No. 22-0909

IN THE

Supreme Court of the United States

IN RE PENNY LANE INDUSTRIES, INC., DEBTOR,

ELEANOR RIGBY, PETITIONER

V.

PENNY LANE INDUSTRIES, INC., RESPONDENT.

ON APPEAL FROM THE
UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

BRIEF FOR PETITIONER

JANUARY 19, 2023

TEAM NUMBER 21
COUNSEL FOR PETITIONER

QUESTIONS PRESENTED

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

II. Whether a corporate debtor proceeding under subchapter V of chapter 11 of the Bankruptcy Code may, pursuant to 11 U.S.C. § 1192, discharge debts related to willful injury to persons and property regardless of their specification as nondischargeable in subparagraphs (1) through (19) of 11 U.S.C. § 523(a).

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The Thirteenth Circuit Court of Appeals' decision is available at No. 21-0803 and reprinted at Record 2. The bankruptcy court decided in favor of Penny Lane Industries, Inc. On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed the Bankruptcy Court's ruling for Penny Lane Industries, Inc.

STATEMENT OF JURISDICTION

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

PERTINENT STATUTORY PROVISIONS

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

STATEMENT OF THE CASE

This appeal arises from the tortious actions of Penny Lane, Inc. ("Debtor") that resulted in its filing for chapter 11 bankruptcy and subsequent plan of reorganization ("Plan"). Funded by a non-debtor parent company with unconstitutional strings attached, the Plan constitutes an undeserved windfall at the expense of creditors' right to see their day in court, jeopardizing the principles of fairness and equity underlying the purposes of bankruptcy law.

I. Factual History

Eleanor Rigby lived in Blackbird with her family for over 40 years. R.at 5. During this time, her four-year-old daughter died of leukemia cancer. R.at 5. Her family lived directly alongside the Liverpool River, which was downstream from Debtor's manufacturing facility. R.at 5. Ms. Rigby asserted that her daughter's untimely death was caused by the Debtor's knowing contamination of the community water supply. R. at 5.

Debtor is a small wholly owned subsidiary of Strawberry Fields, a national food manufacturer. R. at 6. The Debtor produces plastic, glass, and metal food containers at a manufacturing facility in Blackbird, upstream along the Liverpool River. Its operations generate industrial waste, which the Debtor admits disposing of on its property. R. at 6.

The United States Environmental Protection Agency and the Centers for Disease Control and Prevention conducted studies that revealed tens of thousands of Blackbird residents were exposed to toxins in their water supply that had concentrations of up to 3,000 times the permitted level. R. at 6. Exposure to these toxins had various consequences, including death. R. at 6.

Hundreds of Blackbird area residents filed lawsuits against Debtor, asserting the Debtor knowingly caused death and injury by improper disposal of toxic waste into the water supply. R.

at 6. The claims also alleged, the Debtor's CEO was aware of the dangers of contamination for over three years but did not take steps to prevent or limit the practice. R. at 6. The Debtor argued that its waste was disposed of in accordance with current environmental laws, and the toxic pollutants could have been from other manufacturing facilities in the same spot on the river. R. at 6. While no determinations were made regarding the claims, the Debtor decided to file for subchapter V chapter 11 bankruptcy because the Debtor presumed it did not have funds to pay out the claims. R. at 6. The total claims asserted against the Debtor amounted to nearly $400 million dollars' worth of damages from approximately 10,000 claimants. R. at 6.

Due to its small number of liquid debts, the Debtor filed for bankruptcy under subchapter V of the Bankruptcy Code. R. at 6. This allowed Strawberry Fields to retain equity even though not all creditors were paid. R. at 6.

Strawberry Fields is the parent company of the Debtor and was named in many lawsuits based on theories that Strawberry Fields had actual or constructive knowledge of debtor's misconduct. R. at 6. The bankruptcy court approved a temporary injunction against the pending litigation against Strawberry field related to alleged conduct of the Debtor. R. at 7. After extensive negotiations, Strawberry Fields agreed to contribute $100 million dollars to a creditor trust that would also be funded by five years of the Debtor's disposable net income. R. at 8. As a condition of its contribution to the trust, Strawberry Fields insisted on a broad nonconsensual release from all third-party claims against them based on Debtor's pre-petition conduct ("Releases"). R. at 8. Debtor filed a Plan which included Strawberry Fields' Releases, and discharged all remaining debt owed to creditors. R. at 8. These debts included all claims against Debtor for its conduct related to disposal of toxic waste in the Liverpool River. R. at 8-9. Due to issues with the Releases, the Plan was opposed by a minority of creditors, including Ms. Rigby, because it would lead to creditors receiving fewer than 40 cents on the dollar of their original claims. R. at 9. Yet the bankruptcy court made determination to approve the Plan, because most people in the class approved it. R. at 10. Since it was a non-consensual Plan, the parties who opposed it, will still be bound by its implementation and prevented from seeking justice against Strawberry Fields in court. R. at 10.

II. Procedural History

Ms. Rigby initiated this action in the Bankruptcy Court for the District of Moot seeking a determination that 1) her claim against the Debtor is nondischargeable pursuant to sections 523(a)(6) and 1192; and 2) bankruptcy courts do not have authority to release third-party claims against non-debtor entities. R. at 4. An objection to the Plan was also filed by Norwegian Wood Bank ("Bank"). R. 9. The Bankruptcy Court ruled for the Respondent on both issues. R. at 4. Ms. Rigby and the Bank's disputes were certified for direct appeal to the United States Court of Appeals for the Thirteenth Circuit and later consolidated. R. at 3, 11. On appeal, the Thirteenth Circuit narrowly affirmed the bankruptcy court's ruling on both issues, despite a compelling dissent. R. at 23. Ms. Rigby petitioned for a writ of certiorari, which the Supreme Court granted, and the case is now before it. R. at 2.

STANDARD OF REVIEW

This case concerns issues of law because the facts are undisputed. R. at 11. The questions presented are based on statutory interpretation of the Bankruptcy Code[1]. Accordingly, the standard of review for this appeal is *de novo*. *Pierce v. Underwood*, 487 U.S. 552, 558 (1988).

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

SUMMARY OF THE ARGUMENT

This Court should reverse the decision of the Court of Appeals for the Thirteenth Circuit on both issues presented. Principles of fairness and equity confirm that non-debtors, like Strawberry Fields, cannot circumvent the bankruptcy process to be relieved of liabilities. Allowing such a scheme would offend notions of fairness that underpin debtor and non-debtor accountability, claimants' constitutional rights, and purposes of bankruptcy law. Therefore, the Thirteenth Circuit reached the incorrect conclusion on both issues and this Court must hold that 1) a bankruptcy court has no authority to approve non-consensual releases of direct claims held by third parties against non-debtor affiliates as part a chapter 11 plan of reorganization and 2) a corporate debtor proceeding under subchapter V of chapter 11 of the Bankruptcy Code may not, pursuant to 11 U.S.C. § 1192, discharge debts of types specified in subparagraphs (1) through (19) of 11 U.S.C. § 523(a).

