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 RESPONDENT

JANUARY 19, 2023

TEAM NUMBER 24
COUNSEL FOR RESPONDENT

QUESTIONS PRESENTED

I. Whether a bankruptcy court has the authority to approve nonconsensual releases of direct claims held by third parties against nondebtor affiliates as part a chapter 11 plan of reorganization when the Bankruptcy Code's statutory text authorizes such releases and this authority comports with the Constitution.

II. Under 11 U.S.C. § 1192, may a corporate debtor proceeding under subchapter V of chapter 11 of the Bankruptcy Code discharge debts of types specified in 11 U.S.C. § 523(a)(1)–(19) when the statute's plain language, context, and the Bankruptcy Code's overarching policy goals establish that the discharge exceptions apply only to individual debtors?

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The decision of the United States Court of Appeals for the Thirteenth Circuit is available at No. 21-0803 and reprinted at Record 3. The Bankruptcy Court for the District of Moot decided in favor of Penny Lane Industries, Inc., Respondent. On direct appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed in favor of Penny Lane Industries, Inc., Respondent.

STATEMENT OF JURISDICTION

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

STATEMENT OF THE CASE

This appeal arises from Petitioner's erroneous interpretation and fundamental misunderstanding of the Bankruptcy Code, which conclusively confers jurisdiction and authority to the bankruptcy courts to approve nonconsensual third-party releases and channeling injunctions contained in a chapter 11 plan of reorganization. Petitioner's appeal also provides this Court an opportunity to reinforce the longstanding Chapter 11 policies favoring broad corporate discharge and equal treatment amongst similarly situated creditors.

I. FACTUAL HISTORY

Penny Lane Industries, Inc. (the "Debtor") is a manufacturer of plastic, glass, and metal food containers based in the City of Blackbird, Moot, and is a wholly owned subsidiary of Strawberry Fields Foods, Inc. ("Strawberry Fields"), a cereal and convenience foods producer. R. at 4, 12. The Debtor serves as a major employer in the impoverished Blackbird community and operates amongst a slew of manufacturing facilities and closed factories along the Liverpool River. R. at 12, 6.

This subchapter V chapter 11 case traces back to 2017, when Petitioner Eleanor Rigby, a Blackbird resident, filed suit against the Debtor and Strawberry Fields, alleging that the Debtor's manufacturing facility disposed of pollutants on its property that leaked into the Liverpool River and contaminated Blackbird's groundwater supply, exposure to which led to her daughter's death. R. at 5. Petitioner further alleges that Strawberry Fields is liable because it was aware, or should have been aware, of the Debtor's alleged misconduct. R. at 5–6. While various studies concluded that Blackbird's water supply contained high levels of contamination, the Debtor disputes the allegations made against it. *Id.* The Debtor asserts that it complied with applicable environmental laws and regulations in the disposal of pollutants, denies any knowledge of groundwater contamination, and that the evidence is inconclusive to link the pollutants to the Debtor as there are numerous other manufacturing facilities along the Liverpool River. R. at 6. As it currently stands, no judicial determination has been made concerning any claim made against the Debtor or Strawberry Fields. R. at 6.

Following the commencement of Petitioner's action, residents of Blackbird and the surrounding communities filed several hundred lawsuits against the Debtor for its alleged misconduct, including approximately 10,000 disputed, unliquidated tort claims involving nearly $400 million in cumulative damages. R. at 6. Relevant to this appeal, Strawberry Fields, a non-debtor in this case, was named as co-defendant in many of the lawsuits. R. at 6.

Confronted with an insurmountable flood of litigation, the Debtor filed for subchapter V chapter 11 bankruptcy on January 11, 2021, in part, to facilitate a reorganization and substantial recovery to its various creditors. R. at 6. Petitioner subsequently filed a $1 million unsecured claim against the Debtor. R. at 6–7. Because the Debtor was forced to cramdown the Plan, Petitioner sought to have her claim deemed non-dischargeable pursuant to 11 U.S.C. §§ 523(a)(6) and 1192(2), and thus commenced an adversary proceeding shortly after the Debtor's petition. R. at 7. Petitioner contended that her claim against the Debtor is non-dischargeable because the amounts allegedly owed to her fall within the scope of section 523(a)(6). *Id.*

Following months of post-petition mediation in an effort to achieve a viable global settlement, the Debtor filed a nearly consensual Plan of Reorganization (the "Plan"), supported by over 95 percent of the participating creditors. R. at 3, 4, 8, 9. Importantly, the Plan established a creditor trust, funded by the Debtor's disposable income for a period of five years and $100 million paid by Strawberry Fields, resulting in creditors receiving a substantial distribution of 30-40 cents on the dollar. R. at 8. It is undisputed that the creditors would receive more under the Plan than if they pursued their claims directly against Strawberry Fields. R. at 11. In exchange for Strawberry Fields' significant contribution to the global settlement, the Plan necessarily releases Strawberry Fields from either estate claims or third-party direct claims related to or based on the Debtor's alleged misconduct. R. at 8. Instead, and required for the Plan's implementation, the creditors' allowable claims are channeled into the creditor trust. R. at 9.

Despite overwhelming support from over ninety-five percent of the creditors, both the Norwegian Wood Bank (the "Bank") and Ms. Rigby filed objections to the Plan. R. at 9. The Bank, owed approximately $3.5 million, is a separately classified, secured creditor holding a first priority security interest in the Debtor's manufacturing equipment. R. at 9. After bifurcating the Bank's claim pursuant to section 506(a)(1), the Debtor valued the Bank's collateral at $1.5 million and proposed treating the remaining balance as an unsecured claim, thus routing the balance through the creditor trust. R. at 9. The Bank, however, claimed that the collateral's value was understated and voted against the debtor's Plan, forcing the Debtor to invoke subchapter V's cramdown provision found in section 1191(b). R at. 9. The bank objected to the cramdown, arguing that the Plan was not "fair and equitable" pursuant to § 1191(b) and § 1129(b)(2)(A). *Id.* Additionally, Petitioner objected to the Plan, contending that chapter 11 plans of reorganization cannot include nonconsensual releases of third-party direct claims, and thus, she is entitled to pursue her claims directly against Strawberry Fields despite the Plan's confirmation. R. at 13.

II. PROCEDURAL HISTORY

Facing two issues in this case, the bankruptcy court first granted the Debtor's motion to dismiss the adversary proceeding regarding Petitioner's non-dischargeability action. R. at 7. The court held that the section 523(a) exceptions to discharge are inapplicable in cases involving a corporate debtor, including in subchapter V chapter 11 cases. R. at 7. Second, the court overruled

Petitioner's objection to the plan[1] and conclusively determined that nonconsensual releases of third-party direct claims are permissible, noting the swift and significant recovery by the creditors through Strawberry Fields' $100 million contribution. R. at 10. Accordingly, the bankruptcy court confirmed the Plan. R. at 11. On direct appeal, the Thirteenth Circuit affirmed both decisions of the bankruptcy court. R. at 23. This appeal followed.

SUMMARY OF THE ARGUMENT

Petitioner, in contravention of a clear Congressional grant of authority providing bankruptcy courts the flexibility necessary to handle complex chapter 11 cases, seeks to have this Court nullify a reorganization plan supported by an astounding ninety-five percent of unsecured creditors. In so doing, Petitioner would unravel an expertly negotiated plan, drastically diminish the amount of recovery for claimants, and further delay the possibility of any recovery by incentivizing claimants to race to the courthouse to fight against each other over limited funds. Additionally, Petitioner seeks to have her willful injury claims against the corporate debtor deemed non-dischargeable—a result at odds with the language of the Bankruptcy Code and decades of corporate bankruptcy jurisprudence. The Thirteenth Circuit, after careful examination of the statutory text, rejected both of Petitioner's arguments. This Court should affirm.

At issue in the Debtor's plan of reorganization are nonconsensual third-party releases of direct claims against the Debtor's corporate parent, Strawberry Fields, and a channeling injunction issued by the bankruptcy court to enforce the release. Petitioner does not challenge whether the release was necessary or appropriate under the circumstances, but rather takes issue with the bankruptcy court's authority to approve the releases at all.

Recognizing that there is no one-size-fits-all approach to chapter 11, Congress enacted a clear and consistent statutory scheme allowing bankruptcy courts and chapter 11 stakeholders to fashion flexible solutions to meet the needs of the case. The plain text of section 1123(b)(6) could not be more clear: plans can include any provision so long as they are appropriate under the circumstances and not otherwise inconsistent with provisions of chapter 11. Further, section 105 gives broad discretion to bankruptcy courts to issue orders, such as the injunctions at issue, so long as they are tied to specific provisions of the Code. Because it is a requirement under section 1123(a)(5) that all plans have adequate means for their implementation, an injunction enforcing an allowable provision of a plan is proper under this statutory scheme.

