Team 27

No. 22-0909

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE PENNY LANE INDUSTRIES, INC., DEBTOR,

ELEANOR RIGBY, PETITIONER

V.

PENNY LANE INDUSTRIES, INC., RESPONDENT.

ON APPEAL FROM THE UNITED STATES COURT

OF APPEALS FOR THE THIRTEENTH CIRCUIT

BRIEF FOR PETITIONER

TEAM NUMBER 27

JANUARY 19, 2023

COUNSEL FOR PETITIONER

QUESTIONS PRESENTED

I. Whether under Art. I of the United States Constitution a bankruptcy court has the authority to approve non-consensual releases of direct claims held by third parties against non-debtor affiliates when filing under chapter 11 of the Bankruptcy Code.

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

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STATEMENT OF JURISDICTION

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

OPINIONS BELOW

The Bankruptcy Court for the District of Moot ruled in favor of the Debtor, Penny Lane Industries Inc., on both questions. R. 4. On Appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed both holdings. R. 4. The court ruled that (1) provisions of section 523 apply only in cases where the Debtor is an individual, and (2) the bankruptcy court had authority to approve the non-debtor third party releases contained therein. R. 4.

STATUTES INVOLVED

The relevant federal laws controlling this case are all included in the United States Bankruptcy Code. The provisions used in this brief are attached in the Appendix.

STATEMENT OF THE FACTS

Factual History

The facts of this case are not substantially in dispute. R. 11. Ms. Rigby (the "Creditor") and many other residents of the city of Blackbird, Moot assert irreparable harms (i.e. serious injuries and death) because Penny Lane Industries, Inc. ("Penny Lane;" the "Debtor") knowingly dumped industrial chemicals and pollutants contaminating the ground water supply linked to sickness, birth defects, and death. R. 3, 5.[1] Though the source of contamination and validity of these claims have not been conclusively determined, Federal and state authorities did find a sizable "groundwater plume" underneath the community of Blackbird. R. 5.[2] The Environmental Protection Agency and Center for Disease Control and Prevention found from 2013 to 2017, tens of thousands of residents of Blackbird were exposed to "toxins at concentrations 250 to 3,000 times the permitted level" through their drinking and bath water. R. 5.

Ms. Rigby filed suit against Strawberry Fields Foods ("Strawberry Fields") and the Debtor asserting her four-year old daughter died of leukemia because of the pollutants dumped by the Debtor. R. 5. Further, Rigby asserts Debtor knowingly dumped these pollutants to save money, and they made their way into Liverpool River which runs along her property. R. 5. Allegedly, Debtor's former Chief Executive Officer Hammer was aware the pollutants dumped from Penny Lane's plant had contaminated the local community's water supply and had the potential to cause severe injury to the town's residents. R. 5. If allegations are found to be

[1] Penny Lane, a wholly owned subsidiary of Strawberry Fields, manufactured glass, plastic, and metal food containers in the city of Blackbird, Moot. R. 4-5.

[2] "A groundwater plume is created when hazardous substances, pollutants or contaminants are present within an aquifer system. A plume of contaminated groundwater may be formed when substances are released into ground water from above the surface. The contaminated plume may spread horizontally, vertically, and transversely through the aquifer system by means of infiltration, interaquifer exchange, and interaction with surface water. This movement of contaminants throughout an aquifer usually, but not always, occurs in the direction of groundwater flow." R. 5.

factual, Strawberry Fields is vicariously liable for the actions of their subsidiary. R.5. Hundreds of other claims were filed by residents of Blackbird against the Debtor and none of these claims have been judicially adjudicated. R. 6.

Under a chapter 11 *Plan of Reorganization*, distribution to creditors was largely funded by Debtor's corporate parent Strawberry Fields. R. 4.[1] The Plan provides for a creditor trust to be funded by: "(a) the Debtor's disposable (net) income for five years, and (b) far more significantly, $100 million to be paid by Strawberry Fields." R. 8. Though the plan was voted 95% consensual, broad non-consensual releases of claims held by the Debtor and third parties against Strawberry Fields would be discharged under the Thirteenth Circuit decision.[3] A key controversial provision of the plan was that Strawberry Fields demanded a broad release from all claims for funding Penny Lane's settlement. R. 8. (including all estate claims and third-party direct claims) Once confirmed, the Plan precluded all Creditors from pursuing claims against Strawberry Fields related to the environmental dumping, even those who voted against the Plan like Ms. Rigby.[4]

Procedural History

Debtor filed for bankruptcy under subchapter V chapter 11 of the Bankruptcy Code to strategically evade the tremendous costs of the Creditors' claims. R. 3. Upon commencement of Penny Lane's filing under chapter 11, the §362(a) automatic stay stayed all non-bankruptcy litigation against the Debtor. R. 7. However, litigation against Strawberry Fields and other non-

[3] R. 4.; "Direct claims are particularized claims that assert that a defendant harmed the claimant directly. Derivative claims, on the other hand, are claims that a debtor's estate could bring against a defendant, which may have indirectly caused harm to claimants. In bankruptcy, derivative claims become assets of the bankruptcy estate, 11 U.S.C. § 541(a), and, thus, cannot be pursued independently by a debtor's shareholders or creditors." R. 8.
[4] R. 9; The Plan "expressly releases and discharges '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." R. 8.

debtors was not stayed under §362(a). Id. As a result, Debtor sought a temporary injunction "from the bankruptcy court halting all actions against the Debtor's 'current and former owners, officer, directors, employees and associated entities' related to the alleged conduct of the Debtor." R. 7-8.[5]

The Plan received a 95% confirmation from the ballots collected by Creditors. R. 9. However, two notable objections were filed by Ms. Rigby and Norwegian Wood Bank (the "Bank").[6] Ms. Rigby objected on the grounds the non-consensual releases of third-party direct claims is not applicable law and the Bank objected on the grounds the value of its collateral was understated and the Plan was not "fair and equitable" under §1191(b) and §1129(b)(2)(A).[7] The Bank was owed 3.5 million, part of which would be secured and part of which would be paid *pari passu* from the creditors' trust with other unsecured creditors. R. 9. (The Bank held a priority security interest on Debtor's manufacturing equipment and its claim was eventually bifurcated as described.)

Despite these objections, the Bankruptcy Court for the District of Moot confirmed the plan and dismissed Ms. Rigby's action. R. 4, 9. The court stated the result in this case because the proposed distribution to creditors represents a "premium paid by Strawberry Fields to 'buy

[5] "The bankruptcy court concluded that such a temporary injunction was appropriate to facilitate negotiation of a global settlement by the Debtor, Strawberry Fields and a number of ad hoc creditor groups in mediation. The expiration of the injunction has been extended several times while mediated negotiations, and this litigation, continued." R. 8.

[6] The Bank was "a secured creditor who was separately classified from other creditors under the Plan." R. 9.

[7] "Because the Bank voted against the Plan, the Debtor was unable to satisfy the requirements for confirmation of a consensual plan in section 1191(a), which requires satisfaction of various traditional chapter 11 plan confirmation requirements including, but not limited to, section 1129(a)(8) (requiring that each class of impaired claims has accepted the plan). In such cases, a debtor must seek confirmation of a non-consensual plan by utilizing the subchapter V 'cramdown provisions' set forth in section 1191(b). That subsection provides, in pertinent part, that a plan can be confirmed notwithstanding the lack of acceptance by each class of impaired claims if the plan 'does not discriminate unfairly, and is fair and equitable, with respect to each class of claims … that is impaired under, and has not accepted, the plan.' For a plan to be 'fair and equitable' with respect to a secured claim, such as the Bank's secured claim, it must satisfy the confirmation elements of section 1129(b)(2)(A)." R. 9.

peace' and avoid the negative publicity and reputational damage of further litigation" which "could never compensate victims for the significant pain, suffering, and deaths associated with Penny Lane and Strawberry Field's conduct. R. 10, 11. Ms. Rigby argued first that her claim is non-dischargeable under §523(a)(6) and §1192, and second that bankruptcy courts do not have the authority to release third-party claims against non-debtor entities. R. 4. The bankruptcy court acknowledged that "non-consensual releases of third-part direct claims, such as the releases granted to Strawberry Fields, are permitted only in extraordinary cases...The court noted the highly unusual and complex nature of the case, the significant contribution being made by Strawberry Fields … and the overwhelming creditor support for the Plan." R. 10. Under §523(a)(6), debts arising from any "willful and malicious injury by the debtor to another entity or the property of another entity" are non-dischargeable. R. 7. The parties have stipulated that Penny Lane is a "'small business debtor' eligible for relief under subchapter V" of chapter 11 of the Bankruptcy Code. R. 6. Ms. Rigby's claim has been filed without objection, and thus is allowable under 11 U.S.C. §502.

