No. 22-0909

IN THE

Supreme Court of the United States

IN RE PENNY LANE INDUSTRIES, INC., DEBTOR,

ELEANOR RIGBY,
Petitioner,

v.

PENNY LANE INDUSTRIES, INC.,
Respondent.

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

BRIEF IN SUPPORT OF RESPONDENT

TEAM 26
Counsel for Respondent

Questions Presented

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

II. Whether a corporate debtor proceeding under subchapter V of chapter 11 of the Bankruptcy Code may, pursuant to 11 U.S.C. § 1192, discharge debts of types specified in subparagraphs (1) through (19) of 11 U.S.C. § 523(a).

Parties to the Proceeding

The parties to the present proceeding are Penny Lane Industries, Inc., the Debtor and Respondent, and Eleanor Rigby, the Petitioner.

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The opinion from the United States Court of Appeals for the Thirteenth Circuit is unreported and can be found under Case No. 21-0803.

Statement of the Basis for Jurisdiction

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

Statement of the Case

I. Statement of the Facts and Procedural History

Penny Lane Industries, Inc. ("Respondent") is a manufacturer of plastic, glass and metal food containers based in the City of Blackbird, Moot. R. at 4. Respondent is a wholly owned subsidiary corporation of Strawberry Fields Foods, Inc. ("Strawberry Fields"), a producer of cereal and convenience foods that markets its products under several well-known brands sold in supermarkets throughout the United States. *Id.* at 4–5.

A group of creditors, consisting primarily of Blackbird residents, allege that Respondent knowingly disposed of environmental pollutants at its manufacturing plant in Blackbird resulting in contamination of the groundwater supply. *Id.* at 3. Though the source of such contamination has not been determined, Federal and State agencies have concluded that a groundwater plume does exist beneath Blackbird. *Id.* at 5. Studies conducted by the United States Environmental Protection Agency and the Centers for Disease Control and Prevention indicated that tens of thousands of Blackbird residents drank and bathed in the contaminated water between 2013 and 2017. *Id.* Such exposure has been linked to sickness, birth defects, and death. *Id.*

Once such creditor is Eleanor Rigby ("Petitioner"), a resident of Blackbird since 1982. *Id.* In 2017, Petitioner filed suit against Respondent alleging that her four-year old daughter's leukemia, and tragic death, were caused by exposure to pollutants allegedly dumped by Respondent in the Liverpool River that runs along Petitioner's property. *Id.* Petitioner further alleged that Maxwell S. Hammer, now deceased and the former Chief Executive Officer of Respondent, was aware of Respondent's improper pollutant dumping and the associated risks to Blackbird's groundwater and residents. *Id.* Lastly, Petitioner alleged that Strawberry Fields is also liable for the alleged disposal as the parent company of Respondent. *Id.* at 6.

Soon after Petitioner's complaint was filed, hundreds of lawsuits asserting similar damages were filed against Respondent, as well as many against Strawberry Fields as co-defendant, by residents of Blackbird and the surrounding communities. *Id.* at 6. Respondent and Strawberry Fields dispute any allegations of knowing and improper pollution and assert that any waste disposal was done in accordance with applicable environmental law and regulations. *Id.* They deny having any knowledge that such waste allegedly infiltrated the groundwater supply and assert that there is insufficient evidence to link Respondent to the pollutants as there are dozens of other manufacturing plants located upstream along the Liverpool River. *Id.* No judicial determination has yet been made regarding the claims asserted against Respondent or Strawberry Fields in any forum. *Id.*

Respondent filed the present case under subchapter V chapter 11 of the Bankruptcy Code[1] (the "Code") on January 11, 2021; Strawberry Fields has not itself filed a petition for relief under the Code. *Id.* Respondent owes less than $2 million to its trade creditors. *Id.* The nearly 10,000 claims in this case are disputed, unliquidated tort claims related to the alleged dumping of pollutants and assert cumulative damages of nearly $400 million. *Id.* Petitioner filed an unsecured claim against Respondent in the amount of $1 million and, pending the filing of any objection, is deemed allowed under section 502. *Id.* at 6-7.

Soon after the petition date, Petitioner commenced an adversary proceeding against Respondent seeking to have her $1 million claim deemed non-dischargeable pursuant to sections 523(a) and 1192(2). *Id.* at 7. Petitioner alleged that the $1 million sought was non-dischargeable as "willful and malicious injury" by the Respondent to another entity or to the property of another entity. *Id.* Respondent filed a motion to dismiss Petitioner's complaint for failure to state

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

a claim under Rule 12(b)(6) and argued that the non-dischargeability provisions of section 523(a) do not apply to business entities. *Id.* The bankruptcy court agreed, granting Respondent's motion to dismiss the adversary proceeding and holding that the section 523(a) exceptions do not apply to debtors that are corporations. *Id.* Petitioner filed a notice of appeal. *Id.*

Upon commencement, this bankruptcy case was automatically stayed pursuant to section 362(a), though pending litigation against Strawberry Fields and other non-debtors was not. *Id.* Accordingly, Respondent obtained a temporary injunction halting all actions against Strawberry Fields and any of its current and former owners, officers, directors, employees, and associated entities. *Id.* at 7-8. The bankruptcy court reasoned that such an injunction was appropriate to permit settlement negotiations between parties and extended the injunction several times. *Id.* at 8. After two months of mediation, several stakeholders, not including Petitioner, negotiated the Plan of Reorganization (the "Plan"). *Id.* Petitioner participated in the mediation process. *Id.* at n.7.

The Plan created a creditor trust to be funded with five years of Respondent's net income and $100 million paid by Strawberry Fields. *Id.* Under the Plan, creditors with allowed claims would expect distributions between thirty and forty cents on the dollar. *Id.* In exchange for funding the creditor trust, Strawberry fields demanded a broad release from all claims, including estate claims and third-party direct claims. *Id.* Notably, the Plan expressly released and discharged "any and all claims" that third parties "have asserted or might assert in the future against Strawberry Fields" to the extent that such claims are "based on or related to the Debtor's pre-petition conduct, its estate or this chapter 11 case." *Id.* Such release is nonconsensual, precluding all parties, regardless of their participation in this bankruptcy case or if they voted in favor of the Plan, from bringing claims against Strawberry Fields related to Respondent's pre-petition conduct. *Id.* at 8-9.

