No. 22-0909

IN THE

Supreme Court of the United States

OCTOBER TERM, 2022

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 23
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 of types specified in subparagraphs (1) through (19) of 11 U.S.C. § 523(a).

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OPINIONS BELOW

The United States Bankruptcy Court for the District of Moot dismissed Ms. Eleanor Rigby's, the Petitioner, tort claim against Strawberry Fields Foods, Inc. ("Strawberry Fields"). (R. at 4). Strawberry Fields is the corporate parent of Penny Lane Industries, Inc., the Debtor. (R. at 4). The bankruptcy court (1) overruled Ms. Rigby's objection to the Plan on the ground that the bankruptcy court had the authority to approve the non-consensual third-party releases contained in the Plan and (2) dismissed her claim on the grounds that the provisions of section 523 only apply in cases where the Debtor is an individual. (R. at 4). Ms. Rigby timely appealed both of the bankruptcy court's rulings. (R. at 11). Then, upon request of the parties, the disputes were certified for direct appeal to the United States Court of Appeals for the Thirteenth Circuit under 28 U.S.C. § 158(d). (R. at 11). The Thirteenth Circuit affirmed on both issues. (R. at 23.) This Court then granted certiorari. (R. at 1).

STATEMENT OF JURISDICTION

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

STATUTORY PROVISIONS

The relevant statutory provisions are attached hereto as Appendix A.

STATEMENT OF THE CASE

This case arises out of the bankruptcy court's dismissal of Ms. Rigby's tort claim against Strawberry Fields, the corporate parent of the Debtor.

I. Statement of the Facts

In 2017, Ms. Rigsby faced a tragic loss. (R. at 5). Ms. Rigby, who was a member of the Blackbird community since 1982, lost her four-year-old daughter to leukemia caused by exposure to pollutants which affected the town's water supply. (R. at 5). What made the loss of her daughter even more debilitating was the fact that the leukemia was avoidable.

After a careful study of the ground water supply of the area, the "United States Environmental Protection Agency and the Centers for Disease Control and Prevention have shown that, during the years 2013 through 2017," (R. at 5), the local water supply was "contaminated with toxins at concentrations 250 to 3,000 times the permitted level." (R. at 5). Long exposure to these pollutants caused "sickness, birth defects, and even death," (R. at 5), —such as with Mrs. Rigby's daughter. Though agencies cannot definitively say where the pollutants originated, both federal and State agencies have found contaminated groundwater underneath Blackbird. (R. at 5). For a plume of contaminated water to appear, pollutants would have to be released into the surrounding groundwater at a steady rate for the buildup of toxins to travel across the length of the entire community. (R. at 5).

During this time period, Penny Lane Industries, a wholly owned subsidiary of Strawberry Fields Inc., was disposing of waste products that resulted from the manufacture of glass, plastic, and metal food containers. (R. at 4–5). These pollutants are the very type of pollutants that caused groundwater contamination. (R. at 6). Due to the negligent disposal of waste that left many residents of Blackbird sick or dead, certain members of the Blackbird community commenced a

personal injury negligence case against both Penny Lane and its parent company, Strawberry Fields. (R. at 6).

II. Procedural History

The Debtor filed this Subchapter V, chapter 11 case on January 11, 2021. (R. at 6). Ms. Rigby and another creditor, Norwegian Wood Bank (the "Bank"), objected to confirmation of the Plan on a variety of grounds, and objected to the Debtor's discharge. (R. at 9). After a four-day confirmation hearing, the bankruptcy court confirmed the Plan and dismissed Ms. Rigby's discharge objection case. (R. at 10). Ms. Rigby timely appealed both of the bankruptcy court's rulings. (R. at 11). Upon the parties' request, the court certified the appeals for direct appeal to the United States Court of Appeals for the Thirteenth Circuit pursuant to 28 U.S.C. § 158(d) and, thereafter, consolidated in this appeal. (R. at 11). This Court granted certiorari. (R. at 2).

III. Standard of Review

This Court reviews interpretations of the Bankruptcy Code *de novo*. *Pollitzer v. Gebhardt*, 860 F.3d 1334, 1338 (11th Cir. 2017); *Exec. Benefits Ins. Agency v. Arkison*, 573 U.S. 25, 28 (2014).

SUMMARY OF THE ARGUMENT

First, the lower court erred by released Ms. Rigby's claim against Strawberry Fields because it lacked the statutory and constitutional authority to do so. Accordingly, the judgment below should be reversed.

11 U.S.C. § 524(e) unambiguously supports the proposition that the bankruptcy court may not release third-party claims without the claimant's consent. Under that provision, only the debtor is entitled to the benefit of discharge because only the debtor has gone through the rigors of the

bankruptcy process. To hold otherwise would allow bad actors to circumvent the bankruptcy process entirely while reaping all of the benefits of the process. This is not what Congress intended.

Congress did demonstrate what it intended when it drafted section 524(g) by carving out an exception to the general rule found in section 524(e) for asbestos cases. In other words, Congress wanted the rule found in 524(e) to apply to all cases, unless an express exception applies. The only exception drafted by Congress, section 524(g), does not apply to this case. Accordingly, the bankruptcy court erred by adjudicating Ms. Rigby's claim against Strawberry Fields because the Bankruptcy Code expressly prevents it from doing so.

