitted itself to its attendant burdens. *See* R. at 25 (McCartney, J., dissenting). Strawberry Fields cannot extinguish claims brought against it using the bankruptcy process; section 524(e) allows debtors, not other entities, to discharge debts.

The only statutory exception to section 524(e) is section 524(g), which allows for third-party releases in asbestos cases. *See* 11 U.S.C. § 524(g). The Code is explicit in limiting the exception to claims stemming from "the presence of, or exposure to, asbestos or asbestos containing products." 11 U.S.C. § 524(g)(2)(B)(i)(I). This is not an asbestos case; it is a toxic tort case concerning chemical disposals that harmed local drinking water. R. at 5. In 1994, Congress authorized third-party releases in the asbestos circumstance, and has not extended these remedies to any other types of cases. *Resorts Int'l Inc. v. Lowenschuss (In re Lowenschuss)*, 67 F.3d 1394, 1402 n. 6 (9th Cir. 1995). Because Congress allowed for releases in "an extremely limited class of cases," section 524(e)'s general prohibition on releases applies to all other cases. *See id.* ("That Congress provided explicit authority to bankruptcy courts to issue injunctions in favor of the third parties in an extremely limited class of cases reinforces the conclusion that § 524(e) denies such authority in other, non-asbestos, cases.") Section 524(g)(4)(A)(ii) reinforces this conclusion by stating that the asbestos exception applies "[n]otwithstanding the provisions of

Section 524(e)." R. at 25 (McCartney, J., dissenting). Third-party releases outside of the asbestos context lack any statutory justification in substantive provisions of the Code.

2. Statutory authority for third-party releases cannot be found in residual provisions of the Bankruptcy Code.

Courts that have found statutory authority for non-debtor releases do so by improperly relying on residual provisions of the Code. These courts, including the court below, find statutory authority in sections 105(a), 1123(a)(5), or 1123(b)(6) of the Code. *See e.g.*, R. at 14–15 (articulating these statutory arguments). None of these general or "residual" provisions supersede the specific text of Section 524(e). *See United States v. Energy Res. Co., Inc.*, 495 U.S. 545, 549 (1990) ("describing sections 105(a) and 1123(a)(5) as "residual authority"). Indeed, bankruptcy courts cannot receive authority from residual provisions that "only confer on the Bankruptcy Court the power to enter orders that carry out other, substantive provisions of the Bankruptcy Code." *In re Purdue Pharma L.P.*, 635 B.R. 26, 106 (S.D.N.Y. 2021).

First, section 105(a) states that a court "may 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). Section 105(a) does not allow bankruptcy courts to "create substantive rights that are otherwise unavailable under applicable law." *New Eng. Dairies, Inc. v. Dairy Mart Convenience Stores, Inc. (In re Dairy Mart Convenience Stores, Inc.)*, 351 F.3d 86, 92 (2d. Cir. 2003) (internal citations omitted); *In re Lowenschuss*, 67 F.3d at 1402 (internal citations omitted) (noting the specific provisions of section 524 "displace" the court's section 105(a) equitable powers). A third-party release confers a substantive right. Section 105(a) cannot support non-consensual third-party releases absent another, substantive provision of the Code. No such provision exists.

The circuit courts are mostly in agreement that section 105(a), on its own, fails to authorize non-debtor releases. *See In re Purdue Pharma*, 635 B.R. at 104 (discussing the circuit split on third-party releases in detail and concluding as much). Prior to this case, five of the seven circuits to weigh in on the issue have found that section 105(a), on its own, fails to provide statutory authority for third-party releases. *See id.* at 104–05 (discussing in detail the circuit split as it relates to section 105(a)).

Further, the original understanding of section 105(a) barred non-consensual third-party releases. Congress enacted section 105(a) in 1978, but the Supreme Court has acknowledged Congress did "not write on a clean slate." *See Dewsnup v. Timm*, 502 U.S. 410, 419 (1992) (internal citations omitted). The Court will not interpret the Bankruptcy Code to change pre-Code law without a "clear indication" Congress intended such a departure. *Pa. Dep't of Pub. Welfare v. Davenport*, 495 U.S. 552, 563 (1990). Congress is even more hesitant to alter pre-Code law when the provision at issue was simply reenacted from earlier bankruptcy law. *United Sav. Ass'n v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 379–80 (1988). The 1898 Bankruptcy Act contained a nearly identical provision to the 1978 Act's section 105(a) and courts consistently held this provision did *not* authorize non-consensual third-party discharges. 11 U.S.C.A. § 2(15) (current version at 11 U.S.C. § 105(a)) (granting bankruptcy courts the power to "make such orders, issue such process, and enter such judgments . . . as may be necessary for the enforcement of the provisions of this Act"); *see* Brubaker, *Aggregation*, *supra*, at 968 (compiling cases); *see Callaway v. Benton*, 336 U.S. 132, 136–41 (1949) (holding that bankruptcy courts cannot exercise their equitable powers to authorize these releases via permanent injunction). Further, the Court "normally assume[s] that Congress is aware of relevant judicial precedent when it enacts a new statute." *Guerrero-Lasprilla v. Barr*, 140 S. Ct. 1062, 1072 (2020) (internal quotation omitted). Nothing in the Bankruptcy Code, section

105(a)'s legislative development, or pre-1978 cases suggest Congress sought to allow third-party releases.

The opinion below also relied on sections 1123(a)(5) and (b)(6) to authorize the third-party release. R. at 14. Section 1123(b)(6) says that a plan may include an "appropriate provision not inconsistent with the applicable provisions of this title." 11 U.S.C. 1123(b)(6). Section 1123(b)(6) is analogous to section 105(a); both sections are merely "residual provisions" that fail to create any substantive rights under the Bankruptcy Code. *See In re Purdue Pharma*, 635 B.R. at 106 ("If [section 105(a)] does not confer any substantive authority on the bankruptcy court . . . then [section 1123(b)] can in no way be read to do so.").

Lastly, section 1123(a)(5) says a plan shall "provide adequate means for the plan's implementation." 11 U.S.C. 1123(a)(5) This provision also fails to create substantive rights. Instead, this provision, like section 1123(b)(6), only allows the Bankruptcy Court to "carry out other, substantive provisions of the Bankruptcy Code." *In re Purdue Pharma*, 635 B.R. at 106; *see also* R. at 26 (McCartney, J., dissenting) ("These provisions . . . do not create any substantive rights or confer any special powers.").

All three provisions relied on by the majority below are residual provisions that merely aid the administration of bankruptcy plans. These provisions do not allow a claim against a non-debtor to be released unilaterally, as Strawberry Fields attempts to do here. These releases are not relevant or integral to a plan's implementation. Further, these provisions cannot create substantive rights, and no other provision of the Code provides the substantive right to general non-consensual third-party releases.

3. Even if the Code permitted non-debtor releases, courts allowing third-party releases have effectively created a "rare case rule" that cannot be read into the Code.

Even if the Code allowed for non-consensual third-party releases, circuit courts that have permitted this practice do so only in unique circumstances. *See e.g.*, *Deutsche Bank A.G. v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network)*, 416 F.3d 136, 143 (2d. Cir. 2005) (requiring that "truly unusual circumstances" exist to approve these releases); R. at 10 (acknowledging "releases are permitted only in extraordinary circumstances"); *In re Millenium Lab Holdings II, LLC*, 945 F.3d 126, 129 (3d. Cir. 2019) (confirming a plan "[o]n the specific, exceptional facts of this case" because the releases were "integral to the restructuring of the debtor-creditor relationship.").