Over 95 percent of creditors voted in favor of confirmation of the Plan. *Id.* at 9. Petitioner, however, objected to the Plan, asserting that the nonconsensual releases of third-party direct claims against Strawberry Fields are not permissible under applicable bankruptcy and non-bankruptcy law. *Id.* Norwegian Wood Bank (the "Bank"), a secured creditor that was separately classified from other creditors under the Plan, also objected. *Id.* The Bank holds a first priority security interest on the Debtor's manufacturing equipment for approximately $3.5 million owed to it by Respondent. *Id.* Respondent valued the Bank's equipment at $1.5 million and proposed to grant the Bank an allowed secured claim in that amount to be secured post-confirmation of the Plan by a continuing lien and paid in full over a five year period. *Id.* The remaining $2 million of the Bank's claim would be paid at the thirty to forty cents on the dollar mark as an unsecured claim from the creditor trust. *Id.* The Bank objected and asserted that the value of its collateral was understated and, thus, the Plan was not "fair and equitable" as required by sections 1191(b) and 1129(b)(2)(A). *Id.*

The bankruptcy court confirmed the Plan after a four-day hearing, acknowledging Petitioner's objection that nonconsensual releases of third-party direct claim are permitted only in extraordinary circumstances and finding that this case qualifies as such. *Id.* at 10. The bankruptcy court reasoned that the highly unusual and complex nature of the case, the significant monetary contribution pledged by Strawberry Fields, that resulted in distributions to creditors greater than what they would receive under a chapter 7 liquidation, and the overwhelming creditor support for the Plan permitted confirmation. *Id.*

The bankruptcy court also made detailed findings as to the probability of success and collectability of any judgment that would be obtained against Strawberry Fields, noting that the $100 million contribution was substantially greater than any other likely recovery. *Id.* The bankruptcy court further held that the Plan was fair and reasonable because "there existed no other reasonably conceivable means to achieve the [same] result." *Id.* Similarly, the bankruptcy court concluded that the immediate benefits to creditors far outweighed the complex and prolonged litigation that would result from a failure to confirm the Plan. *Id.* The bankruptcy court also overruled the Bank's claims, finding that Respondent's treatments of the Bank's secured claim complied with sections 1129(b)(2)(A) and 1191. *Id.* The Bank did not appeal this decision and, thus, is not at issue in the current case. *Id.*

Having overruled both objections, the bankruptcy court confirmed the Plan, though noting that the success of the Plan could never adequately compensate the pain and suffering associated with the injuries sustained allegedly caused by the conduct of Respondent and Strawberry Fields. *Id.* at 11. Petitioner appealed both of the bankruptcy court's rulings to the United States Court of Appeals for the Thirteenth Circuit. *Id.* In its March 7, 2022, opinion, the court of appeals affirmed the bankruptcy court's decisions on both issues. *Id.* at 4.

Summary of the Argument

This court should affirm the lower court's decision that bankruptcy courts have the authority to approve nonconsensual releases of direct claims held by third parties against non-debtor affiliates as part of Chapter 11 plans of reorganization because the Bankruptcy Code contains several provisions that grant authority to bankruptcy courts to approve nonconsensual releases of third-party claims against non-debtor affiliates. The Plan should be confirmed because the release provisions were approved following the bankruptcy court's detailed factual findings in support of the Plan's necessity and equitability. The statutory language of the Code grants Bankruptcy court's the authority to approve settlements like the Plan here. The facts of this case constitute unique circumstances in which Bankruptcy courts have approved nonconsensual third-party releases throughout existing case law. The third-party release provisions were included only after conducting intense negotiations and months of stayed proceedings. These facts support a finding, supported by case law, that in unique circumstances such as the one at bar the release provisions are permitted. The release provisions will yield an equitable result, both fair to the creditors and vital to the success of the reorganization. This supports the ultimate necessity of the Bankruptcy courts and the purpose of a reorganization plan and this Court should uphold the finding of the lower court.

Corporate debtors proceeding under subchapter V of chapter 11 of the Code may, pursuant to section 1192, discharge debts specified in section 523(a) due to the plain language of section 523(a). The plain language of §523(a) does not apply to the respondent because the preamble of section 523(a) restricts its exceptions to "individual" debtors. The respondent is a corporation, not an individual. When a statute's language is plain, the sole function of the Court is to enforce it according to its textual meaning. It has been well settled that section 523(a) does not apply to corporate debtors in standard chapter 11 cases. Accordingly, section 523(a) must also not apply to corporate debtors in subchapter V cases.

This Court has historically used legislative history to assist in statutory interpretation. There is an absence of any legislative history that supports the petitioner's argument. Congress neither mentioned nor debated whether section 523(a) would be expanded to apply to corporate debtors in subchapter V. Such an expansion would greatly alter chapter 11 law, and it would undoubtedly be mentioned in congressional hearings. Additionally, expanding chapter 11 law in such a way would frustrate fundamental principles of the Code. The Code has long sought for equal distribution amongst similarly situated creditors. Allowing for exceptions to discharge for corporate debtors in subchapter V would lead to unequal distributions, and disincentivize corporations from entering chapter 11 bankruptcy.

Argument

I. THIRD-PARTY RELEASES MAY BE PERMITTED UNDER A CHAPTER 11 REORGANIZATION PLAN BECAUSE THE BANKRUPTCY CODE PROVIDES STATUTORY SUPPORT FOR BROAD BANKRUPTCY COURT AUTHORITY TO APPROVE SUCH RELEASES IN CERTAIN, NARROW CIRCUMSTANCES.

This case centers around the question of whether Petitioner may pursue direct claims against Strawberry Fields. Namely, this Court must decide if Petitioner can pursue such claims regardless of any bankruptcy discharge that Respondent obtains by Strawberry Fields under a chapter 11 plan of reorganization. This Court should affirm the lower court's decision that bankruptcy courts have the authority to approve nonconsensual releases of direct claims held by third-parties against non-debtor affiliates as part of a chapter 11 plan of reorganization.

The often complex issues that arise during bankruptcy are controlled exclusively by bankruptcy courts and the Code. *In re Purdue Pharma, L.P.,* 635 B.R. 26 (S.D.N.Y. 2021) ("[T]he traditional equitable power [of a bankruptcy court] can only be achieved within the confines of the Bankruptcy Code.") (citing *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 207 (1988)). The Code contains several provisions that grant authority to bankruptcy courts to approve nonconsensual release of third-party claims against non-debtor affiliates. 11 U.S.C. § 105(a) authorizes bankruptcy courts to "issue any order . . . necessary to carry out the provisions of the Bankruptcy Code." 28 U.S.C. § 157(b)(2)(B) authorizes bankruptcy courts to confirm chapter 11 plans of reorganization. Under 11 U.S.C. § 1123(b)(6), such plans may include "appropriate provision[s] not inconsistent with the applicable provisions of this title." The non-debtor releases at issue here were not only appropriate provisions under the Code, but necessary for the Plan's implementation. Accordingly, the Court acted well within its statutorily granted authority when it approved the non-debtor release provisions.

The Plan should also be affirmed because the release provisions were approved only after the bankruptcy court made detailed factual findings to support its conclusions that the Plan's terms were both necessary to reorganization and equitable to the creditors. The majority of circuits courts agree that injunctions, like the one at issue here, are "dramatic measure[s] to be used cautiously." *Class Five Nev. Claimants v. Dow Corning Corp. (In re Dow Corning Corp.)*, 280 F.3d 648, 657 (6th Cir. 2002). They should be approached "with the utmost care," and courts must "thoroughly explain the justifications for [their] inclusion" in a reorganization plan. *In re Millennium Lab Holdings II, LLC*, 945 F.3d 126, 139 (3d Cir. 2019). Nonconsensual third-party releases are reserved only for cases so complex and unusual that such a release is both necessary for the success of the reorganization and is fair and equitable considering the specific facts and circumstances of the case. *SE Prop. Holdings, LLC v. Seaside Eng'g & Surveying (In re Seaside Eng'g & Surveying)*, 780 F.3d 1070, 1078 (11th Cir. 2015). Circuits courts have made it abundantly clear that "exacting standards must be satisfied" if non-consensual releases and suit injunctions are to be permitted in reorganization plans. *In re Millennium Lab Holdings II, LLC*, 945 F.3d at 139. Indeed, courts have reversed and remanded reorganization plans—even plans largely implemented at the time of their review—when a bankruptcy court's findings were insufficient to justify non-debtor releases. *Gillman v. Cont'l Airlines (In re Cont'l Airlines)*, 203 F.3d 203 (3d Cir. 2000).

