No. 22-0909

IN THE

Supreme Court of the United States

IN RE PENNY LANE INDUSTRIES, INC., DEBTOR,

ELEANOR RIGBY,

Petitioner,

v.

PENNY LANE INDUSTRIES, INC.

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE THIRTEENTH CIRCUIT

BRIEF FOR PETITIONER

Team 19
Counsel of Record for Petitioner

January 19, 2023

QUESTIONS PRESENTED

1. Whether Strawberry Fields, the Debtor's parent company, may be released from mass tort liability under a Chapter 11 plan, despite Strawberry Fields not filing for bankruptcy itself?

2. Under 11 U.S.C. § 1192(2), is a corporate debtor that has a nonconsensual plan confirmed under 11 U.S.C § 1191(b) entitled to discharge debts described in 11 U.S.C. § 523(a)?

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OPINIONS BELOW

The Thirteenth Circuit's decision is available at No. 22-0909 and reprinted at R. 2. Both the bankruptcy court and United States District Court for the District of Moot decided in favor of the Debtor. On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed the bankruptcy court's decisions.

JURISDICTIONAL STATEMENT

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

RELEVANT STATUTORY PROVISIONS

The following constitutional provision is used in this case and can be found, in relevant part, in Appendix A: U.S. Const. Art, III, § 1

The following statutes are used in this case and can be found, in relevant parts, in **Appendix A**: 11 U.S.C. § 105(a); 28 U.S.C. § 157; 11 U.S.C. § 523; 11 U.S.C. § 524(e); 11 U.S.C. § 524(g)(4)(A)(ii); 11 U.S.C. § 1141; 11 U.S.C. § 1181; 11 U.S.C. § 1191; 11 U.S.C. § 1192; 11 U.S.C. § 1228(a)(2); and 28 U.S.C. § 1334(a)-(b)

STATEMENT OF THE CASE

Factual History

Toxic Pollutants Cause Sickness and Death for Residents in the City of Blackbird

For many years, Penny Lane Industries, Inc. ("Debtor") has operated a manufacturing facility of plastic, glass, and metal food containers in the city of Blackbird (the "City"). R. at 4. The Debtor is a wholly owned subsidiary of Strawberry Fields, Inc. ("Fields"), a well-known brand that sells convenience foods across the country. R. at 4-5.

Citizens have complained for many years that the Debtor knowingly disposed of pollutants on its property and that the pollutants flow into Liverpool River (the "River"), which runs through the entire City. R. at 5. The United States Environmental Protection Agency and other agencies have confirmed citizens' concerns that both (1) a groundwater plume created from hazardous substances exists under the City and (2) tens of thousands of local residents have drank and bathed in this water since at least 2013. R. at 5.

One such citizen is Eleanor Rigby ("Ms. Rigby"), whose four-year daughter died of leukemia caused by pollutants dumped in the River. R. at. 5. Ms. Rigby claims it was the Debtor who dumped these pollutants in the River. R. at 5.

Ms. Rigby and nearly 10,000 other City residents began filing claims against the Debtor and Fields to hold them accountable for their bad acts. R. at 6. Ms. Rigby claims the Debtor's CEO at the time, Maxwell Hammer, knew the Debtor was contaminating the City's water supply as early as 2014, but did nothing the stop it. R. at 5. The Debtor claims that it followed applicable environmental regulations at the time. R. at 6.

Debtor Files for Bankruptcy Extinguish Its Tort Litigation Liability

The Debtor turned to bankruptcy for relief and filed a bankruptcy petition under Subchapter 5 ("Sub. V") to avoid litigation of the claims of City Residents. R. at 6. The majority of claims

filed in the Debtor's bankruptcy relate to the pollutant exposure, totaling nearly four hundred million dollars. Only two million dollars is owed to trade creditors. R. at 6.

Following commencement of the bankruptcy case, all non-bankruptcy claims against Debtor were automatically stayed while pending litigation against Fields continued. R. at 7. Despite never filing for bankruptcy, Debtor obtained a temporary injunction from the bankruptcy court, halting all pending claims against its officers, directors, employees, and associated entities—thereby amounting to a temporary stay for claims against Fields. R. at 8. The bankruptcy court concluded that the injunction was needed to facilitate a global settlement by Debtor and Fields.

Fields Demands Broad Release of Claims as part of Global Settlement

Upon receiving a temporary injunction, Debtor and Fields negotiated a settlement agreement as part of its plan of reorganization (the "Plan"). R. at 4. As part of the Plan, Debtor established a creditors' trust that would distribute to the creditors following confirmation. R. at 4. Fields provided approximately one hundred million dollars towards the plan with the expectation to discharge it from all claims held by third parties including Ms. Rigby. R. at 10.

Ms. Rigby's Claim Forced to Be Discharged

Only a few weeks after Debtor filed their petition, and approximately five years since Ms. Rigby filed her personal claim, Ms. Rigby commenced an adversary proceeding against Debtor for her one-million-dollar claim. R. at 5, 7. Despite no judicial determination regarding the Debtor and Fields's liability yet, both the Debtor and Fields seek releases for all liability under Sub. V, including Ms. Rigby's one-million-dollar unsecured claim. R. at 6. Ms. Rigby sought to prevent Field's release from liability under section 523(a)(6). R. at 7.

Additionally, Norwegian Wood Bank (the "Bank") filed a an objection to the Plan. R. at 9. Because the Bank who was separately classified under the plan as a secured creditor, voted against

the Plan, Debtor was unable to satisfy section 1191(a)'s requirement for consensual plan confirmation. R. at 9. Consequently, Debtor sought to confirm a nonconsensual plan under Sub V. After making a detailed finding on the third parties probability of success on their claims, the Bankruptcy court overruled the objections and confirmed Debtor's plan. R. at 10.

Procedural History

The bankruptcy court and the Bankruptcy Appellate Panel for the Thirteenth Circuit ruled in favor of the Debtors on both issues. R. at 4. The Thirteenth Circuit affirmed the lower courts' opinions, holding that (1) the bankruptcy court has authority to approve nonconsensual third-party releases, and (2) section 523[1] applies only in cases where the Debtor is an individual. R. at 4.

STANDARD OF REVIEW

The questions presented are strictly questions of law based on statutory interpretation of the Bankruptcy Code. Therefore, the standard of review for this appeal is *de novo*. *See*, *e.g.*, *Tex. v. Soileau* (*In re Soileau*), 488 F.3d 302, 305 (5th Cir. 2007).

SUMMARY OF THE ARGUMENT

The Thirteenth Circuit erred in affirming the bankruptcy court's decision, holding that (1) a bankruptcy court has the authority to approve nonconsensual releases of direct claims held by third parties against nondebtor affiliates as part a chapter 11 plan of reorganization, and (2) a corporate debtor that has a nonconsensual plan confirmed under section 1191(b) is entitled to discharge debts described in section 523(a).

The first issue seeks to define the boundaries of what the bankruptcy court and bankruptcy system can do. Nonconsensual third-party releases cannot be approved as part of a debtor's

[1] The Bankruptcy Code is set forth in 11 U.S.C. § 101 *et seq*. (2021). Specific sections of the Bankruptcy Code are identified herein as "section ____."

Chapter 11 plan for two reasons: the bankruptcy court has neither statutory jurisdiction nor constitutional authority to enter a judgment and, third-party releases of a nondebtor are outside the scope of what the bankruptcy system can and should provide. Section 157(a) of title 28 authorizes each district court to refer all bankruptcy cases and all proceedings within the scope of bankruptcy jurisdiction set forth in section 1334(b) of title 28 to the bankruptcy judges of the district. Section 157 also distinguishes "core proceeding" from "non-core proceeding." In the former, bankruptcy courts possess authority to enter final judgments while in the latter, the bankruptcy judge submits proposed findings of fact and conclusions of law to the district court instead. In either case, the release of third-party claims against a nondebtor does not fall under either category. Nonconsensual third-party releases are not a core proceeding. Section 157(b)(2) of title 28 lists 16 types of core proceedings, none of which apply to the facts here. Non-core jurisdiction is also irrelevant because a third-party release of a nondebtor is not related to Debtor's bankruptcy at all.

Yet, even if there was statutory authority, a bankruptcy court may still be violating Article III of the Constitution. The *Stern* court established that to have constitutional authority to adjudicate, the cause of action must either stem from the bankruptcy itself or would be necessarily resolved in determining a claim against the estate. To stem from the bankruptcy itself, the disputed right must stem from the Bankruptcy Code. The Bankruptcy Code expressly prohibits nonconsensual third-party releases. While section 524(a) releases the debtor from its personal liabilities from any debts, section 524(e) unambiguously prohibits releases of nondebtor third parties. The only clear exception to this is found in section 524(g), which allows third-party releases in the asbestos context. The Bankruptcy Code's plain language makes clear that Congress only intended to limit third-party releases to asbestos cases. Moreover, while section 105(a) provides bankruptcy courts with broad equitable power, it cannot be expanded to allow

nonconsensual third-party releases. This provision is clear to limit the bankruptcy court's power by providing that "the court may issue any order, process, or judgement *that is necessary to appropriate to carry out the provisions of this title*." Because the Bankruptcy Code does not allow releases outside of the asbestos context, section 105 cannot be relied on to expand the bankruptcy court's authority. Sections 524(e) & (g), 105(a), and 1123(a)(5) & (b)(6)—whether read individually or together—fail to provide any statutory authority for bankruptcy courts to authorize third-party releases. Furthermore, the claims allowance process is also not grounds for constitutional authority. Fields is not a debtor in this case. The bankruptcy system does not extend its protection to nondebtors, who do not have the same obligations and responsibilities as the debtor. Nondebtors do not have the right to have the claims being asserted against them to be released. Because there is neither statutory jurisdiction nor constitutional authority to hear and determine this matter, the nonconsensual third-party release cannot be approved.