The Supreme Court has cast doubt on whether there can even be a "rare case" rule read into the Bankruptcy Code. *See Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 486–87. Instead, courts should not "deviate" from the procedures outlined explicitly by Congress in the Bankruptcy Code. *Id.* at 487. As noted above, the procedures in the Bankruptcy Code lack any statutory authorization for non-consensual third-party releases. Any creation of a rare-case rule is a deviation from the procedures Congress has authorized.

Third-party releases are expressly prohibited by the Code in Section 524(e). *But see* 11 U.S.C. 524(g) (describing the sole exception to this prohibition). The authorization of a single exception forecloses the possibility these releases are allowed in other circumstances. In addition, residual provisions of the Code, including Sections 105(a), and 1123(a)(5) and (b)(6), are unable to create new substantive rights, nor can they override the explicit text of Section 524(e). Lastly, even if there is statutory justification for third-party releases, courts allowing the releases have improperly created a rare-case rule for determining when a release is appropriate.

B. The lower court's authorization of non-consensual third-party releases violates the Constitution's Bankruptcy Clause as well as jurisdictional requirements.

Even if the Bankruptcy Code allowed for non-consensual third-party releases, the releases are unconstitutional. The authority for approving them has been "manufactured out of whole cloth, and in disregard of Supreme Court precedent prohibiting" it. Ralph Brubaker, *Bankruptcy Injunctions and Complex Litigation: A Critical Reappraisal of Non-Debtor Releases in Chapter 11 Reorganizations*, 1997 U. Ill. L. Rev. 959, 1080.

1. The Bankruptcy Clause bars the creation of non-consensual third-party releases.

The Bankruptcy Clause of the United States Constitution authorizes Congress to pass "uniform Laws on the subject of Bankruptcies." *See* U.S. Const. art. I, § 8, cl. 4. The Supreme Court has consistently focused on the original meaning of the Bankruptcy Clause when interpreting it. *See Cent. Va. Cmty. Coll. v. Katz*, 546 U.S. 356, 362–63 (2006) (discussing the history of the Bankruptcy Clause, and the Framers' knowledge when drafting the Clause). Bankruptcy relief "as understood by the Framers would have been limited solely to the debtor." Brief of Professor Adam J. Levitin in Support of Appellees and Affirmance, *In re Purdue Pharma*, *L.P.*, (No. 22-110-bk *et al.*), 2022 WL 89834, at 10; *see generally* Charles J. Tabb, *The Historical Evolution of the Bankruptcy Discharge*, 65 Am. Bankr. L.J. 325 (1991) (describing the English and American development of bankruptcy discharge law). The Supreme Court has said the bankruptcy power extends to distribution of property of the *debtor* among creditors and the discharge of *debtors* from their debts. *See Hanover Nat'l Bank v. Moyses*, 186 U.S. 181, 186 (1902). And, non-debtor releases are effectively discharges. *In re Metromedia Fiber Network*, 416 F.3d at 142. "The concept of a nonconsensual nondebtor release in bankruptcy would have been incomprehensible to the Framers." Adam Levitin, *The Constitutional Problem of Nondebtor Releases in Bankruptcy*, 91 Fordham L. Rev. 429, 436 (2022)

Strawberry Fields is not a debtor in this case, but it still seeks a discharge. R. at 6, 8–9. Non-consensual third-party releases are barred under the Bankruptcy Clause because they are outside the scope of the Clause and its original meaning. Also, they release non-debtors from claims even though the Bankruptcy power extends solely to debtors.

2. Bankruptcy courts lack subject matter jurisdiction over claims between non-debtors because these claims fail to meet the "related to" requirement of 28 U.S.C. § 1334.

Bankruptcy courts' jurisdiction extends to all claims "arising in or related to" the debtor's bankruptcy case. 28 U.S.C. § 1334(b). Courts rely on the "related to" statutory grant when allowing for non-debtor releases, but that reliance is misplaced. *See* Brubaker, *Aggregation*, *supra*, at 968–69 (discussing "related to" jurisdiction and relevant cases); *see In re Purdue Pharma*, 635 B.R. at 78 (discussing the "related to" requirement). Any claim of liability against a released party must be sufficiently "related to" the bankruptcy case to be released, and thus confer subject matter jurisdiction over the claim. *In re Purdue Pharma*, 635 B.R. at 78. Though the Court has noted that "related to" jurisdiction is a "grant of some breadth," it is not "limitless." *See Celotex Corp. v. Edwards*, 514 U.S. 300, 308 (1995). The Court has embraced the "related to" test outlined by the Third Circuit in *Pacor v. Higgins*. *See id* (agreeing with the *Pacor* test); *Pacor v. Higgins*, 743 F.2d 984 (3d. Cir. 1984). The key *Pacor* inquiry is "whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." *Pacor*, 743 F.2d at 994.

Here, the direct claim by a creditor, Rigby, against a third-party, Strawberry Fields, is outside of this jurisdictional grant. *See* R. at 27 (McCartney, J., dissenting). These claims have no bearing on the bankruptcy estate of the Debtor and lack any relation to this bankruptcy case. *Id.* The only conceivable reason the claims against Strawberry Fields would "have any effect" on the bankruptcy estate is because Strawberry Fields has inserted itself into the global settlement on behalf of the Debtor. Indeed, the bankruptcy could (and would) proceed without their funding the non-consensual settlement. Strawberry Fields is not funding this out of the kindness of their heart; the corporation chose to fund it to avoid liability for themselves and then mandated releases to ensure as much. In so doing, they seek an end-around the "related to" jurisdiction requirement to benefit themselves (a non-debtor) and harm current creditors like Rigby, as well as potential future claimants who would be barred from ever litigating on these issues against Strawberry Fields.

In addition, third party releases often release potential claims that are not yet a "proceeding." *See In re Aegean Marine Petroleum Network*, *In re Aegean Marine Petroleum Network Inc.*, 599 B.R. 717, 723 (Bankr. S.D.N.Y. 2019). Therefore, courts approving releases are exercising power "over a potential claim for which no actual proceeding exists. *Id.* Here, the Plan discharges "any and all claims" that third parties "have asserted or might assert in the future against Strawberry Fields." R. at 8. Though Ms. Rigby has already brought her claim against the Debtor, other potential plaintiffs may exist in Blackbird. Third-party releases bar those claims as well, even though no litigation has been filed and there is no actual "proceeding" to exercise subject matter jurisdiction over.

3. Courts that approve non-consensual third-party releases are improperly creating federal common law in violation of *Erie.*

Courts embracing non-debtor discharges are improperly creating federal common law through the creation of multi-factor tests to determine when a third-party release is permissible. *See e.g.*, *Class Five Nevada Claimants v. Dow CorningCorp. (In re Dow Corning Corp.)*, 280

F.3d 648, 658 (6th Cir. 2002) (creating such a test); *In re Master Mortg. Inv. Fund, Inc.*, 168 B.R. 930, 935 (Bankr. W.D. Mo. 1994) (creating another test used by circuit courts). The creation of factor tests goes against the Supreme Court's guidance in *Erie Railroad Co. v. Tompkins* that "there is no federal common law." *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). This constraint is not limited to diversity cases, so long as the claim in question has its source in state law. Brubaker, *Aggregation*, *supra*, at 969–70. In bankruptcy, "state law governs the substance of claims," *Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15, 20 (2000).

The factor tests relied on by lower courts are not proscribed by Congress, instead they are completely judge-made. By creating these tests, federal courts are fashioning common law in an arena that should be governed by state law or, if applicable, federal statute. Congress has not legislated here, and thus, state law must apply in accordance with *Erie*, not judge-made tests.

