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 to the United States Court of Appeals for the Thirteenth Circuit

BRIEF FOR THE PETITIONER

Counsel for Petitioner, Team Fifteen

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 in connection with a Chapter 11 reorganization plan.

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).

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The order of the United States Bankruptcy Court for the District of Moot is not yet reported and is currently unavailable, but is summarized in the record. R. at 4–11. The March 7, 2022, opinion and judgment of the United States Court of Appeals for the Thirteenth Circuit appears as *Eleanor Rigby v. Penny Lane Industries, Inc.*, No. 21-0803, and is not yet reported.

Statement of Jurisdiction

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

Statutory Provisions Involved

The pertinent statutory provisions are found in 11 U.S.C. §§ 101, 105, 109, 362, 523, 524, 727, 1123, 1129, 1141, 1181, 1182, 1191, 1192, 1228, and 1328. The relevant text is set forth in the appendix. Pet'r's Br. App. A-1 – A-21.

Statement of the Case

A. Events Leading to the Debtor's Bankruptcy Filing

Penny Lane Industries, Inc. (the "Debtor") manufactures plastic, glass, and metal food containers. R. at 4. The Debtor is a wholly owned subsidiary of Strawberry Fields Foods, Inc. ("Strawberry Fields"), a producer of cereal and convenience foods that sells under several brands in supermarkets throughout the country. R. at 4–5. The Debtor is alleged to have knowingly disposed of industrial chemicals and pollutants at its manufacturing plant in Blackbird, Moot, causing groundwater contamination that has been investigated by Federal and State authorities. R. at 5. Thousands of Blackbird residents were exposed to toxic contamination at concentrations 250 to 3,000 times the permitted level, resulting in sickness, birth defects, and death. *Id.* The pollutants were allegedly dumped as a cost savings measure. *Id.* As early as 2014, the Debtor's CEO was allegedly aware of the dumping and its potential harm to local residents. *Id.*

Ms. Rigby, a Blackbird resident, brought tort actions against the Debtor and Strawberry Fields, asserting that her four-year-old daughter died of leukemia caused by exposure to toxins. *Id.* Ms. Rigby asserted that Strawberry Fields is co-liable because it knew, or should have known, of its subsidiary's misconduct. R. at 6. Hundreds of similar tort actions were brought against both companies for injury and death, asserting cumulative damages totaling nearly $400 million. *Id.* As of the date of this filing, none of these actions have been settled or have reached final judgment in any forum. *Id.* As a result of this mass tort litigation, the Debtor filed for bankruptcy under

Subchapter V[1] of Chapter 11 on January 11, 2021.[2] *Id.* The Debtor's eligible debts amount to approximately $5.5 million. *Id.* This does not include the unliquidated tort claims. *Id.* Therefore, it is eligible under Subchapter V as a "small business debtor." § 1182.

B. The Plan Dispute

Upon filing for bankruptcy relief, all non-bankruptcy litigation against the Debtor was stayed. R. at 7; *see* § 362(a). Litigation against non-debtor Strawberry Fields was not automatically stayed, but the bankruptcy court granted the Debtor a temporary injunction halting all litigation against the Debtor's "current and former owners, officers, directors, employees and associated entities." R. at 7–8. This includes corporate parent Strawberry Fields. *Id.* The bankruptcy court found that such an injunction was appropriate to facilitate global settlement negotiations between the Debtor, Strawberry Fields, and creditors. R. at 8.

The negotiated plan establishes a creditors' trust that is funded by the Debtor's disposable income for five years and $100 million paid by Strawberry Fields. *Id.* In exchange for its contribution, non-debtor Strawberry Fields demanded a broad release from all third-party direct claims against it. *Id.* The plan provides for a non-consensual release and discharge of "any and all claims" that third parties "have asserted or might assert in the future against Strawberry Fields" to the extent that such claims are "based on or related to the Debtor's pre-petition conduct, its estate or this chapter 11 case." *Id.* If confirmed, all parties will be precluded from pursuing any claims

[1] Subchapter V of Chapter 11 of the Bankruptcy Code was enacted in 2019. Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079 (2019) (codified in 11 U.S.C. §§ 1181–1195 and scattered sections of titles 11 and 28 of the United States Code). Unless otherwise noted, references and citations to sections are to sections of the Bankruptcy Code ("the Code"), title 11 of the United States Code.

[2] Strawberry Fields has not petitioned for bankruptcy relief and is not a debtor in this case or any other case.

against Strawberry Fields arising from the Debtor's pre-petition conduct, and such claims will be channeled into the creditors' trust. R. at 8–9.

Norwegian Wood Bank (the "Bank"), asserting a $1.5 million secured claim as the sole creditor in the secured creditor's class, objected to the plan. R. at 9. It argued that its collateral was undervalued. *Id.* Because not all classes of creditors voted to approve the plan, it is classified as non-consensual, triggering Subchapter V's "cramdown provisions" set forth in § 1191(b). Accordingly, § 1192's discharge provision applies. § 1191(b); § 1192. Ms. Rigby also objected to the plan and asserted a $1 million claim in the unsecured creditors' class. R. at 6, 9. She argued that non-consensual releases of third-party direct claims against Strawberry Fields, a non-debtor, are impermissible under bankruptcy and non-bankruptcy law. R. at 9.

The bankruptcy court overruled the Bank's objection, and the Bank did not appeal the court's confirmation order. R. at 10. Its objection to the plan is therefore not before this Court. The bankruptcy court also overruled Ms. Rigby's objection, despite acknowledging that non-consensual releases of third-party direct claims are only permitted in extraordinary circumstances. *Id.* After overruling both objections, the bankruptcy court confirmed the plan, but it did so reluctantly. R. at 11. The court thought the result was "an extremely difficult pill to swallow," because the plan could not adequately compensate victims for their pain, suffering, and death. *Id.*

C. The Non-dischargeability Dispute

Ms. Rigby commenced an adversary proceeding against the Debtor, seeking to have her claim deemed non-dischargeable pursuant to §§ 523(a) and 1192(2). R. at 7. Her claim falls under § 523(a)(6), which excepts from discharge debts "for willful and malicious injury by the debtor to another entity or to the property of another entity." *Id.*; § 523(a)(6). The Debtor moved to dismiss

under Rule 12(b)(6),[3] arguing that § 523(a)'s discharge exceptions do not apply to corporate debtors in Subchapter V proceedings. R. at 7. The bankruptcy court agreed with the Debtor and granted the motion. *Id.* Ms. Rigby filed a timely notice of appeal on both issues. *Id.*

D. The Thirteenth Circuit's Decision

On direct appeal to the circuit court, the Thirteenth Circuit majority (the "majority") affirmed the bankruptcy court's decision on both issues before this Court. *See* R. at 12, 22–23. On the first issue, the majority held that bankruptcy courts have the authority to grant non-consensual releases for direct third-party claims against non-debtors. *See* R. at 13. It said that the bankruptcy court had jurisdiction over the claims and statutory authority to approve the plan. R. at 12. The majority focused on the purpose of restructuring and interpreted § 105 as granting "broad equitable powers to approve settlements containing releases." R. at 14. Judge McCartney in dissent (the "dissent") submitted that he would adopt Ms. Rigby's reading. R. at 23, 26. He said the majority ignored the plain text of the Code and violated "fundamental principles of constitutional law." *Id.*

On the second issue, the majority held that discharge exceptions under § 523(a) only apply to individuals in Subchapter V proceedings—not corporations. R. at 15. It again focused on the purpose of bankruptcy and highlighted the Code's different treatment of corporations and individuals. R. at 15–17. The majority recognized that there were two plausible interpretations and made a textual argument in favor of the respondent's reading. R. at 17–19. The dissent would have again adopted Ms. Rigby's reading, finding that § 523(a) discharge exceptions apply to both corporate and individual debtors in non-consensual Subchapter V plans. R. at 34. The dissent made

[3] Federal Rule of Civil Procedure 12(b)(6) is applicable here under Rule 7012 of the Federal Rules of Bankruptcy Procedure. Fed. R. Civ. P. 12(b)(6); Fed. R. Bankr. P. 7012.

a textual argument, highlighting the absurd result flowing from the respondent's reading and advocating for equitable balance under the Code. R. at 31–34. This Court subsequently granted *certiorari* on the two issues presented.

Summary of the Argument

Both questions before this Court involve barriers to Ms. Rigby's recovery for malicious harms allegedly caused by the Debtor and Strawberry Fields. Validating the bankruptcy court's confirmation of the reorganization plan containing a non-consensual release of third-party direct claims against non-debtors will prevent Ms. Rigby from litigating her tort claim against Strawberry Fields. The courts below improperly allowed this. Additionally, if § 523(a)'s discharge exceptions do not apply to corporate debtors proceeding under Subchapter V, then Ms. Rigby's claim for "willful and malicious injury" will be discharged simply due to the nature of the Debtor's corporate form. The courts below incorrectly held that § 523(a) only applies to individuals in non-consensual Subchapter V plans. This Court should reverse the decisions below and hold that the release granted in the plan is unlawful, and Ms. Rigby's § 523(a)(6) claim is non-dischargeable.

On the release issue, the courts below incorrectly held that the plan may be approved despite the non-consensual release of third-party direct claims against Strawberry Fields for two reasons. First, no statutory authority under the Code exists that authorizes the confirmation of such a plan. Section 524 does not allow a discharge to affect the liability of another entity, and the Debtor's plan absolves Strawberry Fields of liability. Additionally, § 105(a) does not confer the requisite power. There is no such thing as "equitable" or "residual" authority. This Court should adopt the reasoning from *In re Purdue Pharma, L.P.*, which held that no statutory authority exists to grant releases like the one here. Courts that have authorized such releases have failed to identify

proper authority under the Code. The constitutional-doubt canon of statutory construction also supports Ms. Rigby's interpretation and allows this Court to avoid resolving due process issues.

Second, policy considerations support Ms. Rigby's position. Allowing the release that the plan provides distorts the economic choices that non-debtor firms face. These firms will not incorporate the costs and risks associated with wrongful conduct into their capital budgeting decisions, and will be incentivized to engage in activity that would otherwise be cost prohibitive. Permitting the release here will also result in an unjustified wealth transfer from litigation claim creditors like Ms. Rigby to non-debtor corporate parents such as Strawberry Fields.

