No. 22-0909

In the Supreme Court of the United States

IN RE PENNY LANE INDUSTRIES, INC.,

Debtor,

ELANOR 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 PETITIONER

Counsel for Petitioner

Question Presented

1. Whether a bankruptcy court has the authority to approve non-consensual releases or direct claims held by third parties against non-debtor affiliates as part of a chapter 11 plan of reorganization.
2. 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) U.S.C. § 523(a)

Table of Contents

Table of Authorities

United States Supreme Court Cases

United States Courts of Appeal Cases

United States District Court Cases

United States Bankruptcy Court Cases

Statutes

OTHER AUTHORITIES

Opinions Below

The decision of the Thirteenth Circuit Court of Appeals is reproduced in the record on appeal. The decisions of the United States District Court for the District of Moot and the United States Bankruptcy Court for the District of Moot are unreported.

Statement of Jurisdiction

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

Statutory Provisions

The relevant constitutional and statutory provisions in this case are: U.S. Const. art. III; 11 U.S.C. §§ 105, 523(a) and (e), 524(a)(e)(g)(h), 1129, 1192, and 1228. These provisions are reproduced in appendices A through G.

Statement of Facts

1. Penny Lane Industries, Inc. background. Penny Lane Industries, Inc. (the "Debtor") is a manufacturer of plastic, glass, and metal food containers based in Blackbird, Moot. R. 4. Its parent company, Strawberry Fields, produces food products sold throughout the country. R. 5. Both companies are alleged to be aware of dumping pollutants on the Debtor's property that contaminated the water supply of Blackbird. R. 6.

2. Allegations of polluting the water of Blackbird. Residents of Blackbird suffered the tragic consequences of drinking water allegedly contaminated by the Debtor. R. 5. Studies conducted by the United States Environmental Protection Agency and the Centers for Disease Control and Prevention show that residents bathed and drank water that was dangerously over the permitted levels of toxins from 2013-2017. R.5.

3. Ms. Rigby's claim. In 2017, following the tragic death of her four-year-old daughter, Ms. Rigby filed suit against the Debtor alleging its knowing disposal of pollutants on the Debtor's property. R. 5. Ms. Rigby, and other litigants, allege that the Debtor improperly dumped pollutants to avoid the cost of proper disposal. R. 5. She alleges that this cost saving measure led to the pollution of the Liverpool River which directly affected the resident's water supply. R. 5. The practice of dumping pollutants continued for years despite the Debtor and parent company's knowledge that it contaminated the nearby water supply. R. 6. Ms. Rigby alleges that the Debtor was aware of the toxic impact its dumping had on the nearby water supply since 2014. R. 5. The contaminated water supply devastated the community. R. 6. Hundreds of individuals are similarly situated to Ms. Rigby with claims of wrongful death or injury against the Debtor and Strawberry Fields. R. 6.

4. Debtor's bankruptcy filing. In the face of these lawsuits, the Debtor filed subchapter V chapter 11 bankruptcy on January 11, 2021. R. 6. At the time of filing the Debtor owed less than $2 million to creditors with many claims being disputed, including unliquidated tort claims over the alleged dumping of pollutants. R. 6. Ms. Rigby has a $1 million unsecured claim to which no objection has been filed. R. 7.

5. Adversary proceedings following filing of bankruptcy. Ms. Rigby filed an adversary proceeding arguing her claim against the Debtor was non-dischargeable under §§ 523(a) and 1192(2). R. 7. She disputed the plan of reorganization on the basis that Strawberry Fields was granted an improper release of liability. R. 9. Like other claims filed against the Debtor and Strawberry Fields, her claim was stayed by the temporary injunction granted by the court while some stakeholders negotiated a plan of reorganization. R. 8.

6. The bankruptcy court granted a temporary injunction while mediation took place. The bankruptcy court granted a temporary injunction against the Debtor's entities relating to the pending litigation over alleged pollution. R. 7. The bankruptcy court deemed this injunction necessary to allow for negotiations needed to reach a global settlement. R. 8. After two months of mediation, several stakeholders negotiated the reorganization plan that provided for the Debtor's disposable income and $100 million paid by Strawberry Fields to create a creditor trust. R. 8.

7. The plan of reorganization. Strawberry Fields made the funding of the trust contingent on a broad release of all claims, those currently asserted and that might be asserted in the future. R. 8. Essentially, the plan required a complete release of Strawberry Fields's liability for any suit related to the Debtor's conduct that occurred before the Debtor filed for bankruptcy. R. 9. Being non-consensual, this plan would bind parties whether they voted in favor of the Plan

or not. R. 8. In exchange for this broad release of liability, the trust would result in creditors getting 30-40 cents on the dollar for their allowed claims. R. 8.

8. Both Norwegian Wood Bank and Ms. Rigby objected to the plan. The bank alleged the Plan was not "fair and equitable" in its treatment of the Bank's claim as unsecured creditor. R. 9. Ms. Rigby objected on the basis that non-consensual releases are not permitted by the Bankruptcy Code ("the Code") rendering the release of Strawberry Fields' liability improper. R. 9.

9. The plan was confirmed over objections and consummated. Despite the bankruptcy court's acknowledgment that the monetary value to the claimants from the plan could never sufficiently compensate them for the pain and suffering allegedly caused by the Debtor, it confirmed the Plan. R. 10. The bankruptcy court confirmed the Plan despite these misgivings considering Strawberry Fields' contribution to the trust funding payment to creditors and the premiums paid to claimants "to buy peace." R. 10.

10. Timely Appeal of Ms. Rigby properly preserved her claim. The bankruptcy court overruled both the Bank and Ms. Rigby's objections to the Plan. R. 11. Ms. Rigby timely appealed the bankruptcy court's ruling in a direct appeal to the Thirteenth Circuit Court of Appeals. R. 11. The Thirteenth Circuit reviewed her claim and confirmed the holding of the bankruptcy court's decision. R. 23.

Summary of Arguments

I.A. The U.S. Constitution prohibits bankruptcy court's from dismissing a third-party's claim against a non-debtor under Article III. Congress grants bankruptcy court's jurisdiction over claims arising under, in, and that are related to title 11 claims. Based on this Court's parameters for each category, Ms. Rigby's state law claim against Strawberry Fields is outside of the permitted jurisdiction of a bankruptcy court's constitutional authority.

B. Congress is unable to vest power in a bankruptcy court to adjudicate state law claims without running afoul of Article III. It undermines the sovereignty of the judiciary to suggest that Congress can override the power of the judiciary branch and usurp the constitutional distinction between equal branches of government.

C. The in *rem* jurisdiction of a bankruptcy court prohibits third-party releases. Bankruptcy court's may only exercise jurisdiction over the estate of the debtor. By releasing a third party's claim a bankruptcy court exceeds its jurisdiction and violates the due process rights of litigants who are left unable to litigate their claims.

D. Bankruptcy courts lack statutory power to release a third-party from claims by a non-debtor. The plain language of the text of the Code's discharge provision, 11 U.S.C. § 524, prohibits any discharge that affects the liability of a third party. Because the release sought by Strawberry Fields is a broad release of its liability, it is expressly outside the scope of authority granted bankruptcy courts in the Code.

E. Both the structure of the discharge provision and the legislative history support that the plain language reading of the Code is consistent with congressional intent. The inclusion of an exception to the general rule against release of third-party claims regarding asbestos-related claims informs this conclusion. Despite ongoing debate in the lower courts, Congress chose to only

provide an exception to asbestos related claims. Indicating that, as a rule, bankruptcy courts may not affect a third-party's liability.

F. The circuit split on the issue is not dispositive to Petitioner's claim. If this Court adopted even the most permissive standard regarding non-debtor releases, Strawberry Fields does not qualify. The factors considered by circuits permitting the practice focus on the indemnity of interests and identity between the non-debtor and the debtor. The relationship between Strawberry Fields and the Debtor does not satisfy this requirement.