In addition, the Supreme Court acknowledged in *Marshall v. Marshall* that under *Erie*, state law would govern the substantive elements of any claim that falls under "related to" jurisdiction. *See* 547 U.S. 293, 313 (2006) (holding that, under *Erie*, state law governed the underlying claim in a chapter 11 bankruptcy falling under "related to" jurisdiction); Brubaker, *Aggregation*, *supra*, at 972 (making this argument). Though "related to" jurisdiction is not even met in this case, as discussed above, if it somehow was, courts below would then be violating both *Erie* and *Marshall* by relying on factor tests to determine when a release is appropriate.

4. Non-consensual third-party releases provide an unconstitutional final judgment on a creditor's claims against the non-debtor because this is a "non-core" proceeding that must be decided by an Article III court.

The Court has restricted bankruptcy courts' power to adjudicate certain proceedings. The 1984 Bankruptcy Code Amendments distinguished "core" proceedings from "non-core" proceedings. *See* 28 U.S.C. § 157(b)-(c). Bankruptcy courts can always enter final judgments in "core" proceedings, and can do so in "non-core" proceedings if the parties consent to such jurisdiction. *See* Richard Lieb, *The Supreme Court, in* Stern v. Marshall*, by Applying Article II of the Constitution Further Limited the Statutory Authority of Bankruptcy Courts to Issue Final Orders*, 20 J. Bankr. L. & Prac. 4 Art. 1 (2011) (discussing the distinction). If the parties do not consent, "non-core" proceedings must have a final judgment issued by an Article III court. *See* 28 U.S.C. 157(c). In *Stern v. Marshall*, the Court clarified what counts as a "core" proceeding. It decided that the bankruptcy court could not adjudicate a pure state law tort claim because it was not necessary to the claim against the estate and did not "stem from the bankruptcy itself." 564 U.S. 462, 499 (2011); *see* R. at 27 (McCartney, J., dissenting) (making a similar argument). Determining if a proceeding is "core" or "non-core" is a constitutional question. *See Stern*, 564 U.S. at 499 ("Congress may not bypass Article III simply because a proceeding may have *some* bearing on a bankruptcy case.").

Third-party claims that are released in cases like this one are "non-core" matters. The claim against Strawberry Fields is a state law toxic tort claim; Strawberry Fields is not a debtor in this case. Therefore, a non-Article III bankruptcy judge cannot enter final judgment on the claims against Strawberry Fields. *Stern*, 564 U.S. at 499. By releasing these claims in the finalized Plan, the court below issued a final judgment beyond its constitutional powers. *See* R. at 27-28 ("[N]othing in *Stern* suggests that a party otherwise entitled to have a matter adjudicated by an Article III court forfeits that constitutional right if the matter is disposed of as part of a plan."); *see also In re Purdue Pharma*, at 41 ("There really can be no dispute that the release of a claim 'finally determines' that claim. It does so by extinguishing the claim, so that it cannot be adjudicated on the merits. A nonconsensual third-party release is essentially a final judgment against the claimant, in favor of the non-debtor, entered 'without any hearing on the merits.'")

Rigby and Strawberry Fields (a third party) were in a state law tort dispute, and "third-party claims belong to third parties, not the estate." *Patterson v. Mahwah Bergen Retail Grp., Inc.*, 636 B.R. 641, 672 (E.D. Va. 2022). "As a general rule, a bankruptcy court has no power to say what happens to property that belongs to a third party." *In re Aegean Marine Petroleum Network Inc.*, 599 B.R. 717, 723 (Bankr. S.D.N.Y. 2019). Rigby's claim against Strawberry Fields is not a claim against the estate at issue in this bankruptcy proceeding, Penny Lane (the Debtor). The bankruptcy court only has *in rem* jurisdiction over claims against the estate, not third-party claims. *Id.*; *Patterson*, 636 B.R. at 672. Therefore, the bankruptcy court has no *in rem* jurisdiction over Rigby's claim against Strawberry Fields.

The opinion below argues that because the releases were incorporated into the plan of reorganization, the bankruptcy court had the authority to approve the releases. R. at 12–14. But this reasoning is ripe for abuse. It would allow bankruptcy courts to unilaterally broaden their jurisdiction via the plan confirmation process. As the dissent below points out, "parties could manufacture a bankruptcy court's *Stern* authority simply by inserting the resolution of otherwise non-core matters into a plan." *See* R. at 27–28 (McCartney, J., dissenting); *In re Digital Impact, Inc.*, 223 B.R. 1, 11 (N.D. Okla. 1998) ("If proceedings over which the Court has no independent jurisdiction could be metamorphosized into proceedings within the Court's jurisdiction by simply including their release in a proposed plan, this Court could acquire infinite jurisdiction."). That is exactly what Strawberry Fields has attempted to do here, demanding a "broad release from all claims" that have been brought against them as a ransom in exchange for their funding of the global settlement. *See* R. at 8. The bankruptcy court does not have jurisdiction to enter final judgment on third-party claims like those brought against Strawberry Fields because they are a non-core matter outside of these courts' jurisdiction.

C. Non-consensual third-party releases abridge Due Process.

Non-debtor releases raise significant Fifth Amendment Due Process concerns. *See* R. at 26 ("When a court directs that a creditor's claim against a non-debtor be released, it takes away a property interest that belongs to that creditor, without affording the creditor due process."). "Nonconsensual releases are undertaken without opportunity for an adjudication of the creditors' claims against nondebtors." Levitin, *Problem*, *supra*, at 439; *see also In re Aegean Marine Petroleum Network*, 599 B.R. at 723–725 (describing the various due process concerns with non-debtor releases).

The Supreme Court has stated that Due Process requires "deprivation of . . . property by adjudication be preceded by notice and opportunity for hearing." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950). Parties should not be deprived their property without their "day in court." Levitin, *Problem*, *supra*, at 440. Rigby is being forced to release her claim against Strawberry Fields, disallowing her from receiving her "day in court." She has only been heard in court for her claims against the *debtor*, Penny Lane, and not Strawberry Fields.

The opinion below characterizes the release as a "global settlement," R. at 8, but this is misleading. It is a forced settlement. Rigby did not negotiate the settlement, and the Plan extinguished her claims against a wholly separate third party without her consent. She engaged in no motion practice, discovery, or fact-finding before a stay was entered by the bankruptcy court below. R. at 7–8. If the plan is confirmed, no court will have adjudicated the plan and Rigby would not have truly settled her claim. *Id.*

In addition, Chapter 11 bankruptcy can't possibly take the place of an adjudication. Bankruptcy concerns itself with the debtor at issue, not a third party like Strawberry Fields. *See* R. at 25 (McCartney, J., dissenting) (noting releases allow non-debtors to "obtain the benefits of bankruptcy without bearing its corresponding responsibilities and burdens); Levitin, *Problem*, *supra*, at 441 ("A bankruptcy court has no basis for making findings of fact regarding the merits of individual creditors' direct claims."). Further, a confirmation vote does nothing to satisfy Due Process. No matter how many creditors support the plan, Due Process cannot be superseded by majority vote. *Id.*

D. Non-consensual non-debtor releases violate Rigby's Seventh Amendment jury trial right

By extinguishing Rigby's claim against Strawberry Fields, the court below abridged her Seventh Amendment jury trial right. The Bankruptcy Code distinguishes between "core" and "non-core" proceedings, and, as discussed above, only Article III judges can issue a final judgment in a "non-core" proceeding like this one. Therefore, any final judgments entered by the bankruptcy court not only violate the Bankruptcy Code, they also violate the claimant's Seventh Amendment jury trial right. *See* Brubaker, *Aggregation*, *supra*, at 973 n. 53 ("[B]y extinguishing damages . . . claims on which creditors have *both* a right to final judgment from an Article III judge *and* a Seventh Amendment right to a jury trial, [non-consensual releases] contravene creditors' constitutional jury-trial rights.")

Here, Rigby received no jury trial. Her case was disposed of by a non-Article III judge via the Plan confirmation process, and not by summary judgment, a motion to dismiss, or some other dispositive motion.