On the first issue, this Court should reverse the Thirteenth Circuit's decision finding a bankruptcy court cannot approve non-consensual releases of direct claims held by third parties against non-debtor affiliates as part of a chapter 11 plan of reorganization for two reasons. First, a bankruptcy court has no authority to approve of such releases because there is no statutory grant of authority in the Bankruptcy Code. Second, approval of such releases as part of a reorganization plan would be an unconstitutional extension of a bankruptcy court's jurisdiction.

The plain language of section 524(e) prohibits discharge of non-debtor liabilities when that entity is not itself the subject of a bankruptcy discharge. Congress did not intend to extend bankruptcy protections through non-consensual releases to third parties who have not submitted to the rigorous bankruptcy process. Along with section 524(e), no other statutory provision grants a bankruptcy court authority to approve non-consensual third-party releases as part of a chapter 11 reorganization plan. 524(g) is a limited exception to the general rule that bankruptcy courts have no authority to approve of such releases but applies only in asbestos cases. Section 1123(a)(5) likewise does not create additional sources of authority because it does not list non-consensual releases of third-party claims as a means for implementing a reorganization plan and a bankruptcy court's residual authority to approve of such a plan is only granted by section 1123(a)(5) when another provision in the Bankruptcy Code provides a statutory basis of authority. Section 105(a) also requires authority elsewhere in the Bankruptcy Code to invoke it as a vehicle to carry out powers otherwise provided to a bankruptcy court. 1123(b)(6) allows a reorganization plan to include any appropriate provision not inconsistent with the Bankruptcy Code, but a bankruptcy court does not find authority to approve of nonconsensual third-party releases in this subsection because it is not granted a statutory basis to do so elsewhere in the Bankruptcy Code.

Second, a bankruptcy court lacks authority to approve non-consensual releases of direct claims held by third parties against non-debtor affiliates as part of a chapter 11 plan of reorganization because such matters are outside its jurisdiction and approval of such releases would be unconstitutional. A bankruptcy court only has subject matter jurisdiction over a plan when the release provisions are integral to the restructuring of the debtor-creditor relationships. Strawberry Fields' releases do not become integral just because they are tucked into a reorganization plan and the record is void of evidence supporting a conclusion that the releases have a meaningful connection to the bankruptcy case. Nor does a bankruptcy court have constitutional authority to approve of the Plan because it cannot adjudicate state law disputes between non-debtors and it cannot dispose of a third party's property like Ms. Rigby's claim, without a hearing on the merits. Ms. Rigby has not consented to a bankruptcy court's jurisdiction, so approval of the plan would be an unconstitutional extension of the court's authority depriving

Ms. Rigby of her property. Therefore, the Thirteenth Circuit's decision should be reversed on the first issue.

On the second issue, this Court should reverse the Thirteenth Circuit's decision and prevent the discharge of Debtor's toxic waste claims for the following three reasons. First, the plain language of section 1192(2) demonstrates that the section 523 discharge exceptions apply to Subchapter V corporate debtors. Second, even if the statute is ambiguous, the canons of statutory interpretation make it clear that Congress intended to make the section 523 discharge exceptions apply to corporate debtors filing under subchapter V. Third, discharging the Debtor's toxic waste claims would violate the principles of fairness and equity and goals of the Bankruptcy Code.

In this case, the plain language of section 1192(2) read in conjunction with section 523 and subchapter V clearly show that the section 523 discharges apply to subchapter V corporate debtors. Subchapter V applies to "persons" which is defined elsewhere in the code as individuals and corporations. Section 1192(2) says for debtors under this section (ie: "persons") all debts are dischargeable except for those of a kind listed in section 523. The plain reading of section 1192(2) is to look at section 523 exclusively as a list of nondischargeable debts applicable to debtors covered under subchapter V.

Even if this Court finds the statute to be ambiguous, the canons of statutory constructions show that Congress intended the section 523 discharges to apply to subchapter V corporate debtors for the following 2 reasons. First, section 1192 is the more specific provision on the topic. It was created to govern discharges for subchapter V debtors, and subchapter V was a specific undertaking meant to provide different bankruptcy procedures for small business debtors. In the current case, section 1192 is far more specific because Debtor is filing under subchapter V, whereas section 523 which is a general list of discharge exceptions for all types of filings. If this

Court finds the statutes are ambiguous, suggesting they cannot be read in harmony, the more specific provision of section 1192(2) should apply.

Additionally, Congress is presumed to be aware of existing case law which interprets an identical chapter 12 section as making section 523 applicable to corporate debtors. Courts held Section 1228 applies to farmers and fishermen which says, "all debts are dischargeable except those of a kind specified in section 523." This is identical to the language used in section 1192, and since that was written after the cases interpreting section 1228 were decided, that demonstrates Congress intended the same result for section 1192(2).

Finally, the principles of fairness and equity, and the fundamental goals of bankruptcy, dictate that section 523's discharge exceptions apply to corporate debtors in the subchapter V context. By abrogating the absolute priority rule and allowing confirmation of nonconsensual plans, subchapter V already provides great benefit to corporate debtors. Allowing them to also benefit from favorable discharge provisions would lead to an absurd result. This would overly incentivize the very anti-public policy behavior Congress intended to curb with section 523 and prevent creditors from receiving a fair distribution for their claims.

Therefore, based on the canons of statutory interpretation and foundational principles of bankruptcy, this Court should reverse the Thirteenth Circuit's decision on both issues.

ARGUMENT

This case involves statutory interpretation of the Bankruptcy Code. Both the Bankruptcy Code's language and purposes for which it was drafted demand this Court to reverse the Thirteenth Circuit's decision on both issues. All inquiries into the meaning of a statute must begin with its language. *U.S. v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989). Where a statute's language is plain, the court's sole function is to enforce it according to its terms. *Id.*; *see also Hartford*

Underwriters Ins. Co. v. Union Planters Bank, N.A., 530 U.S. 1, 13-14 (2000) (the primary role of the court is to follow the law as written, not to assess the relative merits of different approaches to various bankruptcy problems). When a statutory scheme is consistent and coherent, there is no need for a court to inquire beyond the statute's language. *U.S. v. Ron Pair Enters.*, 489 U.S. at 241. If the Court does look beyond the plain language of the statute, it must interpret the Bankruptcy Code in conformance with its purposes; the result it reaches must be fair and equitable. *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 112 (3d. Cir. 2004) ("Bankruptcy courts are courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process."). Therefore, as discussed below, this Court should reverse the Thirteenth Circuit's decision on both issues.

I. The Thirteenth Circuit Incorrectly Held That A Bankruptcy Court Has Authority To Approve Of Non-Consensual Releases Of Direct Claims Held By Third Parties Against Non-Debtor Affiliates As Part Of A Chapter 11 Plan Of Reorganization.