Petitioner further argues that the releases at issue are inconsistent with other provisions of the Code, namely sections 524(e) and 524(g). However, by the unambiguous statutory text, section 524(e) applies only to situations in which the nondebtor is co-liable on the same debt or claim as the debtor. Direct claims, brought solely against the nondebtor and which only the nondebtor can be liable on, are not contemplated by section 524(e). Additionally, that 524(g) allows channeling injunctions and releases of co-debtors in the asbestos context is of no practical import. Section 524(g) clearly indicates that it is an exception to 524(e), applying only when 524(e) itself would otherwise be invoked; that is, when a third-party is a co-debtor on the same claim or debt as the debtor. The legislative history and statutory context reinforce this interpretation.

That the Thirteenth Circuit came to the conclusion that third-party releases are allowable under the Code is no surprise. The vast majority of circuit courts to consider the issue have come to the same conclusion. Indeed, only three circuits prohibit third-party releases and all do so on a misapplication of section 524(e). Notably, one circuit that prohibited third-party releases entirely has recently softened its stance and has held that section 524(e) does not prohibit third-party exculpatory releases.

Likewise, the Constitution provides no impediment to bankruptcy court’s authority to approve and enforce third-party releases. Congress, through Article I of the Constitution, has the exclusive domain over the creation and implementation of bankruptcy laws. Congress specifically delineated plan confirmation proceedings, and the rights and obligations that flow from them, as a "core proceeding" in which a bankruptcy court may enter a final order. Even if the proceeding is "core" by statute, the proceeding and order must still be "constitutionally core." The Thirteenth Circuit correctly determined that it was.

In *Stern v. Marshall*, this Court reiterated that bankruptcy courts, in narrow circumstances, do not have the authority to adjudicate state-law claims. 564 U.S. 462 (2011). *Stern's* limited holding is not applicable to plan confirmation proceedings, as *Stern* expressly limited its holding to state-law counterclaims. Additionally, *Stern* concerns are misplaced as the bankruptcy court is not adjudicating or entering a final judgment on the merits of third-party claims, but rather channeling them to a trust for recovery that, as here, often leads to a maximum payout for victims. Lastly, should *Stern* apply, this Court's precedent makes clear that bankruptcy courts exercise "constitutionally core" authority when restructuring the creditor-debtor relationship.

The Thirteenth Circuit also properly rejected Petitioner's objection to her claims being non-dischargeable under section 523(a). After applying time-honored canons of interpretation, it is clear that the text of sections 1192(2) and 523(a) only except certain debts and claims from discharge for individual debtors, not corporate debtors. Should this Court decide to inquire further, this conclusion is further buttressed by the statutory context and legislative history. Congress clearly sought to favor small business debtors by making it easier, cheaper, and more efficient for them to reorganize their debts. Forcing small business debtors who have to reorganize through a cramdown to carry certain claims with them on the other side of a subchapter V proceeding will oftentimes lead to no reorganization at all, but rather fast track the small business to liquidation.

Such a devastating result for small businesses is clearly at odds with Congress's intentions in enacting subchapter V.

In addition to saddling subchapter V debtors with nondischargeable claims, a contrary reading of sections 523(a) and 1192(2) would lead to inequitable treatment of similarly situated creditors. Petitioner's willful injury claim against the Debtor is only at issue because of the sheer happenstance of the Bank objecting to the valuation of its secured claim. The equality of distribution principle that underpins the classification of creditors would be rendered null, and potentially incentivize creditors to collude to force a subchapter V cramdown solely to allow a large claim to survive the proceeding. This absurd result would render decades of bankruptcy jurisprudence and policy void, and requires much clearer language from Congress to do so.

Accordingly, this Court should affirm the Thirteenth Circuit on both issues.

ARGUMENT

I. THE THIRTEENTH CIRCUIT CORRECTLY AFFIRMED THE PLAN'S INCLUSION OF THIRD-PARTY RELEASES AS A BANKRUPTCY COURT HAS BOTH STATUTORY AND CONSTITUTIONAL AUTHORITY TO ENFORCE THE RELEASES AS PART OF A PLAN OF REORGANIZATION.

A. *A bankruptcy court has statutory authority to approve nonconsensual third-party releases.*

In affirming the bankruptcy court's decision, the Thirteenth Circuit correctly determined that bankruptcy courts are authorized by statute to approve nonconsensual third-party releases included as part of a plan of reorganization. The current bankruptcy code, enacted in 1978 after close to a decade of work by Congress, was a significant overhaul of the prior 1898 Bankruptcy Act. 1 Collier on Bankruptcy ¶ 20.02 (16th ed. 2022). Even after such lengthy deliberation, however, Congress sought to ensure that chapter 11 is imbued with "the policies of flexibility and equity." *N.L.R.B. v. Bildisco and Bildisco*, 465 U.S. 513, 525 (1984); H.R. Rep. No. 95-595, 406

("In reorganization cases, there is frequently great uncertainty. Therefore the need for flexibility is greatest.").

Perhaps nowhere else in chapter 11 are the policies of flexibility and equity more apparent than in the creation and implementation of reorganization plans. This flexibility is necessary because chapter 11 strikes a balance between the rehabilitation of a debtor and the goal of maximizing the estate for the benefit of creditors. *See Florida Dept. of Rev. v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 51 (2008). Indeed, this Court has acknowledged that Congress did not have any "single purpose in enacting Chapter 11." *Toibb v. Radloff*, 501 U.S. 157, 163 (1991). Rather, Congress enacted a clear and consistent statutory scheme in chapter 11 that grants bankruptcy courts the necessary flexibility in working with debtors, creditors, and other stakeholders to maximize the estate and rehabilitate debtors. Third-party releases approved by an overwhelming majority of creditors are consistent with that statutory scheme.

1. Sections 1123 and 105 provide residual statutory authority granting a bankruptcy court broad discretion in confirming the provisions of a chapter 11 plan.

The Thirteenth Circuit correctly held that section 1123, titled "Contents of plan," and section 105, titled "Power of court," grant statutory authority to a bankruptcy court to approve a plan containing third-party releases. In analyzing a set of bankruptcy provisions, so long as the provisions are "coherent and consistent, there generally is no need for a court to inquire beyond the plain language of the statute." *United States v. Ron Pair Enter., Inc.*, 489 U.S. 235, 241 (1989). Section 1123 is bifurcated into two relevant parts—subsection (a) which lists the requirements of the plan and subsection (b) which gives debtors the right to include a number of additional provisions. 11 U.S.C. § 1123. In order to grant chapter 11 participants flexibility, subsection (b)(6) provides that a "plan may include any other appropriate provisions not inconsistent with the applicable provisions of this title." *Id.* § 1123(b)(6). In addition, section 1123(a)(5) requires a plan, almost always proposed by the debtor, to "provide adequate means for the plan's implementation." *Id.* § 1123(a)(5). Lastly, section 105(a) grants the authority to bankruptcy courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." *Id.* § 105(a).

Taken together, these three provisions provide the statutory authority for a bankruptcy court to approve a plan of reorganization that contains nonconsensual third-party releases and issue an injunction channeling claims against those parties to a settlement trust. By the plain text, however, these sections do not provide an unfettered grant to bankruptcy courts to approve any provision or issue any order. Rather, Congress limited a bankruptcy court's statutory authority to approve provisions only if "appropriate" and "not inconsistent" with other provisions of the bankruptcy code. *Id.* § 1123(b)(6). Further, a bankruptcy court may only issue an order under section 105(a) that is "necessary or appropriate" to "carry out" a provision or provisions of this title. *Cf. In re Dairy Mart Convenience Stores*, 351 F.3d 86, 92 (2d Cir. 2002) (holding section 105(a) orders must be tied to a specific provision or provisions of the code). Such a grant of authority, with corresponding limitations, clearly shows a "coherent and consistent" statutory scheme enacted by Congress to provide bankruptcy courts the needed flexibility in chapter 11 reorganizations.

In fact, this Court's precedent has held that these sections are a bankruptcy courts' grant of "residual authority" to allow the inclusion of provisions that the "Bankruptcy Code does not explicitly authorize the bankruptcy court to approve [in] reorganization plans." *United States v. Energy Res. Co.*, 495 U.S. 545, 549 (1990). In *Energy Resources*, a debtor sought to apply tax payments under a reorganization plan to guaranteed tax debt (i.e., "trust fund" tax liabilities) prior to paying off the non-guaranteed tax debt. *Id.* at 547–48. The Government objected because paying the guaranteed debt diminished its chance of full recovery on all tax liabilities owed by the debtor, which are otherwise nondischargeable debts. *Id.* at 549. In overruling the Government's objection, this Court noted that bankruptcy courts "as courts of equity, have broad authority to modify creditor-debtor relationships" and the discretion to issue orders that carry out nonconsensual provisions of a plan, so long as such provisions and orders are consistent with the Bankruptcy Code or other law. *Id.* at 549–50. Finding no inconsistency with the Bankruptcy Code or other law, this Court affirmed the bankruptcy courts order and authority under sections 1123(b)(6) and 105(a) to direct tax payments to the guaranteed tax debt first. *Id.* at 551.