Further, the Court has cautioned that Congress cannot "withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law." *Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. 272, 285 (1856); Rigby's claim is the subject of a suit at common law. She has asserted a tort claim against the Debtor and Strawberry Fields, R. at 5–6, a suit that is "the stuff of traditional actions at common law tried by the courts at Westminster in 1789." *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 90 (1982) (Rehnquist, J., concurring). By allowing Rigby's claim to be released under the Plan, the court is removing a common law suit from an Article III judge.

Courts that have approved non-consensual non-debtor releases hold that Congress, via the Code, has allowed such a suit. *See* R. at 13 (compiling circuit court cases in support of non-debtor releases). But Congress has no power to remove common law suits from Article III courts, and even if they did, the claimants' Seventh Amendment jury trial rights would be abridged in the process—bankruptcy courts do not even provide jury trials. And again, as if this wasn't enough, "non-core" proceedings like this one must receive final judgment from an Article III court, one that *can* provide jury trials. *Stern*, 564 U.S. at 499.

E. Non-consensual third-party releases are an inequitable forced settlement, whereas consensual releases allow for a fair settlement between the parties.

Though the opinion below frames non-consensual third-party releases as an equitable solution that maximizes recoveries for creditors and maintains the Debtor's business, non-consensual releases of third-party claims present significant equity and policy concerns. *See* R. at 29 (McCartney, J., dissenting).

Strawberry Fields has never filed for bankruptcy and has never subjected itself to the bankruptcy process, yet somehow receives the benefits of a bankruptcy discharge through these releases. *Id.* Strawberry Fields will avoid Rigby's lawsuit, any other suits that have been filed, and any that could be filed on this issue in the future. Not only will Rigby miss out on her day in court, Strawberry Fields, who allegedly helped create the tragedy in Blackbird, will avoid ever entering a courtroom over these issues.

Non-consensual third-party releases create a "moral hazard," allowing owners of companies to "piggyback" on another company's bankruptcy to receive releases that limit their own direct liability. *See* Brief of Professor Adam J. Levitin in Support of Appellees and Affirmance, *In re Purdue Pharma*, *L.P.*, (No. 22-110-bk *et al.*), 2022 WL 89834, at 24. This practice is widespread; releases have bene utilized in mass tort cases concerning Purdue Pharma, USA Gymnastics, Boy Scouts of America, the Catholic Dioceses, and Johnson & Johnson. *See Id.* at 25–26; R. at 23–24; *see also In re Aegean Marine Petroleum Network*, 599 B.R. at 726 ("Almost every proposed chapter 11 plan I receive includes proposed releases."). If companies know that releases are at their disposal down the road, they could siphon money out of the entity facing bankruptcy to another entity, knowing the other entity will receive a release. *See* Brief of Professor Adam J. Levitin, at 24 (describing how Johnson & Johnson "transferred its toxic talc liabilities to a newly created subsidiary" to "settle its talc liability more cheaply through bankruptcy than in the regular tort system.) This pervasive practice is already being abused by large corporations.

The majority below argues that Rigby and other creditors will come out better than they would litigating their claims directly. R. at 11. This postulation is farfetched. Without subjecting the claims against Strawberry Fields to the scrutiny applied to a debtor in a bankruptcy proceeding, how could a bankruptcy court provide an accurate estimate of what a jury would award to any given plaintiff at trial? Further, can we be sure that money is what drives a plaintiff's decision to sue? It may be that plaintiffs (including Rigby) file suit to hold an entity responsible for an alleged tragedy regardless of the damage award. They could instead be seeking public recognition or their day in court and may refuse a settlement of any amount.

Better outcomes do exist—consensual releases. Such releases allow creditors to negotiate more favorable terms of the release, unlike non-consensual releases where the Debtor sets out unilateral terms. A non-consensual release may be the worst possible outcome for certain creditors; it is a forced settlement antithetical to our justice system.

The abolition of non-consensual releases will still allow for consensual non-debtor releases, a fair compromise between non-consensual releases and having no releases at all. These releases allow creditors to actually settle their claims through bargaining between the parties. *See also* Brief of Professor Adam J. Levitin, at 24. (making the argument that consensual releases could even be coordinated by the bankruptcy court).

The majority opinion below rests their decision primarily on equity principles, insisting the release benefits creditors in this case. R. at 11–12. These policy concerns are last in the pecking order when needing to rationalize releases. The Bankruptcy Code provides no authority for non-consensual third-party releases. Constitutional issues abound. They include violations of the Bankruptcy Clause, Fifth Amendment Due Process rights, Seventh Amendment jury trial rights, and subject matter jurisdiction requirements, as well as the Court's holding in *Erie*. Each of these Constitutional issues must be satisfied to even begin a conversation on policy. Not one of them is met. Even if they all were, the policy concerns at play favor the abolition of non-consensual releases, a pervasive practice barred by statute and the Constitution.

II. THE DISCHARGE EXCEPTIONS SET OUT IN SECTION 523(A) APPLY TO CORPORATE DEBTORS UNDER SECTION 1192 OF SUBSECTION V.

Petitioner's claim is non-dischargeable, as it arises from a willful and malicious injury inflicted upon the creditor by the debtor, a kind of debt rendered non-dischargeable for corporate debtors by sections 1192(2) and 523(a)(6) of the Code. *See* 11 U.S.C. §§ 523(a)(6), 1192(2). Section 523(a)(6) reads, in pertinent part: "[a] discharge . . . does not discharge an individual debtor from any debt . . . for willful and malicious injury by the debtor to another entity or to property of another entity." 11 U.S.C. § 523(a)(6). Section 523(a)(6) is made applicable to corporate debtors in subchapter V by section 1192(2). 11 U.S.C § 1192(2). Section 1192 excludes from a debtor's discharge "any debt … of the kind specified in section 523(a) of this title." 11 U.S.C § 1192(2). The application of section 523(a) to corporate debtors is required by the unambiguous language of section 1192(2). Even if the text is somehow ambiguous, extra-textual sources like the relevant legislative history and policy goals of bankruptcy definitively support application of section 523(a) to corporate debtors in subchapter V.

A. The plain language of section 1192 requires the application of section 523(a) to individual and corporate debtors without distinction.

When the language of a statute is unambiguous, the Court does not look beyond it. *Ron Pair*, 489 U.S. at 241; *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 579 U.S. 115, 125 (2016) ("The plain text of the Bankruptcy Code begins and ends our analysis . . . ."); *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 460 (2002) ("Where the statutory language is clear and unambiguous, we need neither accept nor reject a particular "plausible" explanation for why Congress would have written a statute . . . ."). Policy arguments are irrelevant when the statutory language is clear. *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 13-14 (2000) ("We do not sit to assess the relative merits of different approaches to various bankruptcy problems. It suffices that the natural reading of the text produces the result we announce. Achieving a better policy outcome . . . is a task for Congress, not the courts."). Similarly, the legislative history is immaterial when the statutory language is clear. *Ron Pair*, 489 U.S. at 241. However, the context in which the statute appears is critical to determining the meaning of statutory language. *Food and Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) ("It is a fundamental canon of statutory construction that the words of statute must be read in their context and with a view to their place in the overall statutory scheme") (internal quotations omitted).