This case presents the opportunity for the Court to settle the impermissibility of bankruptcy courts' authority to approve non-consensual third party releases which would affirm claimants' constitutional rights and the principles of fairness and equity underlying bankruptcy law. Many circuit courts have long held that bankruptcy courts lack the power to approve of such releases because it would be an "extraordinary thing" for a bankruptcy court to say what happens to property that belongs to a third party. *In re Aegean Marine Petroleum Network, Inc.*, 599 B.R. 717, 723 (S.D.N.Y. 2019) ("When we impose involuntary releases, we do not provide claimants with other procedural and substantive rights that they ordinarily would have."). While third party releases as part of a restructuring plan may protect continuation of business, such releases simultaneously provide the beneficiary of a third party release with broader protection than he or she could have obtained in his or her own bankruptcy case. *Id.* "Doing positive things in a restructuring case - even important positive things - is not enough." *Id.* at 727. Approval of such releases result in undeserved windfalls at the expense of claimants' constitutional rights and in violation of the bankruptcy process. Ultimately, fairness and equity dictate that Ms. Rigby has a right to demand repayment in court that outweighs the Debtor's desire to see its liabilities wiped away. As discussed below, both statutory and common law demand reversal of the Thirteenth Circuit's decision.

A. The Thirteenth Circuit incorrectly held that a bankruptcy court has authority under the Bankruptcy Code to approve of non-consensual releases of direct claims held by third parties against non-debtor affiliates as part of a chapter 11 plan of reorganization.

1. A bankruptcy court has no authority under the Bankruptcy Code to approve of the Plan because section 524 prohibits such releases and authority of a bankruptcy court to approve thereof.

The plain language of section 524 does not provide a bankruptcy court with authority to approve non-consensual third party releases and the Court must enforce the law as such. Section 524(e) dictates a specific prohibition on reorganization plans that discharge non-debtor liabilities, stating the "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for such debt." 11 U.S.C. § 524(e). A plain reading of the statute prohibits the release of any person or entity by the bankruptcy court where that person or entity is not itself the subject of a bankruptcy discharge. *In re PWS Holding Corp.*, 228 F.3d 224, 245 (3d Cir. 2000). Even if the Court were to conclude section 524(e) is ambiguous, the drafters of the Bankruptcy Code intended to help troubled debtors and to do so fair and equitably. *Id.* at 247. Reading section 524(e) with regard to the drafters' intent therefore yields the same interpretation because "it is the debtor, who has invoked and submitted to the bankruptcy process, that is entitled to its protections; Congress did not intend to extend such benefits to third party bystanders." *In re W. Real Estate Fund*, 922 F.2d 592, 600 (10th Cir. 1990); *see also In re Bracy*, 449 F. Supp. 70, 71 (D. Mont. 1978) ("it is the policy of the law to discharge the bankrupt but not to release from liability those who are liable with him"). Any other interpretation would functionally allow non-debtors like Strawberry Fields to be freed of liability and obtain bankruptcy discharge benefits without being subject to the bankruptcy process.

Section 524(g) provides a limited statutory exception under which bankruptcy courts have authority to confirm non-consensual third-party releases in asbestos cases. 11 U.S.C. § 524(g). That Congress limited section 524(g)'s application to only asbestos cases indicates the statute was not intended to apply in other circumstances. When read together with subsection (e), Congress intended the allowance of nonconsensual third-party releases to be a limited exception and not broadly permissible. *In re Purdue Pharma*, *L.P.*, 635 B.R. 26, 92 (S.D.N.Y. 2021) ("The word 'notwithstanding,' suggests that the type of injunction Congress was authorizing in section 524(g) would be barred by section 524(e) the absence of the statute."). Holding otherwise would be an impermissible extension of Congress's plain language and intended application of the statute.

Section 524(e) was drafted for precisely the situation with which the Court is presented with today. Section 524(e) sought to prevent non-debtors like Strawberry Farms who have not submitted to the bankruptcy process from obtaining its benefits. Discharging claims against Strawberry Farms would allow the non-debtor to circumvent the bankruptcy process whilst still obtaining relief from liability. Strawberry Fields cannot assert the Plan's goal to preserve the Debtor's business as a "get out of text free" card. A reorganization plan must still comply with the plain language and equitable principles underlying the Bankruptcy Code. *See In re Aegean Marine Petroleum Network, Inc.*, 588 B.R. 717, 727 (S.D.N.Y. 2019). Further, 524(g)'s limited exception is inapplicable here because this is not an asbestos case and since 524(e) does not otherwise confer authority, there is no statutory basis for a bankruptcy court to approve of the Plan. Therefore, this

Court must reverse the Thirteenth Circuit's decision because section 524 is an express prohibition on a bankruptcy court's authority to approve of the Plan, with a limited exception inapplicable here.

2. A bankruptcy court has no authority under the Bankruptcy Code to approve of the Plan because no residual authority provisions under the Bankruptcy Code apply.

No other bankruptcy statute alone provides authority under which a bankruptcy court can approve non-consensual third-party releases. There is no such thing as "equitable authority" or "residual authority" in a bankruptcy court untethered to some specific, substantive grant of authority in the Bankruptcy Code. *In re Purdue Pharma, L.P.*, 635 B.R. at 78. The Supreme Court has long held that there are no general equitable powers; "whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of" the Bankruptcy Code. *Law v. Siegel*, 571 U.S. 415, 421 (2014). Because section 524(e) does not grant a bankruptcy court the authority to approve of nonconsensual third-party releases, there is no statutory tether for any authority found in sections 1123(a)(5), 105(a), or 1123(b)(3) to tie.

Section 1123(a)(5) does not create an additional source of authority for a bankruptcy court to approve non-consensual third-party releases. Section 1123(a)(5) states that a plan shall "provide adequate means for the plan's implementation." 11 U.S.C. § 1123(a)(5). Section 1123(a)(5) lists many things a plan can include to ensure adequate means for its implementation. *Id.* The list does not include non-consensual release of third-party claims, suggesting Congress did not intend for such releases to be contemplated by reorganization plans. The court in *In re Purdue Pharma* rejected the argument that section 1123(a)(5) granted residual authority for a bankruptcy court to approve a plan involving non-consensual third-party releases. *In re Purdue Pharma, L.P.*, 635 B.R. at 108-9. The court reasoned that the statute does not authorize a court to give its imprimatur to something the Bankruptcy Code does not otherwise authorize, simply because doing so would ensure funding for a plan. *Id.* ("Nothing in section 1123(a)(5) suggests that a debtor has the right to secure sufficient funds for implementation by any means necessary."). Therefore, this Court cannot use section 1123(a)(5) as a statutory tether to grant a bankruptcy court with authority to approve of the Plan.