No case has tolerated non-debtor releases absent a finding of unique circumstances. *See Deutsche Bank AG, London Branch v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.)*, 416 F.3d 136, 142 (2d Cir. 2005). Consistent with this trend, the unique circumstances of the present case, captured in a well-reasoned body of case law and in the statutory language of the Code itself, provide the impetus for this Court to affirm the power of bankruptcy courts to approve, albeit in narrow, unique circumstances, chapter 11 reorganization plans that provide for nonconsensual third-party releases.

A. The statutory language of the Bankruptcy Code grants bankruptcy courts broad authority to approve settlements like the Plan at issue here.

Bankruptcy courts are creatures of statute. *In re Purdue Pharma, L.P.*, 635 B.R. 26 (S.D.N.Y. 2021) (citing *Celotex Corp. v. Edwards*, 514 U.S. 300 (1995)). Article I, Section 8 of the Constitution grants Congress the authority to establish "uniform laws on the subject of Bankruptcies throughout the United States." U.S. CONST. art. I, § 8. Like other federal courts, "the jurisdiction of the bankruptcy courts . . . is grounded in, and limited by, statute." *Celotex Corp.*, 514 U.S. at 307.

It is a common canon of statutory interpretation to read the text of a law holistically. *Hibbs v. Winn*, 542 U.S. 88, 101 (2004). Construing the Code comprehensively as a whole, as bankruptcy courts are bound to do, it is evident that the Code grants bankruptcy courts broad powers to confirm reorganization plans. Bankruptcy courts are statutorily authorized to hear and enter final judgments in the context of core proceedings. 28 U.S.C. § 157(b)(1). Core proceedings include confirming reorganization plans under chapter 11 of the Code. 28 U.S.C.§ 157((b)(2)(B). Additionally, the Supreme Court has provided guidance that bankruptcy courts act within constitutional bounds when they resolve matters integral to the restructuring of the debtor-creditor relationship. *Stern v. Marshall*, 564 U.S. 462 (2011). Certainly, reorganization plans are integral to the restructuring of the debtor-creditor relationship as they maximize recovery to creditors and prevent debtors from liquidating a business, which, most detrimentally, results in significant job loss. *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984). Lastly, the Code authorizes bankruptcy courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code." 11 U.S.C. § 105(a). Thus, section 105(a) allows bankruptcy courts to approve nonconsensual releases in a chapter 11 plan of reorganization because, in many cases, feasible reorganization is possible only with the assurance of release provisions.

The Code also states that plans shall "provide adequate means for the plan's implementation." 11 U.S.C. § 1123(a)(5). A plan may "include any other appropriate provision not inconsistent with the applicable provisions of this title*." Id*. at § 1123(b)(6). These provisions provide further support for the notion that nonconsensual releases are appropriate when they provide the means for the implementation of a chapter 11 reorganization plan and when they are not inconsistent with other provisions of the Code.

Despite these grants of broad statutory authority, Petitioner contends that approving nonconsensual releases is a provision inconsistent with other provisions of the Code. Petitioner relies on section 524(e) as one such provision undercut by the Plan. The terms of section 524(e) provide that a debtor's discharge does not affect the liability of another entity for such debt. *Id.* The terms of section 523(a)(6) also carve out an exception for the discharge of debts. *Id.* Under section 523(a)(6), debts "for wilful and malicious injury by the debtor to another entity" are non-dischargeable. *Id.* Yet reliance on these provisions flies in the face of the other provisions of the Code, which, carefully considered and codified by Congress, give bankruptcy courts room to maneuver in carrying out their duties.

For instance, the statutory grant of authority codified in section 105(a) provides bankruptcy courts with the authority to approve orders necessary or appropriate to carry out the provisions of the Code. *Id.* Injunctive orders and nonconsensual releases are provisions necessary, in unique circumstances, to facilitate the confirmation of a chapter 11 reorganization plan. Thus, they are orders that help bankruptcy courts carry out other provisions of the Code. *Id.*

Such provisions, though, "ought not . . . be issued lightly." *In re Seaside Eng'g & Surveying*, 780 F.3d at 1078. Indeed, nonconsensual releases have not been issued lightly. Rather, courts have carefully considered all circumstances surrounding a chapter 11 plan of reorganization. *See In re Metromedia Fiber Network, Inc.*, 416 F.3d 136*; see also In re Cont'l Airlines*, 203 F.3d 203.

Furthermore, section 1126(a) provides that claimants are entitled to vote on acceptances of a reorganization plan. Including this provision in the Code reveals Congress's intent to give claimants a voice in reorganization plans. It also provides a court considering nonconsensual releases with pertinent information about creditor satisfaction and equity concerns.

Notwithstanding the statutory authority granted to bankruptcy courts by the numerous statutes within the Code, Petitioner contends that section 524(e) bars injunctions and nonconsensual releases. This provision, though, cannot be read alone outside the context of the other statutes within the Code; the Code must be read holistically in its entirety. *Hibbs*, 542 U.S. at 101. After all, section 524(e) is "a general provision that does not apply only to Chapter 11 proceedings." *Stuart v. First Mount Vernon Indus. Loan Ass'n. (In re Peramco Int'l, Inc.)*, 3 F. App'x 38, 43 (4th Cir. 2001). Furthermore, "the statute does not by its specific words preclude the discharge of a guaranty when it has been accepted and confirmed as an integral part of reorganization." *Menard-Sanford v. Mabey (In re A.H. Robins Co.)*, 880 F.2d 694 (4th Cir. 1989) (citing *Republic Supply Co. v. Shoaf*, 815 F.2d 1046, 1050 (5th Cir.1987)). The court in *In re A.H. Robins Co.* held that section 524(e) does not prohibit reorganization plans nor act as an independent stopper on the equitable power of the bankruptcy courts:

> In this situation where the Plan was overwhelmingly approved . . . and where the entire reorganization hinges on the debtor being free from indirect claims such as suits against parties who have indemnity or contribution claims against the debtor, we do not construe § 524(e) so that it limits the equitable power of the bankruptcy court to enjoin the questioned suits.

In re A.H. Robins Co., 880 F.2d at 702. The statutes of the Code, read as a whole, provide bankruptcy courts with flexibility to carry out their duties. *Id.* One of those duties is confirming plans for reorganization. *Id.* As such, "[w]e do not think that section [524(e)] must be literally applied in every case as a prohibition on the power of the bankruptcy courts." *Id.*

Finally, allowing nonconsensual third-party releases will not lead to abuse or gamesmanship, as feared by some courts. *See In re Metromedia Fiber Network, Inc.*, 416 F.3d 136. It is unlikely that learned bankruptcy judges, elected by presidentially appointed circuit judges to 14-year terms, whose reputations for excellence precede them, will lack the dexterity needed to navigate even the most factually complex cases. We trust the courts to continue to thoroughly examine and confirm reorganization plans that include nonconsensual releases only in the most unique of circumstances.