Despite Chapter 11 ordinarily offering a near complete discharge for corporate debtors, section 1192 creates a critical exception in subchapter V: "the debtor" is not discharged of any "debt . . . of the kind specified in section 523(a)." 11 U.S.C. § 1192. Section 523(a) is employed as a shorthand for the kind of debts which are rendered non-dischargeable, and states that these debts are non-dischargeable for "the debtor." *See Cantwell-Cleary Co., Inc. v. Cleary Packaging, LLC* (*In re Cleary Packaging*, *LLC*), 36 F.4th 509, 515 (4th Cir. 2022) ("§ 1192(2)'s cross-reference to 532(a) does not refer to any *kind of debtor* addressed by § 523(a) but rather to a *kind of debt* listed in 523(a). By referring to the *kind of debt* listed in 523(a), Congress used a shorthand to avoid listing all 21 types of debts . . . ."). Critically, the unambiguous language of section 1192(2) does not refer to the *kind of debtor* specified in section 523(a), but the *kind of debt*. *Id.* ("The section's use of the word "debt" is, we believe, decisive, as it does not lend itself to encompass the "kind" of debtors discussed in the language of § 523(a).") Rather, section 1192 clearly specifies that it applies to "the debtor." 11 U.S.C. § 1192. Courts interpreting this section need not speculate about the meaning of "the debtor" in subchapter V proceedings; section 1182(1)(A) provides a definition. *See* 11 U.S.C. § 1182(1)(A). A debtor under subchapter V is a "person," natural or incorporated, which engages in business and has aggregate debts not more than $7,500,000. *Id.*; *see also* 11 U.S.C. § 101(41) (defining "person" to include both individuals and corporations). Where the Code deviates from this definition, it does so explicitly. *See, e.g.*, 11 U.S.C. § 1141(d)(2)) ("[T]his chapter does not discharge a debtor *who is an individual* from any debt excepted from discharge under section 523 of this title.) (emphasis added).

The "kind of debt" specified by section 1192 does not include the identity of the debtor as an individual. *Cleary Packaging,* 36 F.4th at 515. "Kind" is commonly understood as a group with shared traits. *See, Kind, Merriam-Webster Dictionary* (online ed.) (defining "kind" as "a group united by common traits or interests."). The court below correctly stated that a "kind" of debt *may* include consideration beyond the "legal or factual basis of the claim." R. at 18. However, such considerations are not necessarily included in the "kind of debt" specified by section 1192. Rather than demonstrating that a kind of debt always includes the identity of the debtor, the lower court's example of "consumer debts" demonstrates that when the Code includes the identity of the debtor in the kind of debt, it does so unequivocally. *See* 11 U.S.C. § 101(8) (defining consumer debt as a "debt incurred by an individual"). In fact, a kind of debt defined in this way is the exception, not the rule. *See* 11 U.S.C. § 101(12) (defining debt as "liability on a claim"). "Debt" is defined explicitly by the Code without so much as an allusion to the identity of the debtor. *Id.*

Respondent's preferred reading of "kind" is erroneous given the statutory context. Section 1141(d)(6)(A) specifies that "the confirmation of a plan does not discharge *a debtor that is a corporation* from any debt . . . of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) . . . ." 11 U.S.C. § 1141(d)(6)(A) (emphasis added). Respondent's desired reading of "kind" would render this section incomprehensible. If the "kinds" of debts listed in section 523(a) necessarily include as a shared characteristic that the debtor is an individual, section 1141(d)(6)(A) would exclude from discharge debts owed by an individual debtor that is also a corporation. *See* 11 U.S.C. § 1141(d)(6)(A). Such a reading is incomprehensible. Given the context in which it appears, the "kind of debt" specified in section 523(a) cannot encompass the identity of the debtor.

Statutory context supports the application of 523(a) to corporate debtors under section 1192. Context is critical to proper statutory interpretation. *Brown & Williamson*

Tobacco Corp., 529 U.S. at 133. Further, it is a cardinal maxim of statutory interpretation that the Court "must give effect, if possible, to every clause and word of a statute." *Loughrin v. U.S.*, 573 U.S. 351, 358 (2014) (quoting *Williams v. Taylor*, 529 U.S. 362, 404 (2000)). In other words, proper statutory analysis abhors superfluity. *See id.* Throughout chapter 11, the Code is explicit in limiting application of 523(a) to individual debtors when that result is intended. *See, e.g.*, 11 U.S.C. § 1141(d)(2). For example, section 1141(d)(2) specifies that "a discharge under this chapter does not discharge a debtor *who is an individual* from any debt excepted from discharge under section 523 of this title." *Id.* (emphasis added). Respondent's desired reading of section 1192 would render these explicit references to individual debtors meaningless. If cross-references to section 523(a) are inherently limited to individual debtors due to the introductory language of 523(a), the specification of a "debtor who is an individual" is completely superfluous. *See id.* Respondent's policy and pecuniary preferences should not be enacted at the cost of rendering multiple sections of the code meaningless.

Similarly, the statutory references in the section 523(a) preamble do not necessitate that the non-discharge provisions apply only to individual debtors. If these preamble references necessitate that the non-discharge provisions apply only to individual debtors, superfluity abounds. *See, e.g.*,11 U.S.C. § 1141(d)(2). For example, Section 1142(d)(2) is referenced in the preamble, and it has already demonstrated that this would result in superfluity. *Id.* Superfluity can be avoided by giving the preamble its proper weight: the preamble references have been described in the House Report as a "conforming amendment." H.R. Rep. No. 171, 116th Cong., 1st Sess. 1, 9 (2019). This Court has given lessor weight to statutory provisions which are merely "conforming amendments," and it should do the same here. *See Cyan, Inc., v. Beaver Cty. Emps. Ret. Fund*, 138 S. Ct. 1061, 1071 (2018) ("Congress does not make "radical–but entirely implicit–change[s] through technical and conforming amendments.") (internal citations omitted).

The application of section 523 to corporate debtors under section 1192 is consistent with the established reading of nearly identical language in Chapter 12. *See* 11 U.S.C. § 1228(a)(2); *S.W. Ga. Farm Credit, ACA v. Breezy Ridge Farms, Inc.* (*In re Breezy Ridge Farms, Inc.*), 2009 WL 1514671 at *2 (Bankr. M.D. Ga. 2009); *New Venture P'ship v. JRB Consol., Inc.* (*In re JRB Consol., Inc.*), 188 B.R. 373, 374 (Bankr. W.D. Tex. 1995) In order to comply with the "fundamental canon of statutory construction," statutes are to be read in context of the greater statutory scheme. *See Brown & Williamson Tobacco Corp*., 529 U.S. at 133. Further, "identical words and phrases within the same statute should normally be given the same meaning." *Hall v. United States*, 566 U.S. 506, 519 (2012) (quoting *Powerex Corp. v. Reliant Energy Servs. Inc.*, 551 U.S. 224, 234 (2007)). Section 1228(a)(2) exempts from discharge debts "of a kind specified in section 523(a) of this title," employing near identical language to that found in section 1192. 11 U.S.C. § 1228(a)(2); *see also* 11. U.S.C. § 1192 (exempting from discharge debts "of the kind specified in section 523(a) of this title"). Repeatedly, bankruptcy courts have held that section 1228(a)(2) renders debts non-dischargeable for individual and corporate debtors without distinction. *See Breezy Ridge Farms, Inc.,* 2009 WL 1514671 at *2 ("Although §523(a) applies only to individuals, Congress has used it as a shorthand to define the scope of a Chapter 12 discharge for corporations as well as individuals."); *JRB Consol.*, 188 B.R. at 374 ("Section 1228(a) uses the term debtor without restriction, . . . and this court believes that the term "of a kind" does not incorporate the limiting definition found in the introductory paragraph of § 523(a)."). Though they do not, even if meaningful policy distinctions existed between small corporate farms and small closely held corporations, the Court should give the near identical text of section 1192 and section 1228(a) the same meaning. Any other result would violate a fundamental canon of statutory construction requiring that identical words and phrases be given the same meaning. *See Hall*, 566 U.S. at 519.