G. Permitting the practice of non-debtor releases conflicts with the policy of the Code. Rather than promote equitable distribution of a debtor's estate, these releases allow large companies, such as Strawberry Fields, to buy itself out of liability by funding the plan. The justification for these releases, avoiding liquidation, can be obtained through far more equitable means which are not prohibited by the Code.

II.A. Courts ought to interpret statutes according to Congress' intent. The most reliable indicator of congressional intent is the language of the statute itself. The plain language of § 1192 references both individual and corporate debtors. This reference does not make § 523(a) the controlling statute, rather it concisely references a kind of dept excepted from discharge.

B. Congress is presumed to be aware of existing law at the time of drafting statutes. Because Congress used similar language in drafting subchapter V to language that already existed in chapter 12, cases interpreting chapter 12 are informative of Congress' intent regarding subchapter V. This application is consistent with canons of statutory construction that require the specific to govern the general. Therefore, the specific provisions of § 1192 ought to govern the general provision, § 523(a) which is referenced in chapter 12 like subchapter V.

C. Because consensual provisions of subchapter V apply to both corporate and individual debtors, allowing corporate debtors to avoid exceptions to discharge for non-consensual plans conflicts with the policy of the Code. It is a policy of the Code to avoid non-consensual plans. Shielding corporate debtors from exceptions to debt essentially incentivizes them to withhold consent. Debtors filing under subchapter V already receive abrogation of the absolute priority rule. This significant benefit should not be coupled with discharging debts from willful or negligent conduct listed in § 523(a).

Standard of Review

Courts review matters of law on appeal *de novo*. *In re Point Center Financial, Inc.*, 957 F.3d 990, 995 (9th Cir. 2020). The parties do not dispute the facts of the case; this appeal involves questions of law. R. 11. The bankruptcy court's findings are treated as findings of fact subject to *de novo* review by this Court. *Executive Benefits Ins. Agency v. Arkison*, 573 U.S. 25, 30 (2014).

Argument

This Court should reverse the decision of the Thirteenth Circuit Court of Appeals. The Thirteenth Circuit incorrectly affirmed the decision of the bankruptcy court. First, the bankruptcy court lacked the power to affect the liability of Strawberry Fields towards Ms. Rigby. Second, the language of non-consensual discharge provisions under subchapter V excepts corporate debtors from discharging certain kinds of debt.

Under the Code, Congress gives bankruptcy courts broad power to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The bankruptcy court may exercise this power to carry out the contents and confirmation of a plan of reorganization. 11 U.S.C. §§ 1123, 1129. However, the bankruptcy court's broad power, and its power to confirm a plan of reorganization, is subject to the specific

provisions of the Code. The Code addresses the discharge of debts in a plan of reorganization specifically, stating that they do not affect the liability of any other entity other than the Debtor. 11 U.S.C. § 524(e).

In subchapter V cases, Congress restricts the discharge of certain debts by reference to listed provisions in 11 U.S.C. § 523(e). Rather than properly apply canons of statutory construction, the bankruptcy court and lower court read subchapter V as not excepting the debts of corporations for the list provided. This is antithetical to congressional intent and the plain reading of the language.

The bankruptcy court overstepped its power in the discharge of a non-debtor's liability towards a third party. The constitutional and statutory limits on the bankruptcy court's power categorically prohibit non-consensual third-party releases against a non-debtor ("non-debtor releases"). Legislative history and policy support this conclusion. The lower court also failed to properly interpret the language of subchapter V regarding corporate debtors. Because the language applies to both individual and corporate debtors, the court cannot discharge this kind of debt.

I. THE THIRTEENTH CIRCUIT ERRED IN FINDING THAT THE BANKRUPTCY COURT HAD JURISDICTION OVER MS. RIGBY'S CLAIM AGAINST STRAWBERRY FIELDS.

Non-debtor releases fall outside of a bankruptcy court's Article III jurisdiction. Bankruptcy courts "have original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11." 28 U.S.C. §§ 157, 1334. This Court held that bankruptcy courts are unable to adjudicate pure state law tort claims asserted by creditors against non-debtors. *Stern v. Marshall*, 564 U.S. 462, 499 (2011). More specifically, a bankruptcy court is unable to enter a final order on a claim that "is not resolved in the process of ruling on a creditor's claim." *Id.* at 503.

Following this Court's analysis in *Stern*, Ms. Rigby's claim falls outside of a bankruptcy court's jurisdiction because it is a state law claim that does not stem from the bankruptcy itself and is not necessarily resolved in determining a claim against the estate. To allow a bankruptcy court to adjudicate Ms. Rigby's claim would directly violate Article III and Congress cannot vest non-Article III judges with the same authority that the Constitution vests in the Article III judiciary. Additionally, the third-party release violated the bankruptcy court's *in rem* jurisdiction.

A. The Constitution Prohibits the Non-Article III Bankruptcy Court's Dismissal of Ms. Rigby's State Law Claim.

Congress divided bankruptcy proceedings into three categories: 1. claims arising under title 11, 2. claims that arise in a title 11 case, and 3. claims that are related to a case under title 11. *Stern,* 564 U.S. at 474. Core claims are defined as either those arising under title 11 or those arising in a title 11 case, while non-core claims are those related to a title 11 case. 28 U.S.C. § 157. Bankruptcy courts have final authority to adjudicate "core" claims; however, they may only issue findings of fact and conclusions of law to a district court and may not adjudicate the claim. 28 U.S.C. § 157(c)(1).

Ms. Rigby's claim, if falling under the bankruptcy court's jurisdiction at all, falls under a bankruptcy court's "related to" jurisdiction. Her claim does not arise under title 11 because it is a state law claim and does not pertain to federal bankruptcy law. Nor does it arise in a title 11 case as it against a non-debtor. Therefore, because Ms. Rigby's claim does fall under the bankruptcy court's jurisdiction it is a non-core *Stern* claim.

This Court has found that both state-law counterclaims and state-law contract claims fall outside of a Bankruptcy Court's Article III jurisdiction. *See* Stern, 564 U.S. at 487; *N. Pipeline Const. Co. v. Marathon Pipe Line Co.,* 458 U.S. 50, 87 (1982) (discussing the authority of Bankruptcy Courts under the Bankruptcy Act of 1978.) Like the claim addressed by this Court in

Stern, Ms. Rigby's claim does not pertain to federal bankruptcy law and is not resolvable by ruling on a creditor's proof of claim. *See Stern*, 564 U.S. at 487. Even if the claim "attempts to augment the bankruptcy estate," it is insufficient to provide a bankruptcy court with Article III jurisdiction. *Id*. at 499. Moreover, if a claim consists of a traditional common law action, then that claim must be adjudicated by an Article III court. *Id.* at 484. Ms. Rigby's wrongful death claim alleges, *inter alia*, negligence by Strawberry Fields for its failure to monitor Penny Lane's illegal environmental activities. R. 5-6. This claim is traditionally brought at common law and is brought against an entity that is not party to the bankruptcy proceeding. Therefore, *Stern* informs this Court that a Bankruptcy Court with "related to" jurisdiction of a claim cannot constitutionally adjudicate Ms. Rigby's claim and this Court should reverse the holding of the Thirteenth Circuit. *Id*. at 487.