B. <u>Since the Bankruptcy Code does not prohibit third-party releases in chapter 11 plans of reorganization, they should be permitted in appropriate, narrow circumstances when necessary to reorganization and when fair to the creditors.</u>

The Code does not expressly prohibit bankruptcy courts from enjoining a nonconsenting creditor's claims against a non-debtor to facilitate a reorganization plan. *In re Dow Corning Corp.*, 280 F.3d at 656. Accordingly, such injunctions are "dramatic measure[s] to be used cautiously." *Id.* at 657. Indeed, no case has tolerated non-debtor releases absent a finding of unique circumstances. *In re Metromedia Fiber Network, Inc.*, 41 F.3d 136.

The facts of this case constitute those unique circumstances in which bankruptcy courts have approved nonconsensual third-party releases. Exacting standards must be satisfied if non-consensual releases and injunctions are to be authorized. *In re Millennium Lab Holdings II, LLC*, 945 F.3d 126. The court in *Millennium* approved a restructuring plan for Millennium, a company which had entered into a billion-dollar credit agreement with lender company Voya. *Id.* A year after entering into the credit agreement with Voya, Millennium was sued by the Department of Justice for violations of various laws. *Id.* Millennium lacked the liquidity to pay its debts to Voya and to its $256 million-dollar settlement with the government. *Id.* As such, Millennium negotiated with lenders, like Voya, as well as its primary shareholders to restructure its financial obligations and satisfy its debts. *Id.* Following extensive, adversarial negotiations, Millennium's primary shareholders agreed to finance its debt in return for full releases from conduct that occurred before the restructuring agreement. *Id.* at 137.

Voya objected to the restructuring agreement because of the release provisions. *Id.* The Third Circuit, however, upheld its confirmation because "the release provisions . . . were absolutely required to induce [the primary shareholders] to pay the funds needed." *Id.* Emphasizing the narrowness of its holding, the court stated that it was only on "the particular facts of this case" that nonconsensual third-party releases could be approved. *Id.* The particular facts showed that the release provisions were "integral to the restructuring" of the debtor-creditor relationship and, importantly, were well-supported by the record. *Id.* at 140. Crucial to the appeals court's decision to confirm was the fact that the bankruptcy court approved the releases only after finding a sound basis in the record for their necessity. *Id.*

The circumstances here parallel those found in *Millennium*. A complex settlement framework was devised by various stakeholders over the course of two months of negotiation.

Strawberry Fields's commitment to fund the creditors' trust also mirrors that of the primary shareholders in *Millennium*. Like the shareholders in *Millennium*, Strawberry Fields demanded a broad release from all claims in exchange for its funding of the creditors' trust. This demand shows that the release provisions were required to incentivize Strawberry Fields to finance the creditors' trust. It also underscores that the release provisions were integral to the restructuring of the debtor-creditor relationship. This is well-supported by the record. Without the release provisions, Strawberry Fields would not provide the funding necessary to establish the creditors' trust. Furthermore, the record indicates the release provisions not only produced a plan that avoids the expense and delay of future litigation, but also one that provides a substantially greater distribution than what creditors would receive if Respondent were liquidated under chapter 7 instead.

The release provisions were included in a complex plan only after intense negotiations and months of stayed proceedings. They are ultimately what induced Strawberry Fields to fund the creditors' trust, distribution from which creditors could expect swift recovery substantially greater than what they would receive if they pursued other claims. In short, these are precisely the unique circumstances that the court in *Millennium* found satisfied the exacting standards required for authorization of nonconsensual third-party releases.

The uniqueness of the circumstances is further highlighted by the extensive number of claims filed against Respondent. With hundreds of lawsuits filed, and nearly 10,000 claims asserting millions of dollars in damages, this is by all means a mass tort case requiring careful review of the facts and conscientious inquiry into whether the Plan in question will provide equitable relief to the creditors. Bankruptcy courts may uphold nonconsensual releases in chapter 11 reorganization plans when faced with voluminous claims that would cause intolerable delay and when creditors express overwhelming support for the plan. *In re A.H. Robins Co.*, 880 F.2d at 697.

The court in *Robins* was faced with more than 52,000 claims asserting damages stemming from the faulty Dalkon Shield intrauterine device. *Id.* More than 94% of claimants agreed to the plan and the bankruptcy court confirmed the third party releases on grounds of equity. *Id.* Similarly, here, the bankruptcy court below confirmed a plan containing third-party releases after more than 95% of creditors expressed their satisfaction with the settlement. The plan was confirmed after careful inquiry all while the source of contamination still has not been conclusively determined. It is because of these truly extraordinary circumstances that the Plan should be confirmed.

C. <u>The bankruptcy court approved the Plan only after making specific factual findings that the nonconsensual releases were both necessary to reorganization and fair to the creditors.</u>

The third-party releases are permissible because they were required for reorganization and because the bankruptcy court made specific, well-reasoned findings that the Plan was fair to the creditors. "The hallmarks of permissible nonconsensual releases [are] fairness, necessity to the reorganization, and specific factual findings to support these conclusions." *In re Cont'l Airlines*, 203 F.3d at 211. The court in *Continental Airlines* found the releases and permanent injunction of plaintiffs' claims could not stand since neither court below made specific factual findings that such provisions were necessary to reorganization or fair to the creditors. *Id*. at 215. The bankruptcy court "never specifically addressed the release and permanent injunction," while the district court "assumed facts not of record and drew superficial analogies based on inapposite case law." *Id.* Without conclusions drawn from findings based soundly in the record before it, the bankruptcy court could not approve the nonconsensual third party releases: "without such findings, a release and permanent injunction cannot stand on their merits." *Id.* at 214.

The facts of this case are markedly different from those that warranted reversal in *Continental Airlines*. The court of appeals in *Continental Airlines* discovered no factual findings to support conclusions that the release provisions were necessary or fair. *Id.* By contrast, the appeals court at present determined the bankruptcy court made numerous, compelling findings to support conclusions that the release provisions were both necessary for reorganization and fair to the creditors. While the bankruptcy court in *Continental Airlines* never specifically addressed the release provisions, the bankruptcy court below here not only acknowledged them but noted that such releases are permitted only in extraordinary cases. Against this backdrop, the bankruptcy court considered the complex nature of this case, the significant financial contribution made by Strawberry Fields, and the overwhelming creditor support for the Plan. The bankruptcy court went so far as to make detailed findings about the probability of success and collectability of any judgments that could be obtained against Strawberry Fields.

The bankruptcy court also considered the likelihood that failure to approve the Plan would result in costly and prolonged litigation. Ultimately, the court found the $100 million contribution was not only substantially greater than any other likely recovery to the creditors but would also offer creditors "a significant and immediate benefit." Because Strawberry Fields would not make such a contribution without the assurance of the third-party releases, the bankruptcy court correctly concluded that there existed no other reasonably conceivable means to achieve the result accomplished by the Plan.

