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 WRIT OF CERTIORARI FROM THE
UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

BRIEF FOR THE RESPONDENT

JANUARY 29, 2023

TEAM NUMBER 14
COUNSEL FOR RESPONDENT

QUESTIONS PRESENTED

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

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

UNITED STATES SUPREME COURT CASES

UNITED STATES COURTS OF APPEAL CASES

BANKRUPTCY APPELLATE REVIEW PANEL CASES

DISTRICT COURT CASES

BANKRUPTCY COURT CASES

STATUTES

OTHER AUTHORITIES

OPINIONS BELOW

The Thirteenth Circuit Court of Appeals decision can be found at No. 21-0803 reprinted at R. 3. The bankruptcy court decided in favor of Debtor, Penny Lane Industries, Inc. Pursuant to 11 U.S.C. § 158(d), the parties requested certification of direct appeal to the Thirteenth Circuit, which affirmed in favor of Debtor, Penny Lane Industries, Inc.

STATEMENT OF JURISDICTION

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

STATUTES INVOLVED

This action requires statutory construction of certain provisions of Titles 11 and 28 of the United States Code. The statutes at issue are 11 U.S.C. §§ 101(13), 101(41); 11 U.S.C. § 105(a); 11 U.S.C. § 523(a); 11 U.S.C. §§ 524(e), 524(g); 11 U.S.C. §§ 1123(a)(5), 1123(b)(6); 11 U.S.C. § 1141(d); 11 U.S.C. § 1192; 28 U.S.C. § 157(b)(1); and 28 U.S.C. 1334. The relevant portions of these statutes are reproduced in the Appendix.

STATEMENT OF THE CASE

This appeal arises from Petitioner's attempt to torpedo the confirmation of a comprehensive plan of reorganization that is supported by an overwhelming majority of similarly situated creditors, based on her incorrect readings of multiple provisions of bankruptcy law. Petitioner's appeal seeks to upend decades of precedent and create an environment inundated with unpredictable litigation that would roil the bankruptcy courts' ability to provide predictable and equitable outcomes for entities reorganizing under chapter 11. Petitioner also seeks to reverse years of precedent allowing corporate debtors to discharge debts under Chapter 11.

I. Factual History

Penny Lane Industries, Inc. ("Debtor" or "Penny Lane") is a cornerstone of the City of Blackbird's manufacturing industry. R. at 4. For decades, Debtor has produced a variety of food containers at its facility on the banks of the Liverpool River. These products serve the needs of Strawberry Fields Food, Inc. ("Strawberry Fields"), Debtor's corporate parent and, itself, a large manufacturer of widely distributed food products. R. at 5.

Tragically, recent environmental studies discovered a contaminated groundwater plume in Blackbird, exposure to which is tied to heightened risk of sickness and death. R. at 5. Some members of the community believe Debtor's operations contributed to the pollution. R. at 5. These beliefs are not supported by any definitive evidence. R. at 5. In fact, both Federal and State authorities have yet to trace the groundwater plume to a source. R. at. 5. Further, dozens of manufacturing facilities owned by other businesses are located on the Liverpool River, where the pollutants were found. R. at. 6. The Debtor has repeatedly maintained that they complied with existing environmental laws and regulations. R. at. 6. Regardless, a group of affected citizens, including Petitioner Eleanor Rigby, decided to file litigation against Debtor alleging Debtor and

Strawberry Fields's actions contributed to their injuries. R. at 5. Both Debtor and Strawberry Fields vehemently deny any wrongdoing and no court has yet to find either entity liable. R. at 6.

Faced with a mountain of litigation, Debtor decided to seek the protections of the Bankruptcy Code. R. at 6. The overwhelming majority of the claims against the Debtor are unliquidated tort claims—totaling approximately $400 million in damages. R. at 6. Stakeholders—including Petitioner—joined together for extended negotiations, which resulted in a comprehensive plan of reorganization ("the Plan"). R. at 8. The Plan contained several provisions, including the creation of a creditor's trust funded, in part, by five years of Debtor's net income. R. at 8. Strawberry Fields also agreed to contribute $100 million to the creditor's trust. R. at 8. Strawberry Fields requested the inclusion of a provision releasing any claims against it related to Debtor's pre-petition conduct. R. at 8. Instead, the claims would be directed to the creditor's trust. R. at 8. These releases buttressed Strawberry Fields's intent to provide considerable funding to the creditor's trust. R. at 8.

Nearly every creditor—over 95%—voted to approve the plan. R. at 8. Yet, Petitioner and one secured creditor refused to accept the Plan. R. at 9. Petitioner The court found however, that the Plan's proposed distribution would allow creditors to receive more than if the Debtor had merely been liquidated under chapter 7. R. at 10.

II. Procedural History

The bankruptcy court held a four-day confirmation hearing whereafter it approved the Plan over Petitioner's objections, both of which remain at issue in this appeal. First, the court decided that although non-consensual third-party releases should only be used in rare instances, the facts of this case met those strict requirements. R. at 10. The court based this decision on a finding that the creditor's trust provided the best opportunity for victims to be made whole through monetary

compensation. R. at 10. The bankruptcy court determined Strawberry Fields's $100 million contribution exceeded its likely exposure from the individual litigation. In approving the releases, the bankruptcy court also determined there were no other reasonable means to achieve the results of the Plan. R. at 10. Second, the bankruptcy court rejected Petitioner's argument that Penny Lane's debts were non-dischargeable and ruled that section 523(a) applies only to debtors who are individuals. R. at 4.

Petitioner timely appealed both rulings of the bankruptcy court. R. at 11. The parties agreed to request certification of direct appeal to the Thirteenth Circuit, which affirmed the bankruptcy court's rulings on both issues. R. at 11.

STANDARD OF REVIEW

The facts in this case are undisputed. R. at 11. The Thirteenth Circuit's ruling that third-party releases are permissible and that 11 U.S.C. § 523 only applies to individual debtors under 11 U.S.C. § 1192 presents only questions of law. Questions of law, like these, are reviewed de novo. *Pierce v. Underwood*, 487 U.S. 552, 558 (1988).

SUMMARY OF THE ARGUMENT

The Thirteenth Circuit correctly affirmed the bankruptcy court's actions below when it held, first that the bankruptcy court possessed the constitutional and statutory authority to confirm the Plan, which included non-consensual third-party releases, and second, that the bankruptcy court rightly discharged Penny Lane's debt pursuant to section 1192 because section 523(a)'s list of exemptions from discharge does not apply to corporate debtors.

Petitioner's appeal attempts to circumvent the rightful approval of the Plan and allow her the opportunity to litigate her individual claims against both Debtor and Strawberry Fields. If this Court reverses the Thirteenth Circuit's careful consideration of the third-party release issue,

Petitioner will embroil Debtor and Strawberry Fields in expensive, protracted litigation. Worse, Petitioner does not even dispute this litigation would likely result in her receiving *less* compensation than the creditor's trust would provide. R. at 11.

A reversal will not just negatively affect the present parties. Reversing the Thirteenth Circuit will create an open season of costly litigation across the bankruptcy ecosystem and upset decades of precedent in nearly every judicial circuit in the country.

Petitioner's appeal is not just wrong based on its intended effects, it is wrong on the law. A plain reading of the Bankruptcy Code demonstrates that bankruptcy courts possess the authority to release third parties from liability as part of a reorganization plan. It is well-established that bankruptcy courts possess significant equitable authority to implement the Bankruptcy Code. These equitable powers are codified, in part, in 11 U.S.C. § 105(a), which, together with 11 U.S.C. § 1123(b)(6), create a textual formulation that endows bankruptcy courts with the authority for third-party releases.

The only possible limitation to the bankruptcy court's statutory power in the third-party release context is the existence of an express prohibition on the mechanism. No such prohibition exists. Instead, Petitioner insists this Court finds an implied bar on third-party releases couched in 11 U.S.C. § 524(e). However, the plain text does not support this reading. To be sure, a small minority of circuits have determined section 524(e) does act to prevent third-party releases; however, Respondent believes these decisions were wrongly decided. The better reading—one that allows third-party releases in limited circumstances—is rooted in the ordinary meaning of the text, contextual understandings of the provision within the Code, and rich legislative history.

Petitioner also wrongly suggests that the bankruptcy court lacked constitutional jurisdiction over the third-party claims. This argument relies on a misreading of both statutory text and this

Court's previous decision previous decision in *Stern v. Marshall*. Bankruptcy courts draw their jurisdiction from Congress's statutory mandate. That mandate unequivocally gives bankruptcy courts jurisdiction over "core" matters, including the confirmation of reorganization plans.

Further, the difference between *Stern* claims and third-party releases could not be clearer. *Stern* only prohibits a bankruptcy court from adjudicating certain claims on the merits. The release of the claims in question here did not proport to offer any judgment on their merits, whatsoever. Nothing prevented the release's inclusion because the Plan merely channeled the creditor's recovery to the trust *en masse*.