Also, other provisions of the Bankruptcy Code, namely sections 105(a), 1123(a)(5), and 1123(b)(6), do not equip the bankruptcy courts with the authority to adjudicate the claim against Strawberry Fields. These provisions are more accurately described as limits on the courts' power and not as a grant of additional authority. Section 105 in particular states that a valid plan must conform to the other applicable provisions of the Bankruptcy Code. The bankruptcy court in this case confirmed a plan that did not satisfy the requirement set forth in section 105 and ignored the plain text of section 524(e) by releasing Ms. Rigby's claim against Strawberry Fields.

Additionally, the strong textual support for Ms. Rigby's position aside, public policy concerns support a holding in Ms. Rigby's favor. The type of broad releases the lower court advocates for will incentivize misconduct. Even those courts that recognize third-party releases warn of the potential dangers of such releases and reserve doing so for the most extraordinary and rare cases. This is simply not one of those cases. Accordingly, this Court should grant Ms. Rigby the day in court that she is due by reversing the judgment below.

Second, the Court should reverse the circuit court's judgment regarding the applicability of the section 523(a) exceptions to discharge to corporate debtors under 11 U.S.C. § 1192. Due to

the history, text, and structure of section 1192, it is clear that the exceptions to discharge referenced in 1192 apply to both the individual and corporate debtor. First, Subchapter V falls outside the purview of the traditional chapter 11 rules found in 11 U.S.C. § 1141(d). Instead, section 1192 allows for departures of traditional debtor and creditor protections such as the elimination of the absolute priority rule, the non-consensual cramdown of plans, and for the section 523(a) exceptions to discharge to cover both individuals and corporations. Next, the text of section 1192 provides for the application to corporate debtors. Since the statute uses the singular term "debtor" instead of differentiating between a corporation or individual as it does in other sections of the chapter, the definition found in chapter 11, which covers both the individual and corporation, should apply. Third, the structure of section 1192 mirrors that of 11 U.S.C. § 1228(a) which has been found to apply to both individuals and corporations. Because the history, text, and structure of the statute show that Congress intended for the exceptions to apply to corporations, the judgment of the court below should be reversed.

ARGUMENT

The United States Court of Appeals for the Thirteenth Circuit should be reversed for two reasons. First, the bankruptcy court did not have authority to release Ms. Rigby's claim against Strawberry Fields and to do so was error. Second, the bankruptcy court erred by holding that 11 U.S.C. § 1192 does not apply to both the corporate and individual debtor. The circuit court affirmed on both of these issues, and Ms. Rigby respectfully asks this Court to reverse the judgment below.

I. THE COURT ERRED BY RELEASING MS. RIGBY'S TORT CLAIM AGAINST STRAWBERRY FIELDS, A NONDEBTOR, WITHOUT HER CONSENT.

"This Court once had a great tradition: All men and women are entitled to their day in Court." *In re Amendment to Rule 39*, 500 U.S. 13, 15 (1991) (Marshall, J., dissenting) (internal quotation omitted). The remedy Ms. Rigby seeks can be summarized in one pithy sentence: Ms.

Rigby wants her day in court. The bankruptcy court, by ignoring express statutory language, denied her of this right. Ms. Rigby respectfully asks this Court to reverse the judgment below so that she may pursue her daughter's claim while ensuring that this Court's "great tradition" is carried on.

A. <u>The bankruptcy court erred by releasing Ms. Rigby's claim without her consent because 11 U.S.C. § 524(e), read according to its plain meaning, prohibits the court from doing so.</u>

The bankruptcy court erred by exceeding its authority under 11 U.S.C. § 524(e), and, accordingly, the judgment should be reversed. Courts, while pursuing the end-result of justice, are bound by the language of the law. Congress, by enacting the Bankruptcy Code, set forth the laws that bankruptcy courts must follow. In this case, the bankruptcy court failed to follow the plain language of the applicable statutes and committed error by doing so. The Thirteenth Circuit's judgment below should be reversed.

i. It was improper for the bankruptcy court to release Ms. Rigby's claim against Strawberry Fields because the release amounted to a discharge of a nondebtor.

In its most basic form, the Bankruptcy Code establishes a *quid pro quo* in which the debtor is entitled to certain benefits in exchange for fulfilling certain obligations and duties. This exchange only makes sense when the Bankruptcy Code works "to free the debtor of [its] personal obligations while ensuring that no one else reaps a similar benefit." *Green v. Welsh*, 956 F.2d 30, 33 (2d Cir. 1992). Here, Strawberry Fields is not a debtor and, therefore, should not be entitled to the same benefits as a debtor who has fulfilled the duties and obligations of the bankruptcy process. *In re Western Real Estate Fund, Inc.*, 922 F.2d 592, 600 (10th Cir. 1990) ("Obviously, it is the debtor, who has invoked and submitted to the bankruptcy process, that is entitled to its protections; Congress did not intent to extend such benefits to third-party bystanders."). A holding that releases Ms. Rigby's claim against Strawberry Fields, without her consent, will result in Strawberry Fields

receiving the full benefit of the bankruptcy process without having to abide by the strict requirements set forth in the Bankruptcy Code. Congress did not intend for this to be the result and that is made clear by looking to the applicable statutes.