The bankruptcy court's confirmation was not issued lightly. Broad releases, like those at issue here, "should be reserved for those unusual cases in which such an order is necessary for the success of the organization, and only in situations in which such an order is fair and equitable under all the facts and circumstances." *In re Seaside Eng'g & Surveying*, 780 F.3d at 1078. The inquiry is fact intensive in the extreme. *Id.* at 1079. The inquiry made by the bankruptcy court was undoubtedly fact intensive, since it meticulously calculated the probability of success of any claims pursued against Strawberry Fields. The court made detailed factual findings well-supported by the record over the course of its four-day confirmation hearing—findings which reasonably led to conclusions that the release provisions were both necessary to reorganization and fair to the creditors. As such, the Plan should be upheld.

D. The Plan satisfies even the most demanding "unusual circumstances test" of the Sixth Circuit.

This Court should also find in favor of Respondent because it satisfies the rigorous "unusual circumstances test" outlined by the Sixth Circuit. *See In re Dow Corning Corp.*, 280 F.3d 648. In *Dow Corning,* the Sixth Circuit identified seven factors that bankruptcy courts should consider when determining whether to enjoin a non-consenting creditor's claims against a non-debtor. *Id.* at 658. These factors include: (1) the identity of interests between debtor and third party, such that a suit against a non-debtor is a suit against the debtor; (2) whether the non-debtor has contributed substantial assets to the reorganization; (3) whether an injunction is essential to the reorganization; (4) whether the impacted class has overwhelmingly voted to accept the plan; (5) whether the plan provides a mechanism to pay for all, or substantially all, of the classes affected by the injunction; (6) whether the plan provides an opportunity for those claimants who choose not to settle to recover in full; and (7) whether the bankruptcy court made a record of specific factual findings to support its conclusions. *Id.*

The Sixth Circuit reiterated that chapter 11 reorganization plans can permissibly include non-debtor releases only where these "unusual circumstances" exist, but relied on factors (2), (3), and (5) in its decision to remand to the district court to make additional findings. *Id.* at 663. When considering whether the non-debtor had contributed substantial assets to reorganization, the appeals court found problematic the bankruptcy court's declaration that contributions were important "without explaining how or why it reached this conclusion." *Id.* at 659. The Sixth Circuit made clear that bankruptcy courts "must specify facts that support a conclusion that the released parties will make significant contributions to the reorganization plan." *Id.*

The court also took issue with the bankruptcy court's "inconsistent fact findings" regarding the essential nature of the release and injunction provisions. *Id.* While the bankruptcy court determined the provisions essential, it subsequently stated they only applied to consenting creditors, suggesting that enjoining nonconsenting creditors was not essential to reorganization after all. *Id.* Lastly, the Sixth Circuit found "clearly erroneous" the bankruptcy court's determination that the plan would provide a mechanism to pay for substantially all of the classes affected by the injunction. *Id.* In so holding, the court stated "the Plan must delineate procedural mechanisms" for distribution of the funds. *Id.* at 661.

The bankruptcy court below has made anything but the type of ambiguous findings which justified remand in *Dow Corning*. Here, Strawberry Fields has made significant contributions to the reorganization—a whopping $100 million to be paid towards the creditors' trust. The release and injunction provisions are essential to the reorganization because, without them, Strawberry Fields would not fund the creditors' trust and Respondent would be forced to liquidate under chapter 7. This would result in reduced distributions to creditors and to costly, prolonged litigation. Finally, the Plan provides a mechanism to pay for substantially all classes affected by the injunction. With claims channeled to a creditor trust funded by Respondent's disposable income for the next five years, and $100 million pledged by Strawberry Fields, creditors can expect a significant distribution immediately.

The Plan at issue also satisfies the other factors under the unusual circumstances test. Perhaps most compelling, the impacted class has overwhelmingly voted in favor of the Plan, with over 95% of voters expressing their approbation. The bankruptcy court also made a record of specific factual findings to support its conclusions. It was only after careful fact finding—which calculated distribution in the case of chapter 7 liquidation and any likely recovery against Strawberry Fields in the case of subsequent suits—that the bankruptcy court concluded "there existed no other reasonably conceivable means to achieve the result accomplished by the Plan." Based on the detailed findings before it, the Plan satisfied the unusual circumstances test.

The Plan's satisfaction of the "unusual circumstances" test should be a driving force behind this Court's decision to affirm. The test lays out stringent requirements that must be satisfied in order to include nonconsensual third-party releases in a chapter 11 reorganization plan. The framework provides an assurance to concerns duly contemplated by other circuits prohibiting these provisions that such releases will not expand the authority of bankruptcy courts.

The court in *Metromedia Fiber Network*, for example, considered two noteworthy reasons for reluctance to non-debtor releases. 416 F.3d at 142. First, the Code does give explicit authorization to non-debtor releases only in asbestos cases, as outlined in section 524(g). *Id.* Second, non-debtor release "lends itself to abuse" because non-debtors can shield themselves from liability.

The unusual circumstances test, however, is stringent enough to ensure that bankruptcy courts do not "broadly [sanction] the permissibility of nonconsensual third-party releases and injunctions." *In re Millennium Lab Holdings II, LLC*, 945 F.3d at 138. The test demands that bankruptcy courts considering third party releases do so with caution and diligence. *Id.* Because the Plan met the demanding requirements of the unusual circumstances test, and because that test ensures that bankruptcy courts do no more than act within the statutory authority already granted to them by the Code, the Plan should be confirmed.

II. **CORPORATE DEBTORS PROCEEDING UNDER SUBCHAPTER V OF CHAPTER 11 OF THE BANKRUPTCY CODE MAY, PURSUANT TO 11 U.S.C. § 1192, DISCHARGE DEBTS SPECIFIED IN 11 U.S.C. § 523(A) BECAUSE OF THE PLAIN LANGUAGE OF 11 U.S.C. § 523(A) AND A LACK OF LEGISLATIVE HISTORY SUPPORTING THE EXPANSION OF 11 U.S.C. § 523(A).**

This case asks us to interpret whether the exceptions in section 523(a) of the Code apply to corporate debtors filing under subchapter V. This requires us to interpret the meaning of section 523(a) in relation to section 1192 of the Code; this is an issue of first impression for this Court. The Court should affirm the lower court's decision that the exceptions in section 523(a) do not apply to corporate debtors filing under subchapter V.

The main principles of statutory interpretation apply to all fields of law. "Statutory interpretation, as we always say, begins with the text." *Ross v. Blake*, 578 U.S. 632 (2016). Most statutory disputes can be resolved by interpreting the plain meaning of the text. If the plain meaning of two statutes seems to be in contradiction, the more specific provision should govern over the more general provision. *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012). If interpretation is still unclear, the intent of the legislature that enacted the statute should be examined. *Smith v. Doe*, 538 U.S. 84, 92 (2003).

In our case, the plain meaning of both section 523(a) and section 1192 supports a finding that exceptions to discharge should not be applied to corporate debtors in subchapter V. The lack of legislative history surrounding what would be a monumental change to existing chapter

11 law also supports this conclusion. Allowing exceptions to discharge for corporate debtors in subchapter V frustrates the purpose of chapter 11. These exceptions could unravel the plan and disrupt equal distribution amongst creditors, a fundamental tenet of the bankruptcy code. *Prudence Realization Corp v. Geist*, 316 U.S. 89, 93 (1942).