In holding that sections 1123(b)(6), 1123(a)(5), and 105(a) provided the authority for nonconsensual third-party releases, the Thirteenth Circuit joined a clear majority of circuits holding the same for over two decades. *See, e.g.*, *Airadigm Commc'ns, Inc. v. FCC (In re Airadigm Commc'ns, Inc.)*, 519 F.3d 640, 657 (7th Cir. 2008) (the "'residual authority' [of 1223(b)(6) and 105(a)] permits the bankruptcy court to release third parties from liability to participating creditors if the release is . . . not inconsistent with any provision of the bankruptcy code."); *Deutsche Bank AG v. Metromedia Fiber Network, Inc., et al. (In re Metromedia Fiber Network, Inc.)*, 416 F.3d 136, 141 (2d Cir. 2005); *In re Dow Corning Corp.*, 280 F.3d 648, 656 (6th Cir. 2002); *SE Property Holdings, LLC v. Seaside Eng'g & Surv., Inc. (In re Seaside Eng'g & Surv., Inc.)*, 780 F.3d 1070, 1076–78 (11th Cir. 2015).

Only the Fifth, Ninth, and Tenth Circuits prohibit third-party releases, and none have considered them in the mass tort context. *See Bank of N.Y. Trust Co. v. Off. Unsec. Cred. Comm. (In re. Pac. Lumber)*, 584 F.3d 229, 252 (5th Cir. 2009) (addressing releases in a reorganization with few creditors and noting that conflicting circuit opinions "all concerned global settlements of mass claims" and that "non-debtor releases are most appropriate as a method to channel mass claims toward a specific pool of assets"); *Resorts Int'l, Inc. v. Lowenschuss (In re Lowenschuss)*, 67 F.3d 1394, 1401–02 (9th Cir. 1995) (collecting Ninth Circuit cases addressing releases in real estate, securities, and manufacturing); *Landsing Diversified Prop.–II v. First Nat'l Bank of Tulsa (In re W. Real Est. Fund, Inc.*), 922 F.2d 592, 594 (10th Cir. 1990) (rejecting release of a single statutory lien against a nondebtor). These circuits reach this conclusion not by challenging the statutory authority stemming from sections 1123(b)(6) and 105(a), but by misreading and misapplying the plain text of section 524(e), which is addressed in the next section.

Against the plain text, the "consistent and coherent" statutory scheme, and the overwhelming majority of circuits in agreement, Petitioner and detractors of third-party releases make several statutory objections. First, that third-party releases are inconsistent with other provisions of title 11—namely section 524(e). R. at 24–25. For reasons addressed below, such a determination is against the plain text of 524(e). Next, detractors argue that section 1123(b)(6) does not create any substantive rights for a debtor. *See* R. at 26; *In re Purdue Pharma*, *L.P.*, 635 B.R. 26, 106 (S.D.N.Y. 2021). Lastly, because no substantive rights for a debtor are granted through section 1123(b)(6), detractors argue that bankruptcy courts are relying on section 105(a) and are thus "a roving commission to do equity." R. at 26 (quoting *In re Dairy Mart*, 351 F.3d at 92). Such arguments, after close inspection and application of this Court's precedent, fail.

As to whether section 1123(b)(6) creates any substantive right for the debtor, the statutory language and this Court's prior construction of the Bankruptcy Code are clear that it does. In *Law v. Siegel*, this Court held that the language "an individual debtor may exempt" property from the estate gave the debtor the substantive right to the exemption even if the debtor engaged in fraudulent behavior against the court. 571 U.S. 415, 424 (2014); *see also* 11 U.S.C. § 522(b)(1). Writing for the majority, Justice Scalia noted that "the subject of '*may exempt*' in § 522(b) is *the* *debtor*, not the court, so it is the debtor in whom the statute vests discretion." *Id.* (emphasis added). Justice Scalia concluded that a debtor need not exempt property, "but if he does, the court may not refuse to honor the exemption absent a valid statutory basis for doing so." *Id.*

The construction of section 1123(b)(6) could not be more similar to section 522(b)(1). It begins with "a plan *may include* any other appropriate provision . . . ." 11 U.S.C. § 1123(b)(6) (emphasis added). While the Code allows for multiple parties to propose a plan, it is the debtor that is most often the plan proponent. *Id.* § 1121(a). Thus, using the analysis of *Siegel*, the subject of 1123(b)(6) is the plan proponent, usually the debtor, and it grants the plan proponent the right to include a provision which the court "may not refuse to honor . . . absent a valid statutory basis for doing so." *Siegel*, 571 U.S. at 424. Section 1123(b)(6), of course, does provide a statutory basis for a court refusing the provision: if it is not "appropriate" or otherwise "not inconsistent with the applicable provisions" of title 11. However, for the reasons discussed, third-party releases are not inconsistent with other provisions of the Bankruptcy Code.

Because section 1123(b)(6) does provide a substantive right to the debtor to include provisions, the argument that, by approving plans containing third-party releases and issuing channeling injunctions, bankruptcy courts are abusing their section 105(a) authority also fails. It is well settled that the power section 105(a) gives to bankruptcy courts "is not boundless and should not be employed as a panacea for all ills confronted in the bankruptcy case." 2 Collier on Bankruptcy ¶ 105.01[2] (16th ed. 2022). Indeed, orders under section 105(a) cannot be used to "carry out" actions that the Code expressly prohibits. *Siegel*, 571 U.S. at 421. However, because the Code does not expressly prohibit nonconsensual third-party releases, and rather provides the authority for them to be included in a plan of reorganization, channeling injunctions to enforce the releases do not contravene the power of the court under section 105(a).

2. Sections 524(e) and 524(g) are neither inconsistent with, nor expressly preclude, a bankruptcy court from approving a plan containing nonconsensual third-party releases.

Detractors of nonconsensual third-party releases, including the dissenting opinion below, often point to sections 524(e) and 524(g) as the provisions that make approval of the releases either "inconsistent with" other sections of title 11 or expressly preclude a bankruptcy court from approving the releases absent the narrow circumstances allowed in section 524(g). However, such a reading of sections 524(e) and 524(g) defies the plain language of the respective code provisions and the statutory context for which the provisions were enacted. Perhaps recognizing this, recent opinions challenging the legality of third-party releases look to legislative history and committee reports to discern Congress's intent to only allow such releases in cases involving asbestos. *See In re Purdue Pharma*, 635 B.R. at 92–94. To the extent such legislative history should be considered at all, the history contradicts the plain meaning of sections 524(e) and (g). With the plain language of the sections unambiguous, a clear majority of circuits in agreement, and the legislative history at best unclear, this Court should find that sections 524(e) and 524(g) are not an impediment to a bankruptcy court's authority to approve nonconsensual third-party releases as part of a plan confirmation.

In analyzing a bankruptcy statute, all inquiries must begin with the language of the statute itself. *Ron Pair*, 489 U.S. at 241. When the statute's language is plain and unambiguous, "the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion." *Caminetti v. United States*, 242 U.S. 470, 485 (1917). Section 524(e) states the general rule 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) (emphasis added). The definitional provision of the Code defines "debt" as a "liability on a claim." 11 U.S.C. § 101(12). Reading these sections together, section 524(e) stands only for the unremarkable proposition that a debtor's discharge of liability on a claim brought against the debtor does not discharge a third party's liability if the third party could be liable *on the same "such" claim* as brought against the debtor. Common situations when this might arise are when the debtor is jointly and severally liable on the debt with another party, or another party serves as a guarantor or surety for the debt. *See Underhill v. Royal*, 769 F.2d 1426, 1432 (9th Cir. 1985); *In re Airadigm Commc'ns, Inc.*, 519 F.3d 640, 656 (7th Cir. 2009) ("a creditor can still seek to collect a debt from a *co-debtor* who did not participate in the reorganization").

In analyzing the text of section 524(e), the Thirteenth Circuit correctly determined that it acts as a savings clause that does not preclude releases against third parties who are not either co-debtors or liable on a claim that could be brought directly against the debtor. R. at 15. That section 524(e) operates this way is supported by a clear majority of circuits engaging in a textual analysis of the statute. *See, e.g.*, *In re Airadigm Commc'ns Inc.*, 519 F.3d at 656 ("Section 524(e) is a savings clause."); *In re Dow Corning Corp.*, 280 F.3d at 657 (Section 524(e) "explains the effect of a debtor's discharge. It does not prohibit the release of a non-debtor."). While the Fifth, Ninth, and Tenth Circuits rely almost exclusively on 524(e) to deny nondebtor releases, the Ninth Circuit recently softened its hardline approach in *Blixseth v. Credit Suisse*. 961 F.3d 1074, 1082 (9th Cir. 2020). In *Blixseth*, the Ninth Circuit approved nondebtor exculpatory releases noting that section "524(e) prevents a bankruptcy court from extinguishing claims of creditors against non-debtors over the *very debt discharged* through the bankruptcy proceedings." *Id.* The Ninth Circuit is correct in its recent interpretation of 524(e).