Stern's narrow decision is further inapplicable to the released claims because they comprised a central aspect of the Plan, therefore proving integral to the restructuring of the debtor-creditor relationship. Tens of thousands of plaintiff advanced claims identical to the Petitioner. These lawsuits contributed directly to Debtor's need for bankruptcy. The release of the claims provided Strawberry Fields with sufficient assurance that its contribution to the creditor's trust would include safety from equally costly litigation. Without the releases the entire Plan would crumble. It is incontrovertible that the restructuring of the debtor-credit relationship hinged on the third-party releases being part of the plan.

This Court must also affirm the Thirteenth Circuit's determination that Penny Lane's debt is dischargeable under 11 U.S.C. § 1192 given the plain language, the context, and the legislative history of subchapter V. A plain reading approach to section 1192 clearly allows for the discharge of all debts, for both individual and corporate debtors, meeting the requirements. A plain reading approach to section 1192(2)'s reference to section 523 demonstrates that only individual debtors may have non-dischargeable debts under the provision. Additionally, section 523 was modified

when subchapter V was created to incorporate section 1192 into the introductory language. To ignore this amendment as Petitioner does, would result in a superfluous and redundant reading.

Second, subchapter V was placed within chapter 11 and thus when read consistently with Chapter 11 precedent, this Court must rule for the Respondent. A long history of precedent exists preventing section 523 from applying to corporate debtors filling under Chapter 11.

Finally, subchapter V was created by Congress for the purpose of easing the burden on small businesses filing for bankruptcy. The Bankruptcy Code itself was designed to allow for debtors to have the opportunity to have their debts easily discharged. By reading sections 1192 and 523 in any other manner, other than rejecting the applicability of section 523 to corporate debtors, would result in the destruction of subchapter V as it would prevent small businesses from having their debts discharged.

ARGUMENT

I. THE BANKRUPTCY COURT'S RELEASE OF THIRD-PARTY CLAIMS DID NOT EXCEED ITS STATUTORY AND CONSTITUTIONAL AUTHORITY.

The Thirteenth Circuit correctly determined that the bankruptcy code confers broad equitable powers to bankruptcy courts. R. at 11; *Pepper v. Litton*, 308 U.S. 295, 304 (1939) ("[bankruptcy courts] are essentially courts of equity, and their proceedings inherently proceedings of equity."). These equitable powers rightfully extend to third-party claims against non-debtors in mass tort scenarios. This determination conforms with decades of precedent in other circuits and solidifies the traditional understanding that bankruptcy courts possess the ability to affect the rights of debtors and creditors. *See e.g.*, *SE Prop. Holdings, LLC v. Seaside Eng'g & Surveying, Inc. (In re Seaside Eng'g & Surveying, Inc.)*, 780 F.3d 1070, 1077–78 (11th Cir. 2015); *Airadem Commc'n, Inc. v. F.C.C.(In re Airadem Commc'n, Inc.)*, 519 F.3d 640, 655–57 (2d Cir. 2008); *In re Dow*

Corning Corp., 280 F.3d 648, 658 (2d Cir. 2002); *In re Drexel Burnham Lambert Grp.*, 960 F.2d 285, 293 (2d Cir. 1992).

Further, Petitioner incorrectly argues that the bankruptcy court lacked constitutional authority to confirm the Plan's third-party releases. Third-party releases are regularly included in comprehensive bankruptcy reorganizations because, time-and-time again, courts recognize that bankruptcy court jurisdiction extends to matters that affect the bankruptcy process. *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 (1995); *GAF Holdings, LLC v. Rinaldi (In re Farmland Indus., Inc.)*, 567 F.3d 1010, 1019 (8th Cir. 2009); *In re Dow Corning Corp.*, 280 F.3d at 488–90; *In re Boy Scouts of Am. & Del. BSA, LLC*, 642 B.R. 504, 588–90 (Bankr. D. Del. 2022).

A. A plain reading of the Bankruptcy Code grants broad equitable powers to the Bankruptcy Court, including the ability to release claims against non-debtors as part of a comprehensive Chapter 11 plan of reorganization.

The Court's analysis of the statutory authority supporting third-party releases, as with any question involving the bankruptcy code, "start[s] with the text." *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1661 (2019). If the Court finds no textual ambiguity, its review is finished. *Conn. Nat. Bank v. Germain*, 503 U.S. 249, 254 (1992) ("When the words of a statute are unambiguous, then, . . . 'judicial inquiry is complete'") (citations omitted). Thus, if a plain reading of the bankruptcy code authorizes third-party releases, the Court need not search further.

1. Sections 105(a) and 1123(b)(6) plainly authorize bankruptcy courts to include third-party releases in reorganization plans.

A non-consensual release of third-party claims against a non-debtor falls within the bounds of section 105(a)'s wide grant of authority. Section 105(a) permits the bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Code]." 11 U.S.C. § 105(a). This provision encapsulates the bankruptcy court's "broad authority" to exercise equitable powers during plan confirmations. *United States. v. Energy Res. Co., Inc.*,

495 U.S. 545, 549 (1990). Of course, the extent of these powers exists only within the confines of the Bankruptcy Code. *Law v. Siegel*, 571 U.S. 415 (2014) ("[A] statute's general permission to take actions of a certain type must yield to a specific prohibition found elsewhere."). Nevertheless, if the bankruptcy court acts within these boundaries, its equitable powers are "broad." *Energy Res. Co., Inc.*, 495 U.S. at 549.

Additionally, multiple provisions within 11 U.S.C. § 1123 provide further support for the bankruptcy court's authority to include third-party releases in the Plan. Section 1123(a)(5) states "a plan *shall* provide adequate means for implementation." 11 U.S.C. § 1123(a)(5) (emphasis added). The use of "shall" "normally creates an obligation impervious to judicial discretion." *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998). Accordingly, a plain reading of this statute demonstrates bankruptcy courts are not merely permitted, but *required*, to ensure plans are implemented. Therefore, section 1123(a)(5) indicates that if the bankruptcy court found the third-party releases were an "adequate means" for plan implementation, the statute requires their inclusion. In fact, the bankruptcy court found exactly that. The bankruptcy court found that other than approval of the releases, "there existed no other reasonably conceivable means to achieve the result accomplished by the plan." R. at 10.

Section 1123(a)(5) also provides a non-exhaustive list of actions that constitute "adequate means." 11 U.S.C. § 1123(a)(5)(A–J). Although third-party releases are not explicitly included in this list, the omission of third-party releases from section 1123(a)(5) does not facially indicate its exclusion from the definition. Instead, the use of the term "such as" within the statute signifies otherwise. *See Bragdon v. Abbott*, 524 U.S. 624, 639 (1998) ("As the use of the term 'such as' confirms, the list is illustrative, not exhaustive."). Section 1123(a)(5) merely provides an illustrative list of adequate means, thus, the use of third-party releases is permitted.

Further, the permissive structure of section 1123(b)(6) indicates that third-party releases operate fully within the guardrails of the bankruptcy code. Section 1123(b)(6) states "a plan may . . . include any other appropriate provision not inconsistent with the applicable provisions of this title." 11 U.S.C. § 1123(b)(6). The Court has recognized sections 1126(b)(6) and 105(a) work together to create "residual authority to confirm reorganization plans" that are not "explicitly authorize[d]." *Energy Res. Co., Inc.*, 495 U.S. at 549 (holding that the residual authority of bankruptcy courts extends to altering the rights of third parties). Put simply, if the bankruptcy court's action is "not inconsistent" with other parts of the bankruptcy code, it may make use of its "broad authority" under section 105(a).

Determining whether third-party releases are "not inconsistent" with other provisions of the Bankruptcy Code does not require the Court to wade into uncharted waters. The Sixth Circuit has already decided that "enjoining claims against a non-debtor so as to not defeat reorganization is consistent with the bankruptcy court's primary function." *In re Dow Corning Corp.*, 280 F.3d at 656. Nor should this Court strain to reach this conclusion when faced with the double negative "not inconsistent" contained in the text. *See NoDak Bancorporation v. Clarke*, 998 F.2d 1416, 1419 (8th Cir. 1993) ("It is significant that the statutory language uses a double negative, allowing any type of merger agreement 'not inconsistent with this subchapter.' The specific type of merger seeking to be approved therefore *need not be explicitly allowed by this section; it simply must not be inconsistent with the provisions of the statute*.") (emphasis added).