The more general provision, Section 523(a), could not be clearer in its restriction of exceptions to individual debtors. Section 523(a) states that "[a] discharge under section . . . 1192 . . . of this title does not discharge an individual debtor from any debt" defined in the following 19 subparagraphs. 11 U.S.C. § 523(a). The term "individual debtor" implies the exclusion of corporate debtors. The more specific provision, section 1192(a), excepts debts "of the kind specified in section 523(a)." 11 U.S.C. § 1192. Whether debts "of the kind" includes the requirement in section 523(a) that the debtor be an individual is debated and discussed further below.

Allowing exceptions in subchapter V bankruptcies would be a monumental change to the Code. When enacting chapter 11, Congress carefully decided against providing exceptions to discharge for corporations. *In re Push & Pull Enterprises, Inc.*, 84 B.R. 546, 551 (Bankr. N.D. Ind. 1988). Allowing these exceptions would dissuade corporate debtors from filing chapter 11 and destroy corporations who emerged from bankruptcy. Thus, it is plausible to conclude that Congress would mention such a change when enacting subchapter V. However, examination of congressional records below show that no consideration of this change occurred.

Lastly, fundamental bankruptcy principles support the conclusion that exceptions to discharge should not apply to corporate debtors in subchapter V. Perhaps the most fundamental tenet of the bankruptcy code is that distributions are equal amongst creditors. *Prudence Realization Corp.*, 316 U.S. at 93. Allowing exceptions to discharge will take money out of the bankruptcy estate, and lead to an uneven distribution amongst similarly situated creditors. The lack of adherence to these principles, in addition to insufficient legislative history provide support to our conclusion. The exceptions in section 523(a) do not apply and were never intended to apply to corporate debtors in subchapter V bankruptcies.

A. <u>The exceptions under 11 U.S.C. § 523(a) do not apply to corporate debtors in chapter 11 because the plain language of the statute states as such.</u>

The plain language of section 523(a) of the Code restricts its exceptions to individual debtors. Section 523(a) states that "[a] discharge under section . . . 1192 . . . of this title does not discharge an individual debtor from any debt" defined in the following 19 subparagraphs. 11 U.S.C. § 523(a). Section 1192, however, states that all debts in subchapter V chapter 11 bankruptcies shall be discharged, except any debt "of the kind specified in section 523(a) of this title." 11 U.S.C. § 1192(2). There is debate as to whether debt "of the kind" includes the requirement in section 523(a) that the debtor be an individual. *See generally* Paul W. Bonapfel, A Guide to the Small Business Reorganization Act of 2019 (2021). The relationship between both section 523(a) and section 1192(2) is incongruent and determining the correct application of section 523(a) is considered a close call. *See Cantwell-Cleary Co. v. Cleary Packaging, LLC (In re Cleary Packaging, LLC)*, 36 F.4th 509, 512 (4th Cir. 2022).

When statutory language is plain, the sole function of the courts is to enforce the language according to its terms. *Lamie v. U.S. Tr.,* 540 U.S. 526, 534 (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." *Hibbs*, 542 U.S. at 101. When tension between two statutes in the Code does exist, the more specific provision should be given greater weight than the more general provision. *See Sw. Ga. Farm Credit, ACA v. Breezy Ridge Farms, Inc. (In re Breezy*

Ridge Farms, Inc.), Nos. 08-12038-JDW, 09-1011, 2009 Bankr. LEXIS 1396, *2 (Bankr. M.D. Ga. May 29, 2009); *see also Universal Am. Mort. Co. v. Bateman (In re Bateman),* 331 F.3d 821, 825 (11th Cir. 2003). Congress, when intending to create exceptions to bankruptcy law requirements, does so clearly and expressly. *FCC v. NextWave Pers. Communs. Inc.*, 537 U.S. 293, 302 (2003).

When Congress enacted the Small Business Reorganization Act of 2019 (hereinafter "SBRA"), they added section 1192 to the preamble of section 523(a). *Small Business Reorganization Act of 2019*, 116th H.R. 3311 (2019). Section 523(a) reads, "[a] discharge under section . . . 1192 . . . of this title does not discharge an individual debtor from any debt" defined in the following 19 subparagraphs. 11 U.S.C. § 523(a). The reference to section 1192 within section 523(a) demonstrates Congress's intent to limit the application of section 1192 to individual debtors. Congress would not have added section 1192 to the preamble in section 523(a) if they wanted the exceptions to extend to corporate debtors.

Section 1228 was also included in the preamble of section 523(a). Section 1228 states that the individual exceptions under section 523(a) do extend to corporate debtors filing under section 1228. *New Venture P'ship v. JRB Consol. (In re JRB Consol.)*, 188 B.R. 373 (Bankr. W.D. Tex. 1995). In *JRB*, the court made clear that this reasoning should not be extended to the context of a chapter 11 case. *Id.* The practical differences between a chapter 11 and a chapter 12 case make such a holding logical. Chapter 12 narrowly defines which types of corporations are eligible for filing a chapter 12 bankruptcy; in most cases, such eligible corporations are closely held. 11 U.S.C. § 101(18)(B). Closely held corporations are more analogous to individuals than the large corporations that file chapter 11 bankruptcies because these corporations cannot issue publicly traded stock and are typically owned by a singular or small group of owners. *Id.* Thus, it would make sense to extend the exceptions for individuals under section 523(a) to the closely held corporations that file under chapter 12. This is consistent with the intent of Congress to provide special treatment for debtors eligible to file for chapter 12. *In re JRB Consol.*, 188 B.R. at 375.

Many courts have observed that section 523, as a whole, applies only to individual debtors and not to corporate debtors. *See In re MF Glob. Holdings Ltd.,* No. 11-15059 (MG), 2012 Bankr. LEXIS 897, *3 (Bankr. S.D.N.Y. Mar. 6, 2012) ("[I]t is well-settled that section 523 does not apply to corporate debtors"); *see also Adam Glass Serv. v. Federated Dep't Stores*, 173 B.R. 840, 842 (E.D.N.Y. 1994) ("§523 only applies to individual debtors"); *In re Trafalgar Assocs*, 53 B.R. 693, 696 (Bankr. S.D.N.Y. 1985) ("[S]ection [523] on its face applies only to individual debtors, and not to limited partnerships"). Although these decisions predate the enactment of the SBRA, it is significant that most courts hold that section 523 applies exclusively to individual debtors, or to corporate debtors in the limited chapter 12 context.

The more specific section 1192(2) states that debts in subchapter V chapter 11 bankruptcies shall be discharged, except any debt "of the kind specified in section 523(a) of this title." 11 U.S.C. § 1192(2). Debt "of the kind specified in section 523(a)" must incorporate the entirety of section 523(a) or else Congress would not have included 523(a) within section 1192(2). The term "individual" in section 523(a) would be insignificant if section 1192(2) were held to apply to corporate debtors. Section 523(a) limits its application to individual debtors; accordingly, section 1192(2) must also limit its application to individual debtors. The requirement that the debtor be an individual can be removed by either severing section 523(a)'s introductory clause from the detailed subsections, or by adding the term "corporate debtor" to section 1192(2).