As for the dischargeability issue, the courts below erred in holding that § 523(a) only applies to individuals for three reasons. First, the relevant text is ambiguous, and the general/specific canon of statutory construction should be applied to resolve the conflict. This leads to the conclusion that debts listed in § 523(a) apply to all debtors in non-consensual Subchapter V plans. Courts that have resolved the same conflict in Chapter 12's nearly identical discharge provision also applied the general/specific canon and came to the same conclusion. Second, even if the text is unambiguously clear in favor of the respondent's reading, Subchapter V debtors will be allowed to discharge tax fraud claims and encouraged to pursue non-consensual plans over consensual ones. Congress did not intend such an absurd result.

Third, policy considerations support Ms. Rigby's reading. She postulates that the elimination of the absolute priority rule in Subchapter V calls for equitable balance. Claims for wrongful conduct under § 523(a) should not be dischargeable unless the debtor offers a plan that satisfies all classes of creditors in a consensual plan. This will avoid abuse by corporate parents who tactically structure their affiliates in a way that leaves their subsidiaries Subchapter V eligible.

The result is also fair because it compensates creditors for the loss of plan challenge rights under Subchapter V and avoids a windfall to debtors. This Court should reverse.

Argument

I. The bankruptcy court did not have statutory authority under the Code to approve the non-consensual release of third-party direct claims against Strawberry Fields—this Court should reverse the Thirteenth Circuit's decision to hold otherwise.

Courts must have both constitutional power and statutory authority under the Code when confirming reorganization plans. *See Stern v. Marshall*, 564 U.S. 462, 469 (2011). Even if the bankruptcy court had constitutional authority, Ms. Rigby contends that it lacked statutory authority to approve the Debtor's reorganization plan, and the Thirteenth Circuit was wrong to affirm. The plan includes non-consensual releases of claims held by Ms. Rigby and others against non-debtor Strawberry Fields. *See* R. at 8–9. This Court should reverse and hold that Chapter 11 plans that contain non-consensual releases of third-party direct claims against non-debtors are unlawful.

The relevant provisions begin with § 524(e): "discharge of a debt of the debtor does not affect the liability of any other entity . . . ." Ms. Rigby argues that this provision precludes the releases. The courts below also relied on § 105(a), which states that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Ms. Rigby further argues that this provision does not authorize courts to approve the releases here. Because the releases are unlawful, Ms. Rigby should be able to litigate her tort claims against Strawberry Fields as the company should not benefit from the bankruptcy system.

This Court should agree with Ms. Rigby for two reasons. First, no statutory authority supports approving releases like the one here. Courts that have authorized such releases have incorrectly interpreted §§ 524 and 105, as well as other relevant Code provisions. The constitutional-doubt canon of statutory construction further supports Ms. Rigby's reading. Second,

policy considerations related to the distortion of economic choices and avoidance of unjust wealth transfers support prohibiting a non-debtor from receiving a debtor's discharge benefits. This Court should reverse.

A. Bankruptcy courts do not have statutory authority to confirm reorganization plans containing non-consensual releases of third-party direct claims against non-debtors.

The bankruptcy court below did not have the requisite statutory authority under the Code to approve the Debtor's plan. There is a long-standing circuit split on this question, and decisions within the circuits are notably inconsistent. This Court should formally adopt the statutory arguments made by the United States District Court for the Southern District of New York in *In re Purdue Pharma, L.P.*, 635 B.R. 26 (S.D.N.Y. 2021). *Purdue Pharma* is on point because it dealt with non-debtors requesting discharge of direct claims arising from a health crisis. *See id.* at 67. Non-debtor owners of Purdue Pharma funded a victim's trust and demanded non-consensual third-party releases of mass-tort claims in exchange for contributions to the trust. *Id.* Judge McMahon reversed the bankruptcy court's confirmation order and held that there is no statutory authority that allows a bankruptcy court to approve non-consensual releases of third-party direct claims against non-debtors. *Id.* at 78. This Court should agree.

1. Section 524(e) precluded the bankruptcy court from confirming the plan because the Debtor's discharge would affect the liability of Strawberry Fields.

If the text is clear and unambiguous, the plain meaning rule applies: "courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992). Section 1123 is a Chapter 11 provision governing contents of a reorganization plan. Section 1123(b) states that "a plan may . . . include any other appropriate provision *not inconsistent with the applicable provisions of this title*. § 1123(b)(6) (emphasis added). Meanwhile, § 524(e) states that a "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." § 524(e) (emphasis added). Additionally, § 1129 governs Chapter 11 plan confirmation requirements and states that "[t]he court shall confirm a plan only if . . . [t]he plan complies with the applicable provisions of this title." § 1129(a)(1) (made applicable to non-consensual plans by way of incorporation in § 1129(b)'s "cramdown provisions").

The text is indeed clear and unambiguous. The release granted to Strawberry Fields expressly violates § 524(e). *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 155 (1st ed. 2012) (discussing the harmonious reading canon of statutory construction, which states that "[t]he provisions of a text should be interpreted in a way that renders them compatible, not contradictory."). Strawberry Fields is not a debtor in this case. R. at 6, 8. Yet the Debtor's plan discharges all litigation claims against Strawberry Fields for the Debtor's pre-petition conduct. *Id.* Thus, the plan absolves *another entity* of liability. Bankruptcy courts are prohibited from confirming such a plan. *See* § 1123(b); § 1129.

Purdue Pharma agreed with Ms. Rigby's position and addressed § 524(g), which authorizes permanent injunctions for third-party claims against non-debtors in asbestos-related bankruptcy cases, although with several prerequisites. 635 B.R. at 91–92; *see* § 524(g)(2)(B)(i)(I) (victim's trust); § 524(g)(4)(A)(ii) (enumerated relationships between debtor and third party); § 524(g)(4)(B)(i) (legal representative to protect rights); § 524(g)(4)(B)(ii) (fair and equitable). But § 524(g) applies only to asbestos-related releases. *Purdue Pharma*, 635 B.R. at 92. The statute's language makes clear that it is an exception to the normal rule. *Id.* In relevant part, § 524(g)(4)(A)(ii) states: "[n]otwithstanding the provisions of section 524(e), such an injunction may bar any action directed against a third party who . . . is alleged to be directly or indirectly liable for the conduct of . . . the debtor." No other Code provision excepts the applicability of § 524(e)'s preclusion of a discharge that affects the liability of another entity. *Purdue Pharma*

reasoned that "[t]he word 'notwithstanding,' suggests that the type of injunction Congress was authorizing in § 524(g) would be barred by § 524(e) in the absence of the statute." *Id.*

Despite § 524(g)'s inapplicability here, its legislative history viewed in light of existing caselaw at the time answers the question of Congress' intent to authorize similar injunctions in non-asbestos cases. When Congress passed § 524(g), the United States Courts of Appeals for the Fourth and Second Circuits had previously upheld non-debtor releases. *See Menard-Sanford v. Mabey* (*In re A.H. Robins Co.*), 880 F.2d 694, 698, 701–02 (4th Cir. 1989); *SEC v. Drexel Burnham Lambert Grp., Inc.* (*In re Drexel Lambert Grp., Inc.*), 960 F.2d 285, 289, 293 (2d Cir. 1992). As an aside, Congress is presumed to be aware of existing judicial interpretations of law. *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 524 (1984). Congress provided a rule of construction: "[n]othing . . . 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 of 1994, Pub. L. No. 103-394, § 111(b), 108 Stat. 4106 (1994) (uncodified). *Purdue Pharma* referenced the legislative history:

> [T]he special rule being devised for the asbestos claim trust/injunction mechanism *is not intended to alter any authority bankruptcy courts may already have to issue injunctions in connection with a plan of reorganization*. Indeed, [asbestos suppliers] Johns-Manville and UNR firmly believe that the court in their cases had full authority to approve the trust injunction mechanism. And other debtors in other industries are reportedly beginning to experiment with similar mechanisms. *The Committee expresses no opinion as to how much authority a bankruptcy court may generally have under its traditional equitable powers to issue an enforceable injunction of this kind.* The Committee has decided to provide explicit authority in the asbestos area because of the singular cumulative magnitude of the claims involved. *How the new statutory mechanism works in the asbestos area may help the Committee judge whether the concept should be extended into other areas.*

140 Cong. Rec. H27692 (daily ed. Oct. 4, 1994) (statement of Rep. Brooks) (emphasis added); *Purdue Pharma*, 635 B.R. at 93. Congress' reference to the authority that bankruptcy courts may have had at the time indicates that such authority was "at best uncertain." *Purdue Pharma*, 635

B.R. at 93. When Congress suggested that the new § 524(g) mechanism may help decide whether to extend the scheme to other areas, it was clear—Congress, not the courts, bears the task of determining whether to permit non-debtor releases to non-asbestos-related situations. *Id.* And "Congress has been deafeningly silent on this subject" since then. *Id.* at 94.

Along with *Purdue Pharma*, the United States Courts of Appeals for Fifth, Ninth, and Tenth Circuits have expressly rejected the contention that a bankruptcy court can authorize non-debtor releases under § 524 outside the asbestos context. *See Bank of New York Tr. Co. v. Official Unsecured Creditors' Comm.* (*In re Pac. Lumber Co.*), 584 F.3d 229, 252 (5th Cir. 2009); *NexPoint Advisors, L.P. v. Highland Cap. Mgmt, L.P.* (*In re Highland Cap. Mgmt, L.P.*), 48 F.4th 419, 435–38 (5th Cir. 2022);[4] *Resorts Int'l, Inc. v. Lowenschuss* (*In re Lowenschuss*), 67 F.3d 1394, 1401–02 (9th Cir. 1995), *cert. denied*, 517 U.S. 1243 (1996); *Landsign Diversified Props.-II v. First Nat'l Bank & Tr. Co. of Tulsa* (*In re W. Real Est. Fund, Inc.*), 922 F.2d 592, 600 (10th Cir. 1990). The cited decisions all read the "[n]otwithstanding the provisions of § 524(e)" language in § 524(g) merely as an exception to the rule. § 524(g)(4)(A)(ii). This prohibits non-asbestos-related releases like the one contemplated here. This Court should read § 524 the same way.

2. Section 105(a) did not grant the bankruptcy court authority to approve the non-consensual release of third-party direct claims against Strawberry Fields.