The second issue presented in this case is a straightforward issue of statutory interpretation: under section 1192(2) is a corporate debtor that has a nonconsensual plan confirmed under section 1191(b) entitled to discharge debts described in section 523(a)? The answer begins—and ends—with the text of section 1192. Section 1192 specifically addresses discharges in bankruptcy cases filed under Sub. V and therefore should govern the Court's interpretive inquiry. Rather than limiting debts of the kind listed in section 523(a) to an individual debtor, section 1192 makes no distinction between corporations and individuals. Thus, the Court should find on a textual basis alone, section 1192 compels reversal of the court below.

Because a plain-text reading of section 1192(2) is conclusive that the exceptions to discharge apply to corporations and individuals alike, the Court need go no further. But if the Court should, statutory canons of construction and the practical implications of the Debtor's argument

are unavailing. Here, applying the canon of consistent usage and meaningful variation would render section 1141(d)(2) only applicable to individuals if the Court were to adopt the Debtor's interpretation of section 1192(2). Furthermore, section 1192(2)'s nearly identical reflection of section 1228(a)(2) warrants invocation of *in pari materia.* As courts have held that section 1228(a)(2)'s "of the kinds of debts" language refers to both corporations and individuals alike in the Chapter 12 setting—Congress was well-intentioned when it decided to import the same language in section 1192(2). In addition, the practical impact of the lower court's decision creates perverse incentives for corporations to exploit Sub. V as a method in escaping liability. Therefore, the Court should reverse the decision below.

ARGUMENT

I. THERE IS NO AUTHORITY FOR THE BANKRUPTCY COURT, A COURT OF LIMITED AUTHORITY, TO HEAR AND DETERMINE NONCONSENSUAL THIRD-PARTY RELEASES OF NONDEBTORS.

Nonconsensual third-party releases have become a weapon used by corporate bad actors to dispose of their unwanted tort liability. These corporations have exploited the bankruptcy system to have their cake and eat it too—to receive the benefits of a bankruptcy discharge without filing for bankruptcy themselves. In these cases, tort victims are being subjected to bankruptcy court against their will, with no way out. This Court must stop these corporations from shielding their assets from the victims they harmed.

The Debtor and Fields are asking this Court to manufacture jurisdiction over claims they should not hear and insert rights into the Bankruptcy Code that simply do not exist. Accordingly, this Court should reverse the decision below for two reasons. First, Field's third-party release cannot be included in the Plan because this Court lacks statutory jurisdiction to adjudicate this claim. Second, even if this Court did have statutory jurisdiction, this Court still lacks the constitutional authority required by *Stern v. Marshall* to hear this claim. 564 U.S. 462 (2011).

A. The bankruptcy court lacks statutory jurisdiction to approve nonconsensual third-party claims under 28 U.S.C. § 1334(b) and 28 U.S.C. § 157.

The statute does not provide the bankruptcy court with authority to approve nonconsensual third-party releases of tort claims against a nondebtor. Section 1334(b) of title 28 was implemented with the enactment of the Bankruptcy Code in 1978, intended to expand federal bankruptcy courts to 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. § 1334(b). To determine how far a bankruptcy court could reach in adjudicating a debtor's civil proceedings, Congress placed express limits on the bankruptcy court's authority, providing that "except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11." 28 U.S.C. § 1334(a). This extended jurisdiction was granted so that bankruptcy courts may "deal efficiently and expeditiously with all matters connected with the bankruptcy estate." *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 (1995) (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984 (3rd Cir. 1984)). This broad provision may extend to third-party disputes that affect the estate and impact the debtor's restructuring options, *id*. at 307–08, but it does not intend for *any* remotely-related proceeding to be included.

In section 157(a) of title 28, bankruptcy jurisdiction is allocated between district courts and bankruptcy courts, authorizing each district court to refer all bankruptcy cases and proceedings within the scope of bankruptcy jurisdiction set forth in section 1334(b) to the bankruptcy judges of the district. 28 U.S.C. § 157. Congress has set forth three types of proceedings in which a bankruptcy court has subject matter jurisdiction. The first two are "core proceedings" where such matters (1) "arise under" the Bankruptcy Code and (2) "arise in" a bankruptcy case. 28 U.S.C. § 157(a). In core proceedings, bankruptcy courts possess statutory jurisdiction to enter final judgments which dispose of core proceedings. 28 U.S.C. § 157(a)(1). The third type are

proceedings "related to" a case under the Bankruptcy Code, known as "non-core" proceedings. 28 U.S.C. § 157(c). The release of third-party tort claims against Fields does not fall under either of these categories because the third-party release is neither (1) a "core" proceeding pursuant to the definition in section 157(b), nor (2) a "non-core" proceeding because the matter is not related to the bankruptcy.

1. The release of third-party tort claims against a nondebtor is not a "core proceeding" because it does not "arise under" the Bankruptcy Code nor does it "arise in" a bankruptcy case. 28 U.S.C. § 157.

Section 157(b)(2) of title 28 lists matters that constitute core proceedings, none of which apply to the confirmation of a nonconsensual plan releasing direct claims held by third parties against a nondebtor in a Chapter 11 bankruptcy case. 28 U.S.C. § 157. Some subsections *may* be used to argue that a nonconsensual third-party release plan is a core proceeding, but to do so would be a stretch. Section 157(b)(2)(B) includes the "allowance or disallowance of claims against the estate…for the purposes of confirming a plan under Chapter 11…" and section 157(b)(2)(L) provides that "confirmation of plans" are core proceedings. 28 U.S.C. § 157. However, these subsections are only relevant at best. These subsections do not include releases and injunctions of third-party claims against the estate, not to mention for a nondebtor that has not even filed for bankruptcy. *See In re Midway Gold US, Inc.*, 575 B.R. 475, 519 (Bankr. D. Colo. 2017) (the court cannot allow third-party nondebtors "to bootstrap their disputes into a bankruptcy case" by way of section 157(b)(2)(L), and that there must be independent statutory basis for the court to exercise jurisdiction over the third-parties' disputes before the Court may adjudicate them)*; see also In re Millennium Lab Holdings II, LLC*, 945 F.3d 126, 129 (3d Cir. 2019) (approving the plan based on section 157(b)(2)(L) but noting the court is not "broadly sanctioning the permissibility of nonconsensual third-party releases in bankruptcy reorganization plans" and that courts must consider such releases with caution).

2. The matter is not even a "non-core" proceeding because the release of third-party tort claims against a nondebtor is not related to the Debtor's bankruptcy.

Section 157(c)(1) provides that "[a] bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11" as a "non-core proceeding." 28 U.S.C. § 157(c). In such matters, the court retains subject matter jurisdiction to hear these matters, but instead of entering a final judgment, the bankruptcy judge must submit proposed findings of fact and conclusions of law to the district court for *de novo* review. *Id*. In a non-core proceeding where a bankruptcy court does not have jurisdiction to adjudicate a final judgment absent parties' consent, its standard of review of findings of act is "far less deferential." *In re Purdue Pharma, L.P.*, 635 B.R. 26, 79-82 (Bankr. S.D.N.Y. 2021) (bankruptcy court did not have power to approve the nonconsensual releases and injunctions because they were the equivalent of a final judgment, and its opinion should be tendered as proposed findings of fact and conclusions of law). If the bankruptcy court issued a final order where it did not have the authority to do so, the district court must view the proceeding as *de novo* and treat it as a recommendation. *Id*.

However, whether the bankruptcy court has statutory jurisdiction to enter a final judgment approving the plan is not the crux of the issue at hand. Even if, at the very least, there is non-core jurisdiction, the bankruptcy court may simply recommend plan confirmation to the district court to get around the lack of statutory jurisdiction. The broader issue that needs to be addressed is whether third-party releases of a nondebtor should even be dealt with in a bankruptcy at all. Prior to *Stern*, this analysis stopped at establishing statutory jurisdiction. Post-*Stern*, it does not matter if a core or non-core proceeding is involved. 564 U.S. at 475, 503 (determining that a counterclaim for tortious interference is a core proceeding but holding that despite the fact that the bankruptcy court had statutory jurisdiction, it did not have constitutional authority to enter a judgment). The

Stern analysis takes a step further to determine that there must be constitutional authority for the bankruptcy court to even hear such matter.