Congress knows how to limit the scope of the corporate debtor discharge in chapter 11, and they did so when they drafted section 1141(d)(6). *See NextWave Pers. Communs., Inc.*, 537 U.S. at 302. Section 1141(d)(6) limits its application by stating that discharges for corporate debtors do not exist for debt "of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a)." This express limitation within section 1141(d)(6) demonstrates that Congress is clear and express when it creates exceptions to bankruptcy law requirements. Congress not only included the term "of a kind," but also severed the exceptions by including the specific subparagraphs of section 523(a), in addition to clarifying that such exceptions shall apply to "a debtor that is a corporation." 11 U.S.C. § 1141(d)(6).

If Congress wanted to create such an exception for subchapter V cases, they would have done so in a manner similar to section 1141(d)(6). Stating that Congress used shorthand when writing section 1192(2) to avoid adding pages to the Code discredits the intent and thoroughness of Congress. *In re Breezy Ridge Farms*, Nos. 08-12038-JDW, 09-1011 at *2. The wording of section 1141(d)(6) defeats such an argument as it shows Congress's intent to clearly create exceptions in the Code and that statutory brevity is the least of their concerns. The fact that section 1192(2) neither specifies the type of debtor nor severs the subparagraphs of section 523(a) from its preamble shows that Congress did not intend to apply these exceptions to corporations in the context of a subchapter V chapter 11 bankruptcy.

Furthermore, "kind" is legally understood to mean a "generic class" or a "description." *Kind*, Black's Law Dictionary (11th ed. 2019). Kind is commonly understood as "a group united by common traits or interests." *Kind*, Webster's Dictionary (Online ed., last visited Jan. 19th, 2022). The preamble of section 523(a) limits its application to individual debtors. A common trait of the exceptions listed in section 523(a) is that they only apply to individuals. 11 U.S.C. §

523(a). It is subjective and inconsistent whether the term "of the kind" in the Code includes the term "individual debtor" in section 523(a).

In the limited context of chapter 12, the Texas bankruptcy court held that the sole use of the term "of the kind" was enough to sever specific discharges from the individual debtor requirement in section 523(a). *In re JRB Consol.*, 188 B.R. at 373. In section 1141(d)(6), the term "of a kind" is supplemented with references to specific exception subsections in addition to the clarification that the debtor "is a corporation." 11. U.S.C. § 1141(d)(6). In section 1192(2), the term "of the kind" is neither limited by the narrow chapter 12 context nor any specific wording. Adhering to the plain meaning, this Court must conclude that that the exceptions in section 1192(2) and section 523(a) do not extend to corporate debtors.

B. <u>Congress's intent to apply preexisting chapter 11 exceptions to discharge debts in subchapter V cases is supported by the legislative history surrounding the passage of the SBRA.</u>

The legislative history surrounding the passage of the SBRA shows that Congress never intended to apply section 523(a) to corporate debtors. Statutory interpretation benefits from reviewing legislative history, rather than ignoring it. *Samantar v. Yousuf*, 560 U.S. 305, 312 (2010). The Supreme Court has long relied on legislative history to assist in its holdings. *See Wallace v. Parker,* 31 U.S. 680, 687-90 (1832). Jurists, however, should exercise care, because "where the mind seeks to find the intent of the legislature, it typically solely seizes from which aid can be derived." *United States v. Fisher*, 6 U.S. 358, 386 (1805). Generally, however, legislative history is not so misleading that jurists should never employ it in a good-faith effort to discern legislative intent. *Samantar,* 560 U.S. at 312.

The Report of the Judiciary Committee of the House of Representatives corresponding with the passage of the SBRA states that the section 1192 discharge excepts debts where the last payment is due after the commitment period under the plan and "any debt that is otherwise nondischargeable." H.R. Rep. No 117-171, at 8. This statement refers to the wording of section 1192 and "otherwise dischargeable" in this context refers to section 523(a). The term "otherwise" demonstrates an intent to apply existing exceptions to discharge in chapter 11 cases in subchapter V, not to expand them. Expanding section 523(a) to allow exceptions for corporate debtors would be a significant change to existing chapter 11 law, thus one would expect the House Judiciary Committee Report to mention this change. The report's explanation that the exceptions are for "debt that is otherwise nondischargeable" demonstrates an intent to strictly apply existing exceptions and not to expand them. *See* Oversight of Bankruptcy Law and Legislative Proposals: Hearing Before the Subcomm. On Antitrust, Commercial, & Admin. Law of the H. Comm. On the Judiciary, 116th Cong. (2019).

Using legislative history in this context is not problematic since it does not solely seek out supporting information and ignore contradictory information. The use of legislative history in this context is simple; Congress neither mentioned nor debated whether section 523(a) would be expanded to apply to corporate debtors. Expanding the exceptions in section 523(a) to corporations would be a monumental change to chapter 11 law and would surely be mentioned during hearings if Congress intended to make such a change. Congress's silence on this matter, however, is deafening. The lack of debate surrounding this issue in Congress, in addition to the lack of specificity taken when drafting section 1192(2) as opposed to the drafting of section 1141(d)(6), shows that Congress clearly did not intend to expand section 523(a) to corporate debtors.

Bankruptcy courts around the country agree that section 523(a) was never intended to be expanded and they point to a lack of legislative history in so concluding. *See Gaske v. Satellite*

Rests. Inc. (In re Satellite Rests. Inc.), 626 B.R. 871 (Bankr. D. Md. 2021); *see also Jennings v. Lapeer Aviation, Inc. (In re Lapeer Aviation, Inc.)*, Nos. 21-31500-jda, 22-3002, 2022 Bankr. LEXIS 1032 (Bankr. E.D. Mich. Apr. 13, 2022); *In re Rtech Fabrications, LLC*, 635 B.R. 559 (Bankr. D. Idaho 2021); *In re Cleary Packaging LLC*, 630 B.R. 466 (Bankr. D. Md. 2021), *rev'd* 36 F. 4th 509 (4th Cir. 2022).

The Fourth Circuit, in its reversal of *Cleary*, notably did not mention the intent of the legislature. That court focused on section 1192(2)'s similarity in structure to the language of discharge exceptions in chapter 12, in addition to equity and fairness concerns. *In re Cleary Packaging, LLC*, 36 F.4th at 512. The Fourth Circuit's lack of legislative analysis is telling in its holding that section 523(a) should be expanded to apply to corporate debtors. While legislative intent should not be the sole reason for the interpretation of a statute, when the statute is ambiguous, legislative intent, or a lack thereof, helps to correctly interpret the law in cases of ambiguity. The lack of any discussion or debate surrounding what would be a monumental expansion of chapter 11 bankruptcy law provides assistance to our determination that section 523(a) should not be expanded to corporate debtors.

C. Fundamental bankruptcy fairness principles support the conclusion that the exceptions in 11 U.S.C. § 523(a) should not be applied to corporate debtors filing under subchapter V.