The bankruptcy court found "'there existed no other reasonably conceivable means to achieve the result accompanied by the Plan' and, therefore the settlements memorialized therein (including the releases) were fair and reasonable." R. 10 The court also made judgements about the comparative distribution under chapter 7, the probability of success and collection of judgment that might be obtained against Strawberry Fields, and that the failure to approve the plan would "likely result in complex and protracted litigation, with attendant risk, cost and delay, whereas the mediated settlement reflected in the Plan offered a significant and immediate benefit

to creditors." R. 10. Ms. Rigby appealed the decision from the Bankruptcy Court of Moot whereas the Bank did not and is not addressed in the ongoing litigation.[8]

STANDARD OF REVIEW

The case before the court presents no dispute as to the facts surrounding the case, but rather only presents the court with questions of law. Since there are only questions of law which this court is called upon to address, the standard of review is *de novo. See, e.g., Texas v. Soileau (In re Soileau)*, 488 F.3d 302, 305 (5th Cir. 2007).

[8] "The parties stipulated to stay the effective date of the Plan pending resolution of these appeals in order to avoid the arguable application of the doctrine of equitable mootness. *See e.g., Ochadleus v. City of Detroit, Michigan (In re City of Detroit, Michigan)*, 838 F.3d 792 (6th Cir. 2016). R. 10, 11.

SUMMARY OF THE ARGUMENT

There are two questions before the court today. First, whether a bankruptcy court has the authority to adjudicate claims whether a non-debtor third party may be released from direct claims under Chapter 11 of the Bankruptcy Code. This raises several different issues as to why this court should overturn the Thirteenth Circuit and their allowance of the third-party releases under a non-consensual plan.

One of the fundamental ideals of the Constitution of the United States is the establishment of "separation of power" between the three branches of government. To allow the courts to discharge these third-party non-debtors would violate this standard for two reasons: (1) it is outside of the scope of the powers granted to the bankruptcy court by statute. The controlling statute tells us that these courts only have the power to hear claims that fall within the category of "core proceedings." 28 U.S.C. §157(b)(2). What does not fall within these core proceedings is making final judgements as to claims typically heard by Article III courts. *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 678, (2015) (discussing the limited authority of bankruptcy courts). Since bankruptcy courts are bound by the powers which Congress gives them, as Article I courts, ruling on direct claims without consent violates this Constitutionally enumerated separation of powers.

In addition to the lack of Constitutionality, there is also a limitation on discharge within the Bankruptcy Code itself. §524 provides that the discharge of debt of the debtor cannot affect the liabilities of another entity for the debt. 11 U.S.C. §524(e). There are several circuits which hold this limitation to apply to third party releases. *See In re Maxitile, Inc.*, 237 Fed. Appx. 274 (9th Cir. App. 2017); *In re Western Real Estate Fund, Inc.*, 922 F.2d 592, 600 (10th Cir.

1990)(both holding that third-party non-debtor releases are not permitted). When applied correctly, this section of the Bankruptcy Code does not permit a third-party release as part of the plan.

The Thirteenth Circuit also misappropriates their understanding of the asbestos exceptions within the Bankruptcy Code. The history behind the special asbestos provisions of the Bankruptcy Code demonstrate that they are to be taken as exceptional rules, not merely amended existing rules for special circumstances. The overall construction of the asbestos provisions lends themselves to also demonstrate their exceptional nature. *See* 11 U.S.C. §524(g). These are the only explicit grants for non-debtor releases found anywhere within the code, demonstrating the exceptional nature of the allowance of these releases.

The second question presented to the Court is whether a corporate debtor seeking relief under Subchapter V, with a plan approved under 11 U.S.C. §1192 of the bankruptcy code may discharge debts listed in 11 U.S.C. §523(a) of the Bankruptcy Code. Simply, they may not discharge these debts. The plain language of §523(a), when read with the properly attributed definitions of the words "kind" and "individual," show that the proper statutory interpretation lends itself to the finding the corporate debtor may not discharge these debts.

When applying the proper meaning of "kind" to §1192(2) we find more support for the finding that there is no discharge for the debts in question. The relevant statute states that when a plan is confirmed under 11 U.S.C. §1191(b), cramdown, that debts "of the kind specified in section 523(a) of this title" are not dischargeable. *See Generally* 11 U.S.C. §1192. This demonstrates that, without exception, these debts are not dischargeable. This cramdown

confirmation also triggers another special provision which removes the discharge of §1141(d), further cementing a lack of §523(a) discharge. *See* 11 U.S.C. §1141(d).

Finally, the importation of language in Subchapter V clearly came from the language used in Chapter 12 cases. In addition to this, there are many similarities between the two types of bankruptcy in the special requirements of each. Since the language can be traced back to a source, this indicates that it should be applied within the new law similarly, giving more evidence that these discharges are not allowed.

ARGUMENT

Petitioner urges this court to overturn the holding of the Thirteenth Circuit Court of Appeals allowing for a non-debtor third party to be released from direct claims under a non-consensual plan approved under Chapter 11 of the Bankruptcy Code. Additionally, this court should find the lower court erred in their holding that a corporate debtor is not bound by 11 U.S.C. §523(a) under a Subchapter V plan approved through 11 U.S.C. §1192.

1. The Bankruptcy Court does not have the power to release a non-debtor third party from direct claims when the Chapter 11 plan approved is non-consensual.

Modern American bankruptcy law finds its framework within the Bankruptcy Reorganization Act of 1978. Pub.L. 95–598, 92 Stat. 2549, November 6, 1978. This act, and the subsequent revisions in the years since, provide the applicable law in the present case under Chapter 11 of the current Bankruptcy Code. Chapter 11 facilitates the reorganization of debts to help keep businesses who file for relief afloat and running. Legislative intent stems from the belief that it is better to keep businesses running and employing workers than to allow businesses to fail and inevitably cost workers the jobs they need to survive. Both scholars and courts recognize that "[t]he fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources." *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984). The bankruptcy courts to this day "are essentially courts of equity, and their proceedings inherently proceedings in equity." *Local Loan Co. v. Hunt*, 292 U.S. 234, 240 (1934). It is this history of equitable remedies and core purposes that supports Petitioner's assertion of erroneous application of law by the Thirteenth Circuit.

I. THE NON-CONSENSUAL RELEASE OF THIRD-PARTY CLAIMS BY THE BANKRUPTCY COURT IS UNCONSTITUTIONAL BECAUSE IT VIOLATES "SEPARATION OF POWERS"

The claims which have been non-consensually discharged against Strawberry Fields (the parent company) are tort claims arising under state law; claims typically heard by an article III court. The Judicial Code in 28 U.S.C. §157 outlines the "core proceedings" with respect to which the bankruptcy court has the power to enter judgements. 28 USC §157(b)(2).[9] As an Article I court, the bankruptcy courts have only limited powers to decide claims which would be traditionally heard by Article III courts.[10] Ms. Rigby's claim against Strawberry Fields and Penny Lane falls into the latter category. There are no provisions within §157 which directly provide the bankruptcy court the authority to hear tort claims which are not core proceedings, as they arise against a non-debtor third party whose only relation to the case is one of a corporate relationship of parent and subsidiary. R 4-5.

If Congress did not intend for the bankruptcy courts to be able to grant final adjudications to those debtors which had direct claims against them, then it surely did not intend for courts to have the power of final adjudication of third-party non-debtor claims. Bankruptcy courts may not rule on "the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11." 28 U.S.C. §157(b)(2)(B). In the case before this court, it is the release of tort claims against

[9] "to....establish uniform laws on the subject of bankruptcy throughout the United States." Art.1 Section __.
[10] Such courts established under Constitutional Article I are limited in nature by two things: 1) the legislation which grants them authority and any limitations contained within, and; 2) the separation of powers; *See: Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 679 (2015) (stating the limited authority which bankruptcy courts have in adjudicating issues typically belonging to article III courts).

Strawberry Fields is sought by the debtor respondent in this case. This case and the underlying inconsistencies in statutory interpretation are about a lack of consent. As this court recognized in *Sharif "*allowing Article I adjudicators to decide claims submitted to them by consent does not offend the separation of powers so long as Article III courts retain supervisory authority over the process." *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 678, (2015). In allowing the confirmation of the plan, the Thirteenth Circuit Court of Appeals has violated this principle. The plan as authorized would allow an Article I court to issue a final adjudication on claims unrelated to the bankruptcy and without supervision of an Article III court over the claims. R 4.