B. The bankruptcy court lacks Stern v. Marshall*'s constitutional authority to release nonconsensual third-party claims.*

Even if a matter is a core proceeding and jurisdiction exists under section 157, the bankruptcy court may violate Article III of the Constitution while acting within their statutory authority. *Stern*, 564 U.S. at 499. Article III, section 1 of the Constitution provides that "[t]he 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." U.S. Const. Art. III, § 1. It further specifies the characteristics of the Article III judiciary, such as tenure and salaries. *Id.* These defining characteristics aimed to protect the liberty of the people and the integrity of judicial decision making by preventing judiciary abuses. *Stern*, 564 U.S. at 484. Article III is "an inseparable element of the constitutional system of checks and balances" that "both defines the power and protects the independence of the Judicial Branch." *Id*. at 482-83 (quoting *N. Pipeline v. Marathon Pipeline Co.*, 458 U.S. 50, 58 (1982)). It was imperative to the Framers of the Constitution that to ensure liberty and justice, the judiciary has to remain distinct from the legislative and the executive powers." *N. Pipeline*, 458 U.S. at 484. An Article III judge cannot simply forfeit its constitutional right to adjudicate a matter because it is part of a restructuring plan in bankruptcy. *Purdue*, 635 B.R. at 80. Congress does not have the power to alter adjudication of tort claims from an Article III court merely because it might have "some bearing on a bankruptcy case." *Stern*, 564 U.S. at 499. If that were to be the case, it would open the door for nondebtor corporations, such as Fields, to escape mass tort liability by simply inserting the resolution of a non-core matter into a bankruptcy plan, benefiting from Bankruptcy Code protection without even filing for bankruptcy.

Courts have interpreted constitutional authority in *Stern* in differing ways resulting in a circuit split and inconsistency in the law. The Fifth, Ninth, and Tenth circuits clearly prohibit the use of third-party releases. *See In re Pac. Lumber Co.*, 584 F.3d 229, 252 (5th Cir. 2009); *see also In re Lowenschuss* 67 F.3d 1394 (9th Cir. 1995); *In re Western Real Estate, Inc.*, 922 F.2d 592. Even circuits that have approved third-party releases urge caution. *See Patterson v. Mahwah Bergen Retail Grp., Inc.*, 636 B.R. 641(Bankr. E.D. Va. 2022); *Millennium*, 945 F.3d at 126.

Thus, regardless of any statutory jurisdiction discussed above, this Court may not approve the third-party release. Causes of action in which the bankruptcy court has constitutional authority must either (1) "stem from the bankruptcy itself" or (2) "would necessarily be resolved in the claims allowance process." *Stern*, 564 at 499. Holding otherwise would contravene this Court's holding in *Stern*. The only way to get the constitutional authority required by *Stern* is through one of these two avenues, and Fields's third-party release neither stems from the bankruptcy itself nor is necessarily resolved in the claims allowance process.

1. The release of nonconsensual third-party claims does not stem from the bankruptcy itself.

The third-party tort claims filed against Fields do not stem at all from the Debtor's bankruptcy. To determine whether an issue "stems from the bankruptcy itself", Courts must consider whether the disputed right stems from the Bankruptcy Code. *In re Apex Long Term Acute Care–Katy, L.P.*, 465 B.R. 452, 460 (Bankr. S.D. Tex. 2011). Nothing in the Bankruptcy Code authorizes releases for nondebtors outside the asbestos context. Accordingly, even if the nonconsensual third-party release is determined to be a core proceeding, the bankruptcy court does not have constitutional authority to make a final decision.

Nothing in the Bankruptcy Code allows this Court to release Field's claim pursuant to the plan. First, the plain language of section 524(e) expressly prohibits nondebtor releases, but

provides one clear-cut exception which *does* authorize releases but only in the asbestos context. Second, section 105(a)'s broad powers cannot override the controlling language in section 524. Lastly, bankruptcy courts' residual authority cannot broaden the scope of its power beyond what is set forth other Code provisions. Accordingly, no court has no statutory authority to grant such a release.

a. The plain language of 11 U.S.C. § 524(e) expressly prohibits nonconsensual third-party releases.

Pursuant to section 524(a), a discharge under Chapter 11 releases the debtor from personal liability for any debts. *See* 11 U.S.C. § 524(a). In exchange for specific repayments to creditors pursuant to the plan, a Chapter 11 debtor generally receives a discharge from its prepetition debt. *See* 11 U.S.C. § 1141(d)(1). This discharge is intended to protect the interests solely of the debtor. Section 524 prohibits the release of *third parties* from liabilities of the same debts. Under section 524(e), a discharge "does not affect the liability of any other entity on, or the property of any other entity for, such debt." 11 U.S.C. § 524(e). Accordingly, the liability of any nondebtor—such as co-debtors, guarantors, insurance carriers—will not be affected by a debtor's discharge.

The plain language of § 524(e) is clear: a discharge has no effect on the liability of a nondebtor party. *See Sure-Snap Corp. v. Vermont Indus. Dev. Authority* (*In re Sure-Snap Corp.*), 983 F.2d 1015, 1019 (11th Cir. 1993); *Sandy Ridge Dev. Corp. v. Louisiana Nat'l Bank* (*In re Sandy Ridge Dev. Corp.*), 881 F.2d 1346, 1351 (5th Cir. 1989); *Underhill v. Royal*, 769 F.2d 1426 (9th Cir. 1985); *United States v. Stribling Flying Serv.*, 734 F.2d 221, 222–23 (5th Cir. 1984). This Court has repeatedly held that interpretation of the Bankruptcy Code begins by consulting the statute's plain language. *See Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61 (2011). When there is no ambiguity in a statutory text, a court's analysis both begins and ends with the statute's plain language. *Kelly v. Robinson*, 479 U.S. 36, 49 (1986); *see also Caminetti v. United States*, 242

U.S. 470, 485 (1917) (recognizing the same). The plain language of section 524 unambiguously prohibits nonconsensual third-party releases, including Fields's release in this case.

b. 11 U.S.C. § 524(g) provides one exception and exception not met here

Congress, however, created one clear-cut exception to the Bankruptcy Code's general prohibition of third-party releases that exists only with asbestos cases. *See* 11 U.S.C. § 524(g)(1)(B). Section 524(g) allows nonconsensual third-party releases in the asbestos context, so long as certain conditions are met. *See* 11 U.S.C. §§ 524(g)(2)(B)(i)(I), 524(g)(4)(A))(ii), and 524(g)(4)(B)(i)-(ii). The language of section 524(g) plainly indicates Congress's intent to create an *exception* to the otherwise general prohibition under section 524(e). When Congress enacted section 524(g), it said that section 524(g) should be not "construed to modify, impair, or supersede any other authority the court has to issue injunctions in connection with the confirmation of a plan." Pub.L.No.103-394, § 111(b). Section 524(g) expressly states that it operates "notwithstanding the general provisions of § 524(e)." *See* 11 U.S.C. § 524(g)(4)(a)(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)"). The inclusion of the word "notwithstanding" suggests that the type of injunction Congress was authorizing in section 524(g) would be barred by section 524(e) in absence of the statute. *See Purdue*, 635 B.R. at 92.

Congress's intention to limit third-party releases under section 524(g) solely to asbestos cases is confirmed by the legislative history of the statute:

> "The Committee has decided to provide explicit authority *in the asbestos area* because of the singular cumulative magnitude of the claims involved. How the new statutory mechanism works *in the asbestos area* may help the Committee judge whether the concept should be extended into other areas."

Vol. E., COLLIER ON BANKRUPTCY, at App. Pt. 9–78 (reprinting legislative history pertaining to the 1994 Code amendments) (emphasis added). The Bankruptcy Code is intended to be a comprehensive set of rules. *See Law v. Siegel*, 571 U.S. 415, 416 (2014). The Supreme Court further explains that the "[t]he Code's meticulous—not to say mind-numbingly detailed—enumeration of exemptions and exceptions to those exemptions confirms that courts are not authorized to create additional exceptions." *Id.* at 424. Congress has already "balanced the difficult choices" in establishing priorities under the Bankruptcy Code and "it is not for the courts to alter the balance struck by [a] statute." *Id.* at 427.

Congress's failure to expand section 524(g) into other areas is consistent with the text of section 524 as a whole—third-party releases are not statutorily authorized outside the limited asbestos context. If Congress intended such a major departure, it would do more than remain silent—it would explicitly say so. *See Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 463-7 (2017) (holding that "[t]he importance of [a discharge] leads us to expect more than simple statutory silence if, and when, Congress were to intend" to authorize discharge of nondebtors' obligations"); *see also* W*hitman v. American Trucking Ass'n., Inc.*, 531 U.S. 457, 468 (2001) ("Congress . . . does not, one might say, hide elephants in mouseholes"). Put somewhat differently, Congress would have given some affirmative indication of intent, such as that expressed in section 524(g). *See Jevic,* 580 U.S. at 463–67. However, Congress has not created an amendment to the Bankruptcy Code, therefore no statutory authority exists to release Fields's claim.

c. 11 U.S.C. § 105(a) does not provide the Debtor a workaround to the requirements set forth in 11 U.S.C. §§ 524(e) and (g)

A common rule of statutory construction is that the specific governs the general. This cannon applies with full force to bankruptcy cases. *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012); *see also D. Ginsberg & Sons v. Popkin*, 285 U.S.

204, 205-6 (1932). Under this reasoning, the Debtor cannot rely on section 105(a) as grounds for approval for Fields's third-party release. Instead, the Debtor must satisfy the requirement set forth in section 524(g) for asbestos cases. Because this case does not involve asbestos, the requirements of section 524(g) are not met. Fields's third-party release must be removed from the plan in order to satisfy section 524(e) of the Bankruptcy Code. If Field's release is not removed, the Debtor's plan cannot be confirmed because section 1129(a)(1), made applicable in a Sub. V case by section 1191(a), is not satisfied. 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. . .") (emphasis added); 11 U.S.C. § 1191.