Ms. Rigby further contends that § 105 does not grant bankruptcy courts the power to approve a non-consensual release for Strawberry Fields. Section 105(a) is a general provision

[4] The bankruptcy court confirmed a plan containing releases for certain non-debtors in part because the risk of negligence suits to obstruct the reorganization was such that the court believed exculpation was warranted. Order Confirming Fifth Amended Plan Reorg. Highland Cap. Mgmt, L.P. 52–53, Feb. 22, 2021. The Fifth Circuit read *Pacific Lumber* differently, and said "[t]he bankruptcy court's underlying factual findings do not alter whether it has statutory authority to exculpate a non-debtor." 48 F.4th at 437. Petition for *certiorari* was docketed on January 9, 2023, but this Court can provide the answer here.

concerning a bankruptcy court's power. *See* § 105(a). It states that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." *Id.* *Purdue Pharma*, together with the Fifth, Ninth, and Tenth Circuits, rejects the idea that § 105(a) grants the authority to sanction non-consensual releases against non-debtors. *See Purdue Pharma*, 635 B.R. at 115; *Highland Cap. Mgmt*, 48 F.4th at 437; *Lowenschuss*, 67 F.3d at 1402; *W. Real Est. Fund*, 922 F.2d at 601–02. This Court should adopt the same narrow view of § 105(a)'s scope.

The majority below and a sizeable group of circuit courts have improperly interpreted § 105(a) as a broad license for bankruptcy courts to authorize releases like the one here. R. at 14–15; *see* discussion of the aggregate body of law *infra* pp. 17–18. These decisions recognize bankruptcy courts as courts of equity but inappropriately engorge their power to grant equitable relief. *See, e.g., In re Ingersoll, Inc.*, 562 F.3d 856, 864 (7th Cir. 2009) (quoting *Airadigm Commc'ns., Inc. v. FCC* (*In re Airadigm Commc'ns., Inc.*), 519 F.3d 640, 657 (7th Cir. 2008)). This Court has discussed the extent of such "traditional equitable power." *See Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206–07 (1988). In response to the parties' equitable arguments over a violation of the absolute priority rule, this Court rejected the plan and said that "whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code." *Id.* at 206.[5]

The courts below are joined by other circuits in expressing caution. These non-consensual releases should be granted only in "unusual" or "rare" cases to achieve a policy objective—moving the debtor's reorganization along. *See, e.g.*, *Deutsche Bank AG v. Metromedia Fiber Network, Inc.* (*In re Metromedia Fiber Network, Inc.*), 416 F.3d 136, 141 (2d Cir. 2005); R. at 10, 13. But there

[5] For an overview of the § 1129(b)(2)(B)(ii) absolute priority rule and its dynamics, *see* discussion *infra* Section II.C.

is no principled basis for a rare case rule. "Either authority for non-consensual third-party releases exists under the statute, or it does not." *See* R. at 24 n.23 (McCartney, J. dissenting); *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 454, 469–70 (2017) (expressly rejecting a "rare case" exception extending beyond the Code's enumerated reach in a creditor's priority dispute) (citing Frederick F. Rudzik, *A Priority is a Priority is a Priority—Except When it Isn't*, 34 Am. Bankr. Inst. J. 16, 79 (2015) ("[O]nce the floodgates are opened, debtors and favored creditors can be expected to attempt to make every case that 'rare case.'"). *Purdue Pharma* agreed that no such "rare case" exception exists. 635 B.R. at 95–96 (relying on *Czyzewski*, 580 U.S. at 469–70).

Coming full circle, this Court's decision in *Law v. Siegel* connects Ms. Rigby's § 524(e) argument to her view of § 105(a). 571 U.S. 415 (2014) (unanimous). The Court was addressing whether a bankruptcy court may subject exempt assets to administrative expenses due to the debtor's misconduct. *See id.* at 417. The Court specifically addressed § 105(a), and even said that a bankruptcy court may possess "inherent powers." *Id.* at 420–21. "But in exercising those statutory and inherent powers, a bankruptcy court may not contravene specific statutory provisions. " *Id.* at 421. The Court interpreted § 105(a) narrowly:

> It is hornbook law that § 105(a) "does not allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code." 2 Collier on Bankruptcy ¶ 105.01[2], p. 105–6 (16th ed. 2013). Section 105(a) confers authority to "carry out" the provisions of the Code, but it is quite impossible to do that by taking action that the Code prohibits. That is simply an application of the axiom that a statute's general permission to take actions of a certain type must yield to a specific prohibition found elsewhere.

Id. Purdue Pharma also relied on *Siegel*'s interpretation of § 105(a). 635 B.R. at 94–95. The respondent asks this Court to gloss over § 524(e) and unleash the bankruptcy court's supposed inherent, residual, or equitable § 105(a) powers to grant an "unusual" and "rare" non-debtor release. No such authority exists and this Court should not abide.

3. The constitutional-doubt canon of statutory construction supports a narrow reading of § 105(a).

The constitutional-doubt canon of statutory construction supports Ms. Rigby's narrow view of bankruptcy courts' power under § 105(a). "A statute should be interpreted in a way that avoids placing its constitutionality in doubt." *See* Scalia & Garner, *supra*, at 201; *United States ex rel. Att'y Gen. v. Del. & Hudson Co.*, 213 U.S. 366, 408 (1909) ("[W]here a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter."). Non-consensual releases raise due process concerns, and Ms. Rigby made such an argument below. R. at 12. The majority dismissed her challenge, reasoning that she incorrectly surmised that the non-consensual release amounted to an adjudication of her claim against Strawberry Fields. R. at 13. The majority was confident that the bankruptcy court merely approved the global settlement—it did not rule on the merits of her claim. *Id.* This is problematic.

As the dissent noted, "[i]t strains credibility to hold that a bankruptcy court can compel a release with respect to a claim (thereby extinguishing the claim) when it could not have rendered a decision on the merits of such claim." R. at 28. Judge McCartney's skepticism is well-founded. While the bankruptcy court did not expressly decide Ms. Rigby's mass tort claim on the merits, the release of her claim amounts to the functional equivalent of a judgment on the merits. *See In re Digital Impact, Inc.*, 223 B.R. 1, 13 n.6 (Bankr. N.D. Okla. 1998) ("A release . . . contained in a confirmed plan, however, has the effect of a judgment—a judgment against the claimant and in favor of the non-debtor, accomplished without due process.").

Also relevant is a 2022 decision from the United States District Court for the Eastern District of Virginia that vacated a plan containing non-consensual releases. *See Patterson v. Mahwah Bergen Retail Grp., Inc.*, 636 B.R. 641, 702–03 (E.D. Va. 2022). The court held that the

bankruptcy court lacked constitutional authority to adjudicate many of the claims under *Stern*. *Id.* at 687–88. The Court also noted the raised serious due process concerns raised by the plan over consent to the releases. *Id.* If this Court interprets § 105(a) narrowly to deny Strawberry Fields the release, it can sidestep these constitutional issues altogether.

4. Courts that have authorized non-consensual releases of third-party direct claims against non-debtors have failed to identify proper authority under the Code.

Decisions authorizing non-consensual releases of third-party claims against non-debtors across the circuits have: (1) not identified statutory authority under the Code; (2) rendered conflicting and inconsistent results; or (3) used improper tests. The Southern District of New York in *Purdue Pharma* called into serious doubt the Second Circuit's decision in *In re Drexel Lambert Group, Inc.*, 960 F.2d 285 (2d Cir. 1992). *See* 635 B.R. at 97 ("There are numerous reasons why *Drexel* does not answer the question about a court's statutory authority . . . ."). *Drexel* said that bankruptcy courts have discretion to "enjoin a creditor from suing a third party, provided the injunction plays an important part in the debtor's reorganization plan," but identified no statutory authority to do so. *See* 960 F.2d at 293. "[O]ne thing is clear: *Drexel* sheds no light whatsoever on the issue of whether releases like the one at bar are authorized *by the Bankruptcy Code*." *Purdue Pharma*, 635 B.R. at 98. *Purdue Pharma* also declined to apply various factors mentioned in *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 141–42 (2d Cir. 2005). 635 B.R. at 101. The Second Circuit "did not rule on whether any or all of the factors it had identified were satisfied in the particular case before it. Nor did it conclude that a non-debtor release should be approved if the factors were satisfied."[6] *Id.*

[6] To see a survey of established factor tests adopted in various circuit courts, *see* 18 Elizabeth D. Lauzon, *Validity of Non-Debtor Releases in Bankruptcy Restructuring Plans* *3–4, *6, *10–11, *14 (Am. L. Rep. 2016).

Caselaw from the United States Court of Appeals for the Third Circuit is contradictory at best. In 2000, *In re Continental Airlines* held that bankruptcy courts have no statutory authority to authorize non-consensual releases for third-party direct claims against non-debtors, and that the only exception to § 524(e) was in asbestos cases under § 524(g). *Gillman v. Continental Airlines* (*In re Cont'l Airlines*), 203 F.3d 203, 211–12 (3d Cir. 2000); *contra In re Mallinckrodt PLC*, 639 B.R. 837, 870, 873 (Bankr. D. Del. 2022) (approving the same type of release because they were both "necessary" and "fair"). The court surveyed other circuits but declined to adopt any of their tests or fashion its own rule. *Cont'l Airlines*, 203 F.3d at 212–14. Then in 2019, it said that bankruptcy courts have constitutional power to confirm non-debtor releases under *Stern*, though it never mentioned statutory authority under the Code. *In re Millennium Lab Holdings II, LLC*, 945 F.3d 126, 137–40 (3d Cir. 2019). The Third Circuit cited *Continental Airlines* once but did not discuss the decision at all. *See id.* at 139. The court did say: "[c]onsistent with prior decisions, we are not broadly sanctioning the permissibility of nonconsensual third-party releases in bankruptcy reorganization plans." *Id.* at 139. To reiterate, a bankruptcy court must have both constitutional and statutory authority. *See Stern*, 564 U.S. at 469.