Principles embedded within chapter 11 of the Code support the conclusion that section 523(a) should not apply to corporate debtors in subchapter V. Chapter 11 of the Code is designed to provide an efficient and fair process for companies to restructure their debt so they can maintain their operations. Subchapter V was intended to streamline this process for small corporations. The Code is not designed to be used as a means for companies to simply avoid their obligations. Courts have "a duty to uphold the integrity of the bankruptcy system" and ensure it is not used to perpetuate fraud or illegality. *In re Goden*, No. 14-22934-NVA, 2021 Bankr. LEXIS 3124, *1 (Bankr. Md. Nov. 12, 2021).

To have a successful bankruptcy, we must have a confirmed plan. Section 1191(b) requires that chapter 11 plans be fair and equitable, and that they do not discriminate unfairly. 11 U.S.C. § 1191(b). An even higher standard exists for plans in non-consensual subchapter V bankruptcies, which require that the debtor can make all payments under the plan. 11 U.S.C. § 1191(c)(3)(A). "The Bankruptcy Code aims, in the main, to secure equal distribution among creditors." *Howard Delivery Serv. v. Zurich Am. Ins. Co.*, 547 U.S. 651, 655 (2006). "[T]he court should aim to treat similarly situated creditors similarly," otherwise plans may not be confirmed. *Till v. SCS Credit Corp.*, 541 U.S. 465, 477 (2004). This unravels the bankruptcy process, leading creditors to pursue alternative methods to recover their debts. Collection attempts outside of chapter 11 can be costly, lengthy, and they often lead to less recovery. *Bledsoe v. Flamingo Props., LLC (In re Musselwhite)*, Nos. 20-00928-5-SWH, 20-00142-5-SWH, 2021 Bankr. LEXIS 2609, *23 (Bankr. E.D.N.C. Sept. 23, 2021). Subchapter V was enacted "with the primary goal of simplifying [c]hapter 11 reorganizations for small businesses and reducing the administrative costs for those businesses." *In re Cleary Packaging, LLC*, 36 F.4th at 517. Allowing exceptions to discharge for corporate debtors in subchapter V will increase administrative costs for small businesses. This disrupts the purpose of subchapter V, takes money out of the bankruptcy estate, and results in a lengthy and complex bankruptcy process.

The focus of chapter 11 is the restructuring of debt and the continuation of functioning businesses. In corporate chapter 11 bankruptcies, with few exceptions, a complete discharge of debt is granted. 11. U.S.C. § 1192. Congress made this decision carefully, concluding that significant non-dischargeable debts would destroy companies emerging from the bankruptcy process. *See* Ralph Brubaker, *Taking Exception to the New Corporate Discharge Exceptions*, 13 AM. BANKR. INST. L. REV. 757, 764–66 (2005). Congress enacted subchapter V to make it easier for small businesses to emerge successfully from bankruptcy. It wouldn't make sense for Congress to allow exceptions to debt in subchapter V cases, where the principles of chapter 11 remain, and the debtor has less capital.

Allowing Petitioner's claim to be excepted will have numerous repercussions. It will signal to other similarly situated creditors that they could pursue their claims outside of the bankruptcy process. This will reduce available disbursements to creditors within the bankruptcy. If enough of these claims exist, the plan could be unraveled altogether, leading the debtor to contemplate liquidation. In this case, over 10,000 claims exist, asserting cumulative damages of nearly $400 million. Allowing these claims to be brought outside of bankruptcy would almost certainly lead to liquidation. Chapter 7 liquidation often leads to less recovery for creditors than a chapter 11 restructuring would. *In re Abeinsa Holding, Inc.*, 562 B.R. 265 (Bankr. D. Del 2016). Therefore, it is crucial that the exceptions in section 523(a) do not apply to corporate debtors. Otherwise, unequal distribution amongst creditors will ensue, and an incentive for future debtors to avoid chapter 11 bankruptcy will be created.

In *Cleary*, the court's interpretation of the Code may have been motivated by the specific situation of the debtor. *In re Cleary Packaging, LLC*, 36 F.4th at 317. The plan in *Cleary* proposed to pay the frustrated debtor just 2.98 percent of the debt owed. *Id*. at 316. In our case, the plan was largely agreed upon amongst creditors, and Petitioner is estimated to receive 30-40 percent of her claim. The bankruptcy court here found that the proposed distribution under the plan is substantially greater than what creditors would receive under a chapter 7 liquidation.

Petitioner does not challenge the factual findings of the lower court, so we can conclude that her and other tort claimants would receive more under the proposed plan than they would otherwise.

If the facts in *Cleary* had included a more favorable distribution to the debtor than a mere 2.98 percent, we may have seen less emphasis on equity and fairness, and more emphasis on statutory construction and legislative intent. Regardless, the *Cleary* court's idea of equity and fairness does not make sense in a bankruptcy context. Fairness in a bankruptcy context refers to an equal distribution amongst creditors, not that every creditor will be paid in full. *See In re Sentry Operating Co. of Tex., Inc.*, 264 B.R. 850 (Bankr. S.D. Tex. 2001). If Petitioner's claim is excepted it will not only lead to an unequal distribution but will lead to significantly less of a distribution for all other creditors, including, possibly, herself. This inequality is considered unfair for the purposes of a bankruptcy.

Allowing exceptions to discharge in subchapter V of chapter 11 frustrates the entire purpose for the enactment of subchapter V in the first place. Subchapter V was enacted to streamline reorganization for small business debtors, and to reduce administrative costs. "[N]o one wins when administrative costs eat up the limited resources of a small business debtor." *In re Wildwood Vills.*, No. 3:20-bk-02569-RCT, 2022 Bankr. LEXIS 2363, *3 (Bankr. M.D. Fla. Aug. 15, 2022). Allowing exceptions to discharge will only complicate reorganization, leading to costly litigation which takes money out of the bankruptcy estate. Without clear and express statutory intent to apply these exceptions, we cannot conclude that Congress wanted to make such a fundamental and detrimental change to chapter 11 law. Petitioner may argue that not applying these exceptions to corporate debtors may incentivize debtors to pursue non-consensual plans instead of consensual plans. This is because section 1141(D)(6) permits exceptions to discharge for tax fraud in consensual chapter 11 plans. 11 U.S.C. § 1141(D)(6). However, this notion is defeated because the bankruptcy court has the sole discretion to approve non-consensual plans. 11 U.S.C. § 1191. It is highly unlikely that bankruptcy courts would entertain frivolous non-consensual plans solely intended to get around discharge exceptions for tax fraud. Bankruptcy courts have "authority to dismiss cases that abuse the bankruptcy process," thus they will only approve fair and equitable plans. *In re Goden*, No. 14-22934-NVA at *1.

Conclusion

This Court should affirm the decision of the United States Court of Appeals for the Thirteenth Circuit and allow nonconsensual releases of chapter 11 reorganization plans in certain, narrow circumstances. There is a clear grant of statutory authority found within the Bankruptcy Code, and the narrow circumstances in which such releases may be upheld ensure not only equitable results to creditors, but also successful reorganization of the debtor. This Court should uphold the statutory interpretation of the Court of Appeals for the Thirteenth Circuit and find that Congress never intended for section 523(a) to apply to corporate debtors in subchapter V. For the foregoing reasons, the judgment of the United States Court of Appeals for the Thirteenth Circuit should be affirmed.

Respectfully Submitted,
Team 26
Counsel for Respondent
January 19, 2023