§157 provides further evidence the release Strawberry Fields is seeking from tort claims is not allowed. Even if it were to be held that the claims against Strawberry Fields were within the limited authority of the bankruptcy court power to hear as a "related to" case, §157(b)(5) would kick in requiring the tort case to be heard by a district court. *See:* 11 U.S.C. §157(b)(5).[11] This shows there is no legislative intent for the court to order final adjudication in tort claims. Circumstances indicate error by both the appellate and bankruptcy courts here. The matter from which Strawberry Fields seeks judicial protection is a state tort claim. Under the plain meaning of 11 U.S.C. §157, this case should properly have been sent to the district court to render adjudication on the tort claim before the bankruptcy court addressed the issue.

The majority at the Court of Appeals for the Thirteenth Circuit incorrectly concluded 11 USC §1123(b) provides a statutory exception to §157 by granting the court "[s]tatutory authority for including any imaginable provision in a plan." R 14. However, this theory of the application of §1123(b) ignores the relevant language within the statute requiring that provisions within the

[11] Requiring a "district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose."

plan "not be inconsistent with the applicable provisions of this title." 11 U.S.C. §1123(b)(6). This is incorrect because it ignores the limitations which are placed on the court in Title 28 of the United States Code. §157. Rationally, Congress does not legislate in ignorance of other existing laws. *Miles v. Apex Marine Corp*., 498 U.S. 19, 32 (1990). When laws relating to the bankruptcy court are updated or changed, they are done so with Congressional mindfulness of the limitations placed on the bankruptcy court. Generally: §157. Therefore, it is more likely that the §1123(b) provision operates within the constraints of §157, rather than superseding the constraints of the courts.

While the powers granted in §157 may allow a bankruptcy court to enter final judgement on a claim, Article III of the Constitution does not allow for this. *Stern v. Marshall*, 564 U.S. 462, 468 (2011); *see also: Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 679 (2015). This court in *Stern* demonstrates the limited scope of powers granted to the bankruptcy court to issue final rulings. The bankruptcy court here issued a de facto state law ruling against Ms. Rigby and the class of litigants against Debtor and Strawberry Fields. The State of Moot Bankruptcy Court reviewed the facts at hand and determined that the $100 million dollar payment was more than the class was likely to receive if the case was litigated. R. 8.[12] This determination is analogous to the prohibited final rulings on state law which this court has previously prohibited. It violates the very nature of Constitutional Article III to allow such an immense degree of discretion for evaluating the value of a claim; that is a job for a general factfinder.

When the points above are applied to the legal question at hand the answer to the legal issue at hand is clear, third-party releases of direct claims are not allowed in Chapter 11 plans,

[12] The class included nearly 10,000 claims asserting cumulative damages of nearly $400 million. R. 6.

especially in the context of releases of tort claims without adjudication. The release of a third-party grants non-debtors relief from the bankruptcy court, the opposite of the purpose of the court to be a remedy for the debtor. The release of these third-party claims is akin to a final adjudication, which not only violates constitutional separation of powers but also the authority granted to the court under §157. For these reasons, Petitioner urges the Court to find bankruptcy courts do not have authority to adjudicate these issues because it violates the judicial "separation of powers" created in Articles I and III of the U.S. Constitution.

II. JUDICIAL PRECEDENTS SUPPORT THAT §524(E) OF THE BANKRUPTCY CODE PROHIBITS THE NONCONSENSUAL RELEASE OF A THIRD PARTY

The concept of third-party releases being part of plans created in Chapter 11 is not new and there is judicial precedence extending back four decades. *See Generally: In re AOV Indus. Inc*., 792 F.2d 1140, 1152 (D.C. Cir. 1986). Major cases have brought the issue to national attention and increased the dire need to end these practices. The root providing for the effects of discharge rests in §524 of the Bankruptcy Code. 11 U.S.C. §524. Relevant to Ms. Rigby's claim, the "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." *Id*. §524(e).

Without unanimous consent to a Chapter 11 plan, debts owed to third parties may not be released. It only took the Ninth Circuit Court of Appeals a single sentence to summarize their holding on this issue: "This court has repeatedly held, without exception, that [11 U.S.C.] § 524(e) precludes bankruptcy courts from discharging the liabilities of non-debtors." *In re Maxitile, Inc.*, 237 Fed. Appx. 274 (9th Cir. App. 2017) (Quoting: *Resorts Int'l, Inc. v. Lowenschuss* (*In re Lowenschuss*), 67 F.3d 1394, 1401 (9th Cir.1995)). In addressing the matter

of a third-party release, the Tenth Circuit held "it is the debtor, who has invoked and submitted to the bankruptcy process, that is entitled to its protections; Congress did not intend to extend such benefits to third-party bystanders." *In re Western Real Estate Fund, Inc.*, 922 F.2d 592, 600 (10th Cir. 1990). The Fifth Circuit comes to the same conclusion in their interpretation of §524(e) and notes that numerous cases within the circuit "seem broadly to foreclose non-consensual non-debtor releases."[13] All these courts read the statutory authority to mean the same thing: without unanimous consent to the plan third parties may not be released.

III. THE ASBESTOS EXCEPTIONS DO NOT RELATE TO REORGANIZATION UNDER SUBCHAPTER V

The majority opinion from the Thirteenth Circuit raises the argument that an understanding of §524 is incomplete without reading subchapter V *a pari ratione* the asbestos provisions. R 15. In their argument, they assert that Congress' addition of special rules for claims involving asbestos cases did not constitute the creation of an exception to §524(e) or offer forth the inference that third party releases were not permissible under the Bankruptcy Code beforehand. However, this view of the argument leaves out several key factors in the law which would indicate that, within the context of third-party releases, the asbestos rules were created as an *exceptional* procedure and not altering an existing allowable practice.

First, the majority relies on a misunderstanding of the historical context behind asbestos claims. Asbestos was a mineral widely used in many different types of products throughout the

[13] *In re Pacific Lumber Co*., 584 F.3d. 229, 252 (5th Cir. 2009) S*ee also: In re Coho Resources, Inc*., 345 F.3d 338, 342 (5th Cir.2003); *Hall v. National Gypsum Co.,* 105 F.3d 225, 229 (5th Cir.1997); *Matter of Edgeworth*, 993 F.2d 51, 53–54 (5th Cir. 1993) (All similarly finding that 11 U.S.C. §524(e) does not allow for the non-consensual release of third parties).

country. At one time, it would have been hard for anyone living in the United States to have avoided encountering asbestos. When it was discovered that asbestos was carcinogenic and led to the development of asbestosis, a substantial portion of the population was destined to suffer from the effects of exposure. This created an exceptional problem for the public which Congress sought to resolve. The ensuing mass tort litigation led to a difficult decision for Congress: allow harmed citizens to adjudicate their claims or allow many businesses to face crippling judgements. To accommodate competing needs, Congress set forth exceptional rules.

Second, the language in the exceptional provisions for asbestos cases highlights the exceptional nature of the rules. One example is the requirement that a separate class of asbestos claimants must be created within the plan. 11 U.S.C.§524(g)(2)(B)(ii)(IV)(bb). This contrasts with the standard rules of bankruptcy which would either: a) not release the debtors from liability under 523(a) or b) have all the debtors be lumped into the general unsecured class. Additionally, the asbestos requirements necessitate that the separate, unsecured class must have at least 75% of the class voting in favor of confirmation. *Id*. Both these provisions demonstrate a deviation away from the standard rules of Chapter 11 plan confirmation and are constructed to protect currently or future injured parties. *See:* 11 U.S.C. §1126 (laying out the rules for general confirmation of plans). This creation of a new separate class and increased voting share both demonstrate that Congress saw the need to deviate from the standard and provide extra protection to the injured or those who would suffer future injury.

Third, asbestos provisions located in §524(g) are "the only explicit authorization in the Code for nondebtor releases." *Deutsche Bank A.G. v. Metromedia Fiber Network, Inc.* (*In re Metromedia Fiber Network, Inc.*), 416 F.3d 136, 141 (2d. Cir. 2005). While the Thirteenth

Circuit majority leans broadly on the breadth of the powers a bankruptcy court has when creating a plan, it must be remembered that the court is not authorized to "to create substantive rights that are otherwise unavailable under applicable law." *New England Dairies, Inc. v. Dairy Mart Convenience Stores, Inc.* (*In re Dairy Mart Convenience Stores, Inc*.), 351 F.3d 86, 92 (2d Cir.2003). In the case before the court today the debtor asks this court to grant the stamp of approval on the expanse of the rights and powers which the bankruptcy court beyond those statutorily and constitutionally allowed.

As discussed above, the asbestos provisions are ones which were necessary under the opinion of Congress in order to address a serious issue within the United States. They are exceptional and not the norm. When Congress saw fit to allow third party releases under plans created through relief under Chapter 11, they clearly provided the option as a remedy. The bankruptcy code's silence on this matter otherwise demonstrates the lack of authority to grant these.