The Thirteenth Circuit's approach attempts to circumvent "related to" jurisdiction by arguing that because the dismissal of Ms. Rigby's claim was incorporated into a plan of reorganization, the bankruptcy court has the constitutional authority to dismiss these claims. This approach must be rejected because allowing the bankruptcy court to adjudicate third-party claims would allow non-debtors to manufacture jurisdiction over claims unrelated to the underlying bankruptcy proceeding. Essentially, the Thirteenth Circuit's approach would allow non-debtors to bootstrap any claim to a bankruptcy proceeding to manufacture jurisdiction over these claims. This approach fundamentally undermines Article III by providing the bankruptcy court with essentially infinite jurisdiction. *See In re Midway Gold US, Inc.*, 575 B.R. 475, 519 (Bankr. D. Colo. 2017) ("If proceedings over which the Court has no independent jurisdiction could be [metamorphosized] into proceedings within the Court's jurisdiction by simply by including their release in a proposed plan, this [Bankruptcy] Court could acquire infinite jurisdiction.) Additionally, *Stern* does not suggest that a party forfeits its constitutional right if the claim is dismissed by a plan of

reorganization in bankruptcy. If this were the case, it would allow parties to "manufacture a bankruptcy court's Stern authority simply by inserting the resolution of some otherwise non-core matter into a plan." *In re Purdue Pharma, L.P.*, 635 B.R. 26, 80 (S.D.N.Y. 2021).

B. Congress Cannot Vest Bankruptcy Courts with Article III Jurisdiction.

Article III creates limitations that other branches of government cannot contravene. A bankruptcy court is not an adjunct of a district court. *N. Pipeline Const. Co.*, 458 U.S. at 51. Furthermore, "[t]he judicial Power of the United States. . . can no more be shared with another branch than 'the Chief Executive, for example, can share with the Judiciary the veto power, or the Congress share with the Judiciary the power to override a Presidential veto.'" *Stern*, 564 U.S. at 483 (quoting *United States v. Nixon*, 418 U.S. 683, 704 (1974)). Article III would not be able to preserve the independence of the judiciary if Congress was able to "confer the Government's "judicial power" on entities outside Article III." *Id.* at 484. This Court emphasized the need for protecting the sovereignty of the Article III Judiciary because it preserves the separation-of-powers principles, and by extension, protects the individual. *Id.* at 483. Article III judges serve lifetime appointments and other branches are unable to diminish their salaries, which creates and preserves an independent judiciary. *Id.* The protection offered by the distinctive structural elements of the Article III judiciary is why this Court held that Congress cannot "withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty." *Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. 272, 284 (1855). To do so would undermine the checks and balances system that is the foundation of our democracy.

Moreover, statutory provisions of the bankruptcy code cannot destroy the constitutional distinction between the Article III and non-Article III judiciaries. "Congress could not eviscerate

the limits of Article III jurisdiction by enacting § 105. Article III simply does not allow third-party non-debtors to bootstrap any and all of their disputes into a bankruptcy case to obtain relief." *Patterson v. Mahwah Bergen Retail Grp., Inc.*, 636 B.R. 641, 672 (E.D. Va. 2022). " Therefore, Congress does not have the constitutional authority to vest a bankruptcy court with the power of the Article III judiciary. *Id.*

C. A Bankruptcy Court's In Rem Jurisdiction Prohibits Third-party Releases.

"Bankruptcy jurisdiction, at its core, is in rem" and its jurisdiction is limited to the *res* of the estate. *Cent. Virginia Cmty. Coll. v. Katz,* 546 U.S. 356, 362 (2006). A bankruptcy court has jurisdiction over "civil proceedings" related to the bankruptcy code; however, in the case of non-debtor releases, there may not be a proceeding at all. 28 U.S.C. §§ 157, 1334; *In re Aegean Marine Petroleum Network Inc.,* 599 B.R. 717, 723 (Bankr. S.D.N.Y. 2019). Non-debtor releases challenge a bankruptcy court's in rem jurisdiction by asking the court to determine the disposition of a non-debtor's assets while extinguishing the claim of yet another non-debtor. *Id*. Therefore, in the absence of consent, a bankruptcy court does not have in rem jurisdiction over a non-debtor.

Moreover, a bankruptcy court's in rem jurisdiction does permit it to dismiss third-party claims. Courts cannot dictate the terms of a settlement or force parties to non-consensually release their claims. *Id*. at 725; s*ee United States v. Ward Baking Co.*, 376 U.S. 327, 334 (1964). This Court has also held that two parties cannot release the claims of a third party, rather the claimant is entitled to their day in court or a settlement to which the claimant agrees. *Local No. 93, Int'l Ass'n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501, 529 (1986). Additionally, litigants have a due process right that enables them to recover the value of the property that they've lost. *See, e.g., First English Evangelical Lutheran Church of Glendale v. Los Angeles Cty., Cal.*, 482 U.S. 304, 322 (1987).

Non-debtor releases violate a litigant's due process rights by determining an appropriate valuation of their loss, based on a non-debtor's voluntary contribution to a bankruptcy estate, fundamentally upending the traditional approach to litigation. *In re Aegean Marine Petroleum Network Inc.*, 599 B.R. at 726. This approach also "has the effect of a judgment," which is in favor of the non-debtor and accomplished without due process. *In re Digital Impact*, 223 B.R. 1, 13 n. 6 (Bankr. N.D. Okla. 1998). In effect, adopting the lower court's holding would be to allow Strawberry Fields to choose their own payment for their negligence in the death of a young girl. This approach fundamentally violates the traditional norms of the adversarial system and is outside the scope of a bankruptcy court's in rem jurisdiction.

D. The Language of the Code Does Not Grant Bankruptcy Courts Power to Release a Non-debtor from Liability.

The plain language of the Code's discharge provision prohibits the release of Strawberry Fields' liability. A proper reading of the Code begins and ends with its plain language. *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000). The Code provides broad equitable power for bankruptcy courts to carry out the specific provisions of the Code that comport with the protections that bankruptcy affords the debtor. *In re American Hardwoods, Inc.*, 885 F.2d 621, 626 (9th Cir. 1989). However, the Code does not grant free reign for a court to exercise its equitable power in a way that conflicts with the Code's specific provisions. *Id.* Instead, the equitable power of the courts must comport with the specific provisions controlling a given topic. *In re Western Real Estate Fund, Inc.*, 922 F.2d 592, 601 (10th Cir. 1990).

The plain language of the Code's discharge provisions requires a categorical ban on non-consensual releases of third parties by non-debtors. *In re Pacific Lumber Co.*, 584 F.3d 229, 252 (5th Cir. 2009). While bankruptcy courts have considerable leeway within the provisions of the Code, any discharge that affects the liability of third parties is expressly beyond the power of the

court. *In re Lowenschuss*, 67 F.3d 1394, 1401-02 (9th Cir. 1995). Thus, the power granted bankruptcy courts under §§ 105 and 1123 is constrained by the limiting language of § 524(e), which prevents any discharge from affecting the liability of a non-debtor. *In re Western Real Estate Fund, Inc.*, 922 F.2d at 601.

General provisions of the Code do not provide relief by themselves. *In re Purdue Pharma, L.P.*, 635 B.R at 115. Rather, general provisions of the Code enable the bankruptcy court to enact specific provision. *In re Lowenschuss*, 67 F.3d at 1402. Parties that submit to the purview of the bankruptcy court ought to be the parties over which the court has power and who benefit from any permissible discharge. In re *Western Real Estate Fund, Inc*., 922 F.2d at 600. The benefits of discharge were not intended for third parties outside the jurisdiction of the bankruptcy court. *Id.* Correctly read, § 524(e) is a limiting provision on the equitable power of a bankruptcy court that only permits discharge of the debts regarding parties to the bankruptcy. Any other action that affects the liability of a non-debtor, such as Strawberry Fields, exceeds the power of the bankruptcy courts and must be invalidated upon timely appeal.