Congress has included standalone uses of the word "consistent" across the bankruptcy code. *See* 11 U.SC. § 1123(a)(7) ("a plan shall . . . contain only provisions that are *consistent with* the interests of the creditors . . . .") (emphasis added); 11 U.S.C. § 1129(a)(5)(ii) (using "consistent with"); 11 U.S.C. §§ 1113(d)(3), 1114(g)(3) (same). These additions are significant because

"[w]hen [the Court is] engaged in the business of interpreting statutes [it] presume[s] differences in language . . . convey differences in meaning." *Henson v. Santander Consumer USA, Inc.*, 137 S. Ct. 1718, 1723 (2017). Accordingly, the use of "consistent" elsewhere guarantees that the term "not inconsistent" acquires its own meaning; a meaning that—based on its plain reading—must be more expansive than "consistent."

The *Energy Resources* court reached this same conclusion when it considered the "broad authority" conveyed by section 1123(b)(6). There, the Court allowed a reorganization plan that, if implemented, would have relieved non-debtor "responsible parties" of certain tax liabilities, over the IRS's objection. *Energy Res. Co., Inc.*, 495 U.S. at 547. The Court clearly articulated that a bankruptcy court adjusting the rights of a third-party "did not transgress the limits" of its statutory power because it was not inconsistent with other provisions. *Id.* at 551. In the face of the clear precedent that "not inconsistent" should be read expansively, this Court must affirm the bankruptcy court's release of third-party claims unless it is expressly prohibited by the Code.

2. No provision of the bankruptcy code prohibits third-party releases.

The Bankruptcy Code does not contain any express prohibition of third-party releases. Petitioner implores the Court to read a prohibition of third-party releases into the code via 11 U.S.C. § 524(e), an unrelated debt discharge savings clause. R. at 15. Unfortunately for Petitioner, a plain reading of the text and ample legislative history reveal her interpretation is wrong. *See In re Seaside Eng'g & Surveying, Inc.*, 780 F.3d at 1077–78 (providing survey of circuits that have considered section 524(e) in the context of third-party releases).

a. Section 524(e) cannot limit third-party releases because it is not applicable to third-party releases.

As an initial matter, section 524(e) is not relevant to third-party releases, and therefore cannot be read in tandem with section 1123(b)(6) to form a textual prohibition. The limitations

contemplated by section 1123(b)(6) extend only as far as Code provisions that are "applicable" to the plan. 11 U.S.C. § 1123(b)(6). "[T]he Supreme Court, interpreting a different section of the Code, has described 'applicable' as meaning something different from 'all'; it requires an analysis of context and typically means 'appropriate, relevant, suitable, or fit.'" *Mass. Dep't of Revenue v. Shek (In re Shek)*, 947 F.3d 770, 776 (11th Cir. 2020) (citing *Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 69–70). Therefore, Petitioner's search for a magic proscription is limited from the jump. The only parts of the Bankruptcy Code that can provide a prohibition on third-party releases are those with some relevancy to the releases themselves. Section 524(e) does not satisfy this straightforward requirement.

Indeed, section 524(e) is facially unrelated to third-party releases. It states, in relevant part, "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). Section 524(e) is a savings clause. *In re Airadem Commc'n, Inc.*, 519 F.3d at 656. A savings clause is "an exemption from a statute's general operation." SUTHERLAND STATUTORY CONSTRUCTION § 47:12 (7th ed.). When forced to interpret a savings clause, the Court avoids broad readings because "it is a commonplace of statutory construction that the specific governs the general." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 556 U.S. 639, 645 (2012) (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992)). Therefore, the Court must read the provision as narrowly as possible.

In line with this narrow reading, courts have repeatedly held that a third-party release is not a discharge. *See MacArthur Co., v. Johns-Manville Corp.*, 837 F.2d 89, 91 (2d Cir. 1988) ("injunctive orders do not offer the umbrella protection of a discharge in bankruptcy."). In stark contrast to the exhaustive protections of a discharge, a third-party release precludes only those suits against the third-party that relate to the debtor. *Id.* Conforming to this reasoning, even courts

in anti-third-party release circuits recognize the distinction between discharges and third-party releases. *Feld v. Zale Corp. (In re Zale)*, 62 F.3d 746, 760 (5th Cir. 1995) (holding that a court enjoining lawsuits and channeling the claims into a creditor's trust did not discharge the non-debtor). Therefore, even if section 524(e) is read to prohibit discharges of third-party debt, this Court cannot read the provision to bear any relation to third-party releases. Consequently, section 524(e) is not "applicable" to the third-party releases contained in the plan, destroying Petitioner's attempt to invalidate the releases using section 1123(b)(6)'s limitations. She cannot simply expand the scope of a textual limit on discharges to achieve her desired outcome. *See United States v. Ron Pair Enter.*, 489 U.S. 235, 241 (1989) (holding that a specific reading was "mandated by the grammatical structure of the statute" because "[t]he language and punctation Congress used cannot be read in any other way").

b. The plain language of section 524(e) does not prohibit third-party releases.

Even if the court decides section 524(e) is relevant to third-party releases, it must still affirm the Thirteenth Circuit because the statute's plain language does not create an explicit bar to their use. Section 524(e)'s prohibition is descriptive, not mandatory. *See In re Airadem Commc'n, Inc.*, 519 F.3d at 656:

> If Congress meant to include such a limit, it would have used the mandatory terms 'shall' or 'will' rather than the definitional term 'does.' . . . [E]nsuring that the 'discharge of a debt of the debtor *shall* not affect the liability of another entity'—whether related to a debt or not.

This simple distinction is catastrophic for Petitioner. Even the most expansive reading of this statute—one that extends its reach to third-party claims—still contains no precise prohibition. Instead, section 524(e) only proports to prevent the extinguishing of third-party debt liability automatically upon a debtor's discharge. A discharge is "an involuntary release by operation of

law of asserted and non-asserted claims . . . against a [debtor]." *In re Dow Corning Corp.*, 255 B.R. 445, 476 (E.D. Mich. 2000). Because a discharge's effects occur by operation of law, section 524(e) exists solely to clarify that third-party liability is not likewise automatically terminated. The words of the statute do not prevent a bankruptcy court from otherwise approving a third-party release.

Section 524(e)'s purpose as a savings clause further supports this interpretation. Savings clauses are read so "the specific provision is construed as an exception to the general one." *RadLAX Gateway Hotel, LLC*, 556 U.S. at 645. Reading section 524(e) as an exception indicates there are *some* instances where a discharge could absolve non-debtor entities of liability for their debt. If no such instance existed, there would be no need for the savings clause at all, rending it extraneous. Such a reading would violate the "cardinal rule that, if possible, effect should be given to every clause and part of the statute." *Id.* (quoting *D. Ginsberg & Sons, Inc. v. Popkin*, 285 U.S. 204, 208 (1932)). The only plausible reading of section 524(e) is that does exactly what it says: it simply prevents the automatic dissolution of third-party liability for the debt itself based solely on a debtor's discharge.

Most circuits agree with this limited, specific interpretation of section 524(e)'s reach. There is simply no part of the provision that confines the bankruptcy court's ability to include third-party releases. *See In re Seaside Eng'g & Surveying, Inc.*, 780 F.3d at 1076 ("§ 524(e) says nothing about the authority of the bankruptcy court to release a non-debtor from a creditor's claim); *In re PWS Holding Corp.*, 228 F.3d 224, 245–47 (3d Cir. 2000); *Menard-Sanford v. Mabey (In re A.H. Robbins, Co., Inc.)*, 880 F.2d 694, 702 (4th Cir. 1989) ("[W]e do not construe § 524(e) so that it limits the equitable power of the bankruptcy court to enjoin the questioned suits").

c. The legislative history supports allowing third-party releases.

The legislative history provides even more evidence that section 524(e) does not preclude third-party releases. Petitioner points to section 524(g)—which outlines a specific framework for third-party releases in the asbestos context—as evidence that 524(e) must prohibit releases in other contexts. Petitioner argues that if section 524(e) broadly allows releases, Congress would have not needed to pass section 524(g). Yet, Petitioner's logic falls short for two reasons. First, although Congress did add an explicit *allowance* for asbestos-related third-party releases, "[524(g)] does not prohibit them in other contexts." *In re Boy Scouts of Am. & Del. BSA, LLC*, 642 B.R. at 594–95. Second, at the time of enactment, Congress included a rule of construction, which states, "Nothing in subsection (a) [the eventual 524(g)–(h)] shall be construed to modify, impair, or supersede any other authority the court has to issue injunctions in connection with an order confirming a plan of reorganization." Bankruptcy Reform Act, Pub. L. 103-394 § 111(b) (1994). In fact, regarding this rule of construction, the committee report specifically stated, "The Committee expresses no opinion as to how much authority a bankruptcy court may generally have under its traditional equitable authority to issue an enforceable injunction of this kind." H.R. Rep. 103-834, 103d Cong., 2nd Sess. 12; 140 Cong. Rec. H10765 (Oct. 4, 1994). Instead, Congress decided to leave that determination to the courts; courts which, as demonstrated above, have overwhelmingly determined bankruptcy courts do possess that authority.

d. Allowing third-party releases will not inundate every bankruptcy plan with similar mechanisms.