Decisions within the United States Courts of Appeals for the First and Eighth Circuits have held that §§ 524(e) and 105(a) authorize non-debtor releases of third-party claims if certain factors are balanced. *See, e.g.*, *In re Chi. Invests., LLC*, 470 B.R. 32, 95 (Bankr. D. Mass. 2012) (First Circuit) (adopting factors from *In re Master Mortg. Inv. Fund, Inc.*, 168 B.R. 930 (Bankr. W.D. Mo. 1994) (Eighth Circuit)); *In re U.S. Fidelis, Inc.*, 481 B.R. 503, 518–21 (Bankr. E.D. Mo. 2012) (same). These factors ask whether (1) there is a certain relationship between the debtor and third party such that the suit is essentially against the debtor; (2) the non-debtor contributed substantial assets to the plan; (3) the release is essential to the reorganization; (4) a substantial majority of

creditors agree to the release; and (5) the plan provides for payment of all, or substantially all, of the claims of the affected classes. *Chi. Invests.*, 470 B.R. at 95. The United States Courts of Appeals for the Fourth and Eleventh Circuits have followed Sixth Circuit decisions, which apply a very similar factor balancing test. *See Nat'l Heritage Found., Inc. v. Highbourne Found.*, 760 F.3d 344, 347 (4th Cir. 2014) (continuing to apply factors from *In re Dow Corning Corp.*, 255 B.R. 445 (E.D. Mich. 2000) (Sixth Circuit)); *SE Prop. Holdings, LLC v. Seaside Eng'g & Surveying, Inc.* (*In re Seaside Eng'g & Surveying, Inc.*), 780 F.3d 1070, 1079 (11th Cir. 2015) (same). The courts' statutory authorization to create such factors remains a mystery.

The United States Court of Appeals for the Seventh Circuit followed pre-*Purdue Pharma* decisions from the Second Circuit, authorizing non-debtor releases in "unusual circumstances" under § 105(a)'s "residual authority." *See Ingersoll*, 562 F.3d at 864–65 (following the Second Circuit in *Metromedia Fiber Network*). *Purdue Pharma* dispensed with this reasoning: "there is no such thing as 'equitable authority' or 'residual authority' in a bankruptcy court untethered to some specific, substantive grant of authority in the Bankruptcy Code." 635 B.R. at 78.

The aggregate body of law on this issue can be summarized as follows: a majority of decisions across the circuits either (1) reject the contention that statutory authority exists; (2) fail to identify where such authority is found; or (3) do not discuss statutory authority. *See Purdue Pharma*, 635 B.R. at 115 (Second Circuit) (no authority); *Highland Cap. Mgmt*, 48 F.4th at 435–38 (Fifth Circuit) (same); *Lowenschuss*, 67 F.3d at 1401–02 (9th Circuit) (same); *W. Real Est. Fund*, 922 F.2d at 600 (Tenth Circuit) (same); *Cont'l Airlines*, 203 F.3d at 212–14 (Third Circuit) (same); *Monarch Life Ins. Co. v. Ropes & Gray*, 65 F.3d 973, 983 (1st Cir. 1995) (recognizing there is "conflicting authority on the 'jurisdictional' reach of section 105(a)" without discussing such authority); *Drexel*, 960 F.2d at 293 (no discussion of statutory authority); *Millennium Lab*

Holdings II, 945 F.3d at 137–40 (Third Circuit) (addressing constitutional authority); *In re AOV Indust., Inc.*, 792 F.2d 1140, 1153–54 (D.C. Cir. 1986) (same). These courts stand for the proposition that if the Code does not expressly empower a bankruptcy court to approve a non-consensual release for a non-debtor, the court cannot approve it. This Court should agree.

Decisions out of two circuits rely on § 524 and § 105(a) in combination to find the necessary statutory authority. *Chi. Invests.*, 470 B.R. at 95 (First Circuit); *U.S. Fidelis*, 481 B.R. at 518–21 (Eighth Circuit). Four circuits find authority largely in § 105(a). *Nat'l Heritage*, 760 F. 3d at 350 (Fourth Circuit); *Seaside*, 780 F.3d at 1076–79 (Eleventh Circuit); *Dow Corning*, 255 B.R. at 478–79 (Sixth Circuit) (interpreting § 105(a) as "residual authority" through the lens of § 1123(b)); *Ingersoll*, 562 F.3d at 864 (Seventh Circuit) (same). The Thirteenth Circuit majority relied on §§ 524, 1123(b), and 105(a) together to find authority. R. at 14–15. These decisions stand for the opposite proposition: if the Code does not expressly prohibit a bankruptcy court from authorizing a non-consensual release for non-debtors, the court *may* approve it. This Court should disagree and avoid an unenumerated expansion of bankruptcy courts' power.

B. Granting non-debtors a release from litigation liability distorts the economic choices that non-debtor corporate parents face and results in unjustified wealth transfers.

Policy considerations regarding the distortion of economic decision making and unjustified wealth transfers further support Ms. Rigby's reading. *see also* discussion of Subchapter V abuse considerations *infra* Section II.C. Permitting the discharge of mass tort claims through a debtor-subsidiary would insulate corporate parents from harm and thereby encourage them to take risks

that they would otherwise avoid. The economic choices the corporate parent faces are distorted because the costs are borne by society, rather than internalized by the parent entity.[7]

The primary economic risk incurred throughout the operation of a business is the risk that the project or activity will result in bankruptcy. *See* Robert J. Rhee, *Corporate Finance* 181–89 (Erwin Chemerinsky et al. eds., 2016) (discussing theories of optimal capital structure and the significant costs of bankruptcy as a risk when raising debt capital). The costs and risks of bankruptcy should be internalized in any capital investment decision.[8] If those costs are not absorbed by the entity, the cost of capital for that activity is artificially depressed. *See* 3 CFA Inst., *CFA Institute Level II 2016 Corporate Finance* 51, 62–63 (2015). This can result in an activity that would lead to mass torts being undertaken when it would otherwise be rejected. *Id.* at 10–27 (discussing investment decision criteria and internal rate of return). When the dissent referred to Strawberry Fields getting the "benefits of bankruptcy without having to subject itself to the bankruptcy process," it was referring to the improper externalization of bankruptcy costs. *See* R. at 25, 28. This unjust non-debtor release "will bind all claimants, regardless of their consent, and Strawberry Fields will get to walk away from the crises that it allegedly helped create." *See id.*

The majority's argument centers on the legislative purpose underlying reorganization. R. at 11 ("Chapter 11 is about maximizing the recoveries of creditors and preserving viable businesses."). In essence, the majority accepts wealth transfers from creditors to debtors, which are supported by the Code's goal of staving off liquidation resulting in "attendant loss of jobs and

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[7] An externality is "[a]n effect of a market transaction that is borne by parties other than those who transacted." 2 CFA Inst., *CFA Institute Level I 2014 Economics* G-12 (2013). For additional background on externalities, *see id.* at 35.
[8] The costs of bankruptcy can be considerable. "[T]he average cost of bankruptcy has been calculated to be about 3 percent of total book assets, and 10 percent to 20 percent of predistress market value of the firm." Rhee, *supra*, at 184.

possible misuse of economic resources." *See Bildisco*, 465 U.S. at 528; H.R. Rep. No. 95-595, at 220 (1977) (outlining the policy goals of restructuring); R. at 11–12. But the majority also mistakenly believes that Chapter 7 should always be avoided and does not consider the advantages of liquidation by spinoff. *See* R. at 12; Kevin M. Warsh, *Corporate Spinoffs and Mass Tort Liability*, 1995 Colum. Bus. L. Rev. 675, 692 (1995) ("[M]any experts believe a company's shareholders [facing mass tort claims] would prefer a strategic reaction like liquidation to a voluntary bankruptcy filing."). Contrary to what most may believe, liquidation of subsidiaries staring down mass tort litigation has advantages.

Naturally, wealth transfers result from bankruptcy. *See* Merton H. Miller, *The Wealth Transfers of Bankruptcy: Some Illustrative Examples*, 41 L. & Contemp. Probs. 39–46 (1977) (discussing economic theories regarding wealth transfers from debt holders to equity holders); F.H. Buckley, *The Bankruptcy Priority Puzzle*, 72 Va. L. Rev. 1393, 1404–19 (1986) (discussing wealth transfers between secured and unsecured creditors). Lenders have value destroyed due to poor credit decisions and debtors acquire an economic gain from the discharge of debts. *See* Miller, *supra*, at 39–46. Mass tort victims also lose compensation to the benefit of debtors. *See id.* But at minimum, debtors are "paying" for the Code's benefits in both financial and reputational terms by filing for bankruptcy and incurring the associated costs. *See* R. at 10.

Although she is detrimentally impacted, Ms. Rigby accepts Congress' current scheme effecting wealth transfers from creditors to debtors through the Code. Granted, many scholars also believe that Congress neither intended nor contemplated bankruptcy courts to resolve mass tort claims. *See* Alan N. Resnick, *Bankruptcy as a Vehicle for Resolving Enterprise-Threatening Mass Tort Liability*, 148 U. Pa. L. Rev. 2045, 2045–49 (2000) ("The Bankruptcy Code's lack of specific guidance on the treatment and dischargeability of future claims has resulted in doubts regarding

the powers of a bankruptcy court to deal with mass torts. Moreover, inconsistent judicial decisions have created confusion and lack of uniformity in this area."); Stacy L. Rahl, *Modification of a Chapter 11 Plan in the Mass Tort Context*, 92 Colum. L. Rev. 192, 192–94 (1992) ("Currently, no adequate regulatory scheme exists to control corporations' undesirable conduct, no social welfare-medical scheme fully compensates victims of mass torts, and no legislation controls or prevents mass tort adjudication.").

That said, granting non-consensual releases for co-liable non-debtors like Strawberry Fields would lead to an inequitable wealth transfer, shifting exorbitant value from tort victims to non-debtor corporate parents that have not incurred the costs of bankruptcy. *See* Rhee, *supra*, at 184 ("Enron paid $757 million in legal and professional fees, and the cost of resolving Lehman Brother's bankruptcy are approximately $1.5 billion."). And what makes this outcome all the more repulsive is that Strawberry Fields will receive this wealth transfer without having to make a new value contribution. It will entirely circumvent the absolute priority rule under Subchapter V to retain its equity interest in its subsidiary. *See* discussion of advantageous absolute priority rule avoidance *infra* Section II.C. Strawberry Fields' contribution to the victim's trust is a fraction of what it might owe in a fully-litigated mass tort case. It is thus receiving a substantial windfall at the expense of tort claimants and society at large. "This outcome is decidedly not equitable," and it is altogether avoided with Ms. Rigby's textual interpretation. R. at 28 (McCartney, J. dissenting). Accordingly, this Court should hold that a bankruptcy court may not approve non-consensual releases of third-party direct claims against non-debtor entities as part of a Chapter 11 plan of reorganization.