This is the proper conclusion despite the circuit split. Several circuits read § 105 as granting broad power to bankruptcy courts to take any action necessary to confirm a plan, including confirming the release of a third party. *National Heritage Foundation, Inc. v. Highbourne Foundation,* 760 F.3d 344, 348 (4th Cir. 2014); *In re Seaside Engineering & Surveying, Inc.*, 780 F.3d 1070, 1078 (11th Cir. 2015); *In re Dow Corning Corp.*, 280 F.3d 648, 658 (6th Cir. 2002). Importantly, circuits adopting this more permissive approach to the Code do not offer a carte blanche authority to confirm such releases. *In re Seaside Engineering & Surveying, Inc.*, 780 F.3d at 1078. Instead, they are only permitted in rare or unusual circumstances. *Id.* In rare cases, bankruptcy courts may exercise their equitable power in confirming a non-debtor release following

a thorough factual analysis to determine that the circumstances call for this rare exercise of equitable power. *In re Dow Corning Corp.*, 280 F.3d at 658.

However, that approach is inconsistent with the nature of the Code as a comprehensive scheme. *In re Purdue Pharma, L.P.*, 635 B.R. at 110. The Code is interpreted by courts to avoid rare application. *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 469 (2017). Essentially, the power either exists or it does not. *Id.* It is antithetical to a comprehensive statutory scheme for a court to claim broad power when it sees fit. *In re Purdue Pharma.*, 635 B.R. at 110. Accordingly, the plain language of the Code indicates that § 524(e) is a limiting provision that expressly prohibits non-debtor releases.

E. Congress Intended to Prevent the Discharge of Non-Debtor Liability in All but Asbestos-Related Cases.

Congress intended the discharge provision of the Code to prevent non-debtor releases. The legislative history behind the specific rule against discharge of non-debtor liability in § 524(e), and its placement within § 524 broadly, clarify its proper reading as a limiting provision on the equitable power of the bankruptcy court. *In re Purdue Pharma, L.P.*, 635 B.R. at 94. While the clearest indication of legislative intent is the plain language of the statute itself, this intent may be supported by available legislative materials. *In re Arnett*, 731 F.2d 358, 361 (6th Cir. 1984). However, a proper interpretation may not render any part of the statute superfluous or redundant. *Id.*

The discharge provision of the Code indicates that a bankruptcy court's power to discharge any debt or liability only extends over the debts of the debtor, not other entities. 11 U.S.C. § 524(e). Following the limiting provision of § 524(e), Congress added an exception to the general rule against non-debtor releases in asbestos cases. 11 U.S.C. § 524(g)(h). The need to add an additional section to state an exception for asbestos-related claims indicates that, prior to this addition, the

Code did not permit non-consensual releases. *In re Purdue Pharma, L.P.*, 635 B.R.at 92. The language of § 524(g) states, "notwithstanding the provisions of section 524(e)" and goes on to carve out an exception for asbestos related claims. § 524(g); *In re Purdue Pharma, L.P.*, 635 B.R. at 92. The inclusion of § 524(g) and (h) in the 1984 reform of the Code supports the idea that § 524(e) is a limiting provision on the power of a bankruptcy court over non-debtors.

The Thirteenth Circuit's holding, that § 524(e) is a savings clause that does not prohibit non-debtor releases, renders the addition of asbestos-related exceptions redundant. If non-debtor releases were a permitted exercise of bankruptcy court's statutory authority it would be superfluous for Congress to carve out an exception for asbestos-related claims. Because Congress chose to specially permit non-debtor releases only in asbestos-related claims, this Court must read § 524(e) as generally prohibiting the practice.

The history of § 524 supports the reading of § 524(g) as an exception to the general limiting provision of § 524(e). Congress drafted § 524(g) and (h) in response to mass tort cases *Manville I* and *II* which allowed for non-consensual release of claims in an asbestos mass tort action. *In re Purdue Pharma, L.P.*, 635 B.R. at 92. Following the passage of § 524(g) and (h), Congress clarified that "nothing in the bankruptcy code should be construed to modify, impair, or supersede any other authority." Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106 (codified at 11 U.S.C. § 524). Additionally, cases involving non-consensual release of third-party claims against non-debtors were proceeding in asbestos and non-asbestos related cases when Congress drafted § 524(g) and (h). *In re Purdue Pharma, L.P.*, 635 B.R. at 94. Congress was aware of the ongoing debate over the issue but chose to only provide exceptions for asbestos related claims. *Id*. Because of the context and history of § 524(e) within the Code, it is correctly read as a limit on non-debtor releases.

F. Circuits That Allow Non-Debtor Releases Would Deny Requested Release to Strawberry Fields.

Were this Court to permit the use of non-debtor releases, Strawberry Fields does not qualify under the existing circuit approaches. While circuits do not have a uniform means of implementing non-debtor releases, every circuit that does permit the use requires that the release only be granted rarely and in unique circumstances. *In re Dow Corning Corp.* 280 F.3d. at 658; *In re Aegean Marine Petroleum Network Inc.*, 599 B.R. at 722; *In re Millennium Lab Holdings II, LLC*., 945 F.3d 126, 139 (3rd Cir. 2019).

1. The requested release does not satisfy the Second Circuit's standard for non-debtor releases.

Because Strawberry Fields' request for release does not demonstrate the rare type of circumstances in which the Second Circuit permits non-debtor releases, the Thirteenth Circuit's holding is incompatible with Second Circuit precedent. The Second Circuit may permit non-debtor releases that are essential to the reorganization plan in extremely rare circumstances. *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 142 (2d Cir. 2005). The appellate court balanced the need for such releases against the potential for abuse by companies seeking to buy themselves out of liability by funding the release. *Id.* Reinforcing the fragile foundations of non-debtor releases in the Second Circuit, a federal court in the same circuit disavowed their use completely, citing the lack of statutory foundation for the practice. *In re Purdue Pharma, L.P*., 635 B.R. at 106.

The non-debtor release requested by Respondent fails to pass the high bar required by the Second Circuit. The fact that Strawberry Fields promises to contribute funds to the reorganization plan is insufficient to render its release essential to the plan. *Metromedia Fiber Network, Inc.*, 416 F.3d at 143. The only non-debtor release approved under the Second Circuit's standard consisted of eight-hundred and fifty securities claims released in return for over one billion dollars in funds.

In re Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 292 (2d Cir. 1992). The court in *Drexel* concluded that there was no other source of adequate funding for the plan and without the release the non-debtor would be brought under by the claims. *Id.* Importantly, the court reached this conclusion after years of negotiation in which every other outcome was thoroughly explored by experienced counsel. *Id.* Conversely, the investment of twelve million dollars for the release of broad liability was rejected as being non-essential. *Metromedia Fiber Network, Inc.*, 416 F.3d at 141. The court clarified that providing funding, absent the extreme circumstances present in *Drexel*, was insufficient to justify a non-debtor release. *Id.* While the funding may have crucial to the funding of the reorganization, the likelihood of abuse was too high to justify the release. *Metromedia*. *Id.* at 143.

The Second Circuit's reluctance in *Metromedia, r*egarding the practice of non-debtor releases, justifies denying the practice outright. *In re Purdue Pharma, L.P.*, 635 B.R. at 106. The historical holding denied the Sackler family a non-debtor release in return for funding the reorganization plan of their company, Purdue Pharma. *Id.* at 39. Despite the years of work that went into negotiating the seemingly essential contribution of funds by the Sackler family, the court held that the bankruptcy court lacked statutory power to release non-debtors from liability, citing the complete lack of statutory foundation for the practice of non-debtor releases in the Second Circuit. *Id.* at 101. The court in *Purdue* found it persuasive that the Second Circuit had not approved a single non-debtor release since the Congress reformed the Code to except asbestos-related claims. *Id.* at 93. Because the modern Code did not permit the practice outside of asbestos-related claims, the bankruptcy court lacked statutory power to approve the release. *Id.* at 106.