Permitting third-party releases in limited contexts is sound policy that conforms to the goals of the bankruptcy code. Often, as is the case here, the third-party releases are a cornerstone of the reorganization plan. R. at 10; *Behrmann v. Nat'l Heritage Found.*, 663 F.3d 704, 708 (4th Cir. 2011) ("the bankruptcy court found that the Release Provisions were . . . an 'essential means' of

implementing the Confirmed Plan"); *In re Seaside Eng'g & Surveying, Inc.*, 780 F.3d at 1080 ("The bankruptcy court found that the [third-party releases were] absolutely essential."). Failure to grant the "essential" releases in these cases would obliterate the plan of reorganization, an outcome that would shirk the "fundamental purpose" of Chapter 11, "prevent[ing] the debtor from going into liquidation." *NLRB v. Bildsico & Bildisco*, 465 U.S. 513, 528 (1984).

Affirming that bankruptcy courts have the authority to release third-party claims will not cause a flood of bankruptcy plans that utilize this mechanism. Pro-third-party release circuits already exercise care to ensure these types of releases are used only in exceptional circumstances. *See In re Dow Corning Corp.*, 280 F.3d at 658 (holding that third-party releases are only appropriate in "unusual circumstances" and creating a seven-factor test to determine the existence of those circumstances); *Behrmann v. Nat'l Heritage Found.*, 663 F.3d at 712 (adopting *Dow Corning* test); *In re Seaside Eng'g & Surveying, Inc.*, 780 F.3d at 1079 (same). Indeed, courts are not shy about blocking third-party releases when they are not needed. *See In re Continental Airlines*, 203 F.3d 203, 213–14 (3d Cir. 2000) (rejecting the plan's third-party releases because "[t]he hallmarks of permissible non-consensual releases—fairness, necessity to the reorganization, and specific factual findings to support these conclusions" were absent). This self-policing by courts provides a significant safeguard to abuse while avoiding the erosion of the "bankruptcy courts' broad equitable powers" that a per se bar grounded in section 524(e) would create. *Id.* at 208.

Lastly, the same statutory provisions that grant bankruptcy courts the authority to include third-party releases provide a safeguard to their misuse. Section 105(a), while conferring broad equitable powers, still limits the exercise of those powers to actions that are "necessary." 11 U.S.C. § 105(a). When the third-party releases are not found to be necessary to the plan's confirmation,

courts have rightfully rejected their inclusion. *In re Continental Airlines*, 203 F.3d at 214 ("the order . . . was not accompanied by any findings that the release was . . . necessary to the [] Debtors' reorganization."). The code, therefore, provides ample protections against releases that are detached from the fundamental purpose of the reorganization. As noted above, the third-party releases in this case are, indisputably, cornerstones of the Plan that fall within statutory limits. Allowing the releases here provides meaningful relief to an overwhelming majority of creditors and does not—as Petitioner would have this Court believe—wreak havoc upon bankruptcy proceedings.

B. The bankruptcy court's approval of non-consensual third-party releases did not run afoul of constitutional limits on its jurisdiction.

The founders granted Congress exclusive powers over bankruptcy in the Constitution. U.S. CONST. art.1 § 8. Congress, in turn, established bankruptcy courts in order to handle the lion's share of bankruptcy issues, under the authority of federal district courts. Therefore, bankruptcy courts derive their jurisdiction from Article I. *See U.S. Brass Corp. v. Traveler's Ins. Grp., Inc. (In re U.S. Brass Corp.)*, 301 F.3d 296, 303 (5th Cir. 2002) ("[T]he source of the bankruptcy court's [subject matter] jurisdiction is 28 U.S.C. §§ 1334 and 157."). Matters before a bankruptcy court are either "core" or "non-core." *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 670 (2015). A bankruptcy court may "hear and determine" core proceedings and, subsequently, "enter appropriate orders and judgments." *Id.* (citing 11 U.S.C. § 157(b)(1)).

This Court, in *Stern v. Marshall*, appeared to limit bankruptcy court jurisdiction because "Congress may not bypass Article III simply because a proceeding may have *some* bearing on a bankruptcy case." *Stern v. Marshall*, 564 U.S. 462, 499 (2011). Effectively, *Stern* prevents bankruptcy courts from "decid[ing] certain claims for which litigants are constitutionally entitled to an Article III adjudication." *Wellness Int'l Network, Ltd.*, 575 U.S. at 669. *Stern* thus mandates

that "the question is whether the action at issue stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process." *Stern*, 564 U.S. at 499. Therefore, third-party releases are constitutionally permissible if the releases are a "core" proceeding that "involve[] a matter integral to the restructuring of the debtor-creditor relationship." *In re Millennium Lab Holdings II, LLC*, 945 F.3d 126, 137 (3d Cir. 2019) (equating resolution in the claims allowance process with integral restructuring matters).

1. A plan including third-party releases is a "core" matter that does not overstep *Stern*'s boundaries because no adjudication on the merits occurs.

The bankruptcy code unambiguously affords bankruptcy courts "core" statutory authority to confirm reorganization plans. 28 U.S.C. § 157(b)(2)(L) ("Core proceedings include, but are not limited to . . . [,] confirmations of plans[.]"). Courts have also historically interpreted third-party releases that are included in the plan as "matter[s] integral to the restructuring of the debtor-creditor relationship." *In re Millennium Lab Holdings II, LLC*, 945 F.3d at 137; *LTL Mgmt., LLC v. New Mexico (In re LTL Management, LLC.)*, 645 B.R. 59 (Bankr. D. N.J. 2022); *In re Mallinckrodt PLC*, 639 B.R. 837, 866–68 (Bankr. D. Del, 2022). There is no dispute that the bankruptcy court in this case used its authority to confirm a plan. R. at 10.

Of course, *Stern* still indicates that whether a specific action is a statutorily "core" matter is not dispositive of the bankruptcy court's constitutional ability to adjudicate the claim to completion. *In re Millennium Lab Holdings II, LLC*, 945 F.3d at 482 ("In sum, *Stern* teaches that the exercise of 'core' statutory authority by the bankruptcy court can implicate the limits imposed by Article III"). Yet, *Stern* is not a roving mandate to invalidate a myriad of bankruptcy court actions. Instead, the *Stern* court took great care to explain its decision was "a narrow one." *Stern*, 564 U.S. at 502.

Regardless, *Stern*'s teachings are inapposite here. Ultimately, that case concerned the bankruptcy court's ability—acting with Congress's Article I powers—to "enter final judgment" on claims normally under the jurisdiction of Article III courts. *Stern*, 564 U.S. at 503. The violative judgment at issue in *Stern* occurred after a bench trial where the bankruptcy court adjudicated the counterclaims *on the merits*. *Id.* at 470. In contrast, third-party releases are not an adjudication on the merits. They are simply one aspect of the real matter before the court—a comprehensive plan of reorganization. *In re Charles St. Afr. Methodist Episcopal Church of Boston*, 499 B.R. 66, 99 (Bankr. E.D. Mass. 2013). Merely approving a plan "is not an adjudication of the various disputes it touches." *Id.*; *see also In re Kirwan Offices S.à.R.L*, 592 B.R. 489, 505 (Bankr. S.D.N.Y. 2018) *aff'd* 792 F. App'x 99 (2d Cir. 2019) ("At bottom, while an involuntary release may have the *effect* of a ruling on the merits, it is *not* a ruling on the merits—and thus operates on entirely different jurisdictional footing.") (emphasis in original).

Here, the bankruptcy court and the Thirteenth Circuit took great care to clarify that the release of Petitioner's claims did not constitute an adjudication on the merits. R. at 13. The facts here are clear, and the law is even clearer. The bankruptcy court did not issue *any* determination on the merits of Petitioner's claims. The court simply authorized the releases as just one element of a larger, comprehensive plan of reorganization.

2. Third-party releases do not violate *Stern* because they are integral to the restructuring of the debtor-creditor relationship.

Even if this Court finds that the releases were adjudications on the merits, it must still affirm the Thirteenth Circuit because the content of the bankruptcy court's action relates to the bankruptcy itself. *See In re Millennium Lab Holdings II, LLC*, 945 F.3d at 136 (holding *Stern* only prohibits bankruptcy courts from issuing final adjudications on core matters when the matters bear no relation to the bankruptcy). *Stern* concerned tortious interference claims asserted by the debtor

against a third-party during a protracted bankruptcy reorganization. *Stern*, 564 U.S. at 470. Although section 157(b)(2)(C) expressly deemed the counterclaims in *Stern* "core" matters, the Court decided the bankruptcy court lacked constitutional jurisdiction because the defamation and tortious interference claims asserted bore no relation to the purpose of a bankruptcy court—restructuring the debtor-creditor relationship. *Id.* at 487.