Despite the plain language, some courts have allowed third parties to reap the benefits of protection under the Bankruptcy Code without ever filing for bankruptcy themselves. These courts have relied on their inherent and statutory powers pursuant to section 105(a) of the Bankruptcy Code. Under section 105(a), "[t]he court may issue any order, process, or judgment *that is necessary or appropriate to carry out the provisions of this title.*" 11 U.S.C. § 105(a) (emphasis added); *see In re Midway Gold*, 575 B.R. 475, 505 (Bankr. D. Colo. 2017) (holding that section 105(a) of the Bankruptcy Code justifies a release of third-party claims); *see also In re Metromedia Fiber Network, Inc.*,416 F.3d 136, 141-2 (2d Cir. 2005).

However, section 105 is not a *carte blanche* grant of power to meet any and all bankruptcy objectives. This Court has held that "traditional equitable power" of a bankruptcy court can only be exercised within the confines of the Bankruptcy Code. *See Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988). The bankruptcy court is granted only the power to carry out other, substantive provisions of the Bankruptcy Code. *See Purdue*, 635 B.R. at 92. Section 105 does not allow the bankruptcy court "to create substantive rights that are otherwise unavailable under

applicable law." *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 141 (2d Cir. 2005) (quoting *New England Dairies, Inc. v. Dairy Mart Convenience Stores, Inc.* (*In re Dairy Mart Convenience Stores, Inc.*), 351 F.3d 86, 92 (2d Cir. 2003)). For example, section 105 does not authorize attorney's fees absent specific statutory authority. *In re Panaia*, 65 B.R. 865, 869–70 (Bankr. D. Mass. 1986). Nor does section 105 authorize a trustee to recover expenses in a manner not specifically provided for in section 506(c). *In re Golden Plan of Cal., Inc.*, 829 F.2d 705, 713 (9th Cir. 1986).

It must also be the case that section 105 cannot authorize a nonconsensual third-party release explicitly prohibited elsewhere in the Code. Third-party releases are in direct contradiction with section 524(e) of the Bankruptcy Code. *See In re Am. Hardwoods, Inc.*, 885 F.2d 621 (9th Cir. 1989) (holding "the specific provisions of section 524 displace the court's equitable powers under section 105"). Accordingly, section 105(a) cannot be used as a workaround to the clear statutory language of section 524(e) and (g).

Because bankruptcy courts are courts of limited jurisdiction, Congress specifically drafted the Bankruptcy Code to reflect a tailored set of rules, as to not offend courts of general jurisdiction. Congress has power to establish uniform laws on the subject of bankruptcies, as granted by the Bankruptcy Clause in the Constitution. U.S. Const. art I., § 8, cl. 4. Discharge of debt is the "greatest" of these powers conferred by the Bankruptcy Clause. *Hanover Nat'l Bank v. Moyses*, 186 U.S. 181, 186 (1902); *see also In re Johns-Manville Corp.*, 517 F.3d 52, 55 (2d Cir. 2008), rev'd and remanded on other grounds sub nom ("most third-party claims against a non-debtor touches the outer limit of the Bankruptcy Court's jurisdiction"). Therefore, relying on section 105(a)'s "necessary and appropriate" power is "too weak a reed upon which to rest" a delegation of the "greatest" bankruptcy power bestowed to Congress. *See Jevic,* 580 U.S. at 467.

d. Bankruptcy courts' residual authority does not supersede specific provisions of the Bankruptcy Code.

Bankruptcy courts have "residual authority" to approve plans, including all provisions that are "necessary and appropriate," so long as they are not inconsistent with any provision of the Bankruptcy Code. *See United States v. Energy Sources Co., Inc.* (*In re Energy Resources Co.*), 495 U.S. 545, 549 (1990). In the third-party release context, some courts have relied on this residual authority through a combination of section 105(a)'s "necessary and appropriate" power and section 1123(b)(6)'s power to "include any other appropriate provision non inconsistent with the applicable provisions of this title." *In re Airadigm Commc'n, Inc.*, 519 F.3d 640, 657 (7th Cir. 2008); *In re Dow Corning Corp.*, 280 F.3d 648, 663 (6th Cir. 2002).

While residual authority allows a bankruptcy court to broadly authorize reorganization plans, these actions must be tethered to some specific authority in and are limited by the Bankruptcy Code. *See Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988) (holding that "whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code"). Fields's third-party release, however, directly contradicts with other provisions of the Bankruptcy Code—specifically sections 524(e), (g), (h); 523; and 1141(d).

Courts are not allowed to deviate from Congress's intentions based on equitable considerations. *See Jevic*, 580 U.S. at 463. Ms. Rigby would receive a substantially greater distribution in bankruptcy than she would recover than pursuing her claim against Fields outside of bankruptcy. But even when there are compelling reasons to deviate from the Bankruptcy Code—as there are here in the case of Ms. Rigby—a bankruptcy court "may not contravene specific statutory provisions." *Law*, 571 U.S. at 421. Further, each harm and thus each claim in this case is unique. While Ms. Rigby will recognize more under the Debtor's plan, that may not be

true of every claim filed against Fields. Therefore, the Debtor and Fields cannot rely on a court's residual authority to prevail over the specific requirements Congress set forth in sections 524(e) and (g).

If courts' residual authority was allowed to override specific provisions of the Bankruptcy Code, a dangerous precedent would be set. This precedent allows a financially healthy company, like Fields, to receive the benefits of bankruptcy (and a subsequent release from liability) without ever having to file for bankruptcy itself. The release of third-party tort claims not only allows negligent corporations to abuse the protection bankruptcy provides, but ultimately implies that the judicial system sides with who has the most money. Plaintiffs like Ms. Rigby should be able to rely on the tort litigation system to seek the justice they rightfully deserve.

2. The release of nonconsensual third-party claims does not arise in the claims allowance process.

Although no Bankruptcy Code section grants authority for bankruptcy courts to approve third-party releases, such releases may still be constitutional if the claim would "necessarily be resolved in the claims allowance process." *Stern,* 564 U.S. at 499. However, the claims allowance process is not grounds for constitutional authority because Fields is not the debtor in this case.

The Bankruptcy Code sets forth a claims allowance process so creditors can file their claims against someone who has invoked the protection of the bankruptcy system. *See* 11 U.S.C. § 502 ("the court . . . shall determine the amount of such claim . . . as of the date of the filing of the petition). The claims allowance process addresses the rights of persons who have claims against the debtor *who sought bankruptcy protection,* not the claims against a nondebtor *who did not seek bankruptcy protection*. *See In re Purdue Pharma, L.P.*, 2022 WL 121393 at *114 (S.D.N.Y. Jan. 7, 2022). Upon filing for bankruptcy, the debtor discloses their assets, which are then applied to the resolution of their claims of their creditors. *See id.*

Nondebtors do not have the same obligations to disclose their assets that debtors have. It follows, then, that nondebtors do not get any of the protections of bankruptcy that debtors do. Nondebtors certainly do not get the "right" to have claims that are being asserted against them outside the bankruptcy process released. *See In re Johns-Manville Corp.*, 600 F. 3d 135, 158 (2d Cir. 2010) (holding that "the 'special remedial scheme' due process exception relating to *in rem* bankruptcy proceedings simply does not give a bankruptcy court subject matter jurisdiction to release *in personam* third-party claims against a nondebtor.")

Yet, if the Thirteenth Circuit's holding is affirmed, Fields's claims will be finally disposed of pursuant to the Plan—despite these claims not stemming from the bankruptcy or relating to the claims allowance process. *See Patterson v. Mahwah Bergen Retail Grp., Inc.*, 636 B.R. 641, 675–76 (E.D. Va. 2022) (quoting *In re Purdue Pharma, L.P.*, 2022 WL 121393 at *81 (S.D.N.Y. Jan. 7, 2022)). Ms. Rigby's claim is thus extinguished—without her consent, without any form of payment, with Ms. Rigby enjoined from prosecuting these claims outside of bankruptcy. *See Purdue*, 2022 WL 121393 at *81. Fields should not reap the benefits of a release through some artificially manufactured form of constitutional authority, which conflicts with this Court's holding in *Stern*.

C. The plain language interpretation of 11 U.S.C. § 524 best comports with the overarching policy goals of the federal bankruptcy system as a whole.

For far too long, the disparity in the way courts have approached nonconsensual third-party claims have caused ambiguity in the law that must be addressed. An overwhelming number of courts approving nonconsensual releases do so under the guise of a "rare" circumstance. *See In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 141–43 (2d Cir. 2005); *Nat'l Heritage Found., Inc. v. Highbourne Found.*, 760 F.3d 344, 347-50 (4th Cir. 2014); *Behrmann v. Nat'l Heritage Found.*, 663 F.3d 704, 712 (4th Cir. 2011); *Class Five Nev. Claimants v. Dow Corning Corp. (In re Dow*

Corning Corp.), 280 F.3d 648, 657-58 (6th Cir. 2002); *Menard-Sanford v. Mabey* (In re A.H. Robins Co., Inc.), 880 F.2d 694, 700-02 (4th Cir. 1989).