Here, the released claims are direct or particularized claims brought, or that could be brought, by claimants *solely* against Strawberry Fields. The direct claims are not the same claims that a discharge releases liability on for the Debtor, as the Debtor is not liable on the direct claims.

Thus, by its plain text, section 524(e) is not implicated by direct claims against a third party and, as such, is not inconsistent with a plan confirmation containing nonconsensual third-party releases and does not preclude a bankruptcy court from entering such an order.

Against the plain language, Petitioner, and the dissenting opinion in the Thirteenth Circuit, turn to statutory context or legislative history to buttress their argument. While section 524(e) states the general rule, section 524(g) provides an exception in situations when the debtor has liability on claims due to "the presence of, or exposure to, asbestos or asbestos-containing products." 11 U.S.C. § 524(g)(2)(B)(i)(I). This "asbestos exception," and prefatory language authorizing an injunction "[n]otwithstanding the provisions of section 524(e)," has been used to argue that Congress sought to create an exception to the general rule of section 524(e) only for asbestos cases. *Id.* § 524(g)(4)(A)(ii). This is undoubtedly the case, but only in situations where section 524(e) would otherwise apply; that is, when a third-party is co-liable on the same claim that could be brought against the debtor. Because section 524(e), by its plain text, does not apply to the direct claims at issue here, the statutory context of section 524(g), and what Congress did or did not intend with its inclusion is of little relevance.

Additionally, the language of the prior bankruptcy act shines light on interpreting section 524(e). This Court has repeatedly looked to prior constructions of the same statute in previous bankruptcy acts to help determine the meaning of a provision. *See Dewsnup v. Timm*, 502 U.S. 410, 418 (1992); *Ron Pair*, 489 U.S. at 246. In this case, section 524(e) is a restatement of section 16 of the 1898 Bankruptcy Act which stated that "[t]he liability of a person who is a co-debtor with, or guarantor or in any manner a surety for, a bankrupt shall not be altered by the discharge of such bankrupt." Act of July 1, 1898, ch. 541, § 16, 30 Stat. 550. Section 16 of the prior act, much like section 524(e), dealt only with liability of a co-debtor, guarantor, or surety, and not with a third-party that is liable on a separate claim.

Lastly, this Court has held time and time again that, when the language of a statute is clear, resorting to legislative history is unnecessary. *See, e.g., United States v. Gonzales*, 520 U.S. 1, 6 (1997); *Conn. Nat. Bank v. Germain*, 203 U.S. 249, 253–54 (1992) ("a legislature says in a statute what it means and means in a statute what it says there"). To the extent that any legislative history should be considered, the most relevant is found in the act that created section 524(g). Section 111(b) of the Bankruptcy Reform Act of 1994, titled "Rule of Construction," is clear that the addition of section 524(g) is not to "be construed to modify, impair, or supersede any other authority the court has to issue injunctions in connection with an order confirming a plan of reorganization." Bankruptcy Reform Act of 1994, Pub. L. No. 103–394, § 111(b), 108 Stat. 4117. Such a rule of construction is a clear Congressional directive: courts should not read into, or attempt to discern, what section 524(g)'s inclusion in the code meant. The meaning of sections 524(e) and 524(g) is to be discerned by looking at the plain text of the statute, and the plain text is not inconsistent with nonconsensual third-party releases.

B. *Bankruptcy courts have subject matter jurisdiction to confirm a plan containing non-consensual third-party injunctions.*

The Thirteenth Circuit correctly concluded that bankruptcy jurisdiction extends to plans containing involuntary releases of third-party claims against non-debtor affiliates. Through the Bankruptcy Clause of the Constitution, the Framers conferred onto Congress the power to "establish … uniform Laws on the subject of Bankruptcies throughout the United States." U.S. Const. art. I, § 8, cl. 4. Consequently, Congress established that district courts have original and exclusive jurisdiction over all cases and "civil proceedings arousing under title 11, or arising in or related to cases under title 11," 28 U.S.C. § 1334(a)-(b), with the ability to refer all cases or proceedings to bankruptcy judges. 28 U.S.C. § 157(a). Bankruptcy courts' authority to judicially resolve a proceeding pursuant to this jurisdiction, however, is contingent on whether the operative proceeding before the court is delegated as "core" or "non-core."

Section 157(b)(1) defines "core" proceedings as those that "aris[e] under title 11, or aris[e] in a case under title 11 …" and provides that bankruptcy judges "may hear and determine" those proceedings, as well as "enter appropriate orders and judgments." A "non-core" proceeding, conversely, is that which is "relate[d] to a case under title 11" and limits the bankruptcy court's authority to "submitt[ing] proposed findings of fact and conclusions of law to the district court …." *Id.* § 157(c)(1). Under section 157(b), Congress "identified as 'core' a nonexclusive list of 16 types of proceedings . . . in which it thought bankruptcy courts could constitutionally enter judgment." *Wellness Intern. Network, Ltd. v. Sharif*, 575 U.S. 665, 670 (2015). Included in that list, Congress conferred onto bankruptcy courts the authority to "hear and determine" and "enter appropriate orders and judgements" in proceedings involving "confirmation of plans." *Id.* § 157(b)(2)(L).

The bankruptcy courts' jurisdiction over confirming plans involving third-party injunctions, therefore, finds support in the express language of section 157. In *Stern v. Marshall*, this Court determined that a bankruptcy court had "core" jurisdiction over a debtor's state law counterclaim because section 157(b)(2) expressly conferred "core" jurisdiction over proceedings involving counterclaims by a debtor's estate. 564 U.S. at 475. Yet, contrary to this Court's express reading of section 157, Petitioner argues that the release of nonconsensual third-party claims in confirming a plan falls within the "related to" jurisdiction of bankruptcy courts. Expressly rejecting this argument, the D.C. Circuit in *In re AOV Industries, Inc.* concluded that the court acted pursuant to its "core" jurisdiction because it considered a third-party release *as part of* the reorganization plan. 792 F.2d 1140, 1145 (D.C. Cir. 1986). Thus, because "confirmation of a reorganization plan [is] clearly [a] proceeding[] at the core of bankruptcy law," the bankruptcy court properly exercised its "core" jurisdiction. *Id.*

Consistent with the overarching principles of the Bankruptcy Code, this Court has repeatedly made clear that "bankruptcy courts, as courts of equity, have broad authority to modify creditor-debtor relationships." *Energy Res. Co.*, 495 U.S. at 549; *see also Celotex Corp. v. Edwards*, 514 U.S. 300, 307–08 (1995) (concluding that bankruptcy courts have jurisdiction when third-party claims affect or preclude the debtor's reorganization). While section 157(b)(2)(L) provides that confirming plans of reorganizations statutorily qualifies as a "core" proceeding, *In re Kirwan Offices S.à.r.l* specifically addressed whether nonconsensual releases of third-party claims fell within that jurisdiction. 592 B.R. 489, 503 (S.D.N.Y. 2018). The district court concluded that because confirming a plan is a "statutorily-defined core proceeding" under section 157(b)(2)(L), "[a] bankruptcy court acts pursuant to its core jurisdiction when it considers the involuntary release of a claims against a third-party, non-debtor in connection with the confirmation of a proposed plan of reorganization …." *Id.* at 504. Accordingly, nonconsensual releases of third-party claims against non-debtor affiliates are properly within a bankruptcy court's "core" jurisdiction.

C. *Bankruptcy courts have constitutional authority to approve nonconsensual releases of direct claims held by third-parties against non-debtor affiliates.*

The Bankruptcy Court not only exercised its "core" statutory authority in confirming the Plan, but its order complied with constitutional strictures. Related to the requirement that bankruptcy courts have jurisdiction to approve nonconsensual third-party releases, bankruptcy courts must also proceed within the prescribed limitations set forth in Article III of the Constitution. *Stern*, 564 U.S. at 499; *see also In re Millennium Lab Holdings II, LLC*, 945 F.3d

126, 135 (3d Cir. 2019) ("even in cases in which a bankruptcy court exercises its 'core' statutory authority, it may be necessary to consider whether that exercise of authority comports with the Constitution"). That is, Article III proscribes that the proceeding must be "constitutionally core."