Petitioner attempts to expand the scope of *Stern* far beyond its rightful progeny by insisting that bankruptcy courts lose jurisdiction whenever the present matter could be adjudicated in an Article III court. This inaccurate reading of *Stern* misses a fundamental clarifying factor: a "core" matter that is integral to the restructuring of the debtor-creditor relationship remains firmly within the boundary of permissible bankruptcy jurisdiction. *See In re Millennium Lab Holdings II, Inc.*, 945 F.3d at 136 (holding that *Stern* only prohibits a bankruptcy court from exercising jurisdiction when the content of a "core" proceeding would not "necessarily be resolved in the claims allowance process.") (citing *Stern*, 564 U.S. at 497).

Petitioner's claims against Debtor and its parent company, Strawberry Fields, are undeniably integral to the restructuring of the debtor-creditor relationship. The waterfall of litigation identical to Petitioner's is the direct cause for debtor's invocation of Chapter 11 protections. R. at 6. Without Strawberry Fields's significant contribution to the creditor's trust, Debtor's reorganization plan would fail to provide the creditors with any substantive redress. R. at 10. The third-party releases are a crucial element of Strawberry Fields's contribution. Without the bankruptcy court's guarantee that potential litigants could not double dip their recovery from both the creditor's trust and secondary lawsuits against Strawberry Fields, no such creditor's trust would exist. *Id.* Without the creditor's trust, the entire plan would come crashing down, destroying the entire reorganization, and preventing *any* restructuring of the debtor-creditor relationship.

II. SECTION 523(A) DOES NOT APPLY TO A CORPORATE DEBTOR FILING BANKRUPTCY UNDER SECTION 1192.

A plain language reading of 11 U.S.C. § 1192 and §523(a), dictates that Respondent's debt must be discharged. The parties do not dispute that the Plan is non-consensual. R. at 8. Further, the bankruptcy court previously confirmed the Plan. R. at 10. Thus, since a confirmed non-consensual plan exists, this court must look to section 1192 to determine how Penny Lane's debt's will be discharged. Section 1192 states, in relevant part:

> "the court shall grant the debtor a discharge of all debts provided in section 1141(d)(1)(A) of this title… and provided for in the plan, except any debt…(2) of the kind specified in section 523(a) of this title."

11 U.S.C. § 1192. Further, section 523(a) states in its relevant sections: "A discharge under section 727, 1141, 1192, 1228(a), 1228(b), or 1327(b) of this title does not discharge an individual debtor from any debt…." 11 U.S.C. § 523(a). Petitioner wrongly concludes section 523(a)'s listed exemptions should limit the dischargeability of Penny Lane's debts under section 1192. Although subchapter V is a recent amendment to the Bankruptcy Code in 2019, courts have unanimously held that section 523(a) is inapplicable for corporate debtors under section 1192. *Avion Funding, LLC v. GFS Indus., LLC (In re GFS Indus., LLC)*, No. 22-50403-cag, 2022 WL 16858009, at *7 (Bankr. W.D. Tex. Nov. 10, 2022) ("The Bankruptcy courts deciding this issue have been unanimous in pointing out that the limiting language of § 523(a) is dispositive of the issue.") Thus, given section 1192's plain language, its statutory context, as well as its legislative history, the Court will find it indisputable that Penny Lane's debt is dischargeable.

A. The Plain Language of section 1192 demands that Penny Lane's debt is dischargeable.

To accurately interpret the meaning of the relevant sections of the Bankruptcy Code, "the Court must first look to the language of the relevant statute." *Catt v. Rtech Fabrications, LLC (In*

re Rtech Fabrications, LLC), 635 B.R. 559, 564 (Bankr. D. Idaho 2021) (quoting *Ransom v. MBNA Am. Bank* (*In re Ransom*), 380 B.R. 799, 806-07 (B.A.P. 9th Cir. 2008)). The Court looks to "the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Id.* (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). The Supreme Court has repeatedly stated that unless there is "clear evidence of a contrary legislative intention" the plain language of a statute shall govern interpretation. *United States v. Apfelbaum*, 445 U.S. 115, 121 (1980); *Maine v. Thiboutot*, 448 U.S. 1, 17 n.4 (1980) ("Ordinarily it is not necessary to look beyond the words of a statute, into the legislative history, in order to ascertain the meaning of the words used…") (quoting *TVA v. Hill*, 437 U.S. 153, 184, n.29 (1978)). Further, this Court must avoid an interpretation that violates the canon of surplusage. Courts that have previously heard this issue relied heavily on the principle "that every word in a statute must be given effect, so as to avoid rendering any language superfluous." *In re Rtech Fabrications, LLC*, 635 B.R. at 564; *In re GFS Indus., LLC,* 2022 WL 16858009, at *5; *Gaske v. Satellite Rest. Inc. (In re Satellite Rest. Inc.)*, 626 B.R. 871, 876 (Bankr. D. Md. 2021).

1. This Court must discharge Penny Lane's debt based on a plain reading of sections 1192 and 523.

Section 1192 contains several words previously defined in the Bankruptcy Code, and thus this Court must look to the defining provisions to interpret section 1192 accurately. *In re GFS Indus., LLC*, 2022 WL 16858009, at *3; *Cantwell Cleary Co., Inc. v. Cleary Packaging, LLC (In re Cleary Packaging, LLC)*, 36 F.4th 509, 514 (4th Cir. 2022). Although courts differ in the section they use to define "debtors" under section 1192, the discrepancy has no bearing on the outcome here.

In the case *In re GFS Industries, LLC* the court looked to the definition of "debtors" in section 101(13) to determine the meaning. *In re GFS Industries, LLC*, 2022 WL 16858009, at *7.

Under the Bankruptcy Code, the word "debtors" is defined as "persons or municipality concerning which a case under this title has been commenced." 11 U.S.C. § 101(13). Alternatively, the court in *In re Cleary Packaging* looked to section 1182(1) for the definition of "debtor." *In re Cleary Packaging LLC*, 36 F.4th at 514. Under section 1182(1) "debtor" means "a person engaged in commercial or business activities…that has aggregate noncontingent liquidated secured and unsecured debts…not more than $7,500,000." 11 U.S.C. § 1181(1).

Although the courts used two differing statutory definitions of "debtors," the determining factor of both statutes is the reference to "persons." Both courts used section 101(41), to define "persons." Accordingly, this Court should adopt the same definition of "persons." *In re Cleary Packaging, LLC*, 36 F.4th at 514; *In re GFS Industries, LLC*, 2022 WL 16858009, at *3. Importantly, section 101(41) defines "persons" as an "individual, partnership, and *corporation*." 11 U.S.C. § 101(41) (emphasis added). Therefore, given the undisputed definition of "persons", it is clear that the discharge language in section 1192 clearly references both individuals and corporations. In re GFS Industries, LLC, 2022 WL 16858009, at *3 ("Based on this language, it is evident that the term 'debtor' in 1192 encompasses corporations, not just individuals.").

a. 523(a) makes reference only to individual debtors in the introductory language

Petitioner's nonsensical argument that section 523 applies to corporate debtors flies in the face of the fundamental canon of construction that, "[u]nless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning." *BP Am. Prod. Co. v. Burton*, 549 U.S. 84, 91 (2006).

Section 523(a) specifically denotes "individual debtors" in its introductory language. As established above, the word "debtor" is given a statutory definition within the Code. However, "individual" is not defined. As a result, this Court must ascribe "individual" its ordinary meaning.

The Merriam-Webster defines "individual" as "a single human being as contrasted with a social group or institution." *Individual*, THE MERRIAM-WEBSTER DICTIONARY (2022). Therefore, given the dictionary definition of an "individual," when we look to the phrase "individual debtors," we must exclude the categories that are not being modified. As described above, since the word "debtor" expressly references both individual and corporate debtors, then when the word "individual" is placed in front of the word "debtor" in section 523(a), a subset of all debtors is being referenced. *In re Satellite Rest. Inc.*, 626 B.R. at 876 ("The language of Section 523(a) is clear and unambiguous that it applies only to individual debtors."). This subset of all debtors being referenced in section 523(a) are only those who are individuals and therefore since Penny Lane is a corporation, their debt must be discharged.

b. Section 523's amendment to include 1192 is meant to incorporate the provisions rather than expand 523's reach.