A case-by-case approach is no longer adequate because "when every case is unique, none is unique." *Purdue*, 635 B.R. at 37. *See also Jevic*, 580 U.S.at 469-70 (allowing exceptions for "rare" cases threatens to turn into a general rule, and there is no such thing as a "rare case" that allows a court to trump the Bankruptcy Code). As evidenced by the frequency at which courts are approving "rare" cases, it is evident that these "rare" cases are becoming "more popular than Jesus." Maureen Cleave, *How does a Beatle live? John Lennon lives like this*, LONDON EVENING STANDARD, Mar. 4, 1996.

The principal justification behind approving third-party releases is that the nondebtor has contributed a substantial amount of assets to the reorganization. *Dow Corning*, 280 F.3d at 658. Similarly, here, Fields attempts to demand complete release of its third-party tort claims in exchange for one hundred million dollars. The funds would undoubtedly result in creditors with allowed claims to receive significant distribution. *But see In re Aegean Marine Petrol. Network, Inc.*, 599 B.R. 717, 726–27 (Bankr. S.D.N.Y. 2019) ("[n]onconsensual third-party releases are not a merit badge that somebody gets in return for making a positive [financial] contribution to a restructuring . . . Doing positive things in a restructuring case—even important positive things — is not enough.") However, as established, nothing in the Bankruptcy Code or the Constitution expressly authorizes a release of a nondebtor's liability on this basis. Confirmation of the nonconsensual plan will bind Ms. Rigby and other residents against their will, forcing their claims against Fields, to be discharged with no justice achieved.

II. A CORPORATE SUB. V DEBTOR THAT CONFIRMS A NONCONSENSUAL PLAN UNDER 11 U.S.C. § 1192 RECEIVES A DISCHARGE OF MOST DEBTS EXCEPT THOSE "OF THE KIND SPECIFIED IN 11 U.S.C. § 523(A)."

When Congress enacted Sub. V of Chapter 11, it afforded mom and pop shops a second chance to succeed by reducing costs associated with reorganization—rather than having to resort to liquidation. The plan confirmation process in traditional Chapter 11 tends to strain such businesses, preventing small business owners to retain their equity interests over the voting process. In order to further these goals, debtors proceeding under Sub. V may confirm a plan and retain their equity interests over the objections of unsecured creditors. Although Sub. V provides a unique set of advantages to ensure small businesses stay afloat, safeguards were put in place to ensure that Sub. V isn't used as a gateway to circumvent creditor protections. Sub. V was introduced as an alternative to simplify the reorganization experience; and not the outcome.

Yet under Debtor's through-the-looking-glass interpretation, section 1192's exceptions from discharge of the debts of the kind described in section 523(a) is limited to individuals. And so, they, alongside their parent company, Fields, insist that should receive a discharge to debts for malicious injury caused by their wrongdoing. Even worse, accepting Debtor's interpretation would only incentivize other large corporations to utilize Sub. V as a gateway to escape liability. Affirming the lower court decision would not only violate the text of section 1192, but it would also bleed Sub. V of all meaning.

Policy considerations aside, the second issue in this case presents a relatively straightforward question—whether section 1192(2) textually subjects corporations to the discharge limitations described in section 523(a). The lower court erred in finding that it does not.

The courts are divided as to whether the discharge provisions of section 1192(2) only apply to individual debtors. Courts such as the Thirteenth Circuit have taken a misguided approach in

relying on section 523(a) as the instructive provision along with the absence of legislative history as conclusive evidence that Congress did not intend to render section 523(a) exceptions to discharge applicable to corporations. Instead, this Court should reverse the decision below for two reasons. First, section 1192(2) is the controlling provision and under a plain text analysis, the kinds of debt specified in section 523(a) apply to a debtor regardless of whether the debtor is a corporation or individual. Second, even if this Court finds that section 1192(2) is ambiguous, the use of other statutory tools of construction and practical considerations support that the discharge limitation apply to all types of debtors.

A. The plain language of 11 U.S.C § 1192 expresses that the exception of debts of the kind specified in 11 U.S.C. § 523 apply regardless of whether the Debtor is an individual or corporation.

1. 11 U.S.C § 1192 is controlling.

The crux of the Debtor's argument—and the authority they rely upon—is that the prefatory clause of section 523(a) is the controlling provision. *See* R. at 18 ("Cases favoring the Debtor's position rely upon the term 'individual debtor' in the introductory clause of section 523(a)"); *Gaske v. Satellite Rests. Inc.* (*In re Satellite Rests. Inc.*), 626 B.R. 871, 876 (Bankr. D. Md. 2021) ("the plain language of Section 523(a) is unequivocal and confirms that the exceptions to a debtor's discharge, including a discharge under Section 1192, apply only to an individual."). Specifically, section 523(a) provides that "[a] discharge under section 727, 1141, 1192, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt…" The remainder of section 523(a) sets forth twenty-one types of debt excepted from discharge following plan confirmation. The underlying policy for excepting a debt from discharge "'is to protect the creditor from the dishonest and fraudulent debtor.'" *In re Anderson*, 29 B.R. 184, 191 (Bankr. N.D. Iowa 1983) (*quoting* H.R. Rep. No. 595, 95th Cong. 1st Sess. 130, 131 (1977)).

But where two statutes conflict, the fundamental rule as recognized by this Court is "that the more specific provision should govern over the more general." *Cantwell-Cleary Co. v. Cleary Packaging, LLC* (*In re Cleary Packaging*), 36 F.4th 509, 515 (4th Cir. 2022); *see also Nitro Lift Techs v. Howard*, 568 U.S. 17, 21 (2012) (*"*The ancient interpretive principle is that the specific governs the general."). While section 523(a) references various discharge provisions throughout the Bankruptcy Code, section 1192(2) specifically addresses Sub. V discharges. Accordingly, this Court should find that section 1192 governs in Sub. V cases over the more general section 523(a).

Here, section 1192 is the specific provision governing Debtor's discharge. Debtor elected to proceed under Sub. V, but was unsuccessful in obtaining full support from its secured creditors—specifically, the Bank—for its reorganization plan. As a result, Debtor unable to satisfy the consensual plan requirements of section 1191(a), nevertheless sought confirmation of a nonconsensual plan under section 1191(b). While section 1141(d)(1) would govern Debtor's discharge had they satisfied the requirements of section 1191(a), *Ellis v. Westinghouse Elec. Co., LLC*, 11 F.4th 221, 235 (3d Cir. 2021), section 1192 governs the discharge rules for Debtor—and others—who elected to take advantage of the cramdown provision of Sub. V. Section 1192 specifically sets forth the discharge rules for plans confirmed under section 1191(b), and therefore, section 1192 governs Debtor's discharge.

The lower court's reliance on the prefatory clause of section 523(a)—and not section 1192(2)—cannot be reconciled for several reasons. First, section 523(a) was amended to include the cross reference to section 1192 following the enactment of Sub. V. The House Report provides clarification explaining that the change to section 523(a) is a "conforming amendment," significantly undercutting the view that section 523 is the guiding statute. Small Business Reorganization Act of 2019 (the "SBRA"), § 4(a)(8) 133 Stat. 1086. This Court has already

acknowledged that "relevant to all ancillary provisions," Congress does not make "'radical—but entirely implicit—change[s]' through 'technical and conforming amendments.'" *Cyan Inc. v. Beaver Cnty., Emps. Ret. Fund,* 138 S. Ct.1061, 1071 (2018). Simply put, Congress does not hide elephants in mouseholes. *Id.*

Second, section 523(a) has long been redundant and overinclusive—even before the additional reference to section 1192—so, the interpretive canon of surplusage is of no use here. Brief for U.S. as Amicus Curiae Supporting Petitioners, p. 17, *In re Cleary LLC,* 36 F.4th 509 (4th Cir. 2021) (No. 21-1981); *c.f.* R. at 18 (expressing that Petitioner's interpretation renders the cross reference to section 1192 in section 523(a) mere surplusage). Here, section 523(a) references five other discharge provisions alongside section 1192. Brief for U.S. as Amicus Curiae Supporting Petitioners, p. 17, *In re Cleary LLC,* 36 F.4th 509 (4th Cir. 2021) (No. 21-1981). For instance, it references section 727 even though Chapter 7 discharges only apply to individuals. *Id.* It also references section 1328(b) even though Chapter 13 discharges are also only available to individuals. 11 U.S.C. § 109(e). *Id.* And it also references section 1141, even though only section 1141(d)(2) addresses discharge exceptions for individual debtors. *Id.*

And so, the Court should be increasingly hesitant in applying the canon of mere surplusage. Indeed, it is the duty of the Court to give effect to each word "'if possible.'" *Chickasaw Nation v. United States*, 534 U.S. 84, 94 (2001). It should reject words as surplusage if "inadvertently inserted or if repugnant to the rest of the statute…" *Id.* Here, Debtor's argument would only hold weight without the existence of section 1192(2) and is therefore rendered useless by their offered interpretation. After Bank objected to Debtor's plan of organization, they sought to utilize the cramdown provisions available to Sub. V debtors. Consequently, the windfall of having to proceed under section 1191(b) is a narrow scope of discharge. Debtor's attempts to swindle the Court are

unavailing and is unjustified attempt to avoid liability. Instead, they must accept the corresponding burdens with having to proceed under Sub. V's cramdown provision.