This case is simply resolved by looking to the language of 11 U.S.C. § 524(e). Judicial inquiry begins, and ends, with the statutory language. *See, e.g.*, *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992) ("When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'"). Interpreting a statute according to its plain, unambiguous language is the "cardinal" canon that stands before all others. *Id.* at 254. In this case, the plain language of 11 U.S.C. § 524(e) prevents the courts from enjoining Ms. Rigby from bringing her action against Strawberry Fields.

ii. Under the plain language of 11 U.S.C. § 524(e), the bankruptcy court did not have the authority to release Ms. Rigby's claim against Strawberry Fields.

The relevant statutory language, found in 11 U.S.C. § 524(e), states that "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). The language states, with no ambiguity, that "discharge of a debt of *the debtor* does not affect the liability of *any other entity* . . . on such debt." *Id.* The word "debtor" is defined in section 101(13) and means "a person or municipality concerning which a case under this title has been commenced." Further, section 101(41) provides that the word "person" refers to an "individual, partnership, and corporation." Accordingly, Penny Lane Industries is a debtor under the Bankruptcy Code while Strawberry Fields is not. Inserting the facts of our case, the statute could read "discharge of a debt of Penny Lane Industries does not affect the liability of Strawberry Fields on such debt." *See id.* The essential distinction is that Strawberry Fields is not the debtor, Penny Lane Industries is.

Congress clearly knew how to carve out specific exceptions to this general rule because it did so in section 524(g) by providing an express exception for asbestos cases. This case does not fall under that exception. *See also Law v. Siegel*, 571 U.S. 415, 424 (2014) ("The 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.") (emphasis added). Applying the "negative-implication canon," one can infer that Congress does not intend to provide an exception in this case because it demonstrated that it knows how to expressly draft exceptions to section 524(e) as it did in section 524(g). *See* ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 108 (2012) ("The particular which is omitted from the particulars mentioned is the *casus omissus*, which the judge cannot supply because that would amount to legislation.") (quoting J.A. Corry, *Administrative Law and the Interpretation of Statutes*, 1 U. TORONTO L.J. 286, 298 (1936)).

It is not the role of this Court to decide what is fair, or unfair, when the statutory language mandates a different result. *See, e.g.*, *Hartford Underwriters Ins. Co. v. Union Planters Bank*, 530 U.S. 1, 13–14 ("It suffices that the natural reading of the text produces the result we announce. Achieving a better policy outcome . . . is a task for Congress, not the courts."); *Broadrick v. Oklahoma*, 413 U.S. 601, 610 (1973) ("[U]nder our constitutional system courts are not roving commissions assigned to pass judgment on the validity of the Nation's laws."). This is a concept that is deeply engrained in American jurisprudence and its origins can be traced back as far as Blackstone. *See, e.g.*, WILLIAM BLACKSTONE, 1 COMMENTARIES ON THE LAWS OF ENGLAND 62 (4th Ed. 1770) ("[L]aw, without equity, though hard and disagreeable, is much more desirable for the public good, than equity without law: which would make every judge a legislator, and introduce most infinite confusion."). Regardless of how "equitable" or "fair" Penny Lane's plan may seem

to Strawberry Fields, the idea of fairness does not trump the governing language found in section 524(e). The only "fair" result of this case is one that allows Ms. Rigby to have her day in court. That result is achieved by applying the governing statute, section 524(e), just as it is written. Otherwise, "the very project of the statute, as conceived and as written [would be] damaged by this Court." *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321 (2021) (Kagan, J., dissenting).

The most concrete evidence of Congress' intent in section 524(e) is the existence of section 524(g). If this type of third-party release was proper under section 524(e), there would be no need for the explicit exception for asbestos claims. However, according the plain, unambiguous language of section 524(e), third-party releases are not proper unless an exception applies. No exception is applicable here. The only potential exception, found in section 524(g), does not apply to this case because this is not an asbestos case and, accordingly, the lower court exceeded its authority by settling Ms. Rigby's claim against Strawberry Fields.

In a situation different from this one, the bankruptcy courts exercising their equitable powers may alter *creditor-debtor* relationships. *United States v. Energy Res. Co., Inc.*, 495 U.S. 545, 549 (1990). In this case, congressional silence in the applicable statutes is deafening. *In re Seaside Eng'g & Surveying*, quoted by the lower court, held that "524(e) says *nothing* about the authority of the bankruptcy court to release a nondebtor from a creditor's claims." 780 F.3d 1070, 1078 (11th Cir. 2015). Congressional silence is *not* a grant of power. *See Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 465 (2017) ("Congress . . . does not, one might say, hide elephants in mouseholes.") (quoting *Whitman v. American Trucking Assns., Inc.*, 531 U.S. 457, 468 (2001)). This Court requires "more than simple statutory silence" if it is to recognize a substantial departure from express statutory language. *Id.* Here, that "more" is lacking and this Court should not depart from the express language found in section 524(e).