Nor does section 105(a) authorize a bankruptcy court to approve the Releases included in the Plan. Section 105(a) states that a court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Section 105(a) authorizes a court to issue orders that implement remedies provided elsewhere in the Bankruptcy Code but "does not authorize the bankruptcy courts to create substantive rights that are otherwise unavailable under applicable law or constitute a roving commission to do equity." *New England Dairies, Inc. v. Dairy Mart Convenience Stores, Inc.*, 351 F.3d 86, 92 (2d Cir. 2003); *see also Feld v. Zale Corp.*, 62 F.3d 746, 760 (5th Cir. 1995) ("although section 105(a) is interpreted by the court liberally, a section 105(a) injunction must be consistent with the rest of the Bankruptcy Code and may not alter another provision of the Code"); *see also In re Am. Hardwoods, Inc.*, 885 F.2d 621, 625 (9th Cir. 1989) (holding section 105 is merely a vehicle to carry out the otherwise provided powers of the bankruptcy court and may not be used to create new law). As discussed above, since a bankruptcy court's authority to approve of non-consensual third-party releases does not exist elsewhere in the Bankruptcy Code, section 105(a) does not grant such authority. Holding otherwise would be a misapplication of statutory language, creating new law and affecting substantive rights not within a bankruptcy court's jurisdiction.

Likewise, section 1123(b)(6) does not allow for a bankruptcy court's approval of non-consensual third-party releases in this context. Section 1123(b)(6) states that a plan may include any "appropriate provision not inconsistent with the applicable provisions of this title." 11 U.S.C. § 1123(b)(6). This section is interpreted analogously to section 105(a), which as discussed above, does not by itself confer substantive authority over the bankruptcy court. *In re Purdue Pharma, L.P.*, 635 B.R. at 106. At most, section 1123(b)(6) has been interpreted by courts to permit the bankruptcy court to release third parties from liability to participating creditors if the release is "appropriate" and not inconsistent with any provision of the Bankruptcy Code. *Airadigm Communs., Inc. v. FCC*, 519 F.3d 640, 657 (7th Cir. 2008). Similar to section 105(a), section 1123(b)(6) would only apply for its residual grant of authority if there was a statutory basis elsewhere in the Bankruptcy Code that granted a bankruptcy court with authority to approve of nonconsensual third-party releases. Here, because authority of a bankruptcy court to approve of the Plan does not find statutory support elsewhere, using section 1123(b)(6) to allow for approval of the releases would be inconsistent with the Bankruptcy Code and inappropriate under *Airadigm*'s standard.

Although case law's interpretation of whether there is statutory authority for bankruptcy courts to authorize nonconsensual third party-releases is unsettled, the purposes underlying the Bankruptcy Code and judicial uniformity demand this Court to reverse the Thirteenth Circuit's decision finding that no such authority is granted by statute. While nonconsensual third-party releases have been approved in so-called rare cases in which exceptional circumstances exist, such approval is unwarranted because "there is no principled basis for acting on questionable authority in 'rare' or 'unique' cases." *In re Purdue Pharma, L.P.*, 635 B.R. at 29. The Supreme Court has rejected such an exception holding there is no "rare case" rule in bankruptcy that allows a court to trump the Bankruptcy Code. *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 986 (2017). If the court could base its authority on an arbitrary "rare case" rule it would really be following no rule at all. "When every case involving a Chapter 11 plan with involuntary releases is unique, no case is unique." *In re Purdue Pharma, L.P.*, 635 B.R. at 29. Courts need a clear answer grounded in statutory law, which is found in the language of the Bankruptcy Code that Congress devised to address debtor-creditor relations, not non-debtor windfalls. *Id.* Fashioning a common law exception absent a statutory grant of authority would result in a lack of judicial uniformity and abuse of the bankruptcy process. Therefore, this Court must find that because the Bankruptcy Code is devoid of any grant of statutory authority to a bankruptcy court to approve of the Plan, and the Thirteenth Circuit's decision should be reversed.

B. The Thirteenth Circuit incorrectly held that a bankruptcy court has authority to approve of non-consensual releases of direct claims held by third parties against non-debtor affiliates as part of a chapter 11 plan of reorganization because a bankruptcy court lacks jurisdiction and constitutional authority to approve of such releases.

Even if the Court were to conclude a bankruptcy court has authority under statutory law to approve non-consensual third-party releases, a bankruptcy court has no jurisdiction or constitutional authority to do so and therefore the Thirteenth Circuit's decision should be reversed. A bankruptcy court must have both jurisdiction and constitutional authority to adjudicate a matter. *Patterson v. Mawah Bergen Retail Grp., Inc.*, 636 B.R. 641, 667 (E.D.Va. 2022). A bankruptcy court's jurisdiction is limited to cases and proceedings that arise under the Bankruptcy Code or arise in or are related to bankruptcy cases. 28 U.S.C. § 1334. Bankruptcy courts face constitutional limitations because they are not Article III tribunals and therefore, cannot adjudicate claims that must be decided by an Article III court. *Stern v. Marshall*, 564 U.S. 462, 512 (2011). The Supreme Court is clear that Congress cannot enlarge the subject matter jurisdiction of the bankruptcy courts beyond constitutional limits and thus third-party non-debtors cannot bootstrap any and all of their disputes into a bankruptcy case to obtain relief. *Patterson*, 636 B.R. at 672. As discussed below, a bankruptcy court has no jurisdiction over the Releases or constitutional authority to approve of them and therefore, the Thirteenth Circuit's decision should be reversed.

1. A bankruptcy court has no authority to approve of the Plan because the Releases are not integral and therefore, a bankruptcy court lacks jurisdiction over the matter.

For a bankruptcy court to approve of a plan that contemplates non-consensual third-party releases, the court must have jurisdiction over the matter. *Patterson*, 636 B.R. at 669. A bankruptcy court has no in rem jurisdiction over third-party claims not against the estate or property of the estate and has no power to say what happens to property that belongs to a third party. *Id.* at 672. True, bankruptcy courts have subject matter jurisdiction over civil proceedings related to a bankruptcy case, but when the proceeding involves a plan with releases, the release provisions must be integral to the restructuring of the debtor-creditor relationship. *Behrmann v. Nat'l Heritage Found*, 663 F.3d 704, 712 (4th Cir. 2011). Even when the release provisions are integral, such plans must be granted "cautiously and infrequently." *Id.*; *see also In re Purdue Pharma, L.P.*, 635 B.R. at 81 (holding non-debtor parties cannot manufacture constitutional authority to resolve a non-core claim by the artifice of including a release of that claim in a plan of reorganization). Under *Behrmann*, releases are integral to the reorganization when the court determines there is an identity of interests between the debtor and the released parties, debtors demonstrated that the released parties made a substantial contribution of assets to its reorganization, debtors demonstrated that the non-debtor release is essential to its reorganization, debtors demonstrated that the class or classes affected by the Release Provision overwhelmingly voted for the plan, the debtor's reorganization plan provides a mechanism to consider and pay all or substantially all of the class or classes affected by the non-debtor release, and the plan provides an opportunity for those who chose not to settle to recover in full. *Behrmann*, 663 F.3d at 711-12. Therefore, without more, a bankruptcy court has no authority to approve non-consensual third-party releases just because the releases are tucked into a Chapter 11 reorganization plan.