The non-debtor release of Strawberry Fields is unessential and subject to abuse under Second Circuit precedent. The contribution of four hundred million to the reorganization plan

following a few months of mediation does not demonstrate the exceptional circumstances present in *Drexel* that justified the use of a non-debtor release. R.8. Rather, the requested release presents the dangers that the Second Circuit found persuasive in *Metromedia*. Strawberry Fields is requesting a broad release from liability in return for its funding of the plan. The Thirteenth Circuit did not present a proper factual finding that Strawberry Fields would be overwhelmed by the claims against them. Instead, the Thirteenth Circuit cited the number of potential claims pending against Strawberry Fields that pale in comparison to the claims brought against *Drexel*. Given the appeal of the court's holding in *Purdue Pharma*, the future of non-debtor releases in the Second Circuit is uncertain. However, given the trend in case law towards adoption of a statutory ban on the practice, the circuit is unlikely to permit a non-debtor release requesting such a broad release of liability to buy its way out of pending litigation.

Conversely, the language in *Drexel* presents a lenient standard weighing in favor of the requested release. The Second Circuit in *Drexel* justified a non-debtor release by stating that it was necessary to the reorganization plan and fair to creditors. However, this conclusion is unpersuasive regarding modern non-debtor releases. The court in *Drexel* failed to cite any statutory authority for its conclusion justifying the allegedly equitable release. *In re Purdue Pharma, L.P.*, 635 B.R. at 97. Second, *Drexel* was held prior revisions to the Code that clarified the general rule against non-debtor releases in all but asbestos-related cases. *Id.* Finally, *Drexel* pertained to a limited fund class action. *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d at 291. This Court distinguishes limited fund class actions from state claims brought by individual plaintiffs. *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 832 (1999). The modern context of the Code indicates that Congress considered the release of liability to be an exception to the general rule against non-debtor releases. *In re Purdue Pharma, L.P.*, 635 B.R. at 94. This general rule is especially justified considering

tort claims brought by individual plaintiffs. Because it is neither adequately essential to the reorganization plan and arguably impermissible, Strawberry Fields does not satisfy the Second Circuit standard for a non-debtor release.

2. Strawberry Fields lacks sufficient indemnity with the Debtor to obtain a non-debtor release under applicable factors.

Several circuits apply a factor-based approach to non-debtor releases, which would lean against the release of Strawberry Fields. In the Fourth, Sixth, and Eleventh Circuits courts apply a flexible list of seven factors called the "*Dow* factors" in determining if a non-debtor release presents sufficiently unique or rare circumstances to justify the practice. *In re Dow Corning Corp.* 280 F.3d. at 658. The factors are:

1. A suit against the non-debtor is, in essence, a suit against the debtor or estate.
2. The non-debtor has contributed substantial assets to the reorganization.
3. The injunction is essential to reorganization.
4. The impacted class, or classes, has overwhelmingly voted to accept the plan.
5. The plan provides a mechanism to pay for all, or substantially all, of the class or classes affected by the injunction.
6. The plan provides an opportunity for those claimants who choose not to settle to recover in full.
7. The bankruptcy court made a record of specific factual findings that support its conclusions.

Id.

Circuits that analyze non-debtor releases based on the *Dow* factors first and foremost require an indemnity of interests between the debtor and non-debtor such that a suit against the non-debtor risks the assets of the estate. *In re Seaside Engineering & Surveying, Inc.*, 780 F.3d

at1079; *National Heritage Foundation, Inc.,* 760 F.3d at 348. It is impermissible to release a claim that lacks this indemnity of interests, even if other factors, such as contribution to the reorganization plan or overwhelming approval by the creditors, is present. *In re Firstenergy Solutions Corp.*, 606 B.R. 720, 739 (Bankr. N.D. Ohio, 2019). While other factors may or may not be considered, the indemnity of interests is essential to a successful non-debtor release because it establishes the bankruptcy courts proper jurisdiction over the matter. *Id.* at 740. Bankruptcy courts may not release claims that do not pose a risk of diminishing the bankruptcy estate. *Id.* It is insufficient that the debtor will be affected; rather, the litigation against the non-debtor must deplete the estate of the debtor for the bankruptcy court to exercise jurisdiction in permitting the release. *Id.* at 739.

Circuits permitting non-debtor releases do so on the understanding that there exists an indemnity agreement between the third party and the debtor. *In re Dow Corning Corp.*, 280 F.3d. at 658 (basing the bankruptcy court's power to release non-debtor liability on its broad equitable power to structure and approve of reorganization plans under § 1123). This indemnity may exist in the form of a contractual indemnity agreement or a demonstrated uniformity of interests such that a suit against the non-debtor is, essentially, a suit against the debtor. *Id.* The justification for a non-debtor release is based on the non-debtor's secondary liability to the claims brought against the estate. *In re Firstenergy Solutions Corp.*, 606 B.R. at 744. Still, even the most permissive circuits require a strict indemnity of interests to prevent extending the bankruptcy court's power beyond the permissible scope of the debtor's estate. *In re Firstenergy Solutions,* 606 B.R.at 740.

The claim brought by Ms. Rigby against Strawberry Fields is a case of primary liability in which Strawberry Fields is held separately liable for its negligence regarding the pollutants dumped by its manufacturer, the Debtor. There is no indemnity agreement present. While there is

a relationship between Strawberry Fields and the Debtor, the relationship is insufficient to render them effectively one entity. Rather, both are distinct companies with separate work forces, directors, and officers. As the parent company of the Debtor, Strawberry Fields is independently liable for the claims of negligence based on its alleged knowledge of the danger to customers. Because parties may sue Strawberry Fields on entirely separate claims than the Debtor, and because both are independent entities without a sufficient indemnity of interests, there is no jurisdiction for the factor-based approach to apply the non-debtor release.

There are other *Dow* factors that are arguably present. However, the fact that other *Dow* factors may be present is insufficient to overcome the distinct nature of Strawberry Fields from the Debtor. *In re Firstenergy Solutions Corp.*, 606 B.R. at 739. Despite some factors being present, such as the funding of the reorganization plan and the support of most creditors, without the sufficient indemnity of interests the basis for the Sixth Circuit's analysis is not present. *Id.* There is no case in the Fourth, Sixth, or Eleventh Circuits that states a specific number of factors that may outweigh a lack of jurisdiction. Because the factor analysis is premised on the court's understanding that the bankruptcy court has limited jurisdiction over the estate of the debtor, any release that is not sufficiently tied up in that estate falls outside of the bankruptcy court's jurisdiction. *See In re Dow Corning Corp.*, 280 F.3d at 658.

The Third and Seventh Circuits adopt a variation of the *Dow* Factors by requiring that the release be narrowly tailored and critical to the plan. *In re Millennium Lab Holdings II, LLC.*, 945 F.3d 126, 139 (3rd Cir. 2019); *In re Airadigm Communications, Inc.*, 519 F.3d 640, 657 (7th Cir. 2008). To be critical to the plan, there must be an integral nexus between the non-debtor release and reorganization plan. *Millennium Lab Holdings II, LLC.*, 945 F.3d at 135. Courts apply this test with heightened concern for potential policy dangers of non-debtor releases. *Id.* at 139.

Because the release of liability requested by Strawberry Fields is so broad, and because it lacks the integral nexus tantamount to indemnity with the Debtor, the Third and Seventh Circuits would deny the non-debtor release as requested. The stark policy concerns that are present in the requested non-debtor release confirm this conclusion and present irreconcilable contradictions between non-debtor releases generally and the Code.

G. Permitting Non-Debtor Releases Leads to Unworkable Policy That Conflicts with Principles of The Code.

Allowing entities to avoid liability without subjecting themselves to the bankruptcy process allows companies to buy themselves out of liability by funding the reorganization plan. The purpose of bankruptcy courts in a chapter 11 proceeding is to provide an equitable means of reorganization to debtors who declare bankruptcy and, thereby, subject themselves to the court's proceedings. *In re Dairy Mart Convenience Stores, Inc.*, 351 F.3d 86, 92 (2d Cir. 2003).
Non-debtor releases rely on the allegedly broad equitable power of the bankruptcy courts to affect the liability of those outside of the scope contemplated within the Code. *In re Purdue Pharma, L.P.*, 635 B.R. at 95.