B. The other statutory provisions, including sections 105(a), 1123(a)(5), and 1123(b)(6), do not grant the courts the authority to release Ms. Rigby's claim against Strawberry Fields.

The lower court cited sections 105(a), 1123(a)(5), and 1123(b)(6) to support its holding that the courts have the authority to release Ms. Rigby's claim against Strawberry Fields. However, these provisions do not grant such authority, and the court erred by finding so. These provisions, when read alongside section 524(e), mandate a holding in Ms. Rigby's favor. *See, e.g., Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992) ("[I]t is a commonplace of statutory construction that the specific governs the general."). Accordingly, the judgment of the lower court should be reversed.

i. 11 U.S.C. § 105(a) is not an independent grant of authority.

Under section 105(a), the bankruptcy courts have statutory authority "to issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code. However, "in exercising those [§ 105(a)] powers, a bankruptcy court *may not* contravene specific statutory provisions." *Law*, 571 U.S. at 421. This premise is so commonplace in American jurisprudence that this Court has referred to the premise as "hornbook law." *See id*.

In this case, a "specific" statutory provision governs: section 524(e). Applying this Court's holding in *Law*, because a precise statutory provision governs, the bankruptcy courts do not have the authority to contravene the specific statutory provision. It is true that bankruptcy courts have certain equitable powers. However, those powers end where the statutory language begins. In this case, the lower court erred by contravening the specific statutory language found in section 524(e) prohibiting non-consensual third-party releases of this type.

ii. Similarly, section 1123(b)(6) is not a source of power but, rather, is a limitation on chapter 11 plans.

Another provision, 11 U.S.C. § 1123(b)(6), relied on by the lower court, does not grant the bankruptcy courts additional powers but merely lists a requirement of a chapter 11 plan. A chapter 11 plan "may . . . include any other appropriate provision *not* inconsistent with the applicable provisions of this title." 11 U.S.C. § 1123(b)(6) (emphasis added). In other words, this provision is a *limitation* on a chapter 11 plan not a source of additional authority for the courts. If anything, section 1123(b)(6) supports Ms. Rigby's position because the chapter 11 plan in this case, by releasing her claim without her consent, directly conflicts with the language in section 524(e). The express limitation found in section 1123(b)(6) states that the chapter 11 plan cannot be "inconsistent with the applicable provisions of this title." One "applicable provision" of the Bankruptcy Code in this case is section 524(e) which, quoted above, states that discharge of a debt of a debtor, Penny Lane Industries in this case, does not affect the liability of another entity (Strawberry Fields) for such debt. The bankruptcy court, by providing for an impermissible release of Ms. Rigby's claim in the chapter 11 plan, fails to meet the requirement for a proper plan found in section 1123(b)(6). The lower court misconstrued an explicit limitation as a grant of broad power. To do so was error, and, accordingly, the judgment below should be reversed.

iii. Like section 1123(b)(6), section 1123(a)(5) does not grant the bankruptcy court the authority to adjudicate Ms. Rigby's claim and the court committed error by exercising such authority.

Like the other provisions mentioned above, section 1123(a)(5) fails to grant the bankruptcy court with the power to release Ms. Rigby's claim. The statute lists yet another requirement of a chapter 11 plan: the plan "shall provide adequate means for the plan's implementation." 11 U.S.C. § 1123(a)(5). The provision then lists a variety of "means" through which the plan can be implemented. Absent from this list is any mention of the release of third-party claims. *See In re*

Irving Tanning Co., 496 B.R. 644, 664 (B.A.P. 1st Cir. 2013) ("Indeed, what the Debtors urge us to find–a grant of power to appropriate the property of third parties–is so bold and remarkable a grant that one cannot imagine Congress having inserted it without a clear and specific indication of such intent. To find that intent here . . . is too much.").

C. The bankruptcy court exceeded its constitutional authority by releasing Ms. Rigby's claim against Strawberry Fields.

Additionally, the lower court erred by exercising Article III powers to release Ms. Rigby's claim. This Court has held that bankruptcy courts are only granted the authority to adjudicate "core" proceedings that come before them, and adjudicating claims that are not core "violates Article III of the Constitution." *Stern v. Marshall*, 564 U.S. 462, 485 (2011). An example of a claim that a bankruptcy court is not allowed to adjudicate is a state-law contract claim involving a party that "was not otherwise part of the bankruptcy proceedings." *Id.* This Court reaffirmed this doctrine in *Stern v. Marshall* when it held that a bankruptcy court exceeded its constitutional authority by adjudicating a state common law counterclaim. *Id.* at 487. To quote this Court in *Stern*, "[i]t is clear that the Bankruptcy Court in this case exercised the 'judicial power of the United States' in purporting to resolve and enter final judgment on a state common law claim, just as the court did in *Northern Pipeline*." *Id.*