2. A corporate debtor seeking relief under Subchapter V of Chapter 11 of the Bankruptcy Code may not be granted a discharge from §523(a) debts when the plan is confirmed under §1192 of Subchapter V.

The issue at hand here is a relatively new one to be asked of the court. Subchapter V of Chapter 11 was created only a few years ago through the passage of the passing of the Small Business Reorganization Act of 2019. As the name would suggest, the act is designed in such a way that only businesses which meet the requirements for what constitutes a small business may take advantage of this special reorganization. Congress felt that this was necessary due to the disparagingly low success rate of small business Chapter 11 reorganizations. *See* H. Rept. 116-

171 (citing the finding that these small business chapter 11 cases were the least likely to be successful). To counteract that issue Congress passed this legislation in order to "streamline the bankruptcy process by which small businesses debtors reorganize." *id.*

I. THE PLAIN MEANING OF SUBCHAPTER V SHOWS 11 U.S.C. §523(A) DEBTS ARE NOT DISCHARGEABLE UNDER 11 U.S.C. §1192

The purpose of the Small Business Reorganization Act of 2019, which first created Subchapter V of the Bankruptcy Code, was to "streamline the process by which small business debtors reorganize." H.R. 3311 (2019). What is sought in this case has nothing to do with the purpose for which Subchapter V was created. Strawberry Fields is a large corporation seeking relief from potential liability resulting from torts in state court and is giving money to their small business subsidiary facing bankruptcy, to try to buy their liability under the guise of "good faith." This case addresses not a small business benefiting from the Subchapter V bankruptcy as Congress intended, but rather a large business attempting to buy its way out of exorbitantly harmful tort liability. To double down on this, the debtor is also asking the court to absolve them of

The present, pertinent question is whether the nondischargeable debts under §523(a) apply to corporate debtors filing for relief under Subchapter V. An "individual debtor" may not be discharged from certain debts enumerated within the statute. 11 U.S.C. §523(a)(1-19). It has been noted in prior judicial precedents that some courts "recognize a certain lack of clarity in the relationship between § 1192(2) and § 523(a)." *In re Cleary Packaging LLC.*, 36 F.4th 509, 513 (4th Cir. Ct. App. 2022). In addressing this matter, the Fourth Circuit found that "§1192(2)'s cross-reference to § 523(a) does not refer to any kind of debtor addressed by §523(a) but rather

to a kind of debt listed in §523(a). *Id* at 515. The use of the word "kind" was merely a form of shorthand. *Id*. In writing the Bankruptcy Code, this use of shorthand would create the most rational meaning. Since the term "kind" would be referencing an extensive list of debt, the use of a shorthand reference would avoid the redundancy of relisting the aforementioned debts and regurgitating the rules of §523(a).

The erroneous application of the term "individual" by the Thirteenth Circuit has led to a mistaken understanding that an "individual" means a single person under the statute, excluding applicability to corporations. R 18. Corporations, by their nature, usually entail multiple people operating together rather than a single person. However, this narrow definition fails to consider the plain, obvious meaning of the word. This failure stems from the application of the word's definition as a *noun* rather than an *adjective*. As the statute is construed, "debtor" is the noun in the sentence and "individual" merely serves to modify that noun. The correct adjective definition of an individual is "existing as a distinct entity." Miriam Webster Dictionary (Online Ed.). Therefore, a corporate debtor *existing as a distinct entity* may not be discharged from certain debts enumerated within the statute. 11 U.S.C. §523(a)(1-19)

To properly apply "individual" requires examination of the statutory syntax. In relevant part, "[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." §523(a). Based on §523(a)'s syntactic structure, the noun "debtor" serves as the subject of the sentence. The clear reading of this statute should result in the "debtor" being read as singular or, in other words, a singular entity. With that, the issue shifts to whether a corporation as a "singular entity" could be the debtor. A corporation by its nature is classified as a singular entity and treated as such under the law. 18

C.J.S. Corporations § 6. Since a corporation is a singular entity, it would meet the necessary classification of an "individual debtor" which is required for §523(a) to apply.

II. THE STATUTORY USE OF THE WORD "KIND" IN §1192(2) DEMONSTRATES THAT THERE IS NO §523(A) DISCHARGE FOR A CORPORATE DEBTOR

In the Thirteenth Circuit majority opinion, the court narrows in on the word "kind" found in §1192(2) and incorrectly discerned its proper application. R 18-19. The relevant statutory language here provides the exceptions to discharge of debts are "of the kind specified in section 523(a) of this title." 11 U.S.C. §1192(2). The majority defines "kind" as "common traits." R. 19. However, this is a misrepresentation of the full definition of "kind": "a group united by common traits or interests." Merriam Webster Dictionary (Online ed.). Using this definition in the appropriate context, the statutory meaning of "kind" completely changes. When §1192(2) refers to the word "kind," legislators most likely intended to mean debts found in §523(a).

This proper application of "kind" additionally negates the second argument of the lower court that "kind" in §523(a) refers to the common traits of individual, and that some specified circumstances must have created the obligation. R. 19. When examining the use of "kind" in §523(a), the term is used there to refer to groups or categories rather than merely common traits. §523(a)(1)(A) uses "kind" to refer to debts "specified in section §507(a)(3) or §507(a)(8) of this title. 11 U.S.C. §523(a)(1)(A). This is another legislative example of "kind" to refer to a category of things – those which fall in the specified sections. Again, there is similar grammatical usage where it is stated that "such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection." 11 U.S.C. §523(a)(3)(A). Here, §523(a)(3)(A) uses "kind" to refer to a specific

category of debt. Another instance of this usage, found in §523(a)(7)(A), states "relating to a tax of a kind not specified in paragraph (1) of this subsection." 11 U.S.C. §523(a)(7)(A). Here, again, "kind" is used to refer to a particular category, here it is of taxes rather than debts.

This repetition of the word "kind" being used to refer to different things categorically gives strong credence to the understanding that "kind" in the prevalent statutes means *category* and not the bifurcated straits which the majority in the lower court proposes. Because of this, the use of kind in §1192(2) simply refers to the category of debts listed in §523(a). Since this is merely a reference to a category, this suggests there is no exclusion of the corporate debtor from this rule further solidifying that when there is cramdown there is no discharge of those debts for anyone under Subchapter V.

III. READING SUBCHAPTER V *A SIMILI RATIONE* WITH CHAPTER 12, SYNTACTICAL SIMILARITIES SHOW PROVISIONS APPLY TO CORPORATIONS AND INDIVIDUALS

While the majority opinion from the Thirteenth Circuit argues that Chapter 12 is irrelevant to the analysis of a Subchapter V filing, there is an "importation of language into Subchapter V from the conceptually similar Chapter 12 proceedings." *Cleary* at 515. Chapter 12 bankruptcies only apply to very particular bankruptcy cases - family farmers or fisherman. Similarly, the Subchapter V provisions found in Chapter 11 of the Bankruptcy Code apply to a similarly narrow category of bankruptcy cases; those of small businesses with a limited number of gross receipts and debt. In addition to the two distinct types of bankruptcy being similar in narrow applicability, there is also an importation of language from Chapter 12 into Subchapter

V. *Cleary* at 515. This conceptual importation has also been recognized by other courts. *See: e.g.,* In *re Trepetin*, 617 B.R. 841, 848 (Bankr. D. Md. 2020).

There are several key similarities between the statutory language of Chapter 12 compared to the Subchapter V provisions in Chapter 11. First, similar language limits both the amount and type of debt which can be held by the debtor. *See:* 11 USC §101(18)(A)[14] Both the syntax and language, like "50% of total income from that source and aggregate noncontingent liquidated debts," are extremely similar. *See* 11 U.S.C. 101(18); *see also* 11 U.S.C. §1182(1). Reasoning *a simile ratione*, similarly constructed statutes are held to mean similar things. *Hall v. United States*, 566 U.S. 506, 519 (2012) ("[I]dentical words and phrases within the same statute should normally be given the same meaning."). Using this method of statutory interpretation, Chapter 12 helps decipher legislative intent for the similarly constructed Subchapter V provisions. Congress does not legislate in ignorance of other existing laws; the bill's authors and voting members of Congress would nearly certainly have known how the similar Chapter 12 language had been applied to cases. *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 524 (1984).