Permitting even rare use of non-debtor releases results in unworkable policy that runs the risk of abuse in reorganization plans. *In re Aegean Marine Petroleum Network Inc.*, 599 B.R. at 726. Rather than remain the rare exception, non-debtor releases are increasingly common in circuits that do not abide by the appropriate statutory ban on the practice. *Id.* Despite the stipulation that a non-debtor release remains an extremely rare event, circuits that permit their use face a rising number of requests for the inclusion of non-debtor releases in reorganization plans. *Id.*

Approving the Thirteenth Circuit's confirmation of the bankruptcy court's release of Strawberry Fields from liability would establish a precedent at odds with the policy of the Code. Unlike the Debtor, Strawberry Fields has not subjected itself to the authority of the bankruptcy

court. Rather, it hopes to avoid liability, which could potentially be more costly than funding the Debtor's plan, by tying its funds to a broad release.

Respondent may argue that the release, though broad, is the only way that the Debtor can avoid liquidation. Proponents of non-debtor releases point to the overarching goal of chapter 11 cases being to avoid liquidation. *N.L.R.B. v. Bildisco and Bildisco*, 465 U.S. 513, 527 (1984). Despite a goal of chapter 11 bankruptcy proceedings being to avoid liquidation, this goal does not justify an improper reading of the Code that leads to abuse of the practice when permitted. Courts must consider the goal of avoiding liquidation alongside equitable interests of other parties as well as the reach of the bankruptcy court's power over non-debtors and third parties. *Id.* While avoiding liquidation is certainly an important goal, it is not to be avoided at any cost. Rather, chapter 11 provides for liquidation in cases where a plan cannot be confirmed within the confines of the Code. 11 U.S.C. § 1129.

Finally, it is not a foregone conclusion that companies will be forced into liquidation without non-debtor releases. Three circuits successfully structure chapter 11 proceedings without permitting non-debtor releases. *In re Lowenschuss*, 67 F.3d at 1402; *In re American Hardwoods, Inc.*, 885 F.2d at 624; *Matter of Highland Capital Management, L.P.*, 48 F.4th 419, 435 (5th Cir. 2022). In practice, non-debtor releases are subject to abuse by corporations with deep pockets seeking broad release of liability in exchange for funding a reorganization plan. Because the Code is structured on the premise that the bankruptcy court oversees the affairs and assets of the debtor, the policy of the Code is at odds with the underlying rationale of non-debtor releases.

II. THE THIRTEENTH CIRCUIT ERRED IN FINDING THAT THE § 523(A) EXCEPTIONS TO DISCHARGE DO NOT APPLY TO CORPORATE DEBTORS IN SUBCHAPTER V CASES.

Congress intended for the discharge exceptions listed in § 523(a) of the Code to apply to corporate debtors in subchapter V cases. This Court should read the plain language of § 1192(2)

to emphasize the kind of debt rather than the kind of debtor. The plain language requires that corporate debtors be excepted from discharge for debts arising from willful or malicious causes of injury. The discharge of such debt raises significant public policy concerns and leads to absurd results. Through past actions and its presumed knowledge of the law, Congress demonstrated an intent to except individual and corporate debtors filing under subchapter V from discharging the kinds of debt listed in § 523(a). Application of the canons of construction this as the proper understanding of Congress' intent. Additionally, applying the discharge exceptions in § 523(a) only to individual debtors is inconsistent with the policy goals of the Code.

A. The Plain Language of § 1192(2) Requires that Corporate Debtors Be Excepted from Discharge for Debts Arising from Willful or Malicious Causes of Injury.

By its plain language the Code requires corporate debtors be excepted from discharge of debts arising from willful or malicious cause of injury. Courts ought to interpret a statute in a way that gives it the effect intended by congress. *U.S. v. American Trucking Ass'ns*, 310 U.S. 534, 542 (1940). The most persuasive evidence of congressional intent is the plain language of the statute. *Id.* at 543. The language may be construed by its common meaning, absent a defined term, and it is best understood within the context of the statute. *Id.* Further analysis is unnecessary if a statute's language unambiguously conveys Congress's intent. *Robert D. Mabe, Inc. v. OptumRX*, 43 F.4th 307, 320 (4th Cir. 2022).

The language of § 1192 makes unambiguous reference the kind of debt listed in, not the kind of debtor considered by, § 523(a). *Cantwell-Cleary Co. v. Cleary Packaging, LLC (In re Cleary Packaging, LLC*), 36 F.4th 509, 515 (4th Cir. 2022). Both individual and corporate debtors are subject to § 1192 by the defined term of "Debtor" in the Code. *Id.* The reference to § 523(a) in § 1192 only pertains to the kind of debt listed in § 523(a). *Id.* By modifying the debt that may be

excepted from discharge with the explanatory phrase "of the kind" Congress' indicated its intent to refer to the kind of debts listed in § 523(a). *Id.*

Here, the Debtor chose to proceed under subchapter V and, because Ms. Rigby does not consent to the discharge, § 1192 governs the filing as a non-consensual discharge of debt. The plain language of § 1192 subjects both corporate and individual debtors to exceptions to discharge both in its defined terms and use of common phrases. First, "Debtor" is a defined term in the Code which includes "persons." 11 U.S.C. § 1182(a). "Person" is defined in the Code to include both individuals and corporations. 11 U.S.C. § 101(41). Second, by its use of the phrase "kind of" to modify the debt excepted from discharge Congress employs a commonly used phrase which ought to be read according to its ordinary meaning. The ordinary meaning given "of the kind" refers to a category or a sort of group united by "sharing common traits." *Of the kind,* Merriam-Webster Dictionary, (12th ed. 2022). By combining the debt referenced by § 1192 with the phrase "of the kind" Congress intended for only the types of debt listed in § 523(a) to apply to § 1192.

Conversely, based on the limited scope of § 523(a) itself, other courts have abstained from excepting corporate debtors from discharge of certain debts and only applied the listed exceptions in § 1192 to individual debtors. *In re Satellite Restaurants Inc. Crabcake Factory USA*, 626 B.R. 871, 876 (Bankr. D. Md. 2021). This alternative reading of § 1192 stems from a mis-guided focus on the language and scope of § 523(a) rather than § 1192. *Id.* The plain language of a statute certainly controls any exercise in statutory interpretation. However, it is the language of the applicable statute, not another statute's language, that must be read in line with congressional intent. By starting the analysis with the plain language of § 523(a), courts that only apply such exceptions to individual debtors misconstrue the reference to the kind of debt and impose a limit on § 1192 which is neither in the Code nor intended by Congress.

Because the only reference to § 523(a) is to the kind of debt listed therein, and because the scope of § 1192 applies to both individual and corporate debtors, exceptions to discharge listed in § 523(a) must apply to both as well.

B. Congress' Knowledge of the Law and Canons of Construction Support Exceptions to Discharge for Corporate Debtors.

1. Existing Law with Similar Language Applied to Both Individual and Corporate Debtors when Congress Drafted Subchapter V.

Congress' knowledge of the law at the time of drafting subchapter V supports Congress' intent that corporate debtors be excepted from discharge for debts listed in § 523(e). It is a settled rule that courts should similarly construe the same language used across statutes, addressing related subject matters. *See Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc*., 576 U.S. 519, 580 (2015); *United States v. Freeman*, 44 U.S. 556, 564 (1845). When courts have settled on a meaning of language in an existing statutory provision, repetition of the same language in a new statute is generally taken to incorporate the existing judicial interpretation. *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 590 (2010). Using the same language in two statutes creates a "presumption that Congress intended that text to have the same meaning in both statutes." *Smith v. City of Jackson*, 544 U.S. 228, 233 (2005). That presumption guides the interpretation unless context, history, or legislative purpose provide a reason to depart. *Jerman*, 559 U.S. at 590. Furthermore, Congress is presumed to be aware of existing law. *NLRB v. Bildisco and Bildisco*., 465 U.S. at 524. Therefore, when enacting subchapter V congress is presumed to be aware of the language in chapter 12 and the judicial rulings.