The bankruptcy court's overstepping in *this* case is just as clear as it was in *Stern*. In both cases, the bankruptcy courts exceeded their constitutional authority by impermissibly resolving state common law claims because the non-consensual releases amount to adjudication of the claims. *See also Patterson v. Mahweh Bergen Retail Group, Inc.*, 636 B.R. 641, 666 (E.D. Va. 2022) ("[T]he Supreme Court has found that Congress violated Article III in authorizing bankruptcy judges to decide certain claims for which litigants enjoy an entitlement to an Article III adjudication."). Like the claims at issue in *Stern* and *Northern Pipeline*, Ms. Rigby's claim

against Strawberry Fields (who is not a debtor) is a state common law claim that is only loosely "related to" the bankruptcy case, and nothing more. *See also* 28 U.S.C. § 1334 (granting bankruptcy courts with jurisdiction over certain claims that are "related to" bankruptcy cases, provided that exercising such jurisdiction is constitutionally permissible). "Congress may not bypass Article III simply because a proceeding may have *some* bearing on a bankruptcy case." *Stern*, 564 U.S. at 499. Ms. Rigby's claim against Strawberry Fields is not classified as a "core" claim so the bankruptcy court did not have the authority to adjudicate the claim. *See Patterson*, 636 B.R. at 668 ("In sum, the Supreme Court mandates that bankruptcy courts only have the constitutional authority to adjudicate core claims, even if Congress has granted them the statutory authority to resolve other claims.").

A claim is classified as "core" when the claim "stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process." *Stern*, 564 U.S. at 499. Ms. Rigby's claim against Strawberry Fields falls into neither of those categories. It is not a claim that stems from the bankruptcy itself because it existed before, and is unrelated to, Penny Lane's bankruptcy proceeding. It is also not "necessarily . . . resolved in the claims allowance process" because the party the claim is filed against, Strawberry Fields, is not a debtor and is not therefore a party to the bankruptcy proceeding. While it is true that 28 U.S.C. § 1334 may, on its face, grant the bankruptcy court jurisdiction over Ms. Rigby's claim, adjudication of the claim must pass constitutional muster according to this Court's holdings in *Stern* and *Northern Pipeline*. Here, adjudication of the claims fails the test of constitutionality. Because Ms. Rigby's claim was not a "core" claim, the bankruptcy court unconstitutionally adjudicated the claim despite it being "related to" the bankruptcy case. This was error, and the judgment below should be reversed.

D. Establishing a rule that allows for bankruptcy courts to issue non-consensual third-party releases affecting creditor-nondebtor relationships will incentivize nondebtors to participate in bad behavior.

Not only is a holding in favor of Ms. Rigby supported by law, but policy concerns also lead to the conclusion that bankruptcy courts should not have the authority to release third party claims, including Ms. Rigby's.

Even those courts that have held that a court may enjoin a creditor from suing a third party acknowledge that "such a release is proper only in *rare* cases." *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 141 (2d Cir. 2005) (emphasis added) (following the Ninth and Tenth Circuits and holding that a non-consensual third-party release was improper under 11 U.S.C. § 523(e)). The Sixth Circuit has described third party releases as a "dramatic measure that is to be used cautiously," and the Third Circuit has recognized that such releases have only been approved in "extraordinary cases." *Id.* (citing *In re Dow Corning Corp*., 280 F.3d 648, 657–58 (6th Cir. 2002) and *In re Cont'l Airlines*, 203 F.3d 203, 212–13 (3d Cir. 2002). These decisions were based on the concern that nondebtors may abuse a rule allowing for broad releases. As the Second Circuit observed: "[A] nondebtor release is a device that lends itself to abuse. . . . a nondebtor can shield itself from liability to third parties. . . . in effect, it may operate as a bankruptcy discharge arranged without filing and without the safeguards of the Code. The potential for abuse is heightened when releases afford blanket immunity." *Metromedia*, 416 F.3d at 142.

This case is analogous to *Metromedia* in that Strawberry Fields, like the Kluge Trust, made significant contributions to the bankruptcy estate. *Id.* The Second Circuit in *Metromedia* held that, although the Kluge Trust's contributions to the estate were significant, the bankruptcy court lacked the authority to release claims against the Kluge Trust because it made "insufficient" findings on the issue of whether "truly unusual circumstances" existed to justify a nondebtor release. *Id.*

(articulating several considerations a bankruptcy court must take into account before a nondebtor release can be considered). The bankruptcy court in this case also failed to make sufficient findings of "truly unusual circumstances" and, accordingly, should be barred from releasing Ms. Rigby's claim against Strawberry Fields. If courts were not required to balance these considerations, the broad power for nondebtor releases would be ripe for abuse. If the statutory text is to be ignored and equity is to govern, equity demands that the power for nondebtor releases be narrow. Otherwise, nondebtors under the Bankruptcy Code can circumvent the Bankruptcy Code while still enjoying the full benefits of discharge. A ruling from this Court affirming the judgment of the lower court would establish this undesirable broad rule and would stand in direct conflict with the intent of Congress, as is deduced from the express language of the applicable statutes. Accordingly, this Court should reverse the judgment of the court below.