Numerous courts have applied §523(a) to Chapter 12 cases which involve corporate debtors. *See: S.W. Ga. Farm Credit, ACA v. Breezy Ridge Farms, Inc*. (*In re Breezy Ridge Farms, Inc.*), 2009 WL 1514671 (Bankr. M.D. Ga. 2009) and *New Venture P'ship. v. JRB*

[14] Providing: aggregate debts do not exceed $10,000,000 and not less than 50 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual's or such individual and spouse's gross income); *See also*: 11 USC §1182(1) ("has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than $7,500,000 (excluding debts owed to 1 or more affiliates or insiders) not less than 50 percent of which arose from the commercial or business activities of the debtor."

Consol., Inc. (*In re JRB Consol., Inc.*), 188 B.R. 373 (Bankr. W.D. Tex. 1995). The cases all come to similar conclusions, that when applied to a corporate debtor who files for relief under Chapter 12 they may not escape from the debts which they owe arising from actions that fall under section 523. Recalling the similarities in statutory syntax and language choice, the most logical conclusion is that the remarkably similar subchapter V language should come out the same way. When §523(a) is applied, Ms. Rigby's debt relating to Penny Lane and Strawberry Fields' tort liability would not be eligible for discharge. §523 specifically prohibits the discharge of debts arising from tort liability, more specifically the "willful or malicious injury" caused by the debtor and must logically preclude release by Penny Lane and Strawberry Fields. 11 U.S.C. §523.

IV. CONFIRMATION OF A PLAN THROUGH CRAMDOWN TRIGGERS THE SPECIAL DISCHARGE RULE IN §1181(C) WHICH REMOVES THE APPLICABILITY OF SECTION §1141(D) TO THE DISCHARGE

The plan at issue in this case was achieved through acceptance of a nonconsensual plan, a process which is more commonly referred to as cramdown. When relief is sought under Subchapter V, and obtained through cramdown, then §1181(c) takes effect. This special rule states that "if a plan is confirmed under §1191(b) of this title, §1141(d) of this title shall not apply, except as provided in §1192 of this title. 11 U.S.C. §1181(c). The controlling §1192 here then provides that:

"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 …, the court shall grant the debtor a discharge of all debts provided in section 1141(d)(1)(A) of this title … except any debt—

(2) of the kind specified in section 523(a) of this title." 11 U.S.C. §1192.

When the plain meaning of a statute can be easily determined, the judicial inquiry into the matter ceases and the court should apply the words as written – *ad verbum*. *See United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989). Since the statutory language in the provisions discussed here is very plain, the inquiry should cease so as not to create absurd consequences – *ab absurdum*. The methods which judicial authorities should use to interpret the legislator's words have been around since the invention of modern law, and the application of these methods is no different today.[15] First, §1192 applies to a debtor who has achieved the confirmation of a plan through an 1191(b) cramdown. §[1192(2) does not contain the word individual; "individual" which the Thirteenth Circuit Court found imperative to their holding that §523(a) did not apply to a corporate debtor. Since there is no adjective modifying the word debtor, then the word would plainly mean whichever debtor is seeking relief from the bankruptcy court whether they are an individual or a corporation.

Since in §1192(2) the term debtor is used generally with no modifying language, "debtor" plainly means that all debtors who qualify are subject to this rule. The cramdown confirmation of a plan requires an examination through §1192 to determine the results discharge will have if the payment requirements are met. 11 U.S.C §1192. Since the controlling section of law explicitly and clearly states that there is no discharge for debts of the kind specified in §523(a), the only logical conclusion is that under Subchapter V, when cramdown is used to have a plan confirmed, there is no discharge from §523(a) debts. Therefore, the most logical, plain interpretation of

[15] Methods of interpretating legislation stems from the glossators and commentators in the ancient Roman Empire. Many of these methods developed by the legal glossators are still in use today.. Britannica, T. Editors of Encyclopaedia. "legal glossator." *Encyclopedia Britannica*, December 16, 2014. https://www.britannica.com/topic/legal-glossator.

§523(a) requires this court to reverse the decision of the Thirteenth Circuit Court of Appeals and find those debts non-dischargeable when cramdown is used for plan confirmation.

CONCLUSION

It is based on the unconstitutionality of the releases in Chapter 11 and violation of the plain statutory language of Subchapter V that Petitioner respectfully asks this Court to overturn the decision of the Thirteenth Circuit Court of Appeals and clarify this very murky area of the law. The use of these releases violates not only the equity inherent in the construction of the bankruptcy courts, but also the Constitutionally protected separation of powers. Nowhere in the Bankruptcy Code is authority granted to the courts for these third-party releases without consent. The actions which the debtor seeks to take are strictly prohibited by a proper reading of the relevant statutes applicable to Subchapter V. Bankruptcy courts neither have the power to discharge these debts, nor is it the statutory intent for third-party direct claims to be allowed for release when they are non-consensual. Therefore, it is in the interest of justice that the Court OVERULE the decision of the Thirteen Circuit Court of Appeals.

APPENDIX

11 U.S.C. §502 – Allowance of claims or interests

(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.**(a)** A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects. **(b)** Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

> **(1)** such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured;
>
> **(2)** Such claim is for unmatured interest;
>
> **(3)** if such claim is for a tax assessed against property of the estate, such claim exceeds the value of the interest of the estate in such property;
>
> **(4)** if such claim is for services of an insider or attorney of the debtor, such claim exceeds the reasonable value of such services;

(5) such claim is for a debt that is unmatured on the date of the filing of the petition and that is excepted from discharge under section 523(a)(5) of this title;**(5)** such claim is for a debt that is unmatured on the date of the filing of the petition and that is excepted from discharge under section 523(a)(5) of this title;

(6)if such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claim exceeds—

> **(A)** the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of—
>
> > **(i)** the date of the filing of the petition; and
> >
> > **(ii)** the date on which such lessor repossessed, or the lessee surrendered, the leased property; plus
>
> **(B)** any unpaid rent due under such lease, without acceleration, on the earlier of such dates;

(7)if such claim is the claim of an employee for damages resulting from the termination of an employment contract, such claim exceeds—

> **(A)** the compensation provided by such contract, without acceleration, for one year following the earlier of—
>
> > **(i)** the date of the filing of the petition; or

(ii) the date on which the employer directed the employee to terminate, or such employee terminated, performance under such contract; plus

(B) any unpaid compensation due under such contract, without acceleration, on the earlier of such dates;

(8) such claim results from a reduction, due to late payment, in the amount of an otherwise applicable credit available to the debtor in connection with an employment tax on wages, salaries, or commissions earned from the debtor; or

(9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) or under the Federal Rules of Bankruptcy Procedure, except that—**(9)** proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) or under the Federal Rules of Bankruptcy Procedure, except that—

(A) a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide; and

(B) in a case under chapter 13, a claim of a governmental unit for a tax with respect to a return filed under section 1308 shall be timely if the claim is filed on or before the date that is 60 days after the date on which such return was filed as required.**(B)** in a case under chapter 13, a claim of a governmental unit for a tax with respect to a return filed under section 1308 shall be timely if the claim is

filed on or before the date that is 60 days after the date on which such return was filed as required.

(c) There shall be estimated for purpose of allowance under this section—

(1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or

(2) any right to payment arising from a right to an equitable remedy for breach of performance.

(d) Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title.

(e)

(1) Notwithstanding subsections (a), (b), and (c) of this section and paragraph (2) of this subsection, the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that—

(A) such creditor's claim against the estate is disallowed;

(B) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution; or

(C) such entity asserts a right of subrogation to the rights of such creditor under section 509 of this title.**(C)** such entity asserts a right of subrogation to the rights of such creditor under section 509 of this title.

(2) A claim for reimbursement or contribution of such an entity that becomes fixed after the commencement of the case shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) of this section, the same as if such claim had become fixed before the date of the filing of the petition.

(f) In an involuntary case, a claim arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee and the order for relief shall be determined as of the date such claim arises, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(g)

(1) A claim arising from the rejection, under section 365 of this title or under a plan under chapter 9, 11, 12, or 13 of this title, of an executory contract or unexpired lease of the debtor that has not been assumed shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the

petition.**(1)** A claim arising from the rejection, under section 365 of this title or under a plan under chapter 9, 11, 12, or 13 of this title, of an executory contract or unexpired lease of the debtor that has not been assumed shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(2) A claim for damages calculated in accordance with section 562 shall be allowed under subsection (a), (b), or (c), or disallowed under subsection (d) or (e), as if such claim had arisen before the date of the filing of the petition.