Article III provides in pertinent part that the "judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish," and instructs that judges of those courts shall enjoy life-long tenure "during good Behaviour" and "a Compensation[] which shall not be diminished." U.S. Const. art. III, § 1. While Article III courts undisputedly have the power to approve releases contained in a reorganization plan, Congress may not confer judicial power to non-Article III courts subject to limited exceptions. *Wellness Intern. Network, Ltd.*, 575 U.S. at 690 (Roberts, C.J., dissenting). This Court has repeatedly recognized one such exception: matters "integral" to proceedings involving "the restructuring of debtor-creditor relations, which [are] at the core of the federal bankruptcy power," fall within the adjudicatory power of a non-Article III court. *Northern Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 71 (1982) (plurality opinion).

In *Stern*, this Court addressed the "narrow" issue of whether bankruptcy courts, as non-Article III courts, could issue a final judgment on a debtor's state-law counterclaim that "exist[ed] without regard to any bankruptcy proceeding." 564 U.S. at 469, 499. In that case, the debtor's stepson filed an adversary proceeding in the chapter 11 case for defamation against the debtor-stepmother, who responded by filing a counterclaim for tortious interference. *Id.* at 470. While the Court concluded that the bankruptcy court possessed the statutory authority to enter a final judgment on the debtor's state-law counterclaim under section 157(b)(2)(C), this Court nevertheless determined that Article III precluded the judgment. *Id.* at 482. Relying on precedent, this Court articulated that bankruptcy courts have constitutional authority to resolve matters that are "integral to the restructuring of the debtor-creditor relationship." *Id.* at 497 (quoting *Langenkamp v. Culp*, 498 U.S. 42, 44 (1990) (per curiam)). Implementing a two-part "disjunctive test," this Court concluded that bankruptcy courts may constitutionally enter a final judgment on a debtor's state law counterclaim when "the action at issue stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process." *Id.* at 499. While this Court concluded that the bankruptcy court lacked constitutional authority to adjudicate the debtor's state law counterclaim, the Court made clear that "the question presented here is a 'narrow' one" and that its holding only applied in this "one isolated respect." *Id.* at 502, 503.

For the reasons set forth below, *Stern* is inapplicable and does not impede the bankruptcy courts' constitutional authority to confirm plans containing third-party injunctions. Alternatively, should *Stern* apply, bankruptcy courts nonetheless satisfy the Court's constitutional requirements in approving the Plan and injunctions.

1. *Stern*'s limitations are inapplicable to a bankruptcy court's constitutional authority to confirm plans containing third-party injunctions.

At the outset, Petitioner asks this Court to apply *Stern*'s limited holding. This extends *Stern* too far. In *Stern* itself, this Court repeatedly emphasized that its holding was a "narrow one." 564 U.S. at 502 ("We conclude today that Congress, in one isolated respect, exceeded that limitation in the Bankruptcy Act of 1984."). Further evidence of its exceptionally limited holding derives from the Court's express language, noting that "the removal of *counterclaims* such as [the debtor's] from core bankruptcy jurisdiction [does not] meaningfully change[] the division of labor" between bankruptcy and district courts and that its holding "does not change all that much…." *Id.* (emphasis added). Subsequent interpretations of *Stern* reinforce that it "should be limited to the unique circumstances of that case, and the ruling does not remove from the bankruptcy court its jurisdiction over matters directly related to the estate that can be finally decided in connection with restructuring debtor and creditor relations …." *In re Salander O'Reilly Galleries*, 453 B.R. 106, 115–16 (Bankr. S.D.N.Y. 2011).

Based on *Stern*'s express language alone, "*Stern* is inapplicable as confirmation of a plan is not 'a state law counterclaim that is not resolved in the process of ruling on a creditor's proof of claim.'" *In re Millennium Lab Holdings II, LLC*, 575 B.R. 252, 271 (Bankr. D. Del. 2017). Additionally, Petitioner argues that *Stern* should be interpreted to encompass any state law claim between any party involved in the proceeding. *Stern*, however, "did not address, either expressly or by implication, any context other than counterclaims; the Supreme Court certainly did not announce a broad holding addressing every facet of the bankruptcy process." *Id.* at 274. Thus, *Stern* does not impede bankruptcy courts from constitutionally confirming plans of reorganization that include third-party injunctions.

2. Bankruptcy courts do not implicate *Stern*'s constitutional limitations on its authority to approve third-party injunctions because the court does not enter a final judgment on a creditor's claim.

Stern is also inapplicable because it only precludes bankruptcy courts from entering a *final judgment* on a debtor's state-law counterclaim. Here, the confirmation of a chapter 11 reorganization plan lies outside the scope of *Stern*'s narrow holding. In determining whether confirming a plan constitutes a final judgment of claims held by third-parties against nondebtor entities, courts faced with this issue agree that while confirmation orders "may have an impact on claims outside the scope of the immediate proceedings," this Court's precedent does not "prohibit all bankruptcy court decisions that may have tangential effects" on the claims of third-parties. *In re AOV Industries, Inc.*, 792 F.2d at 1145; *see also In re Hart*, 564 Fed.App'x. 773, 777 (6th Cir. 2014) (explaining that a bankruptcy court properly exercised its constitutional authority to enter a final judgment even though it precluded a debtor from filing a claim in state court in part because "the bankruptcy court did not address [the debtor's claim] directly").

Petitioner argues that confirming a plan containing nonconsensual releases of third-party claims implicates her due process rights because the bankruptcy court asserted its adjudicatory power through extinguishing the claim without a hearing on the merits. *In re Aegean Marine Petroleum Network, Inc.*, 599 B.R. 717, 723–27 (Bankr. S.D.N.Y. 2019); *see also Patterson v. Mahwah Bergen Retail Group, Inc.*, 636 B.R. 641, 671 (E.D. Va. 2022). Yet, this argument misses the mark. Rather than adjudicating the claim on its merits, nonconsensual third-party releases "merely extinguish those claims *as part of a core bankruptcy process*, preempting an 'obstacle to the accomplishment and execution of [an] important federal objective,' i.e., the Bankruptcy Code." *In re Kirwan Offices S.à.r.l.*, 592 B.R. at 511 (emphasis added) (quoting *Geier v. American Honda Motor Co.*, 529 U.S. 861, 873 (2000)). In *In re Charles Street African Methodist Episcopal Church of Boston*, the bankruptcy court addressed a creditor's argument that the approval of the third-party releases in a chapter 11 plan of reorganization was akin to that of an adjudication. 499 B.R. 66, 99 (Bankr. D. Mass 2013). The court obstinately rejected the argument, reasoning that "the matter before the [c]ourt is the confirmation of a plan" and the "[c]onfirmation of a plan is not an adjudication of the various disputes it touches upon" because, in that case, "the merits of the Guaranty [were] not in controversy." *Id.* Similarly, the merits of Petitioner's claims are not at issue. Moreover, confirming a plan containing nonconsensual releases of third-party claims "simply cancels those claims so as to permit a total reorganization of the debtor's affairs in a manner available only in bankruptcy." *In re Kirwan Offices S.à.r.l.*, 592 B.R. at 504.

Moreover, in chapter 11 cases where the plan of reorganization directs third-party claims into a settlement trust, the claims "are not extinguished; they are simply channeled away … and redirected at the proceeds of the settlement." *MacArthur Co. v. Johns-Manville Corp.* (*Manville I*), 837 F.2d 89, 91 (2d. Cir. 1988); *see also In re A.H. Robins Co.*, 880 F.2d 694, 701 (4th Cir.

1989) (affirming "the bankruptcy court's equitable powers" to approve the release of nonconsensual third-party claims where those tort claims would be "channeled" into and satisfied by a $350 million settlement trust). Here, the Thirteenth Circuit properly concluded that the bankruptcy court did not adjudicate Petitioner's claim against Strawberry Fields. Instead, as in *Manville I* and *A.H. Robins Co.*, Petitioner's claim was simply channeled into the creditors' trust containing the settlement funds, thereby guaranteeing recovery in an amount greater than she would have received otherwise. Petitioner's due process rights are not implicated because she is not being deprived of her right to recover, rather, her manner of recovery is merely shifted. Accordingly, in approving plans containing similar provisions, bankruptcy courts do not run afoul of the Constitution when they do not exercise adjudicatory power, and instead, channel third-party claims into a settlement trust.

3. Under *Stern*, bankruptcy courts satisfy the Court's constitutional requirements in approving third-party injunctions contained in reorganization plans.

Alternatively, if the Court concludes that *Stern* applies, the bankruptcy court properly exercised its constitutional authority to issue a final order confirming a plan with third-party injunctions. Courts rely on *Stern*'s "integral to the restructuring of the debtor-creditor relationship" language in concluding that bankruptcy courts have the constitutional authority to approve third-party injunctions. *See In re Millennium Lab Holdings II, LLC*, 945 F.3d at 129; *In re Boy Scouts of America and Delaware BSA, LLC*, 642 B.R. 504, 588 (Bankr. D. Del. 2022); *In re Kirwan Offices S.à.r.l.*, 592 B.R. at 510. Moreover, because of this language, the majority of circuits conclude that Article III does not preclude bankruptcy courts from confirming plans containing those injunctions, albeit in limited circumstances. *See* Dorothy Coco, *Third-Party Bankruptcy Releases: An Analysis of Consent Through the Lenses of Due Process and Contract Law*, 88 Fordham L. Rev. 231, 240 (2019).