II. The courts below improperly held that debts specified in 11 U.S.C. § 523(a) only apply to individuals in the plan here—this Court should reverse and hold that § 523(a) applies to all debtors in non-consensual Subchapter V plans.

Ms. Rigby contends that both courts below incorrectly decided that debts specified in § 523(a)'s discharge exceptions do not apply to corporations in Subchapter V plans. R. at 7, 15. Rather, those courts believe § 523(a) only applies to individuals. *Id.* This Court should reverse and hold that § 523(a) listed debts are non-dischargeable for both corporate and individual debtors when a non-consensual Subchapter V plan is confirmed. Consequently, Ms. Rigby's § 523(a)(6) claim for "willful and malicious injury by the debtor to another entity" as a result of toxic contamination should be non-dischargeable if the Debtor is unable or unwilling to propose a consensual reorganization plan that sufficiently compensates all classes of creditors.

The question before this Court essentially is whether § 523(a)'s prefatory language should limit § 1192's reach. Section 1192 is the Subchapter V discharge provision that applies when debtors seek confirmation of a non-consensual plan. § 1191(b); § 1192. In other words, the plan was rejected by at least one class of creditors. The plan at issue here is non-consensual. R. at 9. Section 523(a) is a general bankruptcy provision that lists non-dischargeable debts, such as those procured through fraud, for tax evasion, and willful and malicious injury. The relevant text at issue begins with § 1192(2), which excepts from discharge debts "of the kind specified in section 523(a) of this title." Meanwhile, § 523(a) includes limiting language: "A discharge under section . . . 1192 . . . of this title does not discharge an individual debtor from any debt-- . . . ."

This Court should adopt Ms. Rigby's reading for three reasons. First, the text and cross-reference between § 1192 and § 523(a) is ambiguous, and the general/specific canon of statutory construction supports Ms. Rigby's reading. Second, even if the text is clear and unambiguous, the respondent's reading leads to an absurd result that this Court should not permit. Third, policy

considerations regarding Subchapter V abuse and equitable balance under the Code further support Ms. Rigby's reading. This Court should reverse.

A. The relevant text is ambiguous—when read properly, debts of the kind listed in § 523(a)'s discharge exceptions apply to both corporate and individual debtors in non-consensual Subchapter V plans.

The inquiry here requires this Court to examine the interplay and conflict between §§ 1192(2) and 523(a). Section 1192(2) excepts from discharge debts "of the kind specified in section 523(a) of this title." § 1192. The conflict arises due to the cross-reference to § 523(a)'s prefatory language which limits its application to individual debtors. § 523(a) ("A discharge . . . does not discharge an individual debtor . . . ."). The "first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning . . . ." *Robinson v. Shell Oil Co.*, 519 U.S. 337 (1997). Again, if the text is unambiguous, the plain meaning rule applies. *See Germain*, 503 U.S. at 253–54. However, the plain meaning rule does not apply when the text is ambiguous. *See* Hon. Eileen W. Hollowell et al., *First This Way, Then That Way — Conflicting Interpretations of BAPCPA*, *1 (Am. Bankr. Inst. 2007). The majority muddled these textual waters by relying on decisions that used a plain meaning approach, while also conceding that § 1192(2)'s language is ambiguous. *See* R. at 17–18, 21.

Subchapter V is in its infancy—besides the bankruptcy court below, only four other bankruptcy courts have decided this issue. Those four relied largely on textualist arguments. *See Avion Funding, LLC v. GFS Indus., LLC* (*In re GFS Indus., LLC*), Adv. No. 22-05052-cag, 2022 WL 16858009 (Bankr. W.D. Tex. Nov. 10, 2022) (Fifth Circuit); *Jennings v. Lapeer Aviation, Inc.* (*In re Lapeer Aviation, Inc.*), Adv. No. 22-3002, 2022 WL 1110072 (Bankr. E.D. Mich. Apr. 13, 2022) (Sixth Circuit); *Catt v. Rtech Fabrications, LLC* (*In re Rtech Fabrications, LLC*), 635 B.R. 559 (Bankr. D. Idaho 2021) (Ninth Circuit); *Gaske v. Satellite Rests. Inc. Crabcake Factory USA* (*In re Satellite Rests. Inc. Crabcake Factory USA*), 626 B.R. 871 (Bankr. D. Md. 2021); *Cantwell-*

Cleary Co. v. Cleary Packaging, LLC (*In re Cleary Packaging, LLC*), 630 B.R. 466 (Bankr. D. Md. 2021), *rev'd*, 36 F.4th 509 (4th Cir. 2022). All five courts favored the respondent's reading, holding that § 1192(2)'s reach is limited to individual debtors. Of the five, only two have opined on whether the text is ambiguous or unambiguous. *See Rtech Fabrications*, 635 B.R. at 565 (implying that the text is ambiguous); *Satellite Rests.*, 626 B.R. at 876 (stating that the text is clear and unambiguous). Other than the Thirteenth Circuit below, only one circuit court has reviewed this issue, also adopting a textualist approach. *Cantwell-Cleary Co. v. Cleary Packaging, LLC (In re Cleary Packaging, LLC)*, 36 F.4th 509, 514–17 (4th Cir. 2022). The Fourth Circuit did not say whether the text is ambiguous or unambiguous. *Id.* at 511–12. However, it favored Ms. Rigby's reading in holding that § 1192(2) overrides § 523(a)'s prefatory language, rendering all debts "of the kind specified in section 523(a)" non-dischargeable for individual and corporate debtors. *Id.* The majority proclaimed the text ambiguous and ruled for the respondent. R. at 17–18.

Ms. Rigby contends that the text is ambiguous, and the appropriate reading renders § 523(a) applicable to corporate debtors in non-consensual plans. Section 1192 does not specify a type of debtor—it refers only to *kinds* of debt listed in § 523(a). § 1192. Meanwhile, § 523(a)'s prefatory language refers to individual debtors. § 523(a). This Court must first determine which canon (or canons) of statutory interpretation should be applied to resolve the problem.

First, Ms. Rigby contends that the general/specific canon should apply because there is a conflict between sections of the Code. After applying the general/specific canon, § 1192's specific discharge provision controls over § 523(a)'s general provision. Second, Chapter 12's nearly identical discharge language and related jurisprudence applying the general/specific canon further support Ms. Rigby's reading. This Court should apply this canon and hold that § 523(a) debt types apply to all debtors in non-consensual Subchapter V plans.

1. Under the general/specific canon of statutory construction, debts listed in § 523(a) are non-dischargeable for all debtors in non-consensual Subchapter V plans.

Courts do not agree on the canon of statutory construction to apply here. *See* R. at 19, 31–32 (applying the surplusage canon in the majority opinion, while the dissent advocated for the general/specific canon); *Cleary Packaging*, 36 F.4th at 515 (applying the general/specific canon). This Court should apply the general/specific canon. At the outset, the principle of interrelating canons provides that "[n]o canon of interpretation is absolute. Each may be overcome by the strength of differing principles that point in other directions." Scalia & Garner, *supra*, at 68. It is common for there to be "two opposing canons on almost every point." *Id.* Courts on both sides of this issue suggest that there is a conflict and that the text supports two reasonable readings. *See* R. at 17–18; *Cleary Packaging*, 36 F.4th at 512. The general/specific canon is most relevant; it reads that "[i]f there is a conflict between a general provision and a specific provision, the specific provision prevails." Scalia & Garner, *supra*, at 158. This canon presumes that "[t]he particular provision is established upon a nearer and more exact view of the subject than the general . . . ." *Id.* In other words, "the specific provision comes closer to addressing the very problem posed by the case at hand and is thus more deserving of credence." *Id.*

Taking a different path, *In re GFS Industries, LLC* applied the surplusage canon to avoid rendering § 523(a)'s prefatory text superfluous in the most recent opinion on this issue. 2022 WL 16858009, at *5, *8. The court was wrong to apply this canon because "if context and other considerations (including the application of other canons) make it impossible to apply the harmonious-reading canon, the principles governing conflicting provisions . . . must be applied." Scalia & Garner, *supra*, at 155. This Court should focus on the fact that there is a conflict—the provisions cannot be reconciled.

Section 1192 refers only to debts "of the kind" in § 523(a) and does not refer to the type of debtor. § 1192. A plain reading of the term "debtor," without further specification, necessarily refers to *all* debtor types. *See id.* On the other hand, § 523(a)'s prefatory language limits its application to individuals. § 523(a). This incongruity is reason to find that there is a textual conflict, and the proper method of resolution is the general/specific canon. *See, e.g.*, *HCSC-Laundry v. United States*, 450 U.S. 1, 6 (1981) (per curiam) ("[A] specific statute . . . controls over a general provision . . . particularly when the two are interrelated and closely positioned, both in fact being [part of the same statutory scheme]."); *Sw. Ga. Farm Credit, Aca v. Breezy Ridge Farms, Inc.* (*In re Breezy Ridge Farms, Inc.*), Adv. No. 09–1011, 2009 WL 1514671, at *2 (Bankr. M.D. Ga. May 29, 2009) (applying the general/specific canon to resolve the same conflict in Chapter 12's discharge provision); *Cleary Packaging*, 36 F.4th at 515 (applying the general/specific canon to resolve the Subchapter V conflict at issue here); R. at 31–32 (McCartney, J. dissenting) (same). Ultimately, § 1192's superfluity issue in § 523(a)'s prefatory language is a minor one, or at least secondary to the fact that these sections cannot be reconciled. Therefore, this Court should apply the general/specific canon for resolution.

Because § 1192 is a specific provision only applicable in Subchapter V discharges, it should control over the more general § 523(a). Along with Chapters 1 and 3, Chapter 5 provides general rules for liquidation and restructuring. *See* §§ 101–12 (general provisions); §§ 301–66 (case administration); §§ 501–62 (creditors, the debtor, and the estate). In contrast, §§ 727, 1141, 1192, 1228, and 1328 are specific discharge provisions. Consequently, § 523(a) is the broader provision, and it is referenced in many other parts of the Code.