(h) A claim arising from the recovery of property under section 522, 550, or 553 of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.**(h)** A claim arising from the recovery of property under section 522, 550, or 553 of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(i) A claim that does not arise until after the commencement of the case for a tax entitled to priority under section 507(a)(8) of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.**(i)** A claim that does not arise until after the commencement of the case for a tax entitled to priority under section 507(a)(8) of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of

this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(j) A claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case. Reconsideration of a claim under this subsection does not affect the validity of any payment or transfer from the estate made to a holder of an allowed claim on account of such allowed claim that is not reconsidered, but if a reconsidered claim is allowed and is of the same class as such holder's claim, such holder may not receive any additional payment or transfer from the estate on account of such holder's allowed claim until the holder of such reconsidered and allowed claim receives payment on account of such claim proportionate in value to that already received by such other holder. This subsection does not alter or modify the trustee's right to recover from a creditor any excess payment or transfer made to such creditor.

(k)

(1) The court, on the motion of the debtor and after a hearing, may reduce a claim filed under this section based in whole on an unsecured consumer debt by not more than 20 percent of the claim, if—

(A) the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed on behalf of the debtor by an approved nonprofit budget and credit counseling agency described in section 111;

(B) the offer of the debtor under subparagraph (A)—

(i) was made at least 60 days before the date of the filing of the petition; and

(ii) provided for payment of at least 60 percent of the amount of the debt over a period not to exceed the repayment period of the loan, or a reasonable extension thereof; and

(C) no part of the debt under the alternative repayment schedule is nondischargeable.

(2) The debtor shall have the burden of proving, by clear and convincing evidence, that—

(A) the creditor unreasonably refused to consider the debtor's proposal; and

(B) the proposed alternative repayment schedule was made prior to expiration of the 60-day period specified in paragraph (1)(B)(i).

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2579; Pub. L. 98–353, title III, § 445, July 10, 1984, 98 Stat. 373; Pub. L. 99–554, title II, §§ 257(j), 283(f), Oct. 27, 1986, 100 Stat. 3115, 3117; Pub. L. 103–394, title II, § 213(a), title III, § 304(h)(1), Oct. 22, 1994, 108 Stat. 4125, 4134; Pub. L. 109–8, title II, § 201(a), title VII, § 716(d), title IX, § 910(b), Apr. 20, 2005, 119 Stat. 42, 130, 184; Pub. L. 116–260, div. FF, title X, § 1001(d)(2), (3)(B), Dec. 27, 2020, 134 Stat. 3218.)

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

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

(1) for a tax or a customs duty—

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

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

(i) was not filed or given; or

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

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

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

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

(B) use of a statement in writing—

(i) that is materially false;

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

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

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

(C)

(i) for purposes of subparagraph (A)—

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

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

(ii) for purposes of this subparagraph—

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

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

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

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

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

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

(5) for a domestic support obligation;

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

(7) 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; ora 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.

For purposes of this subsection, the term "return" means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.

(b) Notwithstanding subsection (a) of this section, a debt that was excepted from discharge under subsection (a)(1), (a)(3), or (a)(8) of this section, under section 17a(1), 17a(3), or 17a(5) of the Bankruptcy Act, under section 439A [3] of the Higher Education Act of 1965, or under section 733(g) [3]of the Public Health Service Act in a prior case concerning the debtor under this title, or under the Bankruptcy Act, is dischargeable in a case under this title unless, by the terms of subsection (a) of this section, such debt is not dischargeable in the case under this title.

(c)

(1) Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), or (6) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section.

(2) Paragraph (1) shall not apply in the case of a Federal depository institutions regulatory agency seeking, in its capacity as conservator, receiver, or liquidating agent for an insured depository institution, to recover a debt described in subsection (a)(2), (a)(4), (a)(6), or

(a)(11) owed to such institution by an institution-affiliated party unless the receiver, conservator, or liquidating agent was appointed in time to reasonably comply, or for a Federal depository institutions regulatory agency acting in its corporate capacity as a successor to such receiver, conservator, or liquidating agent to reasonably comply, with subsection (a)(3)(B) as a creditor of such institution-affiliated party with respect to such debt.

(d) If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust.

(e) Any institution-affiliated party of an insured depository institution shall be considered to be acting in a fiduciary capacity with respect to the purposes of subsection (a)(4) or (11).

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2590; Pub. L. 96–56, § 3, Aug. 14, 1979, 93 Stat. 387; Pub. L. 97–35, title XXIII, § 2334(b), Aug. 13, 1981, 95 Stat. 863; Pub. L. 98–353, title III, §§ 307, 371, 454, July 10, 1984, 98 Stat. 353, 364, 375; Pub. L. 99–554, title II, §§ 257(n), 281, 283(j), Oct. 27, 1986, 100 Stat. 3115–3117; Pub. L. 101–581, § 2(a), Nov. 15, 1990, 104 Stat. 2865; Pub. L. 101–647, title XXV, § 2522(a), title XXXI, § 3102(a), title XXXVI, § 3621, Nov. 29, 1990, 104 Stat. 4865, 4916, 4964; Pub. L. 103–322, title XXXII, § 320934, Sept. 13, 1994, 108 Stat. 2135; Pub. L. 103–394, title II, § 221, title III, §§ 304(e), (h)(3), 306, 309, title V, § 501(d)(13), Oct. 22, 1994, 108 Stat. 4129, 4133–4135, 4137, 4145; Pub. L. 104–134, title I, § 101[(a)] [title VIII, § 804(b)], Apr. 26, 1996, 110 Stat. 1321, 1321–74; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 104–193, title III, § 374(a), Aug. 22,

1996, 110 Stat. 2255; Pub. L. 105–244, title IX, § 971(a), Oct. 7, 1998, 112 Stat. 1837; Pub. L. 107–204, title VIII, § 803, July 30, 2002, 116 Stat. 801; Pub. L. 109–8, title II, §§ 215, 220, 224(c), title III, §§ 301, 310, 314(a), title IV, § 412, title VII, § 714, title XII, §§ 1209, 1235, title XIV, § 1404(a), title XV, § 1502(a)(2), Apr. 20, 2005, 119 Stat. 54, 59, 64, 75, 84, 88, 107, 128, 194, 204, 215, 216; Pub. L. 111–327, § 2(a)(18), Dec. 22, 2010, 124 Stat. 3559; Pub. L. 116–54, § 4(a)(8), Aug. 23, 2019, 133 Stat. 1086.)

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.

(B) An injunction may be issued under subparagraph (A) to enjoin entities from taking legal action for the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery with respect to any claim or demand that, under a plan of

reorganization, is to be paid in whole or in part by a trust described in paragraph (2)(B)(i), except such legal actions as are expressly allowed by the injunction, the confirmation order, or the plan of reorganization.

(2)

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

(B) The requirements of this subparagraph are that—

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

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

(II) is to be funded in whole or in part by the securities of 1 or more debtors involved in such plan and by the obligation of such debtor or debtors to make future payments, including dividends;

(III) is to own, or by the exercise of rights granted under such plan would be entitled to own if specified contingencies occur, a majority of the voting shares of—

(aa) each such debtor;

(bb) the parent corporation of each such debtor; or

(cc) a subsidiary of each such debtor that is also a debtor; and

(IV) is to use its assets or income to pay claims and demands; and

(ii) subject to subsection (h), the court determines that—

(I) the debtor is likely to be subject to substantial future demands for payment arising out of the same or similar conduct or events that gave rise to the claims that are addressed by the injunction;

(II) the actual amounts, numbers, and timing of such future demands cannot be determined;

(III) pursuit of such demands outside the procedures prescribed by such plan is likely to threaten the plan's purpose to deal equitably with claims and future demands;

(IV) as part of the process of seeking confirmation of such plan—

(aa) the terms of the injunction proposed to be issued under paragraph (1)(A), including any provisions barring actions against third parties pursuant to paragraph (4)(A), are set out in such plan and in any disclosure statement supporting the plan; and

(bb) a separate class or classes of the claimants whose claims are to be addressed by a trust described in clause (i) is established and votes, by at least 75 percent of those voting, in favor of the plan; and

(V) subject to subsection (h), pursuant to court orders or otherwise, the trust will operate through mechanisms such as structured, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of present claims and future demands, or other comparable mechanisms, that provide reasonable assurance that the trust will value, and be in a financial position to pay, present claims and future demands that involve similar claims in substantially the same manner.