Here, the Thirteenth Circuit's decision should be reversed because a bankruptcy court lacks jurisdiction over the Plan and therefore has no authority to approve of it. Claims against Strawberry Fields are unrelated nor integral to the reorganization of the Debtor and do not impact the bankruptcy estate. R. at 7-9. The record is void of evidence to support a finding that the Releases are essential to the Plan. In fact, Strawberry Fields' contribution is not funding anything specific to Debtor's bankruptcy and thus the Releases have no meaningful connection to the bankruptcy case. Those like Ms. Rigby who did not vote for the Plan do not have the opportunity to recover in full and will at most receive 30-40 cents on the dollar. R. at 8. Because the Plan fails to meet the *Behrmann* factors, this is not one of the "infrequent" cases in which the release provisions are integral to the debtor's restructuring. Therefore, a bankruptcy court has no jurisdiction to approve of the Plan even though the Releases are tucked into a reorganization plan.

2. A bankruptcy court has no authority to approve of the Plan because it has no constitutional authority to adjudicate state-law claims or non-consensually dispose of property of a third party.

Even if the Court were to find a bankruptcy court has authority to approve of the non-consensual third-party releases under "related to" jurisdiction in which the Releases are integral to the Plan, the bankruptcy court does not have constitutional authority to approve of the matter for two reasons. First, a bankruptcy court does not have constitutional authority to adjudicate claims involving state law disputes between non-debtors. *Stern*, 564 U.S. at 498 (holding it is unconstitutional for a bankruptcy court to issue a final judgment on a debtor's compulsory counterclaim relating to a creditor's proof of claim where the counterclaim is a state-law tort claim that is not necessarily resolved by the bankruptcy court's decision on the creditor's claim). The

Releases involve state-law claims between non-debtors, Ms. Rigby and Strawberry Fields, and are thus not within the constitutional authority of a bankruptcy court. R. at 9.

Second, a bankruptcy court does not have constitutional authority to say what happens to a third party's property. *In re Aegean Marine Petroleum Network, Inc.*, 599 B.R. at 725. A claim that belongs to a third party may be resolved only through litigation on the merits. *Id.* A court has no jurisdiction to resolve a claim on the merits when a party has not consented to its jurisdiction because a court cannot dispose of a third party's claims without hearing the case on terms to which the third party agrees. *Id.* Consent for a court to authorize a reorganization plan involving non-consensual third-party releases is required because approval such releases takes away a third party's property right without "provid[ing] claimants with other procedural and substantive rights that they ordinarily would have." *Id.* It would be illogical to hold that a bankruptcy court has authority to approve of a reorganization plan that contemplates such releases, when the releases by themselves are not something the bankruptcy court can adjudicate on the merits. *Id.*; *see also Patterson*, 636 B.R. at 671 ("A nonconsensual third-party release is essentially a final judgment against the claimant, in favor of the non-debtor entered without any hearing on the merits. To claim that the Bankruptcy Court can fully extinguish these claims based solely on their inclusion in the Plan — without any hearing on them or any findings about them —amounts to arguing that courts need not have the authority to extinguish claims so long as they provide no procedural safeguards in extinguishing the claims. Obviously, this cannot be."); *see also In re Midway Gold US, Inc.*, 575 B.R. 475, 519 (Bankr. D. Colo. 2017) ("If proceedings over which the Court has no independent jurisdiction could be metamorphosized into proceedings within the Court's jurisdiction by simply by including their release in a proposed plan, the court could acquire infinite jurisdiction."). Therefore, nonconsensual third-party releases are not matters which a bankruptcy court can adjudicate even if they are included in a restructuring plan because by definition, the third party has not consented to the court's jurisdiction and approval of such releases absent consent would be an unconstitutional deprivation of property.

Here, a bankruptcy court has no authority to approve of the Plan because the Releases not only involve state law disputes between non-debtors, but third parties like Ms. Rigby have not consented to the court's jurisdiction. A bankruptcy court's approval of the Plan would be a deprivation of property, stealing Ms. Rigby's right to see her day in court and have her claim adjudicated on the merits. Authorizing a bankruptcy court to approve of the Plan would not only be unsupported by law, but repugnant to constitutional principles of equity, fairness, and due process. Therefore, this Court should reverse the Thirteenth Circuit's decision.

A bankruptcy court does not find authority to approve of non-consensual third party releases in the Bankruptcy Code. Section 524(e) prohibits discharge of non-debtor liabilities, like that of Strawberry Fields'. Without a grant of authority to a bankruptcy court to approve of such releases in section 524(e), no other statute in the Bankruptcy Code, including sections 1123(a)(5), (b)(3), and 105(a), has a provision to tether residual authority to. Therefore, the Thirteenth Circuit incorrectly held that a bankruptcy court has approval under the Bankruptcy Code to approve of the Releases as part of the Plan.

Nor does a bankruptcy court have the jurisdiction or constitutional authority to approve of such releases. A bankruptcy court does not have subject matter jurisdiction over proceedings related to a bankruptcy case when the proceedings involve a plan with non-integral releases, like that of Strawberry Fields'. Even if the Court were to fashion jurisdiction for a bankruptcy court, approval of the Plan would be unconstitutional because a bankruptcy court would be impermissibly adjudicating state-law claims between non-debtors and disposing of Ms. Rigby's property without her consent, depriving her of the opportunity to be heard on the merits.

Therefore, this Court should reverse the Thirteenth Circuit's decision on the first issue, finding that a bankruptcy court has no authority to approve non-consensual releases of direct claims held by third parties against non-debtor affiliates as part of a chapter 11 plan of reorganization.

II. The Thirteenth Circuit Incorrectly Held That Section 523 Discharge Exceptions Only Apply To Individual Debtors, Because The Canons Of Statutory Interpretation And Principles Of Fairness And Equity Clearly Show That The Exceptions To Subchapter V Corporate Debtors.

Congress created subchapter V of chapter 11 by passing the Small Business Reorganization Act of 2019 ("SBRA"). The SBRA sought to simplify the reorganization process and reduce administrative costs for small business debtors. *See* Michael C. Blackmon, *Revising the Debt Limit for "Small Business Debtors" The Legislative Half-Measure of the Small Business Reorganization Act*, 14 Brook. J. Corp. Fin & Com. L 339 (2020). To be eligible to file under subchapter V, a debtor must be engaged in commercial business, have less $7.5 million in total liquid debts, and not be a publicly traded corporation. 11 U.S.C. § 1182. The most significant advantage of this subchapter is the abrogation of the absolute priority rule, which means dissenting unsecured creditors do not have to be paid before junior classes receive payment. *See* William L. Norton, III and James B. Bailey, *The Pros and Cons of the Small Business Reorganization Act of 2019,* 36 Emory Bankr. Dev. J. 383, 386 (2020)*;* As a result, debtors can retain their equity interests without paying out all their claims. *Id*. Section 1192(2) governs the discharge of debts for debtors filing under subchapter V. 11 U.S.C. § 1192(2). It provides that all debts can be discharged except for those listed in section 523(a), which includes an exception in 523(a)(6) for debts caused by willful injury to persons or property. *Id.*; *see also* 11 U.S.C. § 523(a)(6). The exception under 523(a)(6) should prevent discharge of Debtor's claims related to toxic waste in the river. *Id.* While section 523 usually limits the exception to individual debtors, courts have held because section 1192 uses the phrase "debts of a kind," it is only referring to section 523 for the list of nondischargeable debts, making the list applicable to corporations and individuals filing under subchapter V. *In re Cleary Packaging, LLC.,* 36 F.4th 509, 513 (4th Cir. 2022).