The unambiguous language of section 1192, the context in which it appears, and the maxims of statutory construction make clear that respondent's reading is irreparably flawed. However, even if Respondent's reading was equally plausible, the Court should prioritize the specific rule set out in section 1192(2) over the general rule of section 523(a). It is a well-established cannon of statutory construction that specific statutory provisions govern the general. *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (internal citations omitted). This cannon is particularly applicable where "Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions." *RadLAX Gateway Hotel*, 566 U.S. at 645 (quoting *Varity Corp. v. Howe*, 516 U.S. 489, 519 (1996) (Thomas, J., dissenting)).

Here, section 523(a) represents a general non-discharge rule applicable to individual debtors. It is applicable throughout chapter 7 and is referenced by numerous provisions in other chapters. *See, e.g.*, 11 U.S.C. §§ 523(a), 1141(d)(2), 1328(a)(2). In contrast, section 1192(2) is a specific rule, applicable only in subchapter V small business proceedings, which makes section 523(a) applicable to both individual and corporate debtors. *See* 11 U.S.C. § 1192(2). Even if respondent's argument was not contradicted by the unambiguous text of the statute and incoherent when considered in the context of the larger statutory scheme, the Court should prioritize the specific rule set out in section 1192(2) over the general rule set out in section 523(a). The plain text of the Code and the maxims of statutory interpretation are clear; under section 1192(2) the non-discharge provisions of section 523(a) apply to both individual and corporate debtors. Although the legislative history and underlying policy purposes of the Code further support this conclusion, consideration of these factors is unnecessary. As this Court has stated in the past, "the plain text of the Bankruptcy Code begins and ends our analysis[.]" *Franklin Cal. Tax-Free Tr.*, 579 U.S. at 125.

B. The application by section 1192 of the non-discharge provisions of section 523(a) to corporate debtors in subchapter V is in accord with legislative history.

The text of section 1192(2) clearly applies the non-discharge provisions of section 523(a) to corporate debtors, a result in accord with legislative history and intent. The decision below makes much of the sparse legislative history pertaining directly to the enactment of section 1192(2). *See* R. at 2021. But legislative history has no bearing on a plainly worded statute. *See Conn. Nat'l Bank*, 503 U.S. at 253-54; *Barnhart v. Sigmon Coal Co., Inc.,* 534 U.S. 438, 46062 (2002). The lower court asserts that "Congress does not hide elephants in mouseholes," and argues that legislative records accompany a "fundamental change in settled law." R. at 20 (quoting *Whitman v. Am. Trucking Ass'ns Inc.*, 531 U.S. 457, 468 (2001). However, the application of section 523(a) to corporate debtors in subchapter V does not represent a fundamental change in policy regarding small business debtors. On the contrary, prior to the enactment of subchapter V, no provision of the code addressed small business debtors specifically. *See generally* Paul W. Bonapfel, *A Guide to the Small Business Reorganization Act of 2019*, 93 Am. Bankr. L.J. 571, 575–76 (2019). Therefore, references to legislative history pertaining to chapter 11 discharges cannot support a claim that section 1192 represents a fundamental change. Given the limited scope of subchapter V, Congress' intention may have differed widely from those in the larger context of chapter 11. *See, e.g.*, *In re Trepetin*, 617 B.R. 841, 848 (Bankr. D. Md. 2020) ("Several aspects of Subchapter V are premised on the provisions of chapter 12."). Moreover, some of the debts listed in section 523(a) were already exempted from discharge for a corporate debtor. *See* 11 U.S.C. § 1141(d)(6). Ultimately, the plain language of section 1192(2) makes the kinds of debts specified in section 523(a) non-dischargeable for individual and corporate debtors alike. The Court should presume that in enacting this statue into law, the "legislature says in a statue what it means, and means in a statute what it says there." *See Conn. Nat'l Bank*, 502 U.S. at 25354.

In addition to the clear manifestation of legislative intent ensconced within the plain language of the text, the use of statutory language previously interpreted by the Bankruptcy Courts in section 1228 demonstrates a desire to produce the same result in section 1192. This Court has time and time again held that Congress is aware of existing law at the time of enacting legislation. *Guerrero-Lasprilla*, 140 S.Ct. at 1072 ("We normally assume that Congress is aware of relevant judicial precedent when it enacts a new statute."); *Hall*, 566 U.S. at 516; *Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990). Therefore, Congress was aware at the time of enacting that the language "of a kind specified in section 523(a) of this title" had been interpreted by the Bankruptcy Courts to render debts non-dischargeable for individual and corporate debtors alike. *See* 11 U.S.C. § 1228; *Breezy Ridge Farms*, 2009 WL 1514671 at *2; *JRB Consol.*, 188 B.R. at 374. If, as the lower court posits, these interpretations were flawed, Congress could easily have eliminated any ambiguity by employing language explicitly limiting section 523(a) to individual debtors, as it did in section 1141(d)(2). *See* 11 U.S.C. §§ 1141(d)(2). It did not. Instead, Congress enacted language that is nigh-on identical, as it sought an identical result. Therefore, the legislative history and intent support the application of section 523(a) to individual and corporate debtors alike.

C. *Exempting the Kinds of Debt Contained Section 523(a) from a Corporate Debtor's Discharge in subchapter V Proceedings is Supported by the Core Policies of Bankruptcy*

By expanding the non-discharge provisions of 523(a) to corporate debtors in subchapter V of chapter 11, Congress acted to further the core policies of bankruptcy. An examination of the policy underlying discharge in general is important to understand why Congress exempted discharge of certain debts for corporate debtors in subchapter V, but not in Chapter 11 at large. The function of section 523(a) in chapter 7 reflects the general policy that discharge should "relieve the *honest debtor* from the weight of oppressive indebtedness." *Williams v. U.S. Fid. & Guar. Co.*, 236 U.S. 549, 550 (1915) (emphasis added); *see* 11 U.S.C. § 523(a). Section 523(a) reflects this policy by excluding from discharge debts which the "honest debtor" would not incur, as each of the provisions reflect a degree of debtor culpability. *See, e.g.*, 11 U.S.C. § 523(a)(6) (excluding from discharge debts arising from "willful and malicious injury by the debtor to another entity"). However, a corporation has, as Lord Thurlow famously wrote, "no soul to be damned, and no body to be kicked[.]" Therefore, in the case of most large corporate debtors, exempting culpably caused debts from discharge has little policy support. *See generally* Ralph Brubaker, *Taking Exception to the New Corporate Discharge Exceptions,* 13 Am. Bankr. Inst. L. Rev. 757 (2005). The corporation is not morally culpable in the way an individual debtor may be. Hence, chapter 11 ordinarily provides a near complete discharge of corporate debts. *See* 11 U.S.C. § 1141(d)(1).

Additionally, the "absolute priority" rule entails that any morally culpable interest holders are excluded from ownership of the reorganized corporation unless creditors are fully compensated. *See* 11 U.S.C. § 1129(b). Unless the plan provides for payment in full to all claim holders, "the holder of any interest that is junior to the interests of such class will not receive or retain … any property." *See* 11 U.S.C. § 1129(b). In other words, potentially culpable equity holders may not retain any interest in the reorganized corporation, unless the corporate debts are fully paid. *See id.* Given that large corporations are not morally culpable agents, and that any culpable individuals may only retain interests if all creditors are paid in full, a complete discharge in ordinary chapter 11 cases is in accord with the policies of bankruptcy.