Lastly, the Debtor overlooks 11 U.S.C. § 1181 section 1181 which provides the applicable sections for Sub. V debtors. Specifically, section 1181(c) sets forth the special rules for discharge, which states that "if a plan is confirmed under section 1191(b) of this title, section 1141(d) of this title shall not apply, except as provided in section 1192 of this title." And under section 1192(2), debts of the "kind specified" in section 523(a) are excepted from discharge; it does not say that the exception only applies to individual debtors. Accordingly, the scope of this Court's inquiry should focus on section 1192, not section 523.

2. The plain text of 11 U.S.C. § 1192 makes no distinction to the kind of debtor addressed in 11 U.S.C. § 523(a) only the kind of debt listed in section 523(a).

A plain-text reading of section 1192 establishes that it limits the discharge a debtor receives upon completion of a nonconsensual plan to certain kinds of *debt*—not certain kinds of *debtors*. Under a plain-text analysis, this Court "must give effect to the clear meaning of the statutes as written, given each word its ordinary contemporary, common meaning." *Artis v. D.C.*, 138 S. Ct. 594, 603 Fn. 8 (2018) (quoting *Star Athletic, L. L. C. v. Varsity Brands, Inc.*, 580 U.S. 405, 414 (2017)). If the statute can be plainly read, "the sole function of the courts is to enforce it according to its terms." *Caminetti v. United States*, 242 U.S. 470, 485 (1917). Section 1192 provides in its entirety:

> If the plan of the debtor is confirmed under section 1192(b) of this title, as soon as practicable after completion by the debtor of all payment 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 the 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 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.

Section 1192 makes no distinction whatsoever as to the status of the debtor. A natural reading of the text would be sure to include both corporate and individual debtor—who are both eligible to have a plan confirmed under section 1191(b). Furthermore, upon satisfying the three-to-five-year payment requirement, "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…" 11 U.S.C. § 1192. The statute does not limit the type of debtor in which the court may grant discharge from all other debt provided in section 1141(d)(1)(A) and allowed under section 503.

The statute further states that excepted from discharge is "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." The use of "except" in the phrase "except any debt," means "not including" from the preceding section any debt pursuant to sections 1192(1) and (2). Moreover, "except" means "not including" and is a negative that precedes sections 1191(1) and (2). Applying formal rules of grammar, or De Morgan's laws, the negation of the conjunction "or"—found at the end of section 1192(1) and before section 1192(2)—is converted to "and." *United States v. Palomares*, 52 F.4th 640 (5th Cir. 2022) (Willett, J., dissenting) ("This common-sense rule travels more stuffily as 'De Morgan's law,'. . . the negation of a conjunction is equivalent to the disjunction of the negations"). Thus, section 1192 provides, without limiting its application to individual debtors, that in a case in which the plan is confirmed under section 1191(b), the last payment that is due after the first three years of the plan, not to exceed five years, and debts of the kind specified in section 523(a) are not discharged.

Focusing the scope of the inquiry on the relevant text here—section 1192(2)—the plain text is limited to the kinds of debt referred to in section 523(a). This is consistent with the ordinary meaning of the word "kind" as "category" or "sort." *Cleary*, 36 F.4th at 515. As seen in section 523(a), the provision contains various 'categories' or 'sorts' of debt and section 1192 supplies that any debt falling within those categories or sorts of debt are excepted from discharge following confirmation of a nonconsensual plan under Sub. V. *Id.*

The Court should not be persuaded by the Debtor's attenuated textual analysis to arrive at the appropriate conclusion in this case. Indeed, the plain language analysis muddies the waters in explaining that since consumer debt, as defined by section 101(8), shares two common attributes—the nature of the debtor and the purpose of the obligation—and section 523(a) also has two common traits—the debtor must be an individual and the obligation arises from one of the subsections—the plain text of section 1192 incorporates the meaning "for debtors of the kind" and kind of debt. R. at 19. This is a far reach. The nature of consumer debt in general has nothing to do with the breadth of discharge under a nonconsensual plan in Sub. V.

The text of section 1192 as a whole is unambiguous on its face and cannot be read to limit its discharge exceptions only to individual debtors proceeding under Sub. V. Thus, the Court should find that the discharge limitations of section 1192(2) except any debts of the kind listed in section 523(a) irrespective of whether the debtor is a corporation or individual.

B. Even if the Court finds that 11 U.S.C. § 1192 is ambiguous, canons of construction and practical considerations further support the view that 11 U.S.C. § 523(a)'s exceptions to discharge apply to both individuals and corporations in Sub. V.

The Debtor's efforts to evade a plain-text answer to a plain-text question are unavailing. The parties, nor the courts, should be permitted to override the Bankruptcy Code with negative inferences as to what Congress did not include in the legislative record. Nonetheless, even if this

Court were to find that section 1192(2) is ambiguous—which it shouldn't—tools of statutory construction, and practical implications weigh in favor of finding that section 523(a) exceptions to discharge apply to both corporate and individual debtors proceeding under section 1192.

1. Applying other canons of statutory construction tip the balances in favor of Ms. Rigby.

a. The presumption of consistent usage and meaningful variation defeats Debtor's interpretation because it would run afoul to section 1141(d)(2).

Congress has consistently distinguished between types of debtors throughout the Bankruptcy Code and it should be no coincidence that such limiting language is absent from section 1192(2). *Cleary*, 36 F.4th at 515–16. The fact that section 1192(2) may be applied to a corporate, Sub. V debtor does not demonstrate ambiguity; it demonstrates the breadth of the statute. *See Pa. Dep't of Corr.* v. *Yeskey*, 524 U.S. 206, 212 (1998) ("[T]he fact that a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth." (Internal quotation marks omitted)).

For instance, section 1141(d) distinguishes the scope of a discharge for an individual debtor from a corporate debtor. Section 1141(d)(2) expressly states the exceptions to discharge for individuals: "A discharge under this Chapter does not discharge a debtor who is an individual from any debt excepted from discharge under section 523 of this title." Likewise, section 1141(d)(6) limits the scope of the discharge for corporations by providing that confirmation of a plan "does not discharge a debtor that is corporation from" debts:

> (A) of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit, or owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar State statute; or
> (B) for a tax or customs duty with respect to which the debtor—
> (i) made a fraudulent return; or
> (ii) willfully attempted in any manner to evade or to defeat such tax or such customs duty.

11 U.S.C. § 1141(d)(6). As a result, section 1141(d)(2) makes it so that none of the kinds of debt listed in section 523(a) are dischargeable for an individual, whereas the short list of debts set forth in section 1141(d)(6) are non-dischargeable for a corporation. Brief for U.S. as Amicus Curiae Supporting Petitioners, p. 10, *In re Cleary LLC,* (4th Cir. 2021) (No. 21-1981). If Congress intended that the exceptions to a Sub. V discharge apply only to individuals it would have said so in section 1192, just as it did in section 1141(d)(2) for a traditional Chapter 11 debtor.

Adopting the Debtor's interpretation of section 1192(2) is putting a band-aid on a broken leg. As the Fourth Circuit explained, section 523(a) includes section 1141 in its scope just as it does section 1192. *Cleary*, 36 F.4th at 516. Applying the Debtor's reading of section 1192(2) to section 1141, "the list of exceptions to discharge in a traditional Chapter 11 proceeding would govern only individuals by reason of section 523(a)'s limiting language." *Id.*

b. The principle of in pari materia provides additional support in finding that debt of the kind listed in section 523(a) are applicable to Debtor.

Invocation of the *in pari materia* rule begins with a straightforward question: How similar is the language Congress chose to use in the two statutes?

As several courts and commentators have pointed out, the discharge provisions for Chapter 12 debtors under section 1228(a)(2) contains virtually identical language as section 1192, which applies both to corporate and individual debtors. *See e.g. Cleary*, 36 F.4th at 517 (indicating that the language in section 1228(a)(2) of Chapter 12 is "virtually identical" to the language included in section 1192(2)); 8 Collier on Bankruptcy, 1192.03 (16th 2022) (stating that the discharge limitations in nonconsensual, Sub. V plans are identical to the discharge limitations in chapter 12); THE NEW SMALL BUSINESS BANKRUPTCY GAME: STRATEGIES FOR CREDITORS UNDER THE SMALL BUSINESS REORGANIZATION ACT, 28 Am. Bankr. Inst.

L. Rev. 251, 279 (expressing that Sub. V bears more resemblance to Chapter 12 than Chapter 11, as a whole). Although Chapter 12 is strictly for a debtor who is either a "family farmer" or "family fisherman," *Hall v. United States*, 566 U.S. 506, 509 (2012), a qualifying debtor may be an individual, corporation or partnership. 11 U.S.C. §§ 101(18)(B), (19A)(B). For such debtors, section 1228(a)(2) excepts from discharge any debt "of ***a*** kind specified in section 523(a) of this title. . ." *c.f.* 11 U.S.C. § 1192 ("except any debt. . . (2) of ***the*** kind specified in section 523(a) of this title) (Emphasis added). Notably, the prefatory clause of section 523(a) specifically references section 1228 just as it does with section 1192. *Cleary*, 36 4th at 516.