When Subchapter V was passed into law, section 523(a) was amended specifically to include a reference to section 1192. Section 523(a)'s introductory language currently states "A discharge under section 727, 1141, 1192, 1129(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt." 11 U.S.C. § 523(a) (emphasis added). A plain reading of every word of this newly amended section 523(a) indicates that the reference to section 1192 clearly limits section 1192 to the parameters of section 523(a). In re Satellite Restaurants *Inc.*, 626 B.R. at 876. ("Moreover, the reference to Section 1192 added to Section 523(a) by the SBRA must be given meaning, and the only reasonable meaning is that Congress intended to continue to limit application of Section 523(a) exceptions in Subchapter V case to individuals."). Since "every clause and word of a statute" must be given meaning when conducting statutory interpretation, "this Court must give meaning to the addition of the reference to Section 1192 in the introductory phrase of Section 523(a)." *Inhabitants of Montclair v. Ramsdell*, 107 U.S. 147,

152 (1883); *In re Satellite Restaurants Inc.*, 626 B.R. at 876. By explicitly listing and referencing section 1192 in the introductory paragraph of section 523(a), a plain reading of the statute demands that section 1192 does not expand the nondischargeable debts beyond what is allowed under section 523(a). Therefore, Penny Lane's debt must be discharged.

c. The Court must not read in "corporate debtors" in section 523(a), without express language.

Due to an absence of express language referring to corporate debtors in sections 1192(2) and 523(a), a plain reading of both sections indicates that the exceptions only apply to individual debtors. First, section 1192 does not explicitly contain a waiver stating that non-individual debtors are restricted from obtaining a discharge. See 11 U.S.C. § 1192. Rather, section 1192(2) remains silent and clearly states that the court must look to section 523(a) when applying the exceptions for non-dischargeable debts. Id. This is vastly different from section 727(a)(1), which clearly limits the discharge of debts for non-individuals. 11 U.S.C. § 727(a)(1) ("(a) the court shall grant the debtor a discharge, unless (1) the debtor is not an individual."). As such, due to a lack of language written into section 1192 which would limit the discharge of debts for non-individual debtors, corporate debts must be dischargeable under 1192. *In re GFS Industries, LLC*, 2022 WL 16858009, at *3 ("Because § 1192 does not contain any provisions that would preclude non-individual debtors from obtaining a discharge, the Court holds that the plain language of §1192 grants a corporate Subchapter V debtor of a discharge of debts provided the debtor meets the statutory requirements.").

Second, section 1192(2) clearly makes reference to all of section 523(a). Referencing all of section 523(a) includes incorporating the introductory language in section 523(a), which denotes individual debtors. 11 U.S.C. § 1192(2). If the statute had contained limiting language such as "by further refining the reference found in 1192(2) to '523(a)(1)-(19)'" then, we would

not be able to look to the introductory language of section 523(a). *In re Rtech Fabrications, LLC*, 635 B.R. at 565.

Other sections of the Bankruptcy Code had, in fact, limited the subsections of section 523(a) which were incorporated into statutes. For example, section 1141(d)(6) only included limited language of section 523. 11 U.S.C. § 1141(d)(6)(A) ("...of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a)."); *In re Cleary Packaging*, 36 F.4th at 516. However, unlike section 1141(d)(6), section 1192(2) does not restrict which portion of section 523(a) must be applied. *In re GFS Industries, LLC*, 2022 WL 16858009, at *4 ("This language is evidence that Congress knew, when it drafted § 1192(2), how to distinguish dischargeability based on the type of debtor.") Therefore, there is no credence to Petitioner's argument that section 1192(2) includes the phrase "debts of the kind specified in section 523(a)" allows for corporate debtors' debts to be nondischargeable. 11 U.S.C. § 1192(2). Petitioner's argument is moot.

As such, under the statutory cannon of surplusage, it would be incorrect to ignore the words in the introductory provision of section 523(a). Since statutory interpretation requires looking at each word in the statute, and section 1192 does not include the types of nondischargeable debts listed in 523(a)(1)-(19) but includes all of section 523(a), nondischargeable debts must only apply for individual debtors.

2. The context of section 1192 clearly supports discharging Penny Lane's debt.

If the court is not satisfied with the plain reading of the text, we then turn to the context. Where a statute remains "ambiguous in isolation," looking at the structure of the statute's context provides the clarity needed to provide an interpretation that is accurate and "compatible with the rest of the law." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd*, 484 U.S. 365, 371 (1988); *In re Ransom*, 380 B.R. at 807. Since subchapter V falls under chapter 11 of the

Bankruptcy Code, the "discharge provision must be interpreted consistent with chapter 11's overall statutory scheme." *In re Rtech Fabrications, LLC*, 635 B.R. at 565 (holding that section 523(a) does not apply to corporate debtors pursuing bankruptcy under section 1192 "is most consistent with the overall statutory scheme of the Bankruptcy Code's discharge provisions and chapter 11 as a whole.").

a. It is well-settled law that section 523 did not apply to Chapter 11 corporate debtors pre-Subchapter V.

Prior to the creation of subchapter V, it was "almost undebatable and universally held" that non-dischargeability exceptions listed in section 523 did not apply to corporate debtors as defined in Chapter 11. *Krueger v. Push & Pull Enter., Inc. (In re Push & Pull Enter., Inc.)*, 84 B.R. 546, 548 (Bankr. N.D. Ind. 1988); *In re Satellite Restaurants Inc.*, 626 B.R. at 876. Debtors who were non-individuals had "all-encompassing [discharge], and exceptions to discharge are[were] limited." *In re Rtech*, 635 B.R. at 563.

In *In re Spring Valley Farms, Inc.*, a pre-subchapter V case, the court stated that "[a] corporate debtor is not an individual debtor for the purposes of Section 523." *Spring Valley Farms, Inc. v. Keeling (In re Spring Valley Farms, Inc.)*, 863 F.2d 832, 834 (11th Cir. 1989) (holding that section 523 was not applicable where the defendants filed under Chapter 11 bankruptcy because the defendants were corporate debtors.). Further, the court in *Yamaha Motor Corp v. Shadco, Inc.* stated that applying section 523 to a corporate debtor filing bankruptcy under Chapter 11 would "render meaningless employment by Congress of the term 'individual'." *Yamaha Motor Corp. v. Shadco, Inc.*, 762 F.2d 668, 670 (8th Cir. 1985) (holding that section 523 exceptions did not apply to voluntary Chapter 11 bankruptcy petitions where the debtors were corporate) (citing *Delco Dev. Co. of Harrison Rd., Ltd. v. Kuempel Co. (In re Kuempel Co.)*, 14 B.R. 324, 325 (Bankr. S.D. Ohio 1981)). Thus "it is well-settled that Section 523 does not apply to corporate debtors" filing under

Chapter 11. *In re MF Glob. Holdings, Ltd.*, 2012 WL 734175, at *3 (Bankr. S.D.N.Y Mar. 6, 2012); *Garrie v. James L. Gray, Inc.*, 912 F.2d 808, 812 (5th Cir. 1990) ("the 'willful and malicious injury' exception to discharge, like all of the exceptions to discharge found in section 523(a), applies only to individual, not corporate, debtors.") (citing *Yamaha Motor Corp., U.S.A.*, 762 F.2d at 670.).

Given this long-standing precedent of corporate debtors being "immune to dischargeability actions under § 523(a)" and the absence of any intent to change such standards, it is likely that subchapter V was meant to conform to the pre-existing law. *In re GFS Industries*, 2022 WL 16858009, at *5. Subchapter V was not designed as a stand-alone chapter added to the Bankruptcy Code but rather a subchapter of Chapter 11. As such, this Court must respect the boundaries of Chapter 11 precedent and allow subchapter V to integrate without conflict into the existing chapter. *In re GFS Industries*, 2022 WL 16858009, at *5; *In re Satellite Rest. Inc.*, 626 B.R. at 876. The court *In re GFS Industries* unequivocally determined:

"It is much more likely, and confirmed by the language used in Subchapter V, that Congress intended to expand, not discontinue, the principle that Chapter 11 corporate debtors are not subject to § 523(a) complaints to determine dischargeability. Because Subchapter V is merely a subchapter to the broader Chapter 11, this is the required result."

In re GFS Indus., 2022 WL 16858009, at *13. Thus, given that under Chapter 11, section 523 does not apply to corporate debtors, this Court must carry this interpretation over into its analysis of subchapter V, and conclude that section 523's exceptions under section 1192(2) do not apply to corporate debtors.

b. Chapter 11 and Chapter 12 are categorically different.

Petitioner's attempt to include a Chapter 12 interpretation of section 523's exceptions is incorrect. "The nature and purpose of the discharge are different for corporate debtors, and those differences must, in this Court's opinion, be respected in Subchapter V." *Cantwell-Cleary Co., Inc. v. Cleary Packaging, LLC (In re Cleary Packaging, LLC)*, 630 B.R. 466, 476 (Bankr. D. Md. 2021).

Subchapter V encompasses a wide range of small business debtors that includes individual and corporate debtors, while chapter 12 was merely designed for "family farmers" and "family fisherman." 11 U.S.C. § 1201 *et. seq.* As a result, this Court must ignore any outlying similarities between Chapter 11 and Chapter 12 provisions and analyze sections 1192 and 523 purely through the Chapter 11 lens. *In re Cleary Packaging*, 630 B.R. at 472 (holding "that those chapter 12 cases are distinguishable from business cases under Subchapter V."). Given subchapter V's position in Chapter 11 of the Code and the Chapter 11 precedent, this court must discharge all of Penny Lane's debt under 1192.

c. Any other interpretation would render the sections 1192 and 523 superfluous.