II. THE COURT ERRED IN ITS RULING THAT 11 U.S.C. § 1192 DOES NOT APPLY TO BOTH THE CORPORATE AND INDIVIDUAL DEBTOR.

Second, the court should reverse the decision of the appellate court below in regards to the application of section 1192 to corporations for three reasons. First, the differences between traditional chapter 11 cases and Subchapter V shows the intent of Congress to apply section 1192 to both individual and corporate debtors. Next, the text of the statute indicates the incorporation of the corporate debtor into the section 523(a) exceptions to discharge. Finally, section 1228(a), which contains nearly identical language to that of section 1192, has been interpreted to apply the section 523(a) exceptions to discharge to corporations.

A. Differences between traditional chapter 11 and Subchapter V cases

In 2019, Congress passed the Small Business Reorganization Act (SBRA) to help alleviate some of the burdens of reorganization from small businesses. By enacting this statute, Congress provided small businesses with a means of reorganizing their business to that allowed prepetition

equity owners to continue to control the business without the need for significant capital contributions.

Should a business elect to proceed under Subchapter V, the business is afforded many benefits that a traditional chapter 11 reorganization plan would not. For instance, Subchapter V eliminated the absolute priority rule of section 1129(b) and allowed the "authorization of plans that are not consented to by creditors." *In re Cleary Packaging, LLC*, 36 F.4th 509, 514 (4th Cir. 2022). It also made section 1141(d) inapplicable to Subchapter V proceedings. *Id.* at 517. "Section 1141(d), in particular, sets forth debts that are eligible for discharge in a traditional Chapter 11 proceeding, making distinctions between individual debtors and corporate debtors. In contrast, § 1192 provides benefits to small business debtors, regardless of whether they are individuals or corporations." *Id.*

Under a traditional chapter 11 plan, certain creditor acceptances are needed before a plan can be confirmed by the bankruptcy courts, 11 U.S.C. § 1126(d), and creditors are afforded the chance to offer alternative plans to that of the debtor and object to the debtor's plan. Should any creditor under a traditional chapter 11 plan not object to the plan, then, under the absolute priority rule, the debtor would not retain their equity interests in the business unless the unsecured, objecting creditors were paid in full, 11 U.S.C. § 1129(b), or the owners provided "new value." *See Bank of Am. Nat'l Trust & Saving Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 434 (1999). However, under Subchapter V, the debtor need not consult the creditors or receive any votes of acceptance. Instead, so long as there is a feasible plan for all of the expected, disposable income of the debtor to be paid to creditors for three to five years, then the owners may retain their equity interest in the debtor over any objection of creditors. 11 U.S.C. § 1191(c)(2)(A) and (3). However, should any creditor's object to the debtor's plan, then section 1192 will govern instead of section

1141 to disincentivize non-consensual plans. When section 1192 comes into effect, it "provides specific rules for discharge, requiring a court to grant discharge of all debts after approval of the plan except . . . . (2) any debt 'of the kind specified in section 523(a).'" *In re Cleary Packaging, LLC*, 36 F.4th at 514 (citing 11 U.S.C. § 1192). These exceptions to discharge that specifically arise under a non-consensual "cramdown" plan are meant to act as the Subchapter V foil to the elimination of the absolute priority rule. 11 U.S.C. § 1192; *see In re Cleary Packaging, LLC*, 36 F.4th at 517.

However, when the plan is consensual between the debtor and the creditors, the traditional section 1141(d) provisions will apply. *See* 11 U.S.C. § 1181(a). Under this traditional section, 1141(d)(2) states that the discharge exceptions of 11 U.S.C. § 523(a) apply only to an individual debtor. Under this section of chapter 11, there are different discharge rules that pertain to the individual debtor versus that of the corporate entity. 11 U.S.C. § 1141. As such, the only exception to discharge for a corporate entity is that of section 1141(d)(6). This broad discharge of corporate debts is to incentivize a corporate debtor to create a consensual plan over that of a cramdown. Once a cramdown plan is proposed, however, section 1181(c)'s "Special Rule for Discharge" places the corporate debtor under the control of section 1192. 11 U.S.C. § 1181(c) ("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.").

B. <u>The text of section 1192 clearly applies to both the individual and corporate debtor</u>.

As a well-established principle of constitutional law, statutes are afforded their plain meaning unless the wording of the statute is ambiguous. *In re Satellite Restaurant Inc.*, 626 B.R. 871, 875–76 (Bankr. D. Md. 2021) ("[W]hen the statute's language is plain, the sole function of the courts . . . . is to enforce it according to its terms."). Furthermore, when a court is interpreting

a statute, every word in the statute should be given meaning "so that no word in a statute is rendered superfluous." *Id.* at 876.

i. The definition of "debtor" used in chapter 11 cases shows the intent of Congress to apply the section 523(a) exceptions to corporations.

In this case, section 1192 excepts from discharge both the individual and corporate debtor from those discharges listed in section 523(a). The plain text of section 1192 reads:

> If the plan of the *debtor* is confirmed under section 1191(b) of this title, . . . 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*--
> (2) *of the kind specified in section 523(a) of this title*. (emphasis added).