Here, the textual similarity between the two statutes is more than sufficient to invoke *in pari materia*, which counsels that "when similar statutory provisions are found in comparable statutory schemes, interpreters should presumptively the same way." Eskridge, William N. Jr., et al. *Cases and Materials on Legislation and Regulation: Statutes and the Creation of Public Policy* 1158 (6th ed. 2019); *see also Brogdon v. Abbott*, 524 U.S. 624, 645 (1998) (construing provisions in Fair Debt Collections Act in according with how courts had interpreted an identical provision in the Truth in Lending Act before the FDCPA was enacted); *Northcross v. Bd. of Educ. of Memphis City Schs*., 412 U.S. 427, 428 (1973) ("The similarity of language in [two statutes] is, of course, a strong indication that the two statutes should be interpreted *pari passu*.").

The two district court decisions interpreting section 1228(a)(2) have held that it refers to the kinds of debt described in section 523(a), regardless of the type of debtor, just as it should in section 1192(2). As explained in *Sw. Ga. Farm Credit, ACA v. Breezy Ridge Farms, Inc.* (*In re Breezy Ridge Farms, Inc.*), "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" because "although § 523(a) applies only to individuals, Congress has used it as shorthand to define the scope of a Chapter 12

discharge for corporations as well as individuals." Case No. 08-12038-JDW, 2009 WL 1514671 (Bankr. M.D. Ga. 2009); *accord New Venture P'ship v. JRB Consol.* (*In re JRB Consol.*), 188 B.R. 373 (Bankr. W.D. Tex. 1995) ("The wording in § 1228(a)(2) describing 'debts of the kind' specified in § 523(a) does not naturally lend itself to also incorporate the meaning 'for debtors of the kind' referenced in § 523(a). Debts of the kind easily seems to be limited to the subparagraphs of § 523(a) which identify the types of debts which are eligible to be excepted from discharge."). Here, *in pari materia* necessitates that section 1192(2)'s discharge provision applies to Debtor consistent with the application of section 1228(a)(2).

At the same time, several courts have been quick to dispose of any connection between sections 1192(2) and 1228(a)(2). *See* R. at 19. ("Even if correctly decided, the inference that similar terms have identical meanings in different Chapters of the bankruptcy code is a weak one"); *Gaske*, 626 B.R. at 878 (finding that the lack of legislative history to be significant in concluding Congress did not intend to make exceptions apply to corporations under section 1191(b)). Yet even one of those decisions acknowledges that "several aspects of [Sub. V] are premised on the provisions of Chapter 12 of the Code for family and fishermen." *In re Trepetin*, 617 B.R. 841, 848 (Bankr. D. Md. 2020). Instead, this Court should follow the Fourth Circuit and find that the parallels between sections 1192(2) and 1228(a)(2) as persuasive in concluding that the exceptions to discharge apply both to individuals and corporations in Sub. V.

Additionally, the Debtor undercuts its own position stating that the lack of legislative history is indicative that Congress did not intend to make such a radical change. However, the parallels between sections 1192 and 1228 support the view that Congress intended to make the Sub. V cramdown discharge the same as the discharge in Chapter 12. 8 COLLIER ON BANKRUPTCY

¶ 1192.03 (16th 2022). And at the time SBRA was enacted in 2019, only two bankruptcy court decisions concluded that corporate Chapter 12 debtors are subject to section 523(a) exceptions. *Id.*

Public policy also supports the view that the kinds of debts provided under section 523(a) should be excepted from discharge for corporate Sub. V debtors just as in Chapter 12 cases. Sub. V plans confirmed under section 1191(b) and Chapter 12 plans confirmed under section 1225 share a common feature as both can be confirmed without the high voting requirement of section 1129(a)(8)—which can be distinguished from plans confirmed under section 1191(a). Consequently, creditors with the kind of claims described in section 523(a) have much less control over how their claims are treated in plans in Chapter 12 and those confirmed in Sub. V under section 1191(b). For that reason, Congress was well intentioned when it decided to apply limitations on the discharge of debts to strike a balance between creditors and debtors. Had Congress used language in section 1191(2) that was different from the language in Chapter 12, it would have suggested that the discharge for Sub. V debtors with a nonconsensual plan confirmed under section 1191(b) was different than the discharge for debtors in Chapter 12.

c. The practical impact of the lower court's decision creates perverse incentives for corporations such as Debtor to escape liability for their corporate wrongdoings through Sub V.

The Debtor's proposed interpretation does not survive modern bankruptcy law. Sub. V is a useful option for small business debtors, but it is particularly ripe for abuse. While Congress enacted Sub. V to streamline the bankruptcy process by which small businesses reorganize and rehabilitate their financial affairs, "Congress had a single purpose in enacting Chapter 11"—to strike a balance between a debtor's interest in reorganizing and restructuring its debts and the creditors interest in maximizing the value of the bankruptcy estate. *Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 51 (2008) (quoting *Toibb v. Radloff*, 501 U.S. 157 (1991)). Applying the section 523(a) exceptions stands as a safeguard to ensure that companies such as

Fields and the Debtor do not use Sub. V to circumvent creditor protections embodied within Chapter 11. A decision otherwise would not only undermine that balance; but it would only serve to insulate those already protected by a silver spoon.

The Bankruptcy Code is structured to encourage a consensual plan process. *Waldron v. Adams & Reese, LLP* (*In re Am. Int'l Refinery, Inc.*), 436 B.R. 364, 376 (Bankr. W.D. La. 2010) (discussing cases); *see e.g. In re Kellogg Square P'ship,* 160 B.R. 336 (Bankr. D. Minn. 1993) ("Promoting a consensual process in reorganization, in turn, will have the broader benefit of preserving the resources of both debtors and creditors; it will encourage the making of arrangements earlier in the case it will reduce the likelihood that the plan and disclosure statement will undergo several redrafts after an initial hearing. . ."); *In re Sentinel Mgmt. Grp., Inc.*, 398 B.R. 281 (Bankr. N.D. Ill. 2008) (observing that the Bankruptcy Code is "designed to encourage consensual resolution of claims and dispute through the plan negotiation process").

Yet the Debtor's interpretation creates an unworkable scheme and would create "perverse incentives" for others to pursue nonconsensual plans. *Cleary*, 36 F.4th at 517. Under section 1191(a), if a court confirms a consensual plan a corporate debtor receives a discharge that makes nondischargeable certain corporate debts—debts for taxes or customs duties for which the debtor made a fraudulent return. *See* 11 U.S.C. § 1141(d)(6). On the other hand, if a court confirms a nonconsensual plan then section 1141(d) "shall not apply except as provided in section 1192." 11 U.S.C. § 1181(c). Under the Debtor's proposed interpretation of section 1192, the discharge exceptions would not apply to corporations and in turn, a corporate debtor in Sub. V with debts for filing fraudulent tax returns, attempting to evade or defeat tax, or some other type of fraud, cannot discharge those debts by securing support for a consensual plan, but can discharge them if a court confirms a nonconsensual plan.

At the same time, in order to address public concerns section 523(a) stands as a way to address bad acts committed by a debtor—regardless of whether they are an individual or corporation. Society's interest in excepting those debts specified under section 523(a) outweigh Debtor's need for a fresh economic start. Debtor's proposed interpretation of the discharge rules would only welcome others to seek out the cramdown provisions of Sub. V as a method to avoid tortious liability. Allowing Debtor and Fields to receive a fresh start, despite the harm inflicted to Ms. Rigby and her family, manipulates the Bankruptcy Code to reward bad corporate actors—while only punishing individuals.

Here, allowing corporations to fall outside the reach of section 523(a) departs from what Congress envisioned when it enacted Sub. V. Sub. V was put in place to ease the complex requirements of Chapter 11 and provide 'mom and pop' shops with a safety net to reorganize rather than liquidate. Allowing the Debtor and Fields to proceed, free from the non-dischargeable provisions of section 523(a) welcomes other major players and private equity funds to capitalize on the loosened restrictions. But more importantly, it allows Debtor and Fields to escape liability for the harm that they caused Ms. Rigby.

The Thirteenth Circuit fundamentally mischaracterizes the underlying policy goals of a discharge under the Bankruptcy Code. Indeed, the lower court grounded its holding on the basis that the justifications for discharge are very different for humans and corporations. But it is well-established that the basic policy under the Bankruptcy Code is to afford relief only to the honest, but unfortunate *debtor. Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752 (2018) (quoting *Cohen v. de La Cruz*, 523 U.S. 213 (1998)).

Although courts that the Debtor relies upon have exclaimed that applying section 523(a) to corporate debtors in the Sub. V context would be a radical, and unintended change by Congress,

these concerns are overstated. For instance, as the Thirteenth Circuit explained, such an interpretation would "reject a half century of settled doctrine and silently add two dozen new categories of non-dischargeable debts for Chapter 11 debtors in Subchapter V cases." R. at 17. Yet the majority acknowledges that of the twenty-one kinds of debt listed under "at least seven of the categories can only apply to humans." R. at 16; *see also* 11 U.S.C. §§ 523(a)(5), (8), (9), (15), (17). Moreover, several kinds of debt contained within section 523(a) were previously excepted from discharge for corporate debtors through section 1141(d)(6), such as those covered by sections 523(a)(1), (2)(A)-(B). Accordingly, the lower court's concerns afford no basis to depart from the text of section 1192(2).

In sum, allowing Debtor and other corporate entities to receive a discharge from the debts of the kind specified in section 523(a) would violate the text of section 1192(2). But even considering other statutory canons of construction and the practical implications of Debtor's offered approach yield in favor of reversal of the lower court's decision.

CONCLUSION

For these reasons, this Court should reverse the judgment of the United States Court of Appeals for the Thirteenth Circuit.