A. The Thirteenth Circuit incorrectly held that section 523 discharge exceptions only apply to individual debtors, because the canons of statutory interpretation clearly show that the exceptions apply to subchapter V corporate debtors.

Courts are tasked with reading statutes to determine Congress's intent. *Rivers v. Roadway Exp., Inc.,* 511 U.S. 298 (1994). Ideally, this role can be accomplished by a plain text reading of an enacted statute, but it is more challenging to determine congressional intent if the language is ambiguous. While some canons of statutory interpretation suggest that all words be given meaning, this becomes impossible to accomplish when comparing statutes that say two different things. In these cases, courts should use the more specific statute as a tiebreaker and look towards additional sources such as existing case law and legislative history to determine congressional intent. *See Lena v. Pena,* 518 U.S. 187, 211 (1996).

1. The plain language of section 1192 suggests the Debtor's toxic waste claims cannot be discharged.

As discussed above, courts begin any statutory analysis by looking at the plain text of a statute. If the language is plain on its face, then there is no need for further analysis. The court should enforce language as written and conduct no additional inquiries.

Here, the language in section 1192(2) plainly shows that the section 523 discharge exceptions apply to corporate debtors filing under subchapter V. In subchapter V, the term "persons" is used, which is defined in the bankruptcy code as an individual or a corporation. *See* 11 U.S.C. § 1182(1); *see also* 11 U.S.C. § 101(41). In section 1192(2), the language clearly states that all debts are discharged except those debts of a kind specified in section 523. See 11 U.S.C. § 1192(2). As the entire provision relates to corporations and individuals, the clear reading of the reference to section 523 is to provide a list of nondischargeable debts, not to add section 523's restrictions onto whom the exceptions apply.

2. Even if the section 1192 language is considered ambiguous, the canons of statutory interpretation still show that Debtor's toxic waste claims cannot be discharged.

When two statutory provisions are at odds, courts should rely on the more specific statutory provision over a general provision. *Morales v. Trans World Airlines, Inc*., 504 U.S. 374, 384 (1992). In *Morales*, a general FAA clause allowed plaintiffs to recover remedies provided by common law, whereas the pertinent ERISA provision imposed further limitation on the recoverability of remedies. *Id*. There, the court followed remedies specified in an ERISA provision, because the plaintiff's claim related to a violation of employee's rights to receive benefits, making ERISA the more specific statute. *Id*. In *Cleary Packaging,* the 4th Circuit held Congress clearly distinguishes the type of debtors covered by different provisions of the Bankruptcy Code. *In re Cleary Packaging, LLC.,* 36 F.4th at 513. The use of the word debt instead of debtors in section 1192(2) demonstrates the intended modification. *Id*. While Congress explicitly distinguished individual and corporate discharges in traditional chapter 11 proceedings, they failed to do so for subchapter V. *Id.* Subchapter V defines debtor as a person, which includes individuals and corporations, and section 1192(2) governs discharges for subchapter V debtors subject to exceptions. *See* 11 U.S.C. § 1182(1); *see also* 11 U.S.C. § 101(41). Subchapter V specifically deals with small business debtors and distinguishes them from traditional chapter 7 or chapter 11 debtors, whereas section 523 is a general list of debts applicable to any bankruptcy filer. *See* 11 U.S.C. § 1182(1); *see also* 11 U.S.C. § 523. From this, the court in *Cleary,* determined that

1192(2) is the more specific provision governing discharges of debt for subchapter V debtors, and the word individuals in section 523 does not apply. *In re Cleary Packaging, LLC.,* 36 F.4th at 515.

As discussed above, if the Court fails to find the language is plain, and the sections cannot be read in harmony, they should still bar the Debtor from discharging their toxic waste claims, because section 1192 specifically governs discharges for corporate debtors filing under subchapter V. Like the FAA saving clause in *Morales*, section 523 is a general clause that gives a list of exceptions to discharges; it was not created to govern discharges for small business debtors. Meanwhile, corporations are included in the subchapter V definition of debtors, and section 1192 is intended to address discharge provisions for subchapter V debtors. *See* 11 U.S.C. § 1182(1); *see also* 11 U.S.C. § 101(41). Thus, corporations are included in the definition of subchapter V debtors under the more specific provision. Congress specifically addressed small business debtors in subchapter V and created section 1192(2) to define the parameters for discharges under the subsection, thus making it the more specific provision for subchapter V discharges. While section 523 normally limits exceptions to individuals, in subchapter V context, section 523 is intended to serve as a list of nondischargeable debts and section 1192(2) is supposed to govern which debtors the list applies to. Debtor is a corporation that filed for bankruptcy under subchapter V, so 1192(2) dictates they can discharge all debts unless explicitly made nondischargeable through the provisions of section 523. Under section 523(a)(6), the Debtor is prohibited from discharging its toxic waste claims, because these are willful injuries to persons or property. *See* 11 U.S.C. § 523(a)(6). If Congress intended to limit the discharge exceptions to individuals, they could have added the word “individuals” to section 1192(2) or written the phrase “by the debts and debtors listed in section 523”. Since the rest of subchapter V addresses corporations and individuals, the cross reference to 523 and inclusion of the word “debt” instead of debtors demonstrate an intent to reference section 523 as shorthand for a list of nondischargeable debts. *See* 11 U.S.C. § 1192. The phrase "debts of a kind" exclusively modifies the section 523 list of nondischargeable debts, not the entire provision. *Id*. It was more expedient to make the reference to "debts" than to regurgitate the entire list from section 523, which has not been done before and would cause unnecessary time spent comparing the two sections for differences. *Id*. To allow for a discharge of the Debtor's toxic waste claims would be an incorrect statutory interpretation contrary to congressional intent.

Congress is presumed to be aware of existing law when enacting new statutes. *Miles v. Apex Marine Corp*., 498 U.S. 19, 32 (1990). In *Miles*, Congress passed the Jones Act which incorporated the FELA. *Id*. Prior to the Jones Act, courts had interpreted the FELA as only including pecuniary losses. *Id*. The Supreme Court held these interpretations were made part of the Jones Act as they presumed Congress was aware of the case law when they enacted the legislation. *Id.* The references to section 523 found in section 1192 are identical to the section 1228 references, which govern the discharge of debts for farmers and fishermen. *See* 11 U.S.C. § 1228. Under section 1228, if the debtor makes all plan payments, the court shall grant the debtor a discharge of all debts provided for by the plan except any debt of the kind specified in section 523(a). *Id.* Courts have held the language in section 1228 was a modification of the word debt, not of the type of debtor, and held Congress intended section 523 as shorthand for the list of nondischargeable debts. *In re Breezy Ridge Farms, Inc.*, 2009 WL 1514671 (Bankr. M.D. Ga. 2009). In *Breezy Ridge*, the court barred a farming corporation from discharging debt based on the provisions of 523(a)(2), (4), (6). *Id*. The same court also stated, "in Chapter 11, Congress has applied parts of section 523(a) to corporate debtors." *Id*. The narrow requirements of subchapter V results in its application only to a "small and specific subset of debtors" just like those referenced in chapter 12, but not to all chapter 11 corporations. *In re JRB Consolidated, Inc.,* 188 B.R. 373, 374 (Bankr. W.D. Tex. 1995).