The situation to which section 1192 applies is markedly different from an ordinary chapter 11 corporate reorganization, in which a near complete discharge of corporate debts is justified. Subchapter V, in which section 1192 is found, provides for the reorganization of small businesses. *See* 11 U.S.C. § 1182(1)(A) (limiting subchapter V to debtors with less than $7,500,000 in debt). Far from the large, faceless corporations reorganized in chapter 11 proceedings, subchapter v pertains to closely held corporations. *Id.* The shareholders in these small businesses are often also directly involved in the management of the corporation. Where the corporation incurs debts which 523(a) would render non-dischargeable, the culpable individuals responsible for these corporate actions are protected from liability by the corporate veil. The "cramdown" provisions of subchapter V entail that, although claims will not necessarily be paid in full, the original culpable owners may retain ownership. *See Cleary Packaging*, 36 F.4th at 517. This is markedly different from the "absolute priority" rule, which entails that the only way culpable corporate beneficiaries could retain interest in the reorganized corporation is if all injured parties received their just deserts. *See* 11 U.S.C. § 1129(b). Further, Respondent's reading creates a perverse incentive for eligible corporate debtors to seek involuntary plans of reorganization. *See Cleary Packaging*, 36 F.4th at 517 (To make a distinction between individuals and corporations . . . would create create perverse incentives.") Outside of the subchapter V cramdown, corporate debtors in chapter 11 are barred from discharging certain forms of debt. *See* 11 U.S.C. § 1141(d)(6). Respondent's reading would grant a corporate debtor a complete discharge. Therefore, corporations would be incentivized to put forward plans which will not receive creditor report, in order to proceed under the cramdown rules and receive a complete discharge. This result conflicts with the policies of bankruptcy.

Applying section 523(a) non-discharge provisions to corporate debtors is in accord with bankruptcy policy favoring equality among similarly situated creditors. *See Howard Delivery Serv., Inc. v. Zurich Am. Ins. Co.*, 547 U.S. 651, 667 (2006) ("[W]e are guided in reaching our decision by the equal distribution objective underlying the Bankruptcy Code."). Rendering the kinds of debts listed in section 523(a) non-dischargeable does not reduce the "funds available to pay other identical tort claimants," as the lower court claims. R. at 22. On the contrary, the fact that these "identical tort claimants" do not have non-dischargeable claims makes clear that their claims are, in fact, not identical. Rather, their tort claims are not derived from the especially culpable actions identified by Congress and reflected in the kinds of debts listed in section 523(a). Applying section 523(a) to corporate debtors ensures that all similarly situated creditors with non-dischargeable debts receive payment on their claims in full, or the same portion of them. Therefore, Petitioners reading of section 1192 is in accord with creditor equality, as well as the policies of the Bankruptcy Code as a whole.

CONCLUSION

The Bankruptcy Code balances the need to provide carefully tailored benefits to debtors and equitable distributions to creditors. Reversing the courts below ensures these mechanisms are served without providing overly generous windfalls to culpable debtors and solvent third parties at the expense of creditors and other third-party claimants. For the foregoing reasons, we ask that the Court REVERSE.

APPENDIX

11 U.S.C. § 523 Exceptions to discharge

(a) A discharge under section 727, 1141, 1192, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt--

(1) for a tax or a customs duty—

(A) of the kind and for the periods specified in section 507(a)(3) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;

(B) with respect to which a return, or equivalent report or notice, if required--

(i) was not filed or given; or

(ii) was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or

(C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by--

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

(B) use of a statement in writing--

(i) that is materially false;

(ii) respecting the debtor's or an insider's financial condition;

(iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

(iv) that the debtor caused to be made or published with intent to deceive; or

(C)(i) for purposes of subparagraph (A)--

(I) consumer debts owed to a single creditor and aggregating more than $800 [originally "$500", adjusted effective April 1, 2022] for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and

(II) cash advances aggregating more than $1,100 [originally "$750", adjusted effective April 1, 2022] that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and

(ii) for purposes of this subparagraph--

(I) the terms "consumer", "credit", and "open end credit plan" have the same meanings as in section 103 of the Truth in Lending Act; and

(II) the term "luxury goods or services" does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor;

(3) neither listed nor scheduled under section 521(a)(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit--

(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request;

(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;

(5) for a domestic support obligation;

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity.

---

11 U.S.C. § 524 Effect of discharge

(a) A discharge in a case under this title--

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1192, 1228, or 1328 of this title, whether or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1192, 1228(a)(1), or 1328(a)(1), or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

(b) Subsection (a)(3) of this section does not apply if--

(1)(A) the debtor's spouse is a debtor in a case under this title, or a bankrupt or a debtor in a case under the Bankruptcy Act, commenced within six years of the date of the filing of the petition in the case concerning the debtor; and

(B) the court does not grant the debtor's spouse a discharge in such case concerning the debtor's spouse; or

(2)(A) the court would not grant the debtor's spouse a discharge in a case under chapter 7 of this title concerning such spouse commenced on the date of the filing of the petition in the case concerning the debtor; and

(B) a determination that the court would not so grant such discharge is made by the bankruptcy court within the time and in the manner provided for a determination under section 727 of this title of whether a debtor is granted a discharge.

(c) An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, only if--

(1) such agreement was made before the granting of the discharge under section 727, 1141, 1192, 1228, or 1328 of this title;

(2) the debtor received the disclosures described in subsection (k) at or before the time at which the debtor signed the agreement;

(3) such agreement has been filed with the court and, if applicable, accompanied by a declaration or an affidavit of the attorney that represented the debtor during the course of negotiating an agreement under this subsection, which states that--

(A) such agreement represents a fully informed and voluntary agreement by the debtor;

(B) such agreement does not impose an undue hardship on the debtor or a dependent of the debtor; and

(C) the attorney fully advised the debtor of the legal effect and consequences of--

(i) an agreement of the kind specified in this subsection; and

(ii) any default under such an agreement;

(4) the debtor has not rescinded such agreement at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim;

(5) the provisions of subsection (d) of this section have been complied with; and

(6)(A) in a case concerning an individual who was not represented by an attorney during the course of negotiating an agreement under this subsection, the court approves such agreement as--

(i) not imposing an undue hardship on the debtor or a dependent of the debtor; and

(ii) in the best interest of the debtor.

(B) Subparagraph (A) shall not apply to the extent that such debt is a consumer debt secured by real property.

(d) In a case concerning an individual, when the court has determined whether to grant or not to grant a discharge under section 727, 1141, 1192, 1228, or 1328 of this title, the court may hold a hearing at which the debtor shall appear in person. At any such hearing, the court shall inform the debtor that a discharge has been granted or the reason why a discharge has not been granted. If a discharge has been granted and if the debtor desires to make an agreement of the kind specified in subsection (c) of this section and was not represented by an attorney during the course of negotiating such agreement, then the court shall hold a hearing at which the debtor shall appear in person and at such hearing the court shall--

(1) inform the debtor--

(A) that such an agreement is not required under this title, under nonbankruptcy law, or under any agreement not made in accordance with the provisions of subsection (c) of this section; and

(B) of the legal effect and consequences of--

(i) an agreement of the kind specified in subsection (c) of this section; and

(ii) a default under such an agreement; and

(2) determine whether the agreement that the debtor desires to make complies with the requirements of subsection (c)(6) of this section, if the consideration for such agreement is based in whole or in part on a consumer debt that is not secured by real property of the debtor.

(e) Except as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.

(f) Nothing contained in subsection (c) or (d) of this section prevents a debtor from voluntarily repaying any debt.

(g)(1)(A) After notice and hearing, a court that enters an order confirming a plan of reorganization under chapter 11 may issue, in connection with such order, an injunction in accordance with this subsection to supplement the injunctive effect of a discharge under this section.

(B) An injunction may be issued under subparagraph (A) to enjoin entities from taking legal action for the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery with respect to any claim or demand that, under a plan of reorganization, is to be paid in whole or in part by a trust described in paragraph (2)(B)(i), except such legal actions as are expressly allowed by the injunction, the confirmation order, or the plan of reorganization.