Team 19

Team 19
Counsel of Record

APPENDIX A

U.S. Const. Art, III, § 1

The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

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.

28 U.S.C. § 157

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b)

(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2)Core proceedings include, but are not limited to—

(A) matters concerning the administration of the estate;

(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

(C) counterclaims by the estate against persons filing claims against the estate;

(D) orders in respect to obtaining credit;

(E) orders to turn over property of the estate;

(F) proceedings to determine, avoid, or recover preferences;

(G) motions to terminate, annul, or modify the automatic stay;

(H) proceedings to determine, avoid, or recover fraudulent conveyances;

(I) determinations as to the dischargeability of particular debts;

(J) objections to discharges;

(K) determinations of the validity, extent, or priority of liens;

(L) confirmations of plans;

(M) orders approving the use or lease of property, including the use of cash collateral;

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;
(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims; and
(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.

11 U.S.C. § 523

(a) A discharge under section 727, 1141, 1192, 1228(a), 1228(b), or 1328(b) of this title [11 USCS § 727, 1141, 1192, 1228(a), 1228(b), or 1328(b)] 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 [11 USCS § 507(a)(2) or 507(a)(8)], whether or not a claim for such tax was filed or allowed;

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

(i) was not filed or given; or

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

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

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

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

(B) use of a statement in writing—

(i) that is materially false;

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

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

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

(C)

(i) for purposes of subparagraph (A)—

(I) consumer debts owed to a single creditor and aggregating more than $800 for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and

(II) cash advances aggregating more than $1,100 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the

order for relief under this title, are presumed to be nondischargeable; and

(ii) for purposes of this subparagraph—

(I) the terms "consumer", "credit", and "open end credit plan" have the same meanings as in section 103 of the Truth in Lending Act [15 USCS § 1602]; 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 [11 USCS § 521(a)(1)], 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 [26 USCS § 221(d)(1)], 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 [11 USCS § 727(a)(2), (3), (4), (5), (6), or (7)], 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; or
(13) for any payment of an order of restitution issued under title 18, United States Code;
(14) incurred to pay a tax to the United States that would be nondischargeable pursuant to paragraph (1);
(14A) incurred to pay a tax to a governmental unit, other than the United States, that would be nondischargeable under paragraph (1);
(14B) incurred to pay fines or penalties imposed under Federal election law;
(15) to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit;
(16) for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case;
(17) for a fee imposed on a prisoner by any court for the filing of a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the debtor under subsection (b) or (f)(2) of section 1915 of title 28 [28 USCS § 1915] (or a similar non-Federal law), or the debtor's status as a prisoner, as defined in section 1915(h) of title 28 [28 USCS § 1915(h)] (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 [26 USCS § 401, 403, 408, 408A, 414, 457, or 501(c)], under—

(A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 [29 USCS § 1108(b)(1)], or subject to section 72(p) of the Internal Revenue Code of 1986 [26 USCS § 72(p)]; or

(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5 [5 USCS §§ 8431 et seq.], that satisfies the requirements of section 8433(g) of such title [5 USCS § 8433(g)];

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d) [26 USCS § 414(d)], or a contract or account under section 403(b) [26 USCS § 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 [15 USCS § 78c(a)(47)]), 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 nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986 [26 USCS § 6020(a)], or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986 [26 USCS § 6020(b)], 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 of the Higher Education Act of 1965, or under section 733(g) 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).

11 U.S.C. § 524(e)

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

11 U.S.C. § 524(g)(4)(A)(ii)

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

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

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

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

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

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

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

11 U.S.C. § 1141

(a) Except as provided in subsections (d)(2) and (d)(3) of this section, the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as provided in subsections (d)(2) and (d)(3) of this section and except as otherwise provided in the plan or in the order confirming the plan, after confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors, equity security holders, and of general partners in the debtor.

(d)

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

(A) discharges the debtor from any debt that arose before the date of such confirmation, and any debt of a kind specified in section 502(g), 502(h), or 502(i) of this title [11 USCS § 502(g), 502(h), or 502(i)], whether or not—

(i) a proof of the claim based on such debt is filed or deemed filed under section 501 of this title [11 USCS § 501];

(ii) such claim is allowed under section 502 of this title [11 USCS § 502]; or

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

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

(2) A discharge under this chapter does not discharge a debtor who is an individual from any debt excepted from discharge under section 523 of this title [11 USCS § 523].

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

(A) the plan provides for the liquidation of all or substantially all of the property of the estate;

(B) the debtor does not engage in business after consummation of the plan; and

(C) the debtor would be denied a discharge under section 727(a) of this title [11 USCS § 727(a)] if the case were a case under chapter 7 of this title [11 USCS §§ 701 et seq.].

(4) The court may approve a written waiver of discharge executed by the debtor after the order for relief under this chapter [11 USCS §§ 1101 et seq.].

(5) In a case in which the debtor is an individual—

(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;

(B) at any time after the confirmation of the plan, and after notice and a hearing, the court may grant a discharge to the debtor who has not completed payments under the plan if—

(i) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 [11 USCS §§ 701 et seq.] on such date;

(ii) modification of the plan under section 1127 [11 USCS § 1127] is not practicable; and

(iii) subparagraph (C) permits the court to grant a discharge; and

(C) the court may grant a discharge if, after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that—

(i) section 522(q)(1) [11 USCS § 522(q)(1)] may be applicable to the debtor; and

(ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) [11 USCS § 522(q)(1)(A)] or liable for a debt of the kind described in section 522(q)(1)(B) [11 USCS § 522(q)(1)(B)];

and if the requirements of subparagraph (A) or (B) are met.

(6) Notwithstanding paragraph (1), the confirmation of a plan does not discharge a debtor that is a corporation from any debt—

(A) of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) [11 USCS § 523(a)] that is owed to a domestic governmental unit, or owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 [31 USCS §§ 3721 et seq.] or any similar State statute; or

(B) for a tax or customs duty with respect to which the debtor—

(i) made a fraudulent return; or
(ii) willfully attempted in any manner to evade or to defeat such tax or such customs duty.

11 U.S.C. § 1181

(a) In general. Sections 105(d), 1101(1), 1104, 1105, 1106, 1107, 1108, 1115, 1116, 1121, 1123(a)(8), 1123(c), 1127, 1129(a)(15), 1129(b), 1129(c), 1129(e), and 1141(d)(5) of this title [11 USCS §§ 105(d), 1101(1), 1104, 1105, 1106, 1107, 1108, 1115, 1116, 1121, 1123(a)(8), 1123(c), 1127, 1129(a)(15), 1129(b), 1129(c), 1129(e), and 1141(d)(5)] do not apply in a case under this subchapter [11 USCS §§ 1181 et seq.].
(b) Court authority. Unless the court for cause orders otherwise, paragraphs (1), (2), and (4) of section 1102(a) [11 USCS § 1102(a)] and sections 1102(b), 1103, and 1125 of this title [11 USCS §§ 1102(b), 1103, and 1125] do not apply in a case under this subchapter [11 USCS §§ 1181 et seq.].
(c) Special rule for discharge. If a plan is confirmed under section 1191(b) of this title [11 USCS § 1191(b)], section 1141(d) of this title [11 USCS § 1141(d)] shall not apply, except as provided in section 1192 of this title [11 USCS § 1192].

11 U.S.C. § 1191

(a) Terms. The court shall confirm a plan under this subchapter [11 USCS §§ 1181 et seq.] only if all of the requirements of section 1129(a) [11 USCS § 1129(a)], other than paragraph (15) of that section, of this title are met.
(b) Exception. Notwithstanding section 510(a) of this title [11 USCS § 510(a)], if all of the applicable requirements of section 1129(a) of this title [11 USCS § 1129(a)], other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.
(c) Rule of construction. For purposes of this section, the condition that a plan be fair and equitable with respect to each class of claims or interests includes the following requirements:

(1) With respect to a class of secured claims, the plan meets the requirements of section 1129(b)(2)(A) of this title [11 USCS § 1129(b)(2)(A)].
(2) As of the effective date of the plan—

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

(3)

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

(B)

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

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

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

(1) for—

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

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

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

(e) Special rule. Notwithstanding section 1129(a)(9)(A) of this title [11 USCS § 1129(a)(9)(A)], a plan that provides for the payment through the plan of a claim of a kind specified in paragraph (2) or (3) of section 507(a) of this title [11 USCS § 507(a)] may be confirmed under subsection (b) of this section.

11 U.S.C. § 1192

If the plan of the debtor is confirmed under section 1191(b) of this title [11 USCS § 1191(b)], 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 [11 USCS §§ 1101 et seq.], the court shall grant the debtor a discharge of all debts provided in section 1141(d)(1)(A) of this title [11 USCS § 1141(d)(1)(A)], and all other debts allowed under section 503 of this title [11 USCS § 503] 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 [11 USCS § 523(a)].

11 U.S.C. § 1228(a)(2)

(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 [11 USCS § 1222(b)(5) or 1222(b)(9)], 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 [11 USCS § 503], or disallowed under section 502 of this title [11 USCS § 502], except any debt—

(2) of a kind specified in section 523(a) of this title [11 USCS § 523(a)], except as provided in section 1232(c) [11 USCS § 1232(c)].

28 U.S.C. § 1334(a)-(b)

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.