Here, Congress intended to make the nondischargeable provisions of section 523 apply to corporate debtors filing under subchapter V, because existing chapter 12 discharge provisions apply to corporate debtors and contain identical language to section 1192. At the time Congress passed subchapter V, existing case law held that section 1228 references to section 523 applied to corporations and individuals. Yet Congress chose to use exactly the same language when enacting section 1192. With awareness of existing case law, Congress easily could have structured 1192 differently if they intended a different interpretation from section 1228. Congress could have applied the section 523 modification to section 1192, by incorporating the phrase "for individuals," added an additional subsection explicitly stating their disagreement with the 1228 case law, or simply reworded section 1192 to look substantially different from section 1228 and render comparisons less relevant. Congress knew how to make this distinction, as they expressly stated in section 1141(d)(1)(A) "a discharge under this chapter (11) does not discharge a debtor who is an individual from any debt excepted from discharge under section 523 of this title." 11 U.S.C. § 1141(d). As section 1192 takes power from creditors by allowing nonconsensual plans to be approved, the differences in applicability of discharge exceptions between sections 1141 and 1192 are no accident. By failing to use any of the many possible modifications, Congress is presumed to intend the same result for section 1192 as section 1228. That presumption fits a broader reading of the Bankruptcy Code. Section 523 is a general provision governing discharge exceptions, and as a broad rule, Congress intends the exceptions to apply to individuals unless otherwise specified. However, in certain contexts where Congress creates a special dichotomy applying to individuals and corporations, they modify the discharge exceptions to make them applicable to everyone covered by the dichotomy. When concluding on this issue, Judge Harrison misapplied the canon of statutory interpretation that dictates courts cannot render any words "superfluous." R. at 21. The word "individuals" in section 523 is not superfluous, because it applies to most bankruptcy cases. *See* 11 U.S.C. § 523. In the limited contexts where Congress provides these exceptions, it is not rendering the word "superfluous" but is simply overriding the use of the word in a particular circumstance. R. at 21. Based on existing case law, section 523 discharge exceptions only apply to corporations that are small businesses, family farmers or fisherman. R. at 33. These are all situations where an entity might have the legal distinction of a corporation but are not operating at the same size and scope of a traditional corporation like General Motors or Amazon who are subject to extensive oversight by their many stakeholders. In fact, Subchapter V explicitly does not apply to publicly traded corporations. *See* 11 U.S.C. § 1182(1). Congress did not deem it necessary to create a new chapter for small business debtors, as they successfully leveraged some existing provisions from the rest of chapter 11. However, the distinct changes made in subchapter V show Congress intended for debtors filing under subchapter V to be treated differently in some respects, which includes making certain debts nondischargeable for corporate debtors. Contrary to Judge Harrison's assertions, Congress is not "hiding elephants in mouseholes." R. at 21. The provision only affects a small number of debtors and is consistent with interpretations of other parts of the code, so it does not constitute a major policy overhaul, or "radical change." R. at 21. Therefore, Debtor's toxic waste claims cannot be discharged under this Plan.

The plain language of section 1192 clearly shows the section 523 nondischarge provisions apply to subchapter V corporate debtors. Section 1192 only uses the term debt and does not modify the type of debtor that the exceptions apply to. Even if the language is ambiguous and sections 1192 and 523 are in conflict, case law and the canons of statutory interpretation dictate compliance with section 1192. Therefore, the Court should rule the Debtor's toxic waste claims are nondischargeable under section 523(a)(6).

B. The Thirteenth Circuit incorrectly held that the Debtor can discharge its toxic waste debt, because principles of fairness and equity dictate that subchapter V debtors are not able to benefit from favorable discharge exceptions generally given to chapter 11 debtors.

Subchapter V is extremely favorable for small business debtors, and it would be unfair to also allow them an additional benefit from favorable discharge provisions. *See* William L. Norton, III and James B. Bailey, *The Pros and Cons of the Small Business Reorganization Act of 2019,* 36 Emory Bankr. Dev. J. 383, 386 (2020)*;* Under subchapter V, an equity holder can retain their ownership interest, even if the debtor fails to fully pay all creditors. *Id*. This contradicts existing chapter 11 absolute priority rules in section 1129 and creates a large advantage for a debtor who has a corporate parent providing equity capital. *See In re Situation Management Systems, Inc*., 252 B.R.859 (Bankr. D. Mass. 2000). Creditors also see their rights limited under subchapter V. *See* William L. Norton, III and James B. Bailey, *The Pros and Cons of the Small Business Reorganization Act of 2019,* 36 Emory Bankr. Dev. J. 383, 386 (2020)*;* In traditional chapter 11 consensual plans, section 1141(d) explicitly limits discharges to individual debtors. 11 U.S.C. § 1141(d). However, section 1192 is used specifically for subchapter V plans which are confirmed non consensually. 11 U.S.C. § 1192. The Bankruptcy Code seeks to balance the goals of providing a fresh start for the debtor, while maintaining fair distributions for existing creditors. *In re Alwan Bros. Co., Inc.,* 105 B.R. 886, 891 (Bankr. C.D. Ill. 1989). After changing the absolute priority rules for corporations, Congress also sought to return power to creditors and "provide an additional layer of fairness and equity." *In re Cleary Packaging LLC,* 36 F.4th at 36. One way to accomplish this goal is by reducing the types of dischargeable debt. *Id*. Importantly, chapter 12 also does not have an absolute priority rule, and courts have held the section 523 list of nondischargeable debts applies to chapter 12 Debtors. *See Breezy Ridge Farms, Inc.*, 2009 WL 1514671 at 3.