The Supreme Court has explicitly stated that "where the statute's language is plain, the sole function of the courts–at least where the disposition required by the text is not absurd–is to enforce it according to its terms." *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004) (internal quotation omitted). Further, statutes should be interpreted such that "no part will be inoperative or superfluous, void or insignificant." *Hibbs v. Winn*, 542 U.S. 88, 101 (2004) (quoting STATUTES AND STATUTORY CONSTRUCTION § 46.06 (rev. 6th ed. 2000). When section 523(a) was amended to include 1192 in the introductory language, it clearly forced the statute to be read such that section 1192 does not allow for individual debtors who meet the requirement of section 523 to be discharged. Without

the amendment in section 523, the exception in section 1192(2) would allow for all debts that met the criteria of section 523(a) to be denied discharge. *In re Satellite Rest.*, 626 B.R. at 878. Petitioner's reading that section 523(a)'s cross-reference to section 1192 renders the statutes inoperative. *In re Satellite Rest.*, 626 B.R. at 878 ("This amendment would be superfluous if Congress did not intend to limit the § 523(a) exception to individuals."). This Court should not adopt such reading, which would make the words of the statute "superfluous, void or insignificant." *Hibbs*, 542 U.S. at 101. To avoid this redundancy, it is clear that section 1192(2) only allows for individual debtors' debts to be discharged.

B. The Legislative History Supports Discharging Penny Lane's Debts.

Only in the case where the language of a statute is unclear, should a court expand its horizons and look towards legislative history to interpret a statute. *Blum v. Stenson*, 465 U.S. 886, 897 (1986) ("Where, as here, resolution of a question of federal law turns on a statute and the intention of Congress, we look first to the statutory language and then to the legislative history if the statutory language is unclear."). If a statute's text is clear, there is no need to consider its legislative history. *See Toibb v Radloff*, 501 U.S. 157, 162 (1991). The Supreme Court has previously stated that legislative history "can never defeat unambiguous statutory text" and "is meant to clear up ambiguity, not create it." *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1749 (2020) (quoting *Milner v. Dep't of the Navy*, 562 U.S. 562, 574 (2011)); *see also NLRB v. SW Gen., Inc.*, 580 U.S. 288, 291 (2017) ("Because the text is clear, the Board's arguments about legislative history, purpose, and post-enactment practice need not be considered.") Nevertheless, even if this Court chooses to look beyond the plain language of the statute, the legislative history and purpose of subchapter V clearly indicate that all of the Respondent's debt must be discharged under section 1192.

1. Congressional silence in the legislative history proves that respondent's debt must be discharged.

Congress created subchapter V to help small businesses filing for bankruptcy. Subchapter V amended "aspects of a traditional chapter 11 case that arguably do not work well or efficiently for small businesses and individuals who meet the definition of 'debtors' set forth in section 1182." *Jennings v. Lapeer Aviation, Inc.* (*In re Lapeer Aviation, Inc*.), 2022 WL 1110072, at *3 (Bankr. E.D. Mich. Apr. 13, 2022); s*ee* 11 U.S.C. §§ 1182–1195. Congress made clear that the purpose of subchapter V is to "streamline the bankruptcy process by which small businesses debtors reorganize and rehabilitate their financial affairs." H.R. Rep. 116-171, 116th Cong., 1st Sess. 165; 124 Cong. Rec. H7217 (July 23, 2019). There is no indication that "the legislative history for Section 1192 supports the conclusion that Congress intended to expand the application of Section 523(a)." *In re Satellite Rest.*, 626 B.R. at 878. Congress had the opportunity to make such a change, in the amendment process, and it elected not to. The court in *In re Satellite Rest.* noted this exact sentiment, stating that if Congress had intended to expand section 523(a) to non-individual debtors when they were creating subchapter V it "would have been a dramatic change in existing Chapter 11 law, [and] the House Report most certainly would have addressed it." *Id.* As a result, because the House Report lacks any indication of a change from Chapter 11 precedent, the legislative history indicates that section 523(a) does not apply to corporate debtor's proceeding under section 1192. *Id.*

In the official act, Congress' mention of section 1192 was limited to the description that the "new section 1192 requires the court to grant the debtor a discharge as soon as practicable…except any debt…(2) that is otherwise nondischargeable" H.R. Rep. 116-171, 116th Cong., 1st Sess. 165; 124 Cong. Rec. H7217 (July 23, 2019).; *see also In re Satellite Rest.*, 626 B.R. at 878. Congress' use of the phrase 'otherwise nondischargeable' when discussing the

exception in 1192(2), logically indicates they were referring to the existing form of section 523(a), which expressly applied only to individual debtors. *In re Satellite Rest.* 626 B.R. at 878.

Presumably, if Congress wished to expand section 523 in subchapter V, they would have indicated it in either the House Report or in the Code itself. Since neither occurred, the Court is railroaded into the conclusion that Congress did not intend to expand subchapter V cases to include corporate debtors in the nondischargeability provision. *Id.* Thus, when the Report instead states that exceptions are applied for "any debt that is otherwise nondischargeable," it was merely reaffirming the intent to work subchapter V into the constraints of chapter 11 and not vice versa. Paul W. Bonapfel, *A Guide to the Small Business Reorganization Act of 2019*, 93 AM. BANKR. L.J. 571, 622 [hereinafter "Bonapfel"].

2. The purpose of subsection V supports discharging Penny Lane's debts.

Additionally, the purpose of the creation of subsection V points to discharging all corporate debts under 1192 and thus Penny Lane's debts. Congress amended Chapter 11 of the Bankruptcy Code to include subsection V, the Small Business Reorganization Act, thus granting small businesses the opportunity to proceed using an alternative option when filing for bankruptcy. Christopher Bradley, *The New Small Business Bankruptcy Game: Strategies for Creditors Under the Small Buisness Reorganization Act*, 28 AM. BANKR. INST. L. REV 251, 252, 257 [hereinafter "Bradley"]. The Small Business Reorganization Act, completely modernized the Bankruptcy Code by finally allowing for "the rescue of small businesses." Robert J. Landry, *Subchatper V and the Covid-19 Distruption: Did Congress Get Small Buisness Bankruptcy Reform Right This Time?*, 16 OHIO ST. BUS. L.J. 66, 66 (2021) [hereinafter "Landry"]. The necessity and long-awaited need for a bill supporting small businesses during bankruptcy, could be seen with the "substantial bipartisan support" in Congress and the numerous nonpartisan organizations which publicly supported the

bill. *Id.* at 67. Organizations including the National Conference of Bankruptcy Judges (NCBJ), the American Bankruptcy Institute (ABI) as well as the National Bankruptcy Conference (NBC) all understood the importance of accommodating small businesses and gave their support to the bill. *Id.*

Prior to the implementation of subsection V, small businesses were forced to follow standard small business provisions listed in the Bankruptcy Code, if they wished to file for bankruptcy. Bradley at 252, 257. Most however, chose to neglect them, due to how the Bankruptcy Code was written. *Id.* at 257. These standard provisions had strict and inflexible deadlines and requirements which meant that small businesses had limited time to implement the reorganization plans, and this often led to higher fees and larger consequences if a criterion was not met. *Id.*, at 259. Thus, Congress intentionally created subsection V to supplement the shortfalls of the standard small business provisions by allowing for an "accelerated timetable" and simplifying debtors ability to have reorganization plans confirmed. *Id.* at 258 ("The subchapter V debtor has to appear before the court at a status conference within sixty days and propose a plan within ninety days of the petition. But unlike the standard small business provisions, there is no hard-and-fast requirement of when the confirmation of the plan must be accomplished"); *id.* at 260 ("In order to confirm a plan over creditors' objections, the debtor simply needs to estimate its 'disposable income for a period of three to five years and pay that amount to creditors."). Congress intended that through making a faster and cheaper process, the needs of small businesses could be met. Landry at 68.

Courts have repeatedly stated that bankruptcy allows debtors the opportunity to have a clean state and thus we must use the standard that, "debts are presumed dischargeable and will be discharged unless proved non-dischargeable." *Merritt v. Rizzo (In re Rizzo)*, 337 B.R. 180, 187

(Bankr. N.D. Ill. 2006); *see also In re Juzwiak*, 89 F.3d 424, 427 (7th Cir. 1996) ("these exceptions to discharge should be construed . . . liberally in favor of the debtor"). Prior to the implementation of subsection V, chapter 11 had a "one size fits all framework for all debtors" which failed to accommodate the unique aspects of smaller businesses. Landry at 67-68. Thus, subchapter V now acts as an alternative solution that debtors can opt into, instead of following the strict standard small business provisions or the standard Chapter 11 rules. Bradley at 263–64.