The language in § 1192(2) is almost identical to the language in the discharge provision of chapter 12. Under chapter 12, courts shall discharge all debts according to the plan of reorganization except debts "of the kind specified in § 523(a)." 11 U.S.C. § 1228(a). When

Congress enacted subchapter V, both opinions addressing interpretation of this language held that the exceptions to discharge applied to both individual and corporate debtors. *See In re Breezy Ridge Farms, Inc.*, 2009 WL 1514671, at *2 (Bankr. M.D. Ga. 2009) ("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."); *See also In re JRB Consol., Inc.*, 188 B.R. 373, 374 (Bankr. W.D. Tex. 1995) ("this court believes that the term 'of a kind' does not incorporate the limiting definition found in the introductory paragraph of § 523(a).").

Because the language of the chapter 12 discharge provision referenced the kinds of debt, the type of debtor considered by § 523(e) did not control the interpretation of the statute. *In re Breezy Ridge Farms, Inc*., 2009 WL 1514671 at *2. The court in *JRB Consolidated* focused on the same language, specifically noting that the "debts of the kind" language does not lend itself to including "debtors of the kind" in that meaning. *In re JRB Consol., Inc*., 188 B.R. 373, 374 (Bankr. W.D. Tex. 1995).

It is proper to interpret the discharge provisions in subchapter V and chapter 12 similarly given Congress' use of the same language. Despite other provisions in chapter 11 referencing individual debtors specifically, Congress diverged from that approach when drafting subchapter V. There is nothing in the history of the statute to combat the inference that the substantial similarity between the statutes should indicate congressional intent that courts interpret them similarly. Rather, by its use of similar language, Congress demonstrated its intent that subchapter V non-consensual discharges be interpreted similarly to chapter 12 non-consensual discharge.

Conversely, because § 1192 is referenced in the preamble to § 523(a), Respondent may argue that any reference to § 523 elsewhere in the Code only considers individual debtors. A court interpreting § 1192 held this reference in § 523 as conclusive that § 1192 only applied to individual

debtors, thus permitting corporate debtors to be discharged from debts referenced in § 1192. *In re Satellite Restaurants Inc.,* 626 B.R. at 877. The court in *Satellite* held that §1192 should be read with the rest of chapter 11 in mind, and that *Breezy Ridge* is inapplicable because it discussed chapter 12. *Id*. However, that is unpersuasive given that courts have previously recognized that several aspects of subchapter V are premised on provisions of chapter 12 of the Code. *In re Trepetin,* 617 B.R. 841, 848 (Bankr. D. Md. 2020). Additionally, the chapter 12 discharge provisions, which are held to apply to both individual and corporate debtors, is also expressly listed in the preamble of § 523(a). Irrespective of the preamble, courts in *Breezy Ridge Farms* and *JRB Consolidated* applied the discharge provisions according to the language of chapter 12, not § 523(e).

Finally, it is dismissive of Congress' intent to look to traditional chapter 11 interpretation when interpreting § 1192. The plain language of § 1192 is distinct from other discharge provisions in chapter 11. Other discharge provisions in chapter 11 specifically mention individual debtors. 11 U.S.C. § 1141. Had congress intended for § 1192 to be limited to individual debtors, it would have specified this limitation as it did in § 1141. Instead, Congress structured the language of § 1192 almost identical to the discharge provisions in chapter 12 which courts understood to apply to both individual and corporate debtors. *In re Breezy Ridge Farms, Inc*., 2009 WL 1514671 at *2. Therefore §1192 is appropriately read to reference the kind of debt discharged rather than the kind of debtor.

2. Application of Canons of Construction Further Indicate Congress's Intent.

Were this Court to find any ambiguity in the plain language of the statute, or its similarities to chapter 12, canons of construction illustrate Congress' intent that § 1192 apply to both individual and corporate debtors. When Congress' message is not entirely clear, courts rely on canons of

construction to determine legislative intent. *Lena v. Pena*, 518 U.S. 187, 211 (1996). It is a commonplace of statutory construction that the specific governs the general. *Morales v. Trans World Airlines, Inc*., 504 U.S. 374, 384 (1992). The court in *In re Breezy Ridge Farms* stated "[p]rovisions within a statute are read to be consistent whenever possible. *In re Breezy Ridge Farms, Inc*., 2009 WL 1514671, at *2. If the two provisions may not be harmonized, then the more specific will control over the general." *Id.* In *Breezy Ridge Farms*, the court held that even if § 1228 could not be harmonized with § 523(a), the former would control because it is more specific, applicable only in chapter 12. Here, the same can be said of § 1192 which applies only in chapter 11 cases.

Here, it is apparent that Congress intended § 1192 to except individual and corporate debtors from discharge of certain debts. This Court should resolve any conflict between § 523 and § 1192 in favor of § 1192. The introductory language of § 523 does limit the type of debtor to "individuals" 11 U.S.C. § 523(a). However, § 1192 does not specify a kind of debtor at all. While § 523(a) applies in most bankruptcy cases, § 1192 only applies to subchapter V cases and should govern in this instance as it is the more specific provision.

C. The Policy of the Code Favors Exceptions to Discharge for Corporate Debtors.

1. Corporate Debtors in Subchapter V Cases Should Not Benefit in Denying Consent to a Reorganization Plan.

It is antithetical to the policies of the Code to permit corporate debtors to benefit from withholding consent to a plan of reorganization. Congress designed the Code to promote negotiation leading to consensual reorganization plans. *In re Rhead*, 179 B.R. 169, 176 (Bankr. D. Ariz. 1995). Courts ought to read rules controlling reorganization consistent with the goal of promoting consensual reorganization. *In re Jartran, Inc.*, 44 B.R. 331, 363 (Bankr. N.D. Ill. 1984).

In consensual subchapter V cases, parties are subject to 11 U.S.C. § 1141(d), with § 1141(d)(5) excepted. In non-consensual cases, the special rules of § 1192 apply. Consensual cases except from discharge claims arising under the False Claims Act and tax fraud liability. Both tax fraud liability and claims arising under the False Claims Act are included in the kinds of debt listed in § 523(a) as referenced in § 1192.

By reading § 1192 to apply only to individual debtors, corporate debtors could benefit from denying consent to a plan if the discharged debt included claims under the False Claims Act or tax fraud. Hypothetically, were a corporate debtor liable for tax fraud liability, Respondent's theory would incentivize the corporation to deny consent to the reorganization plan to discharge its debt under § 1192. In permitting this abuse of the Code, this Court would reach an absurd result that Congress could not have intended.

Countering this interpretation, the context, and circumstances of the §§ 1142(d) and 1192 are different, rendering it potentially appropriate to interpret similar words in different statutes differently. However, this argument is unpersuasive against the practical impact on a corporate debtor's incentive to consent to a reorganization plan. Such an absurd result could not have been intended by Congress as it runs contrary to the policy of the Code to support consensual plans.

2. Since Debtors Receive the Benefit of the Elimination of the Absolute Priority Rule, They Ought to be Unable to Discharge the Debts Listed in § 523(a).