The Fourth Circuit properly held that *all* Subchapter V debtors are subject to § 523(a) exceptions in non-consensual plans. *Cleary Packaging*, 36 F.4th at 517. *In re Cleary Packaging,*

LLC, and the dissent both applied the general/specific canon to come to this conclusion. 36 F.4th at 517; R. at 31–32. *Cleary Packaging* focused on the language, "any debt . . . *of the kind* specified in section 523(a)" in § 1192. 36 F.4th at 515; § 1192 (emphasis added). "Kind" is defined as "a group united by common traits or interests" or "a specific or recognized variety." Merriam-Webster Dictionary (online ed. 2023); *see also* Scalia & Garner, *supra*, at 469 ("General terms are to be given their general meaning."). The court reasoned that § 1192(2)'s cross-reference to § 523(a) *does not refer to any kind of debtor* in § 523(a), but rather it refers to *kinds of debt* listed in § 523(a). *Cleary Packaging*, 36 F.4th at 515. This Court should adopt this reasoning.

Section 1192's operable and controlling language is clear: debts "of the kind." § 1192(2). Section 1192(2) does not cross-reference to § 523(a) in its entirety—it only refers to the *kinds* of debts listed in § 523(a). *See* § 1192(2). If Congress wanted to limit the discharge provision to a *type* of debtor, it would have conveyed as much in § 1192, as it did in § 1141. *Compare* § 1192 (containing no reference to the type of debtor), *with* § 1141(d)(2) (discharge exceptions for individuals), *and* 1141(d)(6) (discharge exceptions for corporations). Thus, § 1192(2) is not limited in application to individuals and also includes corporate debtors.

2. Courts that have interpreted Chapter 12's nearly identical discharge provision also applied the general/specific canon to come to the same conclusion.

The dissent and the Fourth Circuit properly relied on Congress' "importation" of Chapter 12 language into Subchapter V's discharge provision. *See* R. at 32–33; *Cleary Packaging*, 36 F.4th at 516; *see also In re Trepetin*, 617 B.R. 841, 848 (Bankr. D. Md. 2020) ("Several aspects of Subchapter V are premised on the provisions of chapter 12 . . . ."); § 101(18), (19A) (including both corporations and individuals in the definition of Chapter 12 eligible "family farmer" debtors). Under the borrowed-statute doctrine, "if a legislature enacts a statute copied (borrowed) from another jurisdiction, it also borrows the existing settled construction of the statute in the lending

state." Scalia & Garner, *supra*, at 321. Both opinions refer to Chapter 12's discharge provision, which uses the same debts "of the kind specified in section 523(a)" exception language used in § 1192(2). R. at 33 (McCartney, J. dissenting); *Cleary Packaging*, 36 F.4th at 516; § 1228(a) (discharge provision); § 1192.

The dissent and *Cleary Packaging* looked to *In re Breezy Ridge Farms, Inc.*, where the United States Bankruptcy Court for the Middle District of Georgia interpreted Chapter 12's discharge provision as equally applicable to both corporate and individual debtors. Adv. No. 09–1011, 2009 WL 1514671, at *2 (Bankr. M.D. Ga. May 29, 2009). The bankruptcy court used the general/specific canon of statutory construction and reasoned that:

> Although § 523(a) applies only to individuals, Congress has used it as shorthand to define the scope of a Chapter 12 discharge for corporations as well as individuals. Thus it is appropriate to rely on § 523(a) to determine whether a debt is included in the discharge, even when the debtor is a corporation. Even if the two provisions could not be harmonized, § 1228 would control because it is more specific, applicable only in Chapter 12, than § 523(a), which applies regardless of chapter.

Id. Section 523(a)'s limiting language was thereby rendered inapplicable, just as Ms. Rigby advocates for here. *Id.* The dissent below joined *Breezy Ridge Farms* and *Cleary Packaging* in relying on *In re JRB Consolidated, Inc.*, which also held that § 1228's discharge provision excepts debts of the kind specified in § 523(a) for all debtors. *New Venture P'ship v. JRB Consol., Inc.* (*In re JRB Consol., Inc.*), 188 B.R. 373, 374 (Bankr. W.D. Tex. 1995).

GFS Industries disagreed with *Cleary Packaging*'s reasoning and improperly departed from its own precedent in *JRB Consolidated*. *See* 2022 WL 16858009, at *8–11. The court said Subchapter V is different than Chapter 12 because Chapter 12 is only available to a "small and specific subset of debtors." *Id.* at *7. The refusal to extend the same Chapter 12 reasoning from *JRB Consolidated* to the present issue was erroneous because Subchapter V is also only available

to a small and specific subset of debtors. It only applies to small businesses (regardless of corporate form) with liquidated debts less than $7.5 million. § 1182.

As mentioned above, it is a fundamental principle of statutory interpretation that Congress is presumed to be aware of existing judicial interpretations of law. R. at 33 (McCartney, J. dissenting); *Bildisco*, 465 U.S. at 524. Congress is thus presumed to have been aware of existing interpretations of the virtually identical language in Chapter 12's discharge provision, and the at the time existing bankruptcy opinions holding that § 523(a)'s discharge exceptions applied to all debtors. *See JRB Consol.*, 188 B.R. at 374; *Breezy Ridge Farms*, 2009 WL 1514671, at *2–3. Again, if Congress intended to limit § 1192's reach to individual debtors, it could have done so as it did in § 1141. Accordingly, this Court should find that the jurisprudential reasoning with respect to Chapter 12 discharges also applies to the inquiry here under Subchapter V.

B. Even if the relevant text is unambiguously clear, this Court should apply absurdity doctrine to prevent corporate debtors from discharging claims for tax fraud.

Regardless of any potential textual ambiguity, the respondent's reading leads to a conclusion that cannot be reconciled with Congress' intent. The majority concedes that the text supports two different yet reasonable readings. R. at 17–18. This Court should adopt the reading that avoids an absurd result. The majority emphasized that "Congress does not make a fundamental change in settled law without clearly signaling that intention." R. at 20 (citing to *Whitman v. Am. Trucking Ass'ns., Inc.*, 531 U.S. 457, 468 (2001). The majority's interpretation of § 1192(2) inexplicably allows a corporate debtor to discharge claims asserted by governmental units for tax fraud when a non-consensual plan is approved.

Congress sought to prohibit corporations from engaging in tax fraud and subsequently discharging those claims. It did so through the operation of §§ 1141(d)(6) and 523(a). *See* § 1141(d)(6) (rendering debts non-dischargeable if incurred through false pretenses, false

representation, or fraud, and debts for a tax where the debtor filed a fraudulent return or attempted to evade such tax); § 523(a)(1)(C) (rendering debts non-dischargeable where "the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax"). *One* of these two provisions *must apply* to prevent corporations from discharging tax fraud claims.

Section 1191(a) governs Subchapter V consensual plans and utilizes the § 1141 discharge provision. Thus, in Subchapter V consensual plans, as well as in traditional Chapter 11, tax fraud claims are non-dischargeable. Section 1191(b) governs non-consensual Subchapter V plans, which triggers § 1181(c)'s special rule for discharge. § 1181(c). This special rule states that "[i]f a plan is confirmed under section 1191(b) of this title, section 1141(d) of this title shall not apply, except as provided in section 1192 of this title." *Id.* Thus, § 1141(d) becomes inoperable in Subchapter V non-consensual plans, so tax fraud claims are non-dischargeable *only* if § 523(a) is in force.

Under the respondent's reading, § 523(a) exceptions to discharge are inapplicable to corporate debtors in non-consensual plans. R. at 15, 32. Both §§ 1141(d) and 523(a) would be thereby inoperative for corporate debtors in non-consensual plans. Therefore, tax fraud claims would be dischargeable in non-consensual Subchapter V plans but not in consensual plans. There is no rational basis to conclude that Congress intended to allow corporate debtors to discharge tax fraud claims under *any* Code provision. The respondent's reading would urge corporate debtors to pursue non-consensual plans over consensual ones if it has tax fraud claims against it. This Court should not validate such a perverse incentive and absurd outcome.

This Court can avoid the unintended result by applying absurdity doctrine. *See* Hollowell et al., *supra*, at *2. It would be inconceivable to think Congress enacted Subchapter V to create a loophole to escape tax fraud liability. The majority's reading is unacceptable under absurdity doctrine, insofar as it creates a path for corporate debtors to discharge tax fraud claims. "From the

earliest days of the Republic, the Supreme Court has subscribed to the idea that judges may deviate from even the clearest statutory text when a given application would otherwise produce 'absurd' results." John F. Manning, *The Absurdity Doctrine*, Harv. L. Rev. 2387, 2388 (2003). In *United States v. American Trucking Ass'ns, Inc.*, this Court said that when a statute's meaning leads to "absurd or futile results," the Court will look "beyond the words to the purpose of the act." 310 U.S. 534, 543 (1940). And "even when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words." *Id.* (quoting *Ozawa v. United States*, 260 U.S. 178, 194 (1922)); *see also Grossman v. Beal* (*In re Beal*), 347 B.R. 87, 93 (E.D. Wis. 2006) (applying the "at odds with the interpretation of the drafters" exception in a bankruptcy scenario).

The reason for Congress' enactment of § 1141(d)(6) does not require an extensive study of legislative history. Allowing corporate actors to discharge tax fraud claims in bankruptcy is clearly against the public interest, and Congress intended to foreclose that possibility. The fact that the respondent's reading carves out a path through non-consensual plans only—and discourages consensual plans—is an absurd result. *See* R. at 32; Hon. Paul W. Bonapfel, *A Guide to the Small Business Reorganization Act of 2019*, 128 (2022 rev. ed.) (2019) ("Two features of subchapter V reflect a policy of encouragement of consensual plans.").

Although § 1129(d) allows a bankruptcy court to reject a plan if its "principal purpose" is to avoid taxes, a plan that discharges tax fraud claims could be approved if the debtor simply argues that the plan has an alternative purpose. *See* § 1129(d). This glaring incentive for corporate bad actors to pursue a non-consensual plan and escape tax fraud liability violates the spirit of the Code. *See* § 105(a) ("*No provision of this title . . . shall be construed* to preclude the court from . . .

prevent[ing] an abuse of process.") (emphasis added). This Court should adopt Ms. Rigby's reading to avoid such a result.