Further, small businesses make up a substantial percentage of those who file Chapter 11 bankruptcy, and prior to the enactment of subsection V, Congress was well aware of the growing gap in options that small businesses faced when filing bankruptcy. Bonapfel at 574. In October 2007, it was estimated that "approximately 40 percent of chapter 11 debtors in chapter 11 cases filed after October 1, 2007, would qualify as a small business debtor and that about 25 percent of individuals in chapter 11 cases would qualify as a small business." Bonapfel at 574. After the implementation of subsection V, an increased number of small businesses were successfully able to file for bankruptcy and the number of plans which were confirmed were "six times higher than the percentage of confirmed plans for small business cases that did not proceed under subchapter V during the same time frame." Clifford J. White, III, *Small Business Reorganization Act: Implementation and Trends*, 40-1 AM. BANKR. INST. J. 54, 55. To apply 11 U.S.C. 523(a) to corporate debtors proceeding under 11 U.S.C. 1192, would severely compromise the progress made by Congress and detrimentally hurt small businesses.

C. Even if Penny Lane's debt is dischargeable, section 523(a)(6) cannot apply because there was a lack of willful and malicious injury.

Finally, even if this court concludes that sections 1192 and 523 apply to corporate debtors, section 523(a)(6) does not apply. Section 523(a)(6) states that debts are nondischargeable if they are "for willful and malicious injury by the debtor to another entity or to the property of another

entity." 11 U.S.C. SECTION 523(a)(6). For a debt to fall under section 523(a)(6), the debtor cannot merely act negligently or recklessly, they must be willful in causing the injury. *See Dewitt & DeWitt v. Stewart (In re Stewart)*, 948 F.3d 509, 528 (1st Cir. 2020); *Printy v. Dean Witter Reynolds, Inc.*, 110 F.3d 853, 859 (1st Cir. 1997).

Standards for the level of intent vary depending on the circuit. Geiger. In the first circuit, in order to prove that the debtor was "willful" in causing the injury "a showing of intent to injure or at least of intent to do an act which the debtor is substantially certain will lead to the injury in question." must be demonstrated. *Old Republic Nat'l Title Ins. Co. v. Levasseur (In re Levasseur)*, 737 F.3d 814, 818 (1st Cir. 2013). In the Second Circuit an "intentional and deliberate act which is wrongful" is required. *Geiger v. Kawaauhau (In re Geiger)*, 113 F.3d 848, 858 (8th Cir. 1997); *Navistar Fin. Corp. v. Stelluti (In re Stelluti)*, 94 F.3d 84, 88 (2d Cir. 1996). The Fourth Circuit however requires, "a debtor's injurious act, done deliberately and intentionally, in knowing disregard of the rights of the others" in order to determine the willful and malicious intent required for denying discharge. *First Nat'l Bank of Md. v. Stanley (In re Stanley)*, 66 F.3d 664, 667 (4th Cir. 1995); *In re Geiger*, 113 F.3d at 859. Penny Lane meets none of these definitions.

Penny Lane has repeatedly denied that they were aware of waste infiltrating the groundwater and has stated that given the "dozens of other businesses with manufacturing facilities located upstream along the Liverpool River" there is no evidence that the pollutants can be linked to themselves. R. at. 6. Further, "the source of the contamination has not been conclusively determined." R. at 5. Given the lack of conclusive evidence regarding Penny Lane's responsibility, intent, or knowledge of the pollutants, there is no clear indication that Penny Lane acted willfully in any way in causing injuries. Absent such evidence, Penny Lane cannot be subject to section 523(a)(6). It would be unfair to hold Penny Lane responsible for something they have not done.

CONCLUSION

The Bankruptcy Code is designed to provide stability and predictability for entities seeking its protection. Petitioner's appeal seeks to upend this framework in order to strike down a plan of reorganization that nearly every stakeholder approved. Affirming the Thirteenth Circuit will ensure that Debtor and all its creditors are truly made whole. For the foregoing reasons, Respondant respectfully ask that this Court AFFIRM.

APPENDIX

11 U.S.C. § 101

(13) The term "debtor" means person or municipality concerning which a case under this title has been commenced.

(41) The term "person" includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that--

(A) acquires an asset from a person--

(i) as a result of the operation of a loan guarantee agreement; or

(ii) as receiver or liquidating agent of a person;

(B) is a guarantor of a pension benefit payable by or on behalf of the debtor or an affiliate of the debtor; or

(C) is the legal or beneficial owner of an asset of--

(i) an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986; or

(ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986; shall be considered, for purposes of section 1102 of this title, to be a person with respect to such asset or such benefit.

11 U.S.C. § 105

(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.

11 U.S.C. § 523

(a) A discharge under section 727, 1141, 11921 1228(a), 1228(b), or 1328(b) 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;

11 U.S.C. § 524

(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.

(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.

(iii) As used in this subparagraph, the term "related party" means--
(I) a past or present affiliate of the debtor;
(II) a predecessor in interest of the debtor; or
(III) any entity that owned a financial interest in--
(aa) the debtor;
(bb) a past or present affiliate of the debtor; or
(cc) a predecessor in interest of the debtor.

(B) Subject to subsection (h), if, under a plan of reorganization, a kind of demand described in such plan is to be paid in whole or in part by a trust described in paragraph (2)(B)(i) in connection with which an injunction described in paragraph (1) is to be implemented, then such injunction shall be valid and enforceable with respect to a demand of such kind made, after such plan is confirmed, against the debtor or debtors involved, or against a third party described in subparagraph (A)(ii), if--
(i) as part of the proceedings leading to issuance of such injunction, the court appoints a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands of such kind, and
(ii) the court determines, before entering the order confirming such plan, that identifying such debtor or debtors, or such third party (by name or as part of an identifiable group), in such injunction with respect to such demands for purposes of this subparagraph is fair and equitable with respect to the persons that might subsequently assert such demands, in light of the benefits provided, or to be provided, to such trust on behalf of such debtor or debtors or such third party.

(5) In this subsection, the term "demand" means a demand for payment, present or future, that--
(A) was not a claim during the proceedings leading to the confirmation of a plan of reorganization;
(B) arises out of the same or similar conduct or events that gave rise to the claims addressed by the injunction issued under paragraph (1); and
(C) pursuant to the plan, is to be paid by a trust described in paragraph (2)(B)(i).

(6) Paragraph (3)(A)(i) does not bar an action taken by or at the direction of an appellate court on appeal of an injunction issued under paragraph (1) or of the order of confirmation that relates to the injunction.

(7) This subsection does not affect the operation of section 1144 or the power of the district court to refer a proceeding under section 157 of title 28 or any reference of a proceeding made prior to the date of the enactment of this subsection.

11 U.S.C. § 1123

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

(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;

(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.

11 U.S.C. § 1141

(d)(1) Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan--

(A) discharges the debtor from any debt that arose before the date of such confirmation, and any debt of a kind specified in section 502(g), 502(h), or 502(i) of this title, whether or not--

(i) a proof of the claim based on such debt is filed or deemed filed under section 501 of this title;

(ii) such claim is allowed under section 502 of this title; or

(iii) the holder of such claim has accepted the plan; and

(B) terminates all rights and interests of equity security holders and general partners provided for by the plan.

(2) 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.

(3) The confirmation of a plan does not discharge a debtor if--

(A) the plan provides for the liquidation of all or substantially all of the property of the estate;
(B) the debtor does not engage in business after consummation of the plan; and
(C) the debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title.

(4) The court may approve a written waiver of discharge executed by the debtor after the order for relief under this chapter.

(5) In a case in which the debtor is an individual--
(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;
(B) at any time after the confirmation of the plan, and after notice and a hearing, the court may grant a discharge to the debtor who has not completed payments under the plan if--
(i) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on such date;
(ii) modification of the plan under section 1127 is not practicable; and
(iii) subparagraph (C) permits the court to grant a discharge; and
(C) the court may grant a discharge if, after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that--
(i) section 522(q)(1) may be applicable to the debtor; and
(ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B);
and if the requirements of subparagraph (A) or (B) are met.

(6) Notwithstanding paragraph (1), the confirmation of a plan does not discharge a debtor that is a corporation from any debt--
(A) of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit, or owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar State statute; or
(B) for a tax or customs duty with respect to which the debtor--
(i) made a fraudulent return; or
(ii) willfully attempted in any manner to evade or to defeat such tax or such customs duty.

11 U.S.C. § 1192

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.

28 U.S.C. § 157

(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.
(2) Core proceedings include, but are not limited to—
(L)confirmations of plans;

28 U.S.C. § 1334

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.
(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.
(c)(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.
(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.
(d) Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.
(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction--
(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and
(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.