By streamlining the filing process, subchapter V does away with many of the hurdles and complexities that make chapter 11 cases difficult for small business. Subchapter V accelerates the filing process which facilitates quicker and cheaper reorganizations. *In re Trepetin*, 617 B.R. at 846-47. These additions to chapter 11 make reorganization a realistic option for small business debtors. *Id.*

Importantly, subchapter V eliminates the absolute priority rule. Under regular chapter 11 filings, debtors may not retain existing equity interest over the objection of a class of unsecured creditors unless the unsecured class is paid in full. 11 U.S.C. § 1191(b). Conversely, subchapter V allows debtors to retain their equity interests provided they contribute their disposable income for the appropriate length of time. 11 U.S.C. § 1191(c). Debtors may retain equity interests under subchapter V without the consent of the creditors. *Id.* In practice, this leaves creditors with fewer tools by which to challenge the confirmation of a plan. By eliminating the absolute priority rule, subchapter V allows debtors to cram down plan terms on non-consenting creditors and retain equity interest without paying claims in full.

These benefits to debtors remove checks that would otherwise be present under chapter 11. This increases the likelihood that an otherwise unconfirmable plan might now be confirmed under subchapter V over creditor's protests. Creditors could get stuck with a plan that does not serve their interest because the Debtor opted to file under subchapter V, something over which the creditor had no control. Because subchapter V eliminates the absolute priority rule and allows confirmation without a consenting creditor, it is easier for a debtor to confirm its plan and keep its equity over the objection of a dissenting creditor. These benefits to the debtor are so great that the debtor should not then be able to discharge debts for fraud, injury, and other violations of public policy reflected in § 523(a).

The lower court argues that this balance construct only exists if the creditor that is owed an otherwise non-dischargeable debt also controls whether the plan is consensual. This could very well be the case even though whether the plan is consensual turns on class voting. 11 U.S.C. § 1126. If one creditor controls most of the class, they alone could still determine the vote of the class, which could determine whether a plan is consensual.

By voluntarily filing under subchapter V the Debtor receives many benefits and must also abide by the parts of the Code that are not as beneficial to them. Because the relevant section pertains to both corporate and individual debtors and because such practice is consistent with the policy of subchapter V and congressional intent, the Debtor may not discharge the debt owed Ms. Rigby.

Conclusion

The bankruptcy court lacked both constitutional and statutory power to release Strawberry Fields from its liability to Ms. Rigby. The release of liability granted by the bankruptcy court is beyond the scope of the bankruptcy court's jurisdiction as well as beyond the scope of any power Congress could vest in the bankruptcy courts. The adjudication of state claims is expressly limited to Article III judges. Because this release adjudicates Ms. Rigby's claim without her consent, it is incompatible with Article III limits.

The text of the Code itself prohibits the use of non-debtor releases. The discharge provision expressly states that the general rule for discharges is that they may not impact the liability of a third party. The only exception to this general rule being asbestos cases, Ms. Rigby's claim against Strawberry Fields cannot be affected under the plain language of the Code. Were this Court to adopt the more permissive view of circuits that permit non-debtor releases in exceptional cases, the facts of this case are inadequate to justify release.

Finally, the Debtor's attempted discharge of debts arising from willful or negligent conduct is prohibited by the Code. By voluntarily filing under subchapter V, the Debtor is subject to the cramdown provisions in § 1192. These provisions refer to certain kinds of debt that may not be discharged. Because the relevant section pertains to both corporate and individual debtors and

because such practice is consistent with the policy of subchapter V and congressional intent, the Debtor may not discharge the debt owed Ms. Rigby.

For the forgoing reasons, the judgment of the Thirteenth Circuit Court of Appeals should be reversed.

Respectfully submitted,

/Team P17/

Appendix A: U.S. Const. art. III

Section 1

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; --to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies

between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Section 3

Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

Appendix B: 11 U.S.C. § 105

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

(b) Not withstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title.

(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.

(d) The court, on its own motion or on the request of a party in interest—

(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and

(2) Unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, may issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—

(A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or

(B) in a case under chapter 11 of this title—

(i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;

(ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;

(iii) sets the date by which a party in interest other than a debtor may file a plan;

(iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;

(v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or

(vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

Appendix C: 11 U.S.C. § 523

(a) A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(1) for a tax or a customs duty—

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

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

(i) was not filed or given; or

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

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

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

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

(B) use of a statement in writing—

(i) that is materially false;

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

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

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

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

(I) consumer debts owed to a single creditor and aggregating more than $500 [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 non-dischargeable; and

(II) cash advances aggregating more than $750 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 non-dischargeable; 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 non-dischargeable pursuant to paragraph (1);

(14A) Incurred to pay a tax to a governmental unit, other than the United States, that would be non-dischargeable 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; or

(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.

For purposes of this subsection, the term "return" means a return that satisfies the requirements of applicable non-bankruptcy 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 non-bankruptcy 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.

(b) Notwithstanding subsection (a) of this section, a debt that was excepted from discharge under subsection (a)(1), (a)(3), or (a)(8) of this section, under section 17a(1), 17a(3), or 17a(5) of the Bankruptcy Act, under section 439A [3] of the Higher Education Act of 1965, or under section 733(g) [3] of the Public Health Service Act in a prior case concerning the debtor under this title, or under the Bankruptcy Act, is dischargeable in a case under this title unless, by the terms of subsection (a) of this section, such debt is not dischargeable in the case under this title.

(c)

(1) Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), or (6) of subsection (a) of this section, unless, on

request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section.

(2) Paragraph (1) shall not apply in the case of a Federal depository institutions regulatory agency seeking, in its capacity as conservator, receiver, or liquidating agent for an insured depository institution, to recover a debt described in subsection (a)(2), (a)(4), (a)(6), or (a)(11) owed to such institution by an institution-affiliated party unless the receiver, conservator, or liquidating agent was appointed in time to reasonably comply, or for a Federal depository institutions regulatory agency acting in its corporate capacity as a successor to such receiver, conservator, or liquidating agent to reasonably comply, with subsection (a)(3)(B) as a creditor of such institution-affiliated party with respect to such debt.

(d) If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust.

(e) Any institution-affiliated party of an insured depository institution shall be considered to be acting in a fiduciary capacity with respect to the purposes of subsection (a)(4) or (11).

Appendix D: 11 U.S.C. § 524(a)(e)(g)(h)

a) A discharge in a case under this title—

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

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

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

(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.

Appendix E: 11 U.S.C. § 1129

(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.

(3) The plan has been proposed in good faith and not by any means forbidden by law.

(4) Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

(5)(A)(i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

(6) Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

(7) With respect to each impaired class of claims or interests—

(A) each holder of a claim or interest of such class—

(i) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date; or

(B) if section 1111(b)(2) of this title applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

(8) With respect to each class of claims or interests—

(A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

(9) Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

(A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of this title, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

(B) with respect to a class of claims of a kind specified in

section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of this title, each holder of a claim of such class will receive—

(i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;

(C) with respect to a claim of a kind specified in section 507(a)(8) of this title, the holder of such claim will receive on account of such claim regular installment payments in cash—

(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)); and

(D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

(10) If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

(11) Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

(12) All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

(13) The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title, at the level established pursuant to

subsection (e)(1)(B) or (g) of section 1114 of this title, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

(14) If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first become payable after the date of the filing of the petition.

(15) In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

(16) All transfers of property under the plan shall be made in accordance with any applicable provisions of non-bankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

(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.

(C) With respect to a class of interests—

(i) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the

allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

(ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

(c) Notwithstanding subsections (a) and (b) of this section and except as provided in section 1127(b) of this title, the court may confirm only one plan, unless the order of confirmation in the case has been revoked under section 1144 of this title. If the requirements of subsections (a) and (b) of this section are met with respect to more than one plan, the court shall consider the preferences of creditors and equity security holders in determining which plan to confirm.

(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).

Appendix F: 11 U.S.C. § 1192

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

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

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

Appendix G: 11 U.S.C. § 1228

(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).

(b) Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

(1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

(2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

(3) modification of the plan under section 1229 of this title is not practicable.

(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.

(e) After the debtor is granted a discharge, the court shall terminate the services of any trustee serving in the case.

(f) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is no reasonable cause to believe that—

(1) section 522(q)(1) may be applicable to the debtor; and

(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).