C. Rendering § 523(a) debts non-dischargeable in non-consensual Subchapter V plans is a fair result that will limit abuse by corporate parents.

Ms. Rigby's reading is also supported by policy goals of discouraging Subchapter V abuse and preventing unjustified windfalls to corporate debtors. To begin, a review of restructuring's economic dynamics and the absolute priority rule is needed. The absolute priority rule applies in non-consensual traditional Chapter 11 plans, and essentially means that no party with a lower position in the capital stack may receive value if any creditor class higher in the capital stack objects to the plan. *See* § 1129(b)(2)(B)(ii). Equity interests are cancelled unless all creditors are paid in full,[9] which is generally impossible due to the nature of insolvency—liabilities exceed assets. Even still, absolute priority rule principles prescribe value to equity in the event of successful reorganization. *See* Bonapfel, *supra*, at 230–31.

Subchapter V provides small businesses an opportunity to cost-efficiently reorganize by reducing expenses and administrative burdens. *See* William L. Norton III & James B. Bailey, *The Pros and Cons of the Small Business Reorganization Act of 2019*, 36 Emory Bankr. Devs. J. 383, 383–88 (2020). Subchapter V does not include the absolute priority rule, which accomplishes a core policy goal of allowing small business debtors to retain equity and control of the reorganized entity. *See id.* at 384–85; H.R. Rep. No. 116-171, at 367–70 (2019). When a parent company has wholly owned subsidiaries, the absence of the absolute priority rule is one of the most attractive features of Subchapter V.

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[9] For background on the limited "new value exception" to the absolute priority rule, *see generally* J. Ronald Trost et al., *The New Value Exception to the Absolute Priority Rule in the Wake of 203 N. Lasalle* (Am. L. Inst. 2000).

Unfortunately, a loophole in Subchapter V is ripe for abuse. To be eligible for Subchapter V, a debtor must have no more than $7.5 million in liquidated debts. § 1182(1)(A). Though, this does not include "debts owed to 1 or more affiliates or insiders." *Id.* Therefore, corporate parents can ensure that their subsidiaries only incur debt from affiliates and insiders (the parent) so the subsidiaries remain Subchapter V eligible.[10] One of the most egregious examples of this occurred when sixteen affiliates of Regus PLC filed under Subchapter V. *See* Decl. James S. Feltman Ch. 11 Pets. First-Day Relief, No. 20-11961 (BLS). Regus' parent is IWG International Workplace Group, which has over a thousand special purpose entities. *See* Daniel Gill & Alex Wolf, *Companies Stretch Limits of Small Business Bankruptcy Eligibility*, Bloomberg Law News (June 10, 2022, 5:30 AM).[11] RGN-Group Holdings, LLC, a Regus subsidiary, had debts in excess of $100 million owed to affiliates within the IWG family, but those debts were not counted when determining Subchapter V eligibility. *Id.* After the bankruptcy judge questioned RGN's Subchapter V eligibility, the companies quickly refiled under traditional Chapter 11. *See* Order Redesig. Debtor's Subchapter V Ch. 11 Cases, No. 20-11961 (BLS). A similar instance occurred when an affiliate of multi-million-dollar hedge fund Greylock Capital Management LLC filed under Subchapter V.[12] Realizing the possibility that their business decisions could sour, these affiliates (with solvent parents) were structured to remain Subchapter V eligible to circumvent the

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[10] For example, to avoid structural subordination problems, a parent company's lender will often insist on covenants that prevent subsidiaries from incurring any external debt. If the subsidiary needs credit, it must obtain it from the parent. As a result, subsidiaries only incur debt from affiliates and insiders. Therefore, the subsidiary's credit matrix is such that it easily remains Subchapter V eligible. For additional background, *see generally* Marsha E. Simms, *Subordination and Intercreditor Issues*, SM084 Am. L. Inst. 351 (2007).

[11] *Available at* https://www.bloomberglaw.com/bloomberglawnews/bankruptcylaw/XEMHED5C000000?bna_news_filter=bankruptcy-law#jcite.

[12] The U.S. Trustee questioned Subchapter V eligibility, but the affiliate subsequently struck an out-of-court deal with creditors and had the bankruptcy case dismissed. *See* Gill & Wolf, *supra*.

absolute priority rule. *See* Heidi Sorvino et al., *Benefits of Subchapter V Under the Bankruptcy Code to Private Equity Funds in Managing Distressed Assets*, EisnerAmper: Engaging Alternatives 8–10 (2022).[13]

Strawberry Fields likely instructed its subsidiary to file under Subchapter V for one primary reason: to evade the absolute priority rule. Strawberry Fields seeks to discharge its own mass tort liability, as well as that of its subsidiary, all while retaining its equity interest in Penny Lane Industries. This is hardly the "small business owner" that Congress sought to protect when enacting Subchapter V. *See* H.R. Rep. No. 116-171, at 367. This Court should be wary of this type of abuse.

The majority made a policy argument related to Congress' goal of providing debtors with a fresh start, giving rise to a presumption against discharge exceptions. R. at 21. But this is a false notion. "The question . . . is not what Congress 'would have wanted' but what Congress enacted." *Argentina v. Weltover, Inc.*, 504 U.S. 607, 618 (1992); *see also* Scalia & Garner, *supra*, at 274 (discussing the "false notion that words should be strictly construed" to achieve a particular goal).

Although it is not the judiciary's role to correct Congress' mistakes, this Court can interpret the Code in a way that at least limits abuse and offers a fair result. The Court can achieve this by holding that § 523(a) debts are non-dischargeable in non-consensual Subchapter V plans. This will discourage parent companies from permitting their Subchapter V eligible affiliates from engaging in wrongful conduct with a safety net that ensures the parent's equity interests remain intact.

If the parent company is aware of the existence of non-dischargeable debts incurred by a subsidiary, one of two results will occur in restructuring. One, the subsidiary will need to pursue a consensual Subchapter V plan. This will fairly compensate creditors with § 523(a) debt types that

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[13] *Available at* https://www.eisneramper.com/subchater-v-managed-distress-ea-1222/.

would be otherwise non-dischargeable under a non-consensual plan. Two, if a consensual plan is impossible, the subsidiary will file or refile under traditional Chapter 11 and the parent will likely have its equity interests wiped out as a consequence of its subsidiary's nefarious acts.

This result also tracks the dissent and the Fourth Circuit's fairness arguments. The dissent below recognized that "creditors (such as Ms. Rigby) are afforded fewer tools to challenge confirmation of a plan." R. at 34; *see also* Bonapfel, *supra*, at 9, 137–41 (discussing Subchapter V changes, including the elimination of an unsecured creditors' committee and changes in cramdown rules). The dissent focused on the elimination of the absolute priority rule and the need for equitable balance between debtors and creditors. R. at 34; *Cleary Packaging*, 36 F.4th at 517. These arguments suggest that to avoid granting a windfall to debtors under Subchapter V, the advantages granted to a debtor come at a price. Debtors "must accept the corresponding burdens, including the narrower scope of the discharge." R. at 34 (McCartney, J. dissenting). Accordingly, this Court should hold that *all* Subchapter V debtors are subject to § 523(a)'s discharge exceptions when receiving a § 1192 discharge. Ms. Rigby's § 523(a)(6) claim is thus non-dischargeable.

Conclusion

The judgment of the Thirteenth Circuit below should be reversed on both issues. First, non-consensual releases of third-party direct claims against non-debtor affiliates in connection with a Chapter 11 reorganization plan are unlawful. Second, debts listed in subparagraphs (1) through (19) of § 523(a) are non-dischargeable when receiving a § 1192 discharge. Accordingly, Ms. Rigby should be permitted to proceed with her mass tort claim against Strawberry Fields, and her § 523(a)(6) claim against Penny Lane Industries should be non-dischargeable.

Appendix: Statutory Provisions Involved

Chapter 1 of Title 11, United States Bankruptcy Code: General Provisions

§ 101. Definitions

In this title the following definitions shall apply:

. . . .

(18) The term “family farmer” means—

(A) individual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed $11,097,350 [originally "$10,000,000", adjusted effective April 1, 2022]1 and not less than 50 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual's or such individual and spouse's gross income for--

(i) the taxable year preceding; or

(ii) each of the 2d and 3d taxable years preceding;

the taxable year in which the case concerning such individual or such individual and spouse was filed; or

(B) corporation or partnership in which more than 50 percent of the outstanding stock or equity is held by one family, or by one family and the relatives of the members of such family, and such family or such relatives conduct the farming operation, and

(i) more than 80 percent of the value of its assets consists of assets related to the farming operation;

(ii) its aggregate debts do not exceed $11,097,350 [originally "$10,000,000", adjusted effective April 1, 2022]1 and not less than 50 percent of its aggregate noncontingent, liquidated debts (excluding a debt for one dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a farming operation), on the date the case is filed, arise out of the farming operation owned or operated by such corporation or such partnership; and

(iii) if such corporation issues stock, such stock is not publicly traded.

(19) The term "family farmer with regular annual income" means family farmer whose annual income is sufficiently stable and regular to enable such family farmer to make payments under a plan under chapter 12 of this title.

(19A) The term "family fisherman" means—

(A) an individual or individual and spouse engaged in a commercial fishing operation--

(i) whose aggregate debts do not exceed $2,268,550 [originally "$1,500,000", adjusted effective April 1, 2022]1 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such individual or such individual and spouse; and

(ii) who receive from such commercial fishing operation more than 50 percent of such individual's or such individual's and spouse's gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or

. . . .

§ 105. Power of court

(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.

. . . .

§ 109. Who may be a debtor

. . . .

(e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated debts of less than $2,750,000 or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated debts that aggregate less than $2,750,000 may be a debtor under chapter 13 of this title.

. . . .

Chapter 3 of Title 11, United States Bankruptcy Code: Case Administration

§ 362. Automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

. . . .