The language in section 523 suggests the discharge exceptions are largely based on public policy concerns. *See* 11 U.S.C. § 523. These exceptions include taxes, fines, domestic support, and claims related to willful injuries. *Id*. Bankruptcy is intended to provide a fresh start for individuals who found themselves in financial trouble, and these exceptions help ensure debtors do not abuse this system. *See Field v. Mans*, 516 U.S. 59, 76 (1995). Overall, these goals are grounded in foundational principles of fairness and equity. *See In re Cleary Packaging LLC,* 36 F.4th at 36. Without section 523, there would be little to dissuade an individual from engaging in anti-public policy behavior, because they can discharge any related debts during bankruptcy. Courts have previously followed this rationale and applied section 523(a)(6) to prevent debtors from discharging debts which were caused by willful and malicious conduct. *In re Better Than Logs, Inc.,* 631 B.R. 670 (Bankr. D. Mont. 2021). In that case, the court said a debtor who filed under subchapter V could not discharge claims related to their false advertising. *Id.*

In this case, the Debtor should be unable to benefit from favorable discharge provisions, because it has already immensely benefited from filing under subchapter V. Congress created the new subchapter V scheme to make it simpler and more cost effective for small businesses to file for bankruptcy. In doing so, they recognized a difference between a traditional corporation filing under chapter 11, and one filing under subchapter V. The Debtor had a choice between filing under a traditional plan or filing under subchapter V, they were not forced into using either method. Based on their assessments of the relative advantages of each plan, they decided that allowing Strawberry Fields to retain equity was a better result than they would receive by using traditional cramdown provisions under chapter 11. To allow the same equity ownership and allow the discharge of claims listed in section 523 would lead to an absurd result. There would be no reason for a small business debtor to ever choose any plan besides subchapter V, thus incentivizing the exact type of anti-public policy behavior which section 523 is meant to discourage. In the Debtor's case, this anti-public policy behavior led to several injuries and even the death of a child. R. at 5. Additionally, unlike in a traditional chapter 11 bankruptcy, a debtor using section 1192(2) can have a nonconsensual plan approved by the court, thus further reducing the ability of creditors to receive fair distributions. 11 U.S.C. § 1192. Generally, with larger corporations, the ramifications of bankruptcy serve as an effective deterrent to the anti-public policy behavior section 523 attempts to discourage. A chapter 11 bankruptcy could lead to shareholders losing their entire investment, which creates incentives for monitoring and preventing the company from engaging in anti-public policy behavior. To allow equity holders to retain their equity and prevent application of section 523 would remove that incentive and increase the type of anti-public policy behavior which section 523 is meant to prevent. This is especially true in the subchapter V context, because publicly traded corporations are excluded from filing, and those are the type of corporation more likely to be subject to scrutiny and oversight. It is unreasonable to decide Congress meant to drastically rework the Bankruptcy Code to provide such misaligned incentives just for small business debtors. A far more reasonable interpretation is that Congress sought to follow the existing court interpretations of chapter 12 and make certain debts nondischargeable to subchapter V debtors to balance the increased advantages caused by removing the absolute priority rule and permitting nonconsensual plans. This Court should look to the traditional principles of fairness and equity and not allow the discharge of Debtor's toxic waste claims.

Since subchapter V defines debtor as an individual or corporation, and section 1192 discharges all "debts except of a kind in section 523," the plain text reading clearly shows that the section 523 list of nondischargeable debts applies to corporate debtors filing under subchapter V. 11 U.S.C. § 1192; *see also* 11 U.S.C. § 523. Assuming the Court finds the statutory language ambiguous and says section 1192 and section 523 conflict with regard to the applicability of discharges for corporate debtors, then the Court should analyze the more specific provision. Section 1192 is written for the purpose of explaining the rules for discharges under Subchapter V, therefore the language in section 1192 is controlling for purposes of Debtor's plan. The reference to section 523 "debts" instead of debtors shows that the only applicable portion of section 523 is the list of nondischargeable debts, not the limitation to individual debtors. 11 U.S.C. § 1192. Congress is aware of this interpretation, because of the existing case law regarding the nearly identical references in section 1228. Furthermore, allowing the Debtor to discharge their debts while filing under subchapter V would violate the principles of fairness and equity. Debtors filing under Subchapter V receive an extensive benefit by avoiding the absolute priority rule and being able to confirm nonconsensual plans. In this case, those advantages allow Strawberry Fields to maintain equity ownership even though not all claims have been paid and some creditors object to the plan. To also allow the Debtor the ability to push through nondischargeable debts against public policy would lead to a bankruptcy scheme far too heavily constructed against creditors. Therefore, this Court should block the discharge of all Debtor's toxic waste claims.

CONCLUSION

For the foregoing reasons, this Court should reverse the decisions of the Court of Appeals for the Thirteenth Circuit on both issues and find in favor of Petitioner.

APPENDIX

11 U.S.C. § 101(41) – Definitions

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

(A) acquires an asset from a person--

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

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

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

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

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

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

11 U.S.C. § 105(a) – Power of court

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

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

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

(1) for a tax or a customs duty—

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

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

(i) was not filed or given; or

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

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

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

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

(B) use of a statement in writing—

(i) that is materially false;

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

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

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

(C)

(i) for purposes of subparagraph (A)—

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

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

(ii) for purposes of this subparagraph—

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

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

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

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

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

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

(5) for a domestic support obligation;

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

(7) – (19) [omitted]

(b) – (e) [omitted]

11 U.S.C. § 524(e) – Effect of discharge

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

11 U.S.C. § 524(g) – Effect of discharge

(g)

(1) [omitted]

(2)

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

(B) The requirements of this subparagraph are that—

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

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

(g)(2)(B)(i)(II) – (k) [omitted]

11 U.S.C. § 1123(a)(5) – Contents of plan

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

(5) provide adequate means for the plan's implementation, such as—

(A) retention by the debtor of all or any part of the property of the estate;

(B) transfer of all or any part of the property of the estate to one or more entities, whether organized before or after the confirmation of such plan;

(C) merger or consolidation of the debtor with one or more persons;

(D) sale of all or any part of the property of the estate, either subject to or free of any lien, or the distribution of all or any part of the property of the estate among those having an interest in such property of the estate;

(E) satisfaction or modification of any lien;

(F) cancellation or modification of any indenture or similar instrument;

(G) curing or waiving of any default;

(H) extension of a maturity date or a change in an interest rate or other term of outstanding securities;

(I) amendment of the debtor's charter; or

(J) issuance of securities of the debtor, or of any entity referred to in subparagraph (B) or (C) of this paragraph, for cash, for property, for existing securities, or in exchange for claims or interests, or for any other appropriate purpose;

11 U.S.C. § 1123(b)(6) – Contents of plan

(b) Subject to subsection (a) of this section, a plan may—

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

11 U.S.C. § 1141(d) – Effect of confirmation

(d)

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

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

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

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

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

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

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

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

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

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

(C) the debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title.

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

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

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

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

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

(ii) modification of the plan under section 1127 is not practicable; and

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

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

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

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

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

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

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

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

(i) made a fraudulent return; or

(ii) willfully attempted in any manner to evade or to defeat such tax or such customs duty.

11 U.S.C. § 1182 – Definitions

(1) Debtor.—The term "debtor"—

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

(B) does not include—

(i) any member of a group of affiliated debtors under this title that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than $7,500,000 (excluding debt owed to 1 or more affiliates or insiders);

(ii) any debtor that is a corporation subject to the reporting requirements under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)); or

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

(2) Debtor in possession.—

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

11 U.S.C. § 1192 – Discharge

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

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

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

11 U.S.C. § 1228 – Confirmation hearing

(a) After notice, the court shall hold a hearing on confirmation of a plan.

(b) A party in interest may object to confirmation of a plan.

28 U.S.C. § 1334 – Bankruptcy cases and proceedings

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

> **(1)** Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.
> **(2)** Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d) Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.
(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

> **(1)** of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and
> **(2)** over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.