In *In re Millennium Lab Holdings II, LLC*, a laboratory testing company filed a chapter 11 petition, along with a restructuring support agreement, after concluding it lacked the liquidity to service its debt obligations and settlement payments to various governmental entities. 945 F.3d at 130. The restructuring support agreement was reached after "intensive negotiations" and provided in pertinent part that shareholders would contribute $325 million in exchange for full releases from "all claims arising from conduct that occurred before the [agreement]…." *Id.* at 131. In affirming the bankruptcy court's confirmation of the plan containing the releases, the Third Circuit concluded that the releases were "integral to the restructuring" of the debtor in part because the record provided that the releases were "necessary to the entire agreed resolution" and the stakeholders contribution "would not have been possible without the third-party releases." *Id.* at 140, 132. Similarly, the Second Circuit concluded that "[i]n bankruptcy cases, a court may enjoin a creditor from suing a third party, provided the injunction plays an important part in the debtor's reorganization plan." *In re Drexel Burnham Lambert Grp., Inc.*, 960 F.2d 285, 293 (2d Cir. 1992); *see also In re Kirwan Offices S.à.r.l.*, 592 B.R. at 511 ("the release of [the third-party's] claims was absolutely necessary to the operation of [the debtor's] reorganization plan").

Here, the Thirteenth Circuit correctly concluded that the third-party injunctions were paramount to the Plan's implementation. As in *In re Millennium Lab Holdings II, LLC*, the nearly consensual Plan was filed after months of extensive post-petition mediation. Absent the releases, Strawberry Fields undoubtedly would not have provided its significant $100 million contribution towards the global settlement. As a result, the class of unsecured creditors, including Petitioner, would spend significant time and financial resources litigating their claims, only to receive less than they would otherwise receive under the Plan. Thus, as the Thirteenth Circuit aptly identified, the Plan ensures the various third-party claimants receive compensation promptly and without competing for limited funds. Finally, the viable Plan keeps the Debtor from liquidation, thereby preserving substantial jobs in the Blackbird community.

Lastly, bankruptcy courts nonetheless satisfy *Stern*'s "disjunctive test" when approving releases containing third-party injunctions. *Stern* provides that bankruptcy courts may constitutionally exercise adjudicatory power when "*the action at issue* stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process." 564 U.S. at 499 (emphasis added). While Petitioner argues that her claim against Strawberry Fields does not "stem from the bankruptcy itself" or would not be resolved in determining a claim against the Debtor's estate, the "action at issue" is the confirmation of the Plan, which the bankruptcy court has "core" statutory authority to resolve. *See In re Lazy Days' RV Center Inc.*, 724 F.3d 418, 423 (3d Cir. 2013) (determining that the "*Stern* line of cases is plainly inapposite" because the bankruptcy court focused on the "federal bankruptcy law provision" and not the state common law claim). Accordingly, even if *Stern* is implicated, bankruptcy courts satisfy the Court's constitutional requirements in confirming plans containing nonconsensual third-party injunctions.

II. THE THIRTEENTH CIRCUIT CORRECTLY HELD THAT SECTION 523(A) EXCEPTIONS TO DISCHARGE ONLY APPLY TO INDIVIDUAL DEBTORS, NOT CORPORATE DEBTORS, PURSUANT TO 11 U.S.C. §1192.

In 2019, Congress passed the Small Business Recovery Act (SBRA) in order to "streamline the bankruptcy process by which small businesses debtors reorganize and rehabilitate their financial affairs." H.R. Rep. No. 116–171, at 1 (2019). The SBRA was enacted to aid small businesses such as "family-owned businesses, startups, and other entrepreneurial ventures." *Id.* at 2. Though these businesses form the backbone of the American economy, they are the most likely to fail and least likely to reorganize successfully after declaring bankruptcy. *Id.* The SBRA's sponsor, Representative Ben Cline, explained that the SBRA's purpose is to allow small businesses "to file bankruptcy in a timely, cost-effective manner, and hopefully allows them to remain in business'' which ''not only benefits the owners, but employees, suppliers, customers, and others who rely on that business.'' *Id*. at 4.

The SBRA created a new class of debtors under chapter 11, subchapter V, of the Bankruptcy Code by adding provisions specific to small businesses with noncontingent debts under $7,500,000. 11 U.S.C. § 1182(1)(A). Under subchapter V, a small business debtor still confirms its plan as any traditional Chapter 11 debtor would by complying with section 1129(a). *Id.* § 1191(a). If creditors consent to the plan, the debt is discharged under section 1141(d). If creditors do not consent to the plan, the small business debtor is forced to have its plan approved through the "cramdown" process under section 1191(b). When a subchapter V debtor invokes a cramdown, their discharge is governed by section 1192 which, in pertinent part, does not discharge "any debt . . . (2) of the kind specified in section 523(a) of this title." *Id.* § 1192. After passage of the SBRA, section 523(a) was amended to state that "[a] discharge under section . . . 1192 . . . of this title does not discharge an *individual debtor* from any debt–" and lists nineteen nondischargeable exceptions. *Id.* § 523(a) (emphasis added).

Petitioner contends that section 1192's cross reference to the nondischargeable debts in section 523(a) does not discharge her willful and malicious injury claims against the Debtor because it is listed as an exception to discharge in section 523(a)(6). The Thirteenth Circuit, however, correctly held that the section 523(a) exceptions apply only to subchapter V individual debtors, and not to subchapter V corporate debtors. A small business receiving a complete discharge under subchapter V is consistent with the plain meaning of sections 1192 and 523(a), their statutory and legislative context, and the policy behind the SBRA and the Bankruptcy Code. Therefore, this Court should affirm the Thirteenth Circuit's decision and hold that a corporate debtor proceeding under subchapter V may discharge debts without exceptions because section 523(a) exceptions only apply to individual debtors.

A. *The plain meanings of sections 1192 and 523(a) and statutory interpretation canons mandate that only individual debtors are subject to discharge exceptions.*

To resolve the interrelation of sections 523(a) and 1192, this Court must once again begin with "language of the statute itself." *Ron Pair*, 489 U.S. at 241. While there is generally "no need for a court to inquire beyond the plain language of the statute," *Id.*, interpretive canons are used to guide this Court when a set of statutes appear to conflict or are otherwise ambiguous. *See, e.g.*, *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (Scalia, J.) (using specific/general canon to resolve a "fair and equitable" plan dispute). Here, the plain language of section 523(a) clearly states that discharge exceptions apply only to subchapter V debtors who are individuals, and time honored statutory interpretation canons affirm that conclusion.

To begin with, a subchapter V debtor must be a "person" with noncontingent liquidated debts of less than $7,500,000. 11 U.S.C. § 1182(1)(A). The code defines "person" as an "individual, partnership, and corporation." *Id.* § 101(41). It is uncontested that the Debtor is a corporation within the meaning of the code, and is not an individual. As such, the prefatory language of section 523(a), which states that "a discharge under section . . . 1192 . . . does not discharge an *individual debtor*" from the debts listed in 523(a)(1)-(19), squarely provides that the Debtor is not subject to the discharge exceptions by its plain text.

Against this clear language, Petitioner instead asks this Court to focus on the "debt of any kind" language found in section 1192(2) instead. However, such a narrow focus conflicts with the canon against surplusage because applying section 523(a) discharges to corporate or partnership debtors would ignore its explicit language and render Congress's amendment of section 523(a) superfluous. The canon against surplusage directs a court to "give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed." *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883); *see also Hibbs v. Winn*, 542 U.S. 88, 101 (2004) ("A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant."); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 176 (2012) (an interpretation of conflicting statutes "that leaves both provisions with some independent operation" should be preferred).

In *Kawaauhau v. Ginger,* this Court, interpreting section 523(a), declined "'to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law.'" 523 U.S. 57, 61 (1998) (quoting *Mackey v. Lanier Collection Agency & Service, Inc*., 486 U.S. 825, 837 (1988)). This Court reasoned that exceptions to discharge should be narrowly construed such that they are consistent "with the 'well-known' guides that exceptions to discharge 'should be confined to those plainly expressed.'" Id. at 62 (quoting *Gleason v. Thaw*, 236 U.S. 558, 562 (1915)).