Though this statute is clear and unambiguous, courts disagree over both the application of the word "debtor" in relation to that of section 523(a)'s preamble and the meaning "debt of the kind." 11 U.S.C. § 1192. Part of this disagreement comes from the different treatment afforded to corporate and individual debtors in a traditional chapter 11 case. However, with the enactment of the SBRA adding section 1192 to the Bankruptcy Code, Congress departed from the traditional Chapter 11 structure in relation to small business debtors. Here, Congress used the singular word "debtor" to apply to all of section 1192. Under Subchapter V, "debtor" is defined as "a person engaged in commercial or business activities that has debt of not more than $7.5 million." 11 U.S.C. § 1182(1). Chapter 11 further defines the word "person" in the definition of "debtor" as both an individual and a corporation. 11 U.S.C. § 101(41). Therefore, since "[w]e assume that Congress is aware of existing law when it passes legislation," *Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990), it can be presumed that Congress was aware that the mention of the singular word "debtor" in chapter 11 would make section 1192 applicable to both the individual and corporate debtor.

This is further supported by the indicative language in other chapter 11 sections. For example, in 11 U.S.C. § 1141(d)(2), Congress addresses the individual debtor when discussing the section 523(a) exceptions in a traditional chapter 11 case. Similarly, in 11 U.S.C. § 1141(6), Congress references the corporate debtor only. Specifically, Congress used section 1141(d)(6) to state that a corporation cannot discharge a debt that arises under 523(a)(2)(A) or (2)(B). Since Congress has specified in other sections of the Code whether it is referring only to an individual or corporate debtor, it can be presumed that by not specifying between a corporate or individual debtor in the text of section 1192 that Congress meant to allow the inclusive definition of "debtor" to apply to cover both individuals and corporations. *Miles*, 498 U.S. at 32.

ii. The wording of section 1192, as the more specific provision, governs over the more broadly applicable section 523(a) preamble.

The other disagreement in the interpretation of section 1192 derives from the preamble of section 523(a) versus the wording of 1192 that "except[s] any debt . . . . of the kind specified in section 523(a)." 11 U.S.C. § 1192. Since the word "debt" is used instead of "debtors," the plain reading of this would be "that Congress intended to reference only the list of non-dischargeable debts found in § 523(a)." *In re Cleary Packaging, LLC*, 36 F.4th at 515. As the Fourth Circuit found in *Cleary Packaging*, Congress wrote the statute in this way as a shorthand to prevent the statute from stretching over many pages as it would if all twenty-one exceptions were listed. *Id.*

Other courts wrongly reject the Fourth Circuit's interpretation in *Cleary Packaging*. Those courts interpret the preamble of section 523(a) to make the reading of section 1192 inapplicable. 11 U.S.C. § 523(a). However, "§ 523(a) provides that § 1192, along with five other discharge sections of the Bankruptcy Code, 'does not discharge an individual debtor' . . . implying that corporations are not subject to the discharge exceptions." *In re Cleary Packaging, LLC*, 36 F.4th at 515 (citing 11 U.S.C. § 523(a)). The contrary reading of the statute, which derives from the

reasoning of two bankruptcy courts, is erroneous. *But see In re Satellite Restaurant Inc.*, 626 B.R. at 876 ("[T]he 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."); *In re Rtech Fabrication, LLC*, 635 B.R. 559 (Bankr. Idaho 2021) (adopting the reasoning found in *In re Satellite Restaurant Inc.* and the overturned *Cleary Packaging* bankruptcy court decision.).

First, the court in *In re Satellite Restaurant Inc.* relied solely on an interpretation of section 523(a) and ignored the established principle that the more specific statute should govern over that of the general when the two cannot be harmonized. *In re Cleary Packaging, LLC*, 36 F.4th at 515. Since section 1192 applies only to small business debtors versus section 523(a) which applies to all title 11 cases, section 1192 is the more specific provision and should be the controlling statute when deciding whether a corporation can be excepted from the list of discharges in 523(a). However, even if this was not the case, the conclusions reached in *In re Satellite Restaurant Inc.* and *In re Rtech Fabrication, LLC* are erroneous due to their incompatibility with section 1141(d)(6). Section 1141(d)(6) provides that "the confirmation of a plan does not discharge a debtor that is a corporation from any debt– . . . of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a)." 11 U.S.C. § 1141(d)(6)(A). Therefore, if *In re Satellite Restaurant Inc.* reasoning were to be applied, then section 1141(d)(6) would have to be held null and void despite the clear intent from Congress for the two 523(a) exceptions to apply to corporations.