Chapter 5 of Title 11, United States Bankruptcy Code: Creditors, the Debtor, and the Estate

§ 523. Exceptions to discharge[14]

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

(1) for a tax or a customs duty—

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

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

(i) was not filed or given; or

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

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

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

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

(B) use of a statement in writing—

(i) that is materially false;

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

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

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[14] Effective January 5, 2023, Congress added a new subparagraph (20) to 11 U.S.C. § 523(a). Abolish Trafficking Reauthorization Act of 2022, Pub. L. No. 117-347, § 201, 136 Stat. 6199, 6205 (2023) (codified as amended at 11 U.S.C. § 523(a)). This Court granted *certiorari* for the non-dischargeability issue as relevant to subparagraphs (1) through (19) of 11 U.S.C. § 523(a) before subparagraph (20) was in effect. This appendix includes the new subparagraph (20) to reflect the most current codification of 11 U.S.C. § 523(a).

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

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

(I) consumer debts owed to a single creditor and aggregating more than $800 [originally "$500", adjusted effective April 1, 2022]2 for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and

(II) cash advances aggregating more than $1,100 [originally "$750", adjusted effective April 1, 2022]2 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and

(ii) for purposes of this subparagraph—

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

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

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

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

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

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

(5) for a domestic support obligation;

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

(7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty—

(A) relating to a tax of a kind not specified in paragraph (1) of this subsection; or

(B) imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition;

(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—

(A)(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or

(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

(B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;

(9) for death or personal injury caused by the debtor's operation of a motor vehicle, vessel, or aircraft if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;

(10) that was or could have been listed or scheduled by the debtor in a prior case concerning the debtor under this title or under the Bankruptcy Act in which the debtor waived discharge, or was denied a discharge under section 727(a)(2), (3), (4), (5), (6), or (7) of this title, or under section 14c(1), (2), (3), (4), (6), or (7) of such Act;

(11) provided in any final judgment, unreviewable order, or consent order or decree entered in any court of the United States or of any State, issued by a Federal depository institutions regulatory agency, or contained in any settlement agreement entered into by the debtor, arising from any act of fraud or defalcation while acting in a fiduciary capacity committed with respect to any depository institution or insured credit union;

(12) for malicious or reckless failure to fulfill any commitment by the debtor to a Federal depository institutions regulatory agency to maintain the capital of an insured depository institution, except that this paragraph shall not extend any such commitment which would otherwise be terminated due to any act of such agency;

(13) for any payment of an order of restitution issued under title 18, United States Code;

(14) incurred to pay a tax to the United States that would be nondischargeable pursuant to paragraph (1);

(14A) incurred to pay a tax to a governmental unit, other than the United States, that would be nondischargeable under paragraph (1);

(14B) incurred to pay fines or penalties imposed under Federal election law;

(15) to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit;

(16) for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case;

(17) for a fee imposed on a prisoner by any court for the filing of a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the debtor under subsection (b) or (f)(2) of section 1915 of title 28 (or a similar non-Federal law), or the debtor's status as a prisoner, as defined in section 1915(h) of title 28 (or a similar non-Federal law);

(18) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, under—

(A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974, or subject to section 72(p) of the Internal Revenue Code of 1986; or

(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title;

(19) that—

(A) is for—

(i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or

(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

(B) results, before, on, or after the date on which the petition was filed, from—

(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

(ii) any settlement agreement entered into by the debtor; or

(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor; or

(20) for injury to an individual by the debtor relating to a violation of chapter 77 of title 18, including injury caused by an instance in which the debtor knowingly benefitted financially, or by receiving anything of value, from participation in a venture that the debtor knew or should have known engaged in an act in violation of chapter 77 of title 18.

For purposes of this subsection, the term "return" means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.

. . . .

§ 524. Effect of discharge

. . . .

(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.

(h) Application to existing injunctions.--For purposes of subsection (g)—

(1) subject to paragraph (2), if an injunction of the kind described in subsection (g)(1)(B) was issued before the date of the enactment of this Act, as part of a plan of reorganization confirmed by an order entered before such date, then the injunction shall be considered to meet the requirements of subsection (g)(2)(B) for purposes of subsection (g)(2)(A), and to satisfy subsection (g)(4)(A)(ii), if--

(A) the court determined at the time the plan was confirmed that the plan was fair and equitable in accordance with the requirements of section 1129(b);

(B) as part of the proceedings leading to issuance of such injunction and confirmation of such plan, the court had appointed a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands described in subsection (g)(4)(B) with respect to such plan; and

(C) such legal representative did not object to confirmation of such plan or issuance of such injunction; and

(2) for purposes of paragraph (1), if a trust described in subsection (g)(2)(B)(i) is subject to a court order on the date of the enactment of this Act staying such trust from settling or paying further claims—

(A) the requirements of subsection (g)(2)(B)(ii)(V) shall not apply with respect to such trust until such stay is lifted or dissolved; and

(B) if such trust meets such requirements on the date such stay is lifted or dissolved, such trust shall be considered to have met such requirements continuously from the date of the enactment of this Act.

. . . .

Chapter 7 of Title 11, United States Bankruptcy Code: Liquidation

§ 727. Discharge

(a) The court shall grant the debtor a discharge, unless--

the debtor is not an individual;

. . . .

(b) Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title.

. . . .

Chapter 11 of Title 11, United States Bankruptcy Code: Reorganization

§ 1123. Confirmation of plan

. . . .

(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.

. . . .

§ 1129. Confirmation of plan

(a) The court shall confirm a plan only if all of the following requirements are met:

(1) The plan complies with the applicable provisions of this title.

(2) The proponent of the plan complies with the applicable provisions of this title.

. . . .

(b)(1) Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

(2) For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides--

(i)(I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and
(II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the

proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or
(iii) for the realization by such holders of the indubitable equivalent of such claims.

(B) With respect to a class of unsecured claims--

(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

. . . .

(d) Notwithstanding any other provision of this section, on request of a party in interest that is a governmental unit, the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933. In any hearing under this subsection, the governmental unit has the burden of proof on the issue of avoidance.

(e) In a small business case, the court shall confirm a plan that complies with the applicable provisions of this title and that is filed in accordance with section 1121(e) not later than 45 days after the plan is filed unless the time for confirmation is extended in accordance with section 1121(e)(3).

§ 1141. Effect of confirmation

(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.

. . . .

(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.

Subchapter V of Chapter 11 of Title 11, United States Bankruptcy Code: Reorganization

§ 1181. Inapplicability of other sections

. . . .

(c) Special rule for discharge.--If a plan is confirmed under section 1191(b) of this title, section 1141(d) of this title shall not apply, except as provided in section 1192 of this title.

§ 1182. Definitions

In this subchapter:

(1) Debtor.--The term "debtor"—

(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning single asset real estate) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than $7,500,000 (excluding debts owed to 1 or more affiliates or insiders) not less than 50 percent of which arose from the commercial or business activities of the debtor; and

(B) does not include--

(i) any member of a group of affiliated debtors under this title that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than $7,500,000 (excluding debt owed to 1 or more affiliates or insiders);
(ii) any debtor that is a corporation subject to the reporting requirements under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)); or

(iii) any debtor that is an affiliate of a corporation described in clause (ii).

(2) Debtor in possession.--The term "debtor in possession" means the debtor, unless removed as debtor in possession under section 1185(a) of this title.

§ 1191. Confirmation of plan

(a) Terms.--The court shall confirm a plan under this subchapter only if all of the requirements of section 1129(a), other than paragraph (15) of that section, of this title 1 are met.

(b) Exception.--Notwithstanding section 510(a) of this title, if all of the applicable requirements of section 1129(a) of this title, other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

(c) Rule of construction.--For purposes of this section, the condition that a plan be fair and equitable with respect to each class of claims or interests includes the following requirements:

(1) With respect to a class of secured claims, the plan meets the requirements of section 1129(b)(2)(A) of this title.

(2) As of the effective date of the plan--

(A) the plan provides that all of the projected disposable income of the debtor to be received in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; or

(B) the value of the property to be distributed under the plan in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date on which the first distribution is due under the plan is not less than the projected disposable income of the debtor.

(3)(A) The debtor will be able to make all payments under the plan; or

(B)(i) there is a reasonable likelihood that the debtor will be able to make all payments under the plan; and

(ii) the plan provides appropriate remedies, which may include the liquidation of nonexempt assets, to protect the holders of claims or interests in the event that the payments are not made.

(d) Disposable income.--For purposes of this section, the term "disposable income" means the income that is received by the debtor and that is not reasonably necessary to be expended—

(1) for--

(A) the maintenance or support of the debtor or a dependent of the debtor; or

(B) a domestic support obligation that first becomes payable after the date of the filing of the petition; or

(2) for the payment of expenditures necessary for the continuation, preservation, or operation of the business of the debtor.

(e) Special rule.--Notwithstanding section 1129(a)(9)(A) of this title, a plan that provides for the payment through the plan of a claim of a kind specified in paragraph (2) or (3) of section 507(a) of this title may be confirmed under subsection (b) of this section.

§ 1192. Discharge

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

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

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

Chapter 12 of Title 11, United States Bankruptcy Code: Adjustment of Debts of a Family Farmer or Fisherman with Regular Annual Income

§ 1228. Discharge

(a) Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, other than payments to holders of allowed claims provided for under section 1222(b)(5) or 1222(b)(9) of this title, 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 for by the plan, allowed under section 503 of this title, or disallowed under section 502 of this title, except any debt--

(1) provided for under section 1222(b)(5) or 1222(b)(9) of this title; or

(2) of a kind specified in section 523(a) of this title, except as provided in section 1232(c).

. . . .

(c) A discharge granted under subsection (b) of this section discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1222(b)(5) or 1222(b)(9) of this title; or

(2) of a kind specified in section 523(a) of this title, except as provided in section 1232(c).

(d) On request of a party in interest before one year after a discharge under this section is granted, and after notice and a hearing, the court may revoke such discharge only if—

(1) such discharge was obtained by the debtor through fraud; and

(2) the requesting party did not know of such fraud until after such discharge was granted.

. . . .

Chapter 13 of Title 11, United States Bankruptcy Code: Adjustment of Debts of an Individual with Regular Income

§ 1328. Discharge

(a) Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, 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 for by the plan or disallowed under section 502 of this title, except any debt--

(1) provided for under section 1322(b)(5);

(2) of the kind specified in section 507(a)(8)(C) or in paragraph (1)(B), (1)(C), (2), (3), (4), (5), (8), or (9) of section 523(a);

. . . .

(c) A discharge granted under subsection (b) of this section discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1322(b)(5) of this title; or

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

. . . .