Here, applying section 523(a)'s exceptions to corporate debtors would render the word "individual" superfluous. If section 523(a)'s exceptions applied to individuals and entities, the SBRA's addition of section 1192 to section 523 would be unnecessary. Thus, incorporating the reference to section 1192 results in "the only reasonable meaning [being] that Congress intended to limit application of the § 523(a) exceptions in a Subchapter V case to individuals." *Gaske v. Satellite Restaurants, Inc. Crabcake Factory USA (In re*

Satellite Restaurants, Inc. Crabcake Factory USA), 626 B.R. 871, 876 (Bankr. D. Md. 2021). Further, giving credit to 523(a)'s "individual" language gives both provisions independent operation: section 1192(2) directs a court to grant a discharge, while section 523(a) limits the scope of that discharge in the case of an individual.

In support of its argument that section 1192(2)'s language "any debt of the kind" controls, Petitioner relies on *Cantwell-Cleary Co. v. Cleary Packaging, LLC (In re Cleary Packaging LLC)*. 36 F.4th 509 (4th Cir. 2022). In *Cleary*, the Fourth Circuit focused on the word "debt" in 1192, and held that the "any debt of the kind" referenced in section 1192 could never encompass the "kind of debtors," and thus completely render 523(a)'s reference to section 1192 useless. *Id.* at 515. However, a debt of a kind could naturally be read to include the type of debtor: small-business debt, consumer credit card debt, and Government debt are certainly all "debts of a kind." The Fourth Circuit, while asserting a textual argument, spent close to an entire page discussing how, and for what purposes, subchapter V is to serve, eventually concluding that the debtors argument "would not only undermine [the] balance [of subchapter V], but would also make no sense and indeed would create perverse incentives." *Id.* at 517. This Court has cautioned that "[t]he fact that Congress may not have foreseen all of the consequences of a statutory enactment is not a sufficient reason to give effect to its plain meaning." *Union Bank v. Wolas*, 502 U.S. 151, 158 (1991).

Lastly, the Fourth Circuit's reading is far too narrow, solely focusing on four words, and taking far too much of a blinkered approach to its statutory interpretation analysis. *See Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 9 (2000) (interpreting the code should be done with a "most natural reading"); *United Sav. Ass'n of*

Tex. v. Timbers of Inwood Forest Assoc., Ltd., 484 U.S. 365, 369–75 (1988) (analyzing five different code sections to interpret section 362). The Debtor's interpretation of section 523(a), giving effect to both section 523 and 1192, is the most natural reading. *See also Piccadilly Cafeterias, Inc*., 554 U.S. at 41 (declining to side with the interpretation that "places greater strain on the statutory text than the simpler construction").

While the question may be a close one, exceptions should be narrowly construed and "confined to those plainly expressed." *Kawaauhau*, 523 U.S. at 62; *see also In re Udelhoven*, 624 B.R. 629, 647 (Bankr. N.D. Ill. 2021) ("[e]xceptions to discharge are construed narrowly in favor of the debtor") (citing *In re Chambers*, 348 F.3d 650, 654 (7th Cir. 2003)). Even if this Court finds that the language is ambiguous, "Congress does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions – it does not, one might say, hide elephants in mouseholes." *Whitman v. American Trucking*, 532 U.S. 457, 468 (2001).

B. *Although sections 1192 and 523(a)'s plain meanings require discharging a corporate debtor's debts, the statutory and historical context also require the same.*

The court should affirm the Thirteenth Circuit's decision because the statutory and legislative context of section 1192 also indicate that Congress did not intend for 523(a) exceptions to apply to subchapter V debtors. "The meaning of statutory language, plain or not, depends on context." *King v. St. Vincent's Hosp.*, 502 U.S. 215, 221 (1991).

In analyzing statutory context, the *Cleary* court asserted that Congress's reference to "any debt of the kind" was merely a shorthand for including all of the exceptions listed in section 523(a)(1)-(19). *In re Cleary*, 36 F.4th at 515. Besides rendering the prefatory language of section 523(a) surplusage, the Fourth Circuit disregarded that Congress already knows how to reference exceptions in 523(a) when they want to be clear that they should apply to a debtor. When Congress decided that under traditional chapter 11 confirmations, a debtor should receive a discharge except for a few kinds of debt they specified *exactly* what provisions. 11 U.S.C. § 1141(d)(6)(A) ("of a kind *specified in paragraph (2)(A) or (2)(B)* of section 523(a)" (emphasis added)). Petitioner's contention that Congress intended SBRA to expand exceptions under section 523 from two to twenty-one "seems not only improbable but also contradicts years of bankruptcy law and policy." *Cantwell-Cleary Co. v. Cleary Packaging, LLC (In re Cleary Packaging LLC)*, 630 B.R. 466, 475 (Bankr. D. Md. 2021), rev'd 36 F.4th 509 (4th Cir. 2022). If Congress wanted to except a corporate subchapter V debtor from a discharge, they clearly would have used more specific language as they did in section 1141.

Petitioner and the *Cleary* court further contend that the treatment of chapter 12 discharge exceptions requires this Court to apply section 523(a) exceptions to corporate debtors. While two cases holding that Chapter 12 corporate debtors are subject to section 523(a) exceptions were decided prior to the enactment of subchapter V, this Court has held that Congressional intent cannot be gleaned from knowledge of prior judicial decisions. *See Ron Pair*, 489 U.S. at 246 (holding that judicial practice creating an exception was "certainly not the type of 'rule' that we assume Congress was aware of when enacting the Code; nor was it of such significance that Congress would have taken steps other than enacting statutory language to the contrary").

Further, even if Congress was aware of these cases, chapter 12's discharge provisions are inapplicable to the case at hand. The "lack of distinction within Chapter 12 of an individual debtor from a corporate debtor, combined with the narrow type of corporation that may be a debtor in Chapter 12, renders any analogy between the Chapter 12 discharge provisions under Section 1228 and the Chapter 11 discharge provisions . . . inappropriate." *In re Satellite Restaurants, Inc*, 626 B.R. at 877. Chapter 12 was originally enacted to reorganize family farmers and fisheries, unlike the much broader application of subchapter V to a variety of entities. Further, section 1141(d) discharge provisions, incorporated by subchapter V, distinguishes between individual and corporate discharges, unlike chapter 12 discharge. The bankruptcy court in *Cleary* correctly stated "[t]he lack of such distinction within Chapter 12 considered in conjunction with the narrowly circumscribed type of entity that may be a Chapter 12 debtor renders analogy between the two discharge provisions unpersuasive." 630 B.R. at 472, n. 9 (quoting *United States ex rel. Minge v. Hawker Beechcraft, Inc.* (*In re Hawker Beechraft, Inc.*), 515 B.R. 416, 430 (S.D.N.Y. 2014)).

Historically, chapter 11 favors broad corporate discharge. Prior to 1978, the 1898 Bankruptcy Act provided for comprehensive corporate discharge under Chapter X, but Chapter XI provided for exceptions to corporate discharge, creating "a substantial impediment to the ability of certain debtors to reorganize under that chapter." Ralph Brubaker, *Taking Exception to the New Corporate Discharge Exceptions*, 13 Am. Bankr. Inst. L. Rev. 757, 765 (2005). These discharge exceptions "supplied to any creditor who could assert colorable allegations of fraud, a credible threat to 'opt out' of the Chapter XI restructuring, in an attempt to receive a greater recovery than other creditors," causing reorganization plans to be "manifestly thwarted by a few dissident creditors initiating eleventh-hour non-dischargeability actions." *Id*. at 764–65.

When Congress drafted the 1978 Bankruptcy Code, "the differing scope of the corporate discharge as between chapters X and XI received careful scrutiny." *Id.* at 765 (citing 124 Cong. Rec. 34,003 (1978) (statement of Sen. DeConcini); 124 Cong. Rec. 32,404 (1978) (statement of Rep. Edwards)). As a result, the 1978 revision enacted a more comprehensive corporate discharge because "any corporate discharge exception 'would leave an undesirable uncertainty surrounding reorganizations that is unacceptable.'" *Id*. at 766 (citing 124 Cong. Rec. 34,003 (1978) (statement of Sen. DeConcini); 124 Cong. Rec. 32,404 (1978) (statement of Rep. Edwards)).

C. *Declining to extend 523(a) exceptions to subchapter V corporate debtors reinforces the underlying goals of the SBRA and the Bankruptcy Code.*

Congress enacted subchapter V to expand accessibility to the bankruptcy process and relief for companies that would not have the financial resources to do so. Allowing small businesses "to file bankruptcy in a timely, cost-effective manner . . . hopefully allows them to remain in business,'' which benefits business owners, employees, customers, and communities. H.R. Rep. No. 116–71, at 1 (2019).

Thus, the purpose of subchapter V was not to change the priority system of creditors, but expand accessibility. However, the *Cleary* decision attempts to undermine the specific purpose of subchapter V, as "the existence of a nondischargeable debt in a reorganization case is in most circumstances adverse to the interests of unsecured creditors generally." Hon. Paul W. Bonapfel, *Guide to the Small Business Reorganization Act of 2019*, 234 (2020) (updated 2022), https://www.ganb.uscourts.gov/sites/default/files/sbra_guide_pwb.pdf. As a result, applying section 523(a) exceptions to corporate debtors would create competition for recovery between unsecured creditors with dischargeable and nondischargeable debts.