(2)(A) Subject to subsection (h), if the requirements of subparagraph (B) are met at the time an injunction described in paragraph (1) is entered, then after entry of such injunction, any proceeding that involves the validity, application, construction, or modification of such injunction, or of this subsection with respect to such injunction, may be commenced only in the district court in which such injunction was entered, and such court shall have exclusive jurisdiction over any such proceeding without regard to the amount in controversy.

(B) The requirements of this subparagraph are that--

(i) the injunction is to be implemented in connection with a trust that, pursuant to the plan of reorganization--

(I) is to assume the liabilities of a debtor which at the time of entry of the order for relief has been named as a defendant in personal injury, wrongful death, or property-damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products;

(II) is to be funded in whole or in part by the securities of 1 or more debtors involved in such plan and by the obligation of such debtor or debtors to make future payments, including dividends;

(III) is to own, or by the exercise of rights granted under such plan would be entitled to own if specified contingencies occur, a majority of the voting shares of--

(aa) each such debtor;

(bb) the parent corporation of each such debtor; or

(cc) a subsidiary of each such debtor that is also a debtor; and

(IV) is to use its assets or income to pay claims and demands; and

(ii) subject to subsection (h), the court determines that--

(I) the debtor is likely to be subject to substantial future demands for payment arising out of the same or similar conduct or events that gave rise to the claims that are addressed by the injunction;

(II) the actual amounts, numbers, and timing of such future demands cannot be determined;

(III) pursuit of such demands outside the procedures prescribed by such plan is likely to threaten the plan's purpose to deal equitably with claims and future demands;

(IV) as part of the process of seeking confirmation of such plan--

(aa) the terms of the injunction proposed to be issued under paragraph (1)(A), including any provisions barring actions against third parties pursuant to paragraph (4)(A), are set out in such plan and in any disclosure statement supporting the plan; and

(bb) a separate class or classes of the claimants whose claims are to be addressed by a trust described in clause (i) is established and votes, by at least 75 percent of those voting, in favor of the plan; and

(V) subject to subsection (h), pursuant to court orders or otherwise, the trust will operate through mechanisms such as structured, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of present claims and future demands, or other comparable mechanisms, that provide reasonable assurance that the trust will value, and be in a financial position to pay, present claims and future demands that involve similar claims in substantially the same manner.

(3)(A) If the requirements of paragraph (2)(B) are met and the order confirming the plan of reorganization was issued or affirmed by the district court that has jurisdiction over the reorganization case, then after the time for appeal of the order that issues or affirms the plan--

(i) the injunction shall be valid and enforceable and may not be revoked or modified by any court except through appeal in accordance with paragraph (6);

(ii) no entity that pursuant to such plan or thereafter becomes a direct or indirect transferee of, or successor to any assets of, a debtor or trust that is the subject of the injunction shall be liable with respect to any claim or demand made against such entity by reason of its becoming such a transferee or successor; and

(iii) no entity that pursuant to such plan or thereafter makes a loan to such a debtor or trust or to such a successor or transferee shall, by reason of making the loan, be liable with respect to any claim or demand made against such entity, nor shall any pledge of assets made in connection with such a loan be upset or impaired for that reason;

(B) Subparagraph (A) shall not be construed to--

(i) imply that an entity described in subparagraph (A)(ii) or (iii) would, if this paragraph were not applicable, necessarily be liable to any entity by reason of any of the acts described in subparagraph (A);

(ii) relieve any such entity of the duty to comply with, or of liability under, any Federal or State law regarding the making of a fraudulent conveyance in a transaction described in subparagraph (A)(ii) or (iii); or

(iii) relieve a debtor of the debtor's obligation to comply with the terms of the plan of reorganization, or affect the power of the court to exercise its authority under sections 1141 and 1142 to compel the debtor to do so.

(4)(A)(i) Subject to subparagraph (B), an injunction described in paragraph (1) shall be valid and enforceable against all entities that it addresses.

(ii) Notwithstanding the provisions of section 524(e), such an injunction may bar any action directed against a third party who is identifiable from the terms of such injunction (by name or as part of an identifiable group) and is alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor to the extent such alleged liability of such third party arises by reason of--

(I) the third party's ownership of a financial interest in the debtor, a past or present affiliate of the debtor, or a predecessor in interest of the debtor;

(II) the third party's involvement in the management of the debtor or a predecessor in interest of the debtor, or service as an officer, director or employee of the debtor or a related party;

(III) the third party's provision of insurance to the debtor or a related party; or

(IV) the third party's involvement in a transaction changing the corporate structure, or in a loan or other financial transaction affecting the financial condition, of the debtor or a related party, including but not limited to--

(aa) involvement in providing financing (debt or equity), or advice to an entity involved in such a transaction; or

(bb) acquiring or selling a financial interest in an entity as part of such a transaction.

---

11 U.S.C. § 1123 Contents of plan

(a) Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall--

(1) designate, subject to section 1122 of this title, classes of claims, other than claims of a kind specified in section 507(a)(2), 507(a)(3), or 507(a)(8) of this title, and classes of interests;
(2) specify any class of claims or interests that is not impaired under the plan;
(3) specify the treatment of any class of claims or interests that is impaired under the plan;
(4) provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest;
(5) provide adequate means for the plan's implementation, such as--
(A) retention by the debtor of all or any part of the property of the estate;
(B) transfer of all or any part of the property of the estate to one or more entities, whether organized before or after the confirmation of such plan;
(C) merger or consolidation of the debtor with one or more persons;
(D) sale of all or any part of the property of the estate, either subject to or free of any lien, or the distribution of all or any part of the property of the estate among those having an interest in such property of the estate;
(E) satisfaction or modification of any lien;
(F) cancellation or modification of any indenture or similar instrument;
(G) curing or waiving of any default;
(H) extension of a maturity date or a change in an interest rate or other term of outstanding securities;
(I) amendment of the debtor's charter; or
(J) issuance of securities of the debtor, or of any entity referred to in subparagraph (B) or **(C)** of this paragraph, for cash, for property, for existing securities, or in exchange for claims or interests, or for any other appropriate purpose;
(6) provide for the inclusion in the charter of the debtor, if the debtor is a corporation, or of any corporation referred to in paragraph (5)(B) or (5)(C) of this subsection, of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends;
(7) contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee; and
(8) in a case in which the debtor is an individual, provide for the payment to creditors under the plan of all or such portion of earnings from personal services performed by the debtor after the commencement of the case or other future income of the debtor as is necessary for the execution of the plan.
(b) Subject to subsection (a) of this section, a plan may--
(1) impair or leave unimpaired any class of claims, secured or unsecured, or of interests;
(2) subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;
(3) provide for--

(A) the settlement or adjustment of any claim or interest belonging to the debtor or to the estate; or

(B) the retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose, of any such claim or interest;

(4) provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests;

(5) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims; and

(6) include any other appropriate provision not inconsistent with the applicable provisions of this title.

(c) In a case concerning an individual, a plan proposed by an entity other than the debtor may not provide for the use, sale, or lease of property exempted under section 522 of this title, unless the debtor consents to such use, sale, or lease.

(d) Notwithstanding subsection (a) of this section and sections 506(b), 1129(a)(7), and 1129(b) of this title, if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

---

11 U.S.C. § 1192 Discharge

If the plan of the debtor is confirmed under section 1191(b) of this title, as soon as practicable after completion by the debtor of all payments due within the first 3 years of the plan, or such longer period not to exceed 5 years as the court may fix, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided in section 1141(d)(1)(A) of this title, and all other debts allowed under section 503 of this title and provided for in the plan, except any debt--

(1) on which the last payment is due after the first 3 years of the plan, or such other time not to exceed 5 years fixed by the court; or

(2) of the kind specified in section 523(a) of this title.