C. <u>The structure of section 1192 matches that of section 1228(a) and should be interpreted similarly</u>.

Next, the application of the exceptions to discharge to corporations under section 1192 is further supported by the comparison of statutory language from chapter 12 of the Bankruptcy Code. Section 1228 of chapter 12, which was enacted before section 1192, states "except any

debt-- . . . . of a kind specified in section 523(a)." In *In re JRB Consol., Inc.*, the court found that "[t]he language of § 1228(a) is not inconsistent with § 523(a) as individual debtors are still subject to the § 523(a) exceptions. But, § 1228(a) is broader in that its language is inclusive of all debtors—individuals, partnerships, and corporations." 188 B.R. 373, 374 (Bankr. W.D.Tex. 1995). The *JRB Consol.* court further found that the attempt to use section 523(a)'s preamble to redefine the word "debtor" used in section 1228(a), which has a specific meaning within the confines of chapter 12 to include both individuals and corporations, would be too far of a stretch for the court to condone. *Id.* Next, the court reasoned that the meaning of the phrase "debts of a kind" cannot be read as "debtors of a kind" because to do so would be to completely change the reading of the statute. *Id.* Instead, the court found the specificity of using "debts of a kind" was meant to act as a shorthand by Congress to include all the listed exceptions to discharge found in section 523(a). *Id.* Finally, the court found "that the term 'of a kind' does not incorporate the limiting definition found in the introductory paragraph of § 523(a)." *Id.*

Likewise, the same should be found in regard to section 1192 since the language used is almost identical to that found in section 1228(a). *In re Cleary Packaging, LLC*, 36 F.4th at 516. Currently, there is no corollary language within chapter 11 to that used in section 1192. *Id.* Instead, Congress borrowed the language used in 1192 from chapter 12 which applies to farmers and fishermen and has no absolute priority rule. *Id.* However, since it is presumed that Congress is aware of the current state of the law when drafting statutes, *Miles*, 498 U.S. at 32, it can be presumed that Congress was aware of the two bankruptcy court decisions which found that the identical language found in section 1228(a) applied the 523(a) exceptions to discharge to corporations. *In re Cleary Packaging, LLC*, 36 F.4th at 516. "Thus, prior interpretations of § 1228(a) support[s] [this] interpretation of § 1192(2)'s virtually identical language." *Id.* (citing *Hall*

v. United States, 566 U.S. 506 (2012)) ("[I]dentical words and phrases within the same statute should normally be given the same meaning.").

Due to the text, structure, and history of Subchapter V, the section 523(a) exceptions to discharge should apply to corporate debtors under section 1192. The text of the statute uses the singular term "debtor" which is defined under chapter 11 to cover both individuals and corporations. Also, the phrase "debts . . . . of a kind" cannot be read as "debtors . . . . of a kind" because that would serve to change the intent of Congress. Instead, the plain meaning of the phrase is to incorporate the list of exceptions to discharge found in section 523(a) without having to list out every exception. Finally, section 1192 was based off of identical language found in section 1228(a). Since Congress is presumed to know of the current state of the law when forming statutes, it is presumed that Congress was aware of the identical language being interpreted by courts to cover both corporations and individual debtors.

CONCLUSION

This Court should reverse the decision of the Thirteenth Circuit Court of Appeals. The Thirteenth Circuit erred by affirming the bankruptcy court on both issues. First, the bankruptcy court erred by releasing Ms. Rigby's claim against Strawberry Fields because it did not have the authority to do so. Second, the bankruptcy court erred by holding that section 1192 does not apply to both corporate and individual debtors. Accordingly, the judgment below should be reversed.

APPENDIX A

11 U.S.C. § 101 reads, in pertinent part, as follows:

> (13) The term "debtor" means person or municipality concerning which a case under this title has been commenced. . . .
>
> (41) The term "person" includes individual, partnership, and corporation . . .

11 U.S.C. § 105(a) reads, in pertinent part, as follows:

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

11 U.S.C. § 523(a) reads, in pertinent part, as follows:

> A discharge under section 727, 1141, 11921 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

11 U.S.C. § 524(e) reads, in pertinent part, as follows:

> (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) reads, in pertinent part, as follows:

> (g)(1)(A) After notice and hearing, a court that enters an order confirming a plan of reorganization under chapter 11 may issue, in connection with such order, an injunction in accordance with this subsection to supplement the injunctive effect of a discharge under this section.

(B) 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;

11 U.S.C. § 1123(a)(5) reads, in pertinent part, as follows:

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

(5) provide adequate mans for the plan's implementation . . .

11 U.S.C. § 1123(b)(6) reads, in pertinent part, as follows:

(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. § 1129(a)(5)(B) reads, in pertinent part, as follows:

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

11 U.S.C. § 1141(d)(2) reads, in pertinent part, as follows:

(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 U.S.C. § 1141(6)(A) reads, in pertinent part, as follows:

> (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;

11 U.S.C. § 1181(c) reads, in pertinent part, as follows:

> 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.

11 U.S.C. § 1191(b) reads, in pertinent part, as follows:

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

11 U.S.C. § 1191(c)(2)(A) reads, in pertinent part, as follows:

> (c) 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 . . . .
>
> > (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

11 U.S.C. § 1191(c)(3) reads, in pertinent part, as follows:

(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;

11 U.S.C. § 1192 reads, in pertinent part, as follows:

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, ... except any debt. . . .

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

11 U.S.C. § 1228(a) reads, in pertinent part, as follows:

[T]he court shall grant the debtor a discharge of all debts provided for by the plan, allowed under section 503 of this title, or disallowed under section 502 of this title, except any debt

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