Moreover, *Cleary*'s reasoning and holding ultimately frustrates the broader purpose of the Bankruptcy Code. *Kothe v. R.C. Taylor Trust*, 280 U.S. 224, 227 (1930) ("The broad purpose of the Bankruptcy Act is to bring about an equitable distribution of the bankrupt's estate...."); *Nathanson v N.R.L.B.*, 344 U.S. 25, 29 (1952) ("The theme of the Bankruptcy Act is 'equality of distribution' ...; and if one claimant is to be preferred over others, the purpose should be clear from the statute") (quoting *Sampsell v. Imperial Paper & Color Corp*., 313 U.S. 215, 219 (1941)).

While section 523(a) does not technically change a priority rule, the practical effect on corporate subchapter V creditors is significant, as the "existence of nondischargeable debt increases the probability of liquidation. When a feasible plan is otherwise possible, liquidation generally results in a lower recovery for unsecured creditors than payments under a plan." Bonapfel, *supra* at 234. When a statute's provision alters priorities and creditor preferences, the Court is "guided in reaching [its] decision by the equal distribution objective underlying the Bankruptcy Code, and the corollary principle that provisions allowing preferences must be tightly construed." *Howard Delivery Serv., Inc. v. Zurich Am. Ins. Co.*, 547 U.S. 651, 667 (2006). Further, "preferential treatment of a class of creditors is in order only when clearly authorized by Congress." *Id*. Thus, Cleary's justification that applying section 523(a) exceptions to entity subchapter V debtors creates an "additional layer of fairness and equity" is a far cry from fair and equitable when considering the practical effects of its interpretation. 36 F.4th at 517.

Lastly, *Cleary* concludes "to make a distinction between individuals and corporations for how Subchapter V is applied would not only undermine that balance, but would also make no sense and indeed would create perverse incentives." 36 F.4th at 517. In reality, expanding section 523(a) discharge exceptions to corporate debtors creates its own perverse incentives, opening the floodgate for litigation, meritless claims, and prolonged bankruptcy proceedings. Allowing unsecured creditors to pursue nondischargeable debt ultimately defeats the purpose of subchapter V, as small businesses are forced to defend themselves in resource intensive litigation or attempt to reorganize with large nondischargeable debts. Surely Congress would not allow exceptions to the rule to render the rule completely ineffective.

In this case, over ninety-five percent of creditors overwhelmingly supported Debtor's Plan. Because of the Bank's objection, Petitioner fortuitously found herself with the ability to contest the Plan, continue litigation, and request her debt be deemed nondischargeable. If her debt is nondischargeable, she will unfairly receive a higher distribution than other tort claimants and similarly situated creditors, contravening the underlying goals of the SBRA and Bankruptcy Code.

CONCLUSION

The touchstone of chapter 11 is maximizing value for creditors while facilitating the rehabilitation of businesses. Affirming the Thirteenth Circuit's decision achieves both of these objectives by promoting equitable distribution among creditors and broad corporate discharge. For the foregoing reasons, Debtor respectfully requests that this Court AFFIRM.

APPENDIX

11 U.S.C. § 101. Definitions.

In this title the following definitions shall apply:

(12) The term "debt" means liability on a claim.

(12A) The term "debt relief agency" means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110, but does not include—

(A) any person who is an officer, director, employee, or agent of a person who provides such assistance or of the bankruptcy petition preparer;

(B) a nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

(C) a creditor of such assisted person, to the extent that the creditor is assisting such assisted person to restructure any debt owed by such assisted person to the creditor;

(D) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any Federal credit union or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act), or any affiliate or subsidiary of such depository institution or credit union; or

(E) an author, publisher, distributor, or seller of works subject to copyright protection under title 17, when acting in such capacity.

(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;

11 U.S.C. § 105. Power of Court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 U.S.C. § 523(a). 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) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(19) that—

(A) is for—

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

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

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

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

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

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

11 U.S.C. § 524. Effect of discharge.

(a) A discharge in a case under this title—

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

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

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

(b) Subsection (a)(3) of this section does not apply if—

(1)(A) the debtor's spouse is a debtor in a case under this title, or a bankrupt or a debtor in a case under the Bankruptcy Act, commenced within six years of the date of the filing of the petition in the case concerning the debtor; and

(B) the court does not grant the debtor's spouse a discharge in such case concerning the debtor's spouse; or

(2)(A) the court would not grant the debtor's spouse a discharge in a case under chapter 7 of this title concerning such spouse commenced on the date of the filing of the petition in the case concerning the debtor; and

(B) a determination that the court would not so grant such discharge is made by the bankruptcy court within the time and in the manner provided for a determination under section 727 of this title of whether a debtor is granted a discharge.

(c) An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, only if—

(1) such agreement was made before the granting of the discharge under section 727, 1141, 1192, 1228, or 1328 of this title;

(2) the debtor received the disclosures described in subsection (k) at or before the time at which the debtor signed the agreement;

(3) such agreement has been filed with the court and, if applicable, accompanied by a declaration or an affidavit of the attorney that represented the debtor during the course of negotiating an agreement under this subsection, which states that—

(A) such agreement represents a fully informed and voluntary agreement by the debtor;

(B) such agreement does not impose an undue hardship on the debtor or a dependent of the debtor; and

(C) the attorney fully advised the debtor of the legal effect and consequences of—

(i) an agreement of the kind specified in this subsection; and

(ii) any default under such an agreement;

(4) the debtor has not rescinded such agreement at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim;

(5) the provisions of subsection (d) of this section have been complied with; and

(6)(A) in a case concerning an individual who was not represented by an attorney during the course of negotiating an agreement under this subsection, the court approves such agreement as—

(i) not imposing an undue hardship on the debtor or a dependent of the debtor; and
(ii) in the best interest of the debtor.
(B) Subparagraph (A) shall not apply to the extent that such debt is a consumer debt secured by real property.

(d) In a case concerning an individual, when the court has determined whether to grant or not to grant a discharge under section 727, 1141, 1192, 1228, or 1328 of this title, the court may hold a hearing at which the debtor shall appear in person. At any such hearing, the court shall inform the debtor that a discharge has been granted or the reason why a discharge has not been granted. If a discharge has been granted and if the debtor desires to make an agreement of the kind specified in subsection (c) of this section and was not represented by an attorney during the course of negotiating such agreement, then the court shall hold a hearing at which the debtor shall appear in person and at such hearing the court shall—

(1) inform the debtor—
(A) that such an agreement is not required under this title, under nonbankruptcy law, or under any agreement not made in accordance with the provisions of subsection (c) of this section; and
(B) of the legal effect and consequences of—
(i) an agreement of the kind specified in subsection (c) of this section; and
(ii) a default under such an agreement; and
(2) determine whether the agreement that the debtor desires to make complies with the requirements of subsection (c)(6) of this section, if the consideration for such agreement is based in whole or in part on a consumer debt that is not secured by real property of the debtor.

(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.

(f) Nothing contained in subsection (c) or (d) of this section prevents a debtor from voluntarily repaying any debt.

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

11 U.S.C. § 1123. Contents of plan.

(a) Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall—
(1) designate, subject to section 1122 of this title, classes of claims, other than claims of a kind specified in section 507(a)(2), 507(a)(3), or 507(a)(8) of this title, and classes of interests;
(2) specify any class of claims or interests that is not impaired under the plan;
(3) specify the treatment of any class of claims or interests that is impaired under the plan;
(4) provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest;
(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;
(6) provide for the inclusion in the charter of the debtor, if the debtor is a corporation, or of any corporation referred to in paragraph (5)(B) or (5)(C) of this subsection, of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends;
(7) contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee; and
(8) in a case in which the debtor is an individual, provide for the payment to creditors under the plan of all or such portion of earnings from personal services performed by the debtor after the commencement of the case or other future income of the debtor as is necessary for the execution of the plan.
(b) Subject to subsection (a) of this section, a plan may—
(1) impair or leave unimpaired any class of claims, secured or unsecured, or of interests;
(2) subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;
(3) provide for—
(A) the settlement or adjustment of any claim or interest belonging to the debtor or to the estate; or
(B) the retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose, of any such claim or interest;
(4) provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests;
(5) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims; and
(6) include any other appropriate provision not inconsistent with the applicable provisions of this title.
(c) In a case concerning an individual, a plan proposed by an entity other than the debtor may not provide for the use, sale, or lease of property exempted under section 522 of this title, unless the debtor consents to such use, sale, or lease.
(d) Notwithstanding subsection (a) of this section and sections 506(b), 1129(a)(7), and 1129(b) of this title, if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

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.