(3)

(A) If the requirements of paragraph (2)(B) are met and the order confirming the plan of reorganization was issued or affirmed by the district court that has jurisdiction over the reorganization case, then after the time for appeal of the order that issues or affirms the plan—

(i) the injunction shall be valid and enforceable and may not be revoked or modified by any court except through appeal in accordance with paragraph (6);

(ii) no entity that pursuant to such plan or thereafter becomes a direct or indirect transferee of, or successor to any assets of, a debtor or trust that is the subject of the injunction shall be liable with respect to any claim or demand made against such entity by reason of its becoming such a transferee or successor; and

(iii) no entity that pursuant to such plan or thereafter makes a loan to such a debtor or trust or to such a successor or transferee shall, by reason of making the loan, be liable with respect to any claim or demand made against such entity, nor shall any pledge of assets made in connection with such a loan be upset or impaired for that reason;

(B) Subparagraph (A) shall not be construed to—

(i) imply that an entity described in subparagraph (A)(ii) or (iii) would, if this paragraph were not applicable, necessarily be liable to any entity by reason of any of the acts described in subparagraph (A);

(ii) relieve any such entity of the duty to comply with, or of liability under, any Federal or State law regarding the making of a fraudulent conveyance in a transaction described in subparagraph (A)(ii) or (iii); or

(iii) relieve a debtor of the debtor's obligation to comply with the terms of the plan of reorganization, or affect the power of the court to exercise its authority under sections 1141 and 1142 to compel the debtor to do so.

(4)

(A)

(i) Subject to subparagraph (B), an injunction described in paragraph (1) shall be valid and enforceable against all entities that it addresses.

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

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

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

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

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

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

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

(iii) As used in this subparagraph, the term "related party" means—

(I) a past or present affiliate of the debtor;

(II) a predecessor in interest of the debtor; or

(III) any entity that owned a financial interest in—

(aa) the debtor;

(bb) a past or present affiliate of the debtor; or

(cc) a predecessor in interest of the debtor.

(B) Subject to subsection (h), if, under a plan of reorganization, a kind of demand described in such plan is to be paid in whole or in part by a trust described in paragraph (2)(B)(i) in connection with which an injunction described in paragraph (1) is to be implemented, then such injunction shall be valid and enforceable with respect to a demand of such kind made, after such plan is confirmed, against the debtor or debtors involved, or against a third party described in subparagraph (A)(ii), if—

(i) as part of the proceedings leading to issuance of such injunction, the court appoints a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands of such kind, and

(ii) the court determines, before entering the order confirming such plan, that identifying such debtor or debtors, or such third party (by name or as part of an identifiable group), in such injunction with respect to such demands for purposes of this subparagraph is fair and equitable with respect to the persons that might subsequently assert such demands, in light of the benefits provided, or to be provided, to such trust on behalf of such debtor or debtors or such third party.

(5) In this subsection, the term "demand" means a demand for payment, present or future, that—

(A) was not a claim during the proceedings leading to the confirmation of a plan of reorganization;

(B) arises out of the same or similar conduct or events that gave rise to the claims addressed by the injunction issued under paragraph (1); and

(C) pursuant to the plan, is to be paid by a trust described in paragraph (2)(B)(i).

(6) Paragraph (3)(A)(i) does not bar an action taken by or at the direction of an appellate court on appeal of an injunction issued under paragraph (1) or of the order of confirmation that relates to the injunction.

(7) This subsection does not affect the operation of section 1144 or the power of the district court to refer a proceeding under section 157 of title 28 or any reference of a proceeding made prior to the date of the enactment of this subsection.

(h) Application to Existing Injunctions.—For purposes of subsection (g)—

(1) subject to paragraph (2), if an injunction of the kind described in subsection (g)(1)(B) was issued before the date of the enactment of this Act, as part of a plan of reorganization confirmed by an order entered before such date, then the injunction shall be considered to meet the requirements of subsection (g)(2)(B) for purposes of subsection (g)(2)(A), and to satisfy subsection (g)(4)(A)(ii), if—

(A) the court determined at the time the plan was confirmed that the plan was fair and equitable in accordance with the requirements of section 1129(b);

(B) as part of the proceedings leading to issuance of such injunction and confirmation of such plan, the court had appointed a legal representative for the purpose

of protecting the rights of persons that might subsequently assert demands described in subsection (g)(4)(B) with respect to such plan; and

(C) such legal representative did not object to confirmation of such plan or issuance of such injunction; and

(2) for purposes of paragraph (1), if a trust described in subsection (g)(2)(B)(i) is subject to a court order on the date of the enactment of this Act staying such trust from settling or paying further claims—

(A) the requirements of subsection (g)(2)(B)(ii)(V) shall not apply with respect to such trust until such stay is lifted or dissolved; and

(B) if such trust meets such requirements on the date such stay is lifted or dissolved, such trust shall be considered to have met such requirements continuously from the date of the enactment of this Act.

(i) The willful failure of a creditor to credit payments received under a plan confirmed under this title, unless the order confirming the plan is revoked, the plan is in default, or the creditor has not received payments required to be made under the plan in the manner required by the plan (including crediting the amounts required under the plan), shall constitute a violation of an injunction under subsection (a)(2) if the act of the creditor to collect and failure to credit payments in the manner required by the plan caused material injury to the debtor.

(j) Subsection (a)(2) does not operate as an injunction against an act by a creditor that is the holder of a secured claim, if—

(1) such creditor retains a security interest in real property that is the principal residence of the debtor;

(2) such act is in the ordinary course of business between the creditor and the debtor; and

(3) such act is limited to seeking or obtaining periodic payments associated with a valid security interest in lieu of pursuit of in rem relief to enforce the lien.

(k)

(1) The disclosures required under subsection (c)(2) shall consist of the disclosure statement described in paragraph (3), completed as required in that paragraph, together with the agreement specified in subsection (c), statement, declaration, motion and order described, respectively, in paragraphs (4) through (8), and shall be the only disclosures required in connection with entering into such agreement.

(2) Disclosures made under paragraph (1) shall be made clearly and conspicuously and in writing. The terms "Amount Reaffirmed" and "Annual Percentage Rate" shall be disclosed more conspicuously than other terms, data or information provided in connection with this disclosure, except that the phrases "Before agreeing to reaffirm a debt, review these important disclosures" and "Summary of Reaffirmation Agreement" may be equally conspicuous. Disclosures may be made in a different order and may use terminology different from that set forth in paragraphs (2) through (8), except that the terms "Amount Reaffirmed" and "Annual Percentage Rate" must be used where indicated.

(3) The disclosure statement required under this paragraph shall consist of the following:

(A) The statement: “Part A: Before agreeing to reaffirm a debt, review these important disclosures:”;

(B) Under the heading “Summary of Reaffirmation Agreement”, the statement: “This Summary is made pursuant to the requirements of the Bankruptcy Code”;

(C) The “Amount Reaffirmed”, using that term, which shall be—

(i) the total amount of debt that the debtor agrees to reaffirm by entering into an agreement of the kind specified in subsection (c), and

(ii) the total of any fees and costs accrued as of the date of the disclosure statement, related to such total amount.

(D) In conjunction with the disclosure of the “Amount Reaffirmed”, the statements—

(i) “The amount of debt you have agreed to reaffirm”; and

(ii) “Your credit agreement may obligate you to pay additional amounts which may come due after the date of this disclosure. Consult your credit agreement.”.

(E) The “Annual Percentage Rate”, using that term, which shall be disclosed as—

(i) if, at the time the petition is filed, the debt is an extension of credit under an open end credit plan, as the terms “credit” and “open end credit plan” are defined in section 103 of the Truth in Lending Act, then—

(I) the annual percentage rate determined under paragraphs (5) and (6) of section 127(b) of the Truth in Lending Act, as applicable, as disclosed to the debtor in the most recent periodic statement prior to entering into an agreement of the kind specified in subsection (c) or, if no such periodic statement has been given to the debtor during the prior 6 months, the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given to the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of each such balance included in the amount reaffirmed, or

(III) if the entity making the disclosure elects, to disclose the annual percentage rateunder subclause (I) and the simple interest rate under subclause (II); or

(ii) if, at the time the petition is filed, the debt is an extension of credit other than under an open end credit plan, as the terms "credit" and "open end credit plan" are defined in section 103 of the Truth in Lending Act, then—

(I) the annual percentage rate under section 128(a)(4) of the Truth in Lending Act, as disclosed to the debtor in the most recent disclosure statement given to the debtor prior to the entering into an agreement of the kind specified in subsection (c) with

respect to the debt, or, if no such disclosure statement was given to the debtor, theannual percentage rate as it would have been so disclosed at the time the disclosure statement is given to the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of such balance included in the amount reaffirmed, or

(III) if the entity making the disclosure elects, to disclose the annual percentage rateunder (I) and the simple interest rate under (II).

(F) If the underlying debt transaction was disclosed as a variable rate transaction on the most recent disclosure given under the Truth in Lending Act, by stating "The interest rate on your loan may be a variable interest rate which changes from time to time, so that the annual percentage rate disclosed here may be higher or lower.".

(G) If the debt is secured by a security interest which has not been waived in whole or in part or determined to be void by a final order of the court at the time of the disclosure, by disclosing that a security interest or lien in goods or property is asserted over some or all of the debts the debtor is reaffirming and listing the items and their original purchase price that are subject to the asserted security interest, or if not a purchase-money security interest then listing by items or types and the original amount of the loan.

(H) At the election of the creditor, a statement of the repayment schedule using 1 or a combination of the following—

(i) by making the statement: “Your first payment in the amount of $___ is due on ___ but the future payment amount may be different. Consult your reaffirmation agreement or credit agreement, as applicable.”, and stating the amount of the first payment and the due date of that payment in the places provided;

(ii) by making the statement: “Your payment schedule will be:”, and describing the repayment schedule with the number, amount, and due dates or period of payments scheduled to repay the debts reaffirmed to the extent then known by the disclosing party; or

(iii) by describing the debtor’s repayment obligations with reasonable specificity to the extent then known by the disclosing party.

(I) The following statement: “Note: When this disclosure refers to what a creditor ‘may’ do, it does not use the word ‘may’ to give the creditor specific permission. The word ‘may’ is used to tell you what might occur if the law permits the creditor to take the action. If you have questions about your reaffirming a debt or what the law requires, consult with the attorney who helped you negotiate this agreement reaffirming a debt. If you don’t have an attorney helping you, the judge will explain the effect of your reaffirming a debt when the hearing on the reaffirmation agreement is held.”.

(J)

(i) The following additional statements:

“Reaffirming a debt is a serious financial decision. The law requires you to take certain steps to make sure the decision is in your best interest. If these steps are not completed, the reaffirmation agreement is not effective, even though you have signed it.

"1. Read the disclosures in this Part A carefully. Consider the decision to reaffirm carefully. Then, if you want to reaffirm, sign the reaffirmation agreement in Part B (or you may use a separate agreement you and your creditor agree on).

"2. Complete and sign Part D and be sure you can afford to make the payments you are agreeing to make and have received a copy of the disclosure statement and a completed and signed reaffirmation agreement.

"3. If you were represented by an attorney during the negotiation of your reaffirmation agreement, the attorney must have signed the certification in Part C.

"4. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, you must have completed and signed Part E.

"5. The original of this disclosure must be filed with the court by you or your creditor. If a separate reaffirmation agreement (other than the one in Part B) has been signed, it must be attached.

"6. If you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship as explained in Part D.

"7. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, it will not be effective unless the court approves it. The court will notify you of the hearing on your reaffirmation agreement. You must attend this hearing in bankruptcy court where the judge will review your reaffirmation agreement. The bankruptcy court must approve your reaffirmation agreement as consistent with your best interests, except that no court approval is required if your reaffirmation agreement is for a consumer debt secured by a mortgage, deed of trust, security deed, or other lien on your real property, like your home.

“Your right to rescind (cancel) your reaffirmation agreement. You may rescind (cancel) your reaffirmation agreement at any time before the bankruptcy court enters a discharge order, or before the expiration of the 60-day period that begins on the date your reaffirmation agreement is filed with the court, whichever occurs later. To rescind (cancel) your reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (or canceled).

“What are your obligations if you reaffirm the debt? A reaffirmed debt remains your personal legal obligation. It is not discharged in your bankruptcy case. That means that if you default on your reaffirmed debt after your bankruptcy case is over, your creditor may be able to take your property or your wages. Otherwise, your obligations will be determined by the reaffirmation agreement which may have changed the terms of the original agreement. For example, if you are reaffirming an open end credit agreement, the creditor may be permitted by that agreement or applicable law to change the terms of that agreement in the future under certain conditions.

“Are you required to enter into a reaffirmation agreement by any law? No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments you agree to make.

“What if your creditor has a security interest or lien? Your bankruptcy discharge does not eliminate any lien on your property. A ‘lien’ is often referred to as a security interest, deed of trust, mortgage or security deed. Even if you do not reaffirm and your personal liability on the debt is discharged, because of the lien your creditor may still have the right to take the property securing the lien if you do not pay the debt or default on it. If the lien is on an item of personal property that is exempt under your State’s law or that the trustee has abandoned, you may be able to redeem the item rather

than reaffirm the debt. To redeem, you must make a single payment to the creditor equal to the amount of the allowed secured claim, as agreed by the parties or determined by the court.".

(ii) In the case of a reaffirmation under subsection (m)(2), numbered paragraph 6 in the disclosures required by clause (i) of this subparagraph shall read as follows:

"6. If you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court.".

(4) The form of such agreement required under this paragraph shall consist of the following:

"Part B: Reaffirmation Agreement. I (we) agree to reaffirm the debts arising under the creditagreement described below.

"Brief description of credit agreement:

"Description of any changes to the credit agreement made as part of this reaffirmation agreement:

"Signature: Date:

"Borrower:

"Co-borrower, if also reaffirming these debts:

"Accepted by creditor:

"Date of creditor acceptance:".

(5) The declaration shall consist of the following:

(A) The following certification:

"Part C: Certification by Debtor's Attorney (If Any).

"I hereby certify that (1) this agreement represents a fully informed and voluntary agreement by the debtor; (2) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

"Signature of Debtor's Attorney: Date:".

(B) If a presumption of undue hardship has been established with respect to such agreement, such certification shall state that, in the opinion of the attorney, the debtor is able to make the payment.

(C) In the case of a reaffirmation agreement under subsection (m)(2), subparagraph (B) is not applicable.

(6)

(A) The statement in support of such agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:

"Part D: Debtor's Statement in Support of Reaffirmation Agreement.

"1. I believe this reaffirmation agreement will not impose an undue hardship on my dependents or me. I can afford to make the payments on the reaffirmed debt because my monthly income (take home pay plus any other income received) is $___, and my actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total $___, leaving $___ to make the required payments on this reaffirmed debt. I understand that if my income less my monthly expenses does not leave enough to make the payments, this reaffirmation agreement is presumed to be an undue hardship on me and must be reviewed by the court.

However, this presumption may be overcome if I explain to the satisfaction of the court how I can afford to make the payments here: ___.

"2. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.".

(B) Where the debtor is represented by an attorney and is reaffirming a debt owed to a creditor defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act, the statement of support of the reaffirmation agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:

"I believe this reaffirmation agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.".

(7) The motion that may be used if approval of such agreement by the court is required in order for it to be effective, shall be signed and dated by the movant and shall consist of the following:

"Part E: Motion for Court Approval (To be completed only if the debtor is not represented by an attorney.). I (we), the debtor(s), affirm the following to be true and correct:

"I am not represented by an attorney in connection with this reaffirmation agreement.

"I believe this reaffirmation agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement, and because (provide any additional relevant reasons the court should consider):

"Therefore, I ask the court for an order approving this reaffirmation agreement.".

(8) The court order, which may be used to approve such agreement, shall consist of the following:

"Court Order: The court grants the debtor's motion and approves the reaffirmation agreement described above.".

(l) Notwithstanding any other provision of this title the following shall apply:

(1) A creditor may accept payments from a debtor before and after the filing of an agreement of the kind specified in subsection (c) with the court.

(2) A creditor may accept payments from a debtor under such agreement that the creditor believes in good faith to be effective.

(3) The requirements of subsections (c)(2) and (k) shall be satisfied if disclosures required under those subsections are given in good faith.

(m)

(1) Until 60 days after an agreement of the kind specified in subsection (c) is filed with the court (or such additional period as the court, after notice and a hearing and for cause, orders before the expiration of such period), it shall be presumed that such agreement is an undue hardship on the debtor if the debtor's monthly income less the debtor's monthly expenses as shown on the debtor's completed and signed statement in support of such agreement required under subsection (k)(6)(A) is less than the scheduled payments on the reaffirmed debt. This presumption shall be reviewed by the court. The presumption may be rebutted in writing by the debtor if the statement includes an explanation that identifies additional sources of funds to make the payments as

agreed upon under the terms of such agreement. If the presumption is not rebutted to the satisfaction of the court, the court may disapprove such agreement. No agreement shall be disapproved without notice and a hearing to the debtor and creditor, and such hearing shall be concluded before the entry of the debtor's discharge.

(2) This subsection does not apply to reaffirmation agreements where the creditor is a credit union, as defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act.

11 U.S. Code § 1123

(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. Code § 1192

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.

28 U.S. Code § 157

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

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

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

(A)
matters concerning the administration of the estate;

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

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

(D)
orders in respect to obtaining credit;

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

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

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

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

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

(J)
objections to discharges;

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

(L)
confirmations of plans;

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

(N)
orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;

(O)
other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims; and

(P)
recognition of foreign proceedings and other matters under chapter 15 of title 11.

(3)
The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is

otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

(4)

Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

(5)

The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

(c)

(1)

A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

(2)

Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

(d)

The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

(e)

If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.