No. 22-0909

IN THE

Supreme Court of the United States

OCTOBER TERM, 2022

IN RE PENNY LANE INDUSTRIES, INC., DEBTOR,

ELEANOR RIGBY,

Petitioner,

v.

PENNY LANE INDUSTRIES, INC.,

Respondent.

On Writ of Certiorari from the
United States Court of Appeals
for the Thirteenth Circuit

BRIEF FOR RESPONDENT

Team 28
Counsel for Respondent

Oral Argument Requested

QUESTIONS PRESENTED

I. Whether bankruptcy courts have the authority under the Bankruptcy Code to approve non-consensual releases of direct claims held by third parties against non-debtor affiliates as part a chapter 11 plan of reorganization?

II. Whether Subchapter V of Chapter 11 of the Bankruptcy Code allows a corporate debtor, pursuant to 11 U.S.C. § 1192, to discharge types of debts specified in subparagraphs (1) through (19) of 11 U.S.C. § 523(a)?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

United States Supreme Court Cases:

United States Court of Appeals Cases:

United State District Court Cases:

State Court Cases:

Constitutional and Statutory Authority:

Secondary Authority:

OPINIONS BELOW

The Bankruptcy Court for the District of Moot ruled in favor of the Debtor, Penny Lane Industries, on both questions. R. at 4. On Appeal, the United States District Court for the District of Moot and the United States Court of Appeals for the Thirteenth Circuit affirmed both holdings. R. at 4. The court held that (1) third-party releases are permissible in Chapter 11 plans, and (2) section 523(a) exceptions discharge exceptions apply only to individual debtors.

STATEMENT OF JURISDICTION

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

STATUTES INVOLVED

The relevant federal laws controlling this case are 11 U.S.C. §§ 105(a), 522(c)(1), 523(a), 524(e), 524(g), 525(h) 1123(a)(5), 1123(b)(6), 1141(d), 1181(a), 1181(b), 1181(c) 1183(c), 1191, 1192 of the United States Bankruptcy Code. These provisions are attached in Appendix A.

STATEMENT OF THE CASE

I. Facts

The Parties. The Debtor, Penny Lane Industries, Inc. ("Penny Lane") is a manufacturer of plastic, glass, and metal food containers based in the City of Blackbird, Moot. R. at 4. Penny Lane is a wholly owned subsidiary of Strawberry Fields, a company that produces cereal and convenience foods that are marketed under various well-known brands sold in supermarkets around the country. R. at 4-5.

In 2017, Ms. Rigsy ("Complainant"), a Blackbird resident since 1982, filed suit against both Debtor and Strawberry Fields claiming that exposure to pollutants allegedly dumped by the Debtor was linked to her daughter's death. R. at 5. Ms. Rigby alleges that the Debtor disposed of pollutants on the property to save money, and the pollutants permeated the Liverpool River, which runs near the Debtor's property. *Id.* Ms. Rigby also alleges that Debtor's CEO at the time, Maxwell S. Hammer ("Hammer") knew that the waste Debtor disposed of on their property had tainted the nearby water supply. *Id.* Lastly, Ms. Rigby alleges that Strawberry Fields is liable because it was aware, or should have been aware, of its subsidiary's alleged misconduct. R. at 6. The source of the contamination has however, not been determined. *Id.* Federal and State authorities have determined that a groundwater plume does exist under Blackbird. *Id.*

The Pending Litigation. Similar lawsuits have been filed by Blackbird residents against the Debtor. *Id.* The lawsuits claimed damages relating to injury or death caused by exposure to the contaminated water supply. *Id*. The cumulative damages amount to $400 million. *Id*. Multiple lawsuits list Strawberry Fields as a co-defendant. *Id.* Strawberry Fields denies having knowledge that the waste allegedly infiltrated Blackbird's groundwater supply. *Id.*

Penny Lane asserts that all waste was disposed of in accordance with the then applicable environmental laws and regulations. R. at 6. Penny Lane denies having knowledge that the waste from their property subverted into Blackbirds' groundwater supply. *Id.* Penny Lane also asserts that there is insufficient evidence linking them to the contamination of the groundwater supply as there are multiple manufacturing facilities located upstream from its property. *Id.*

The Bankruptcy Filing. Once the bankruptcy case began, the automatic stay established in section 362(a) automatically stayed the continuation and commencement of all non-bankruptcy litigation brought against the debtor. R. at 7. Any pending litigation against Strawberry Fields and other non-debtors was not automatically stayed. *Id.* As a result, the Debtor sought and obtained a temporary injunction from the bankruptcy court, halting action against the Debtor's "current and former owners, officers, directors, employees and associated entities," including Strawberry fields, related to the Debtor's alleged misconduct. R. at 7-8. The bankruptcy court explained that the temporary injunction was necessary to facilitate mediated negotiation of a global settlement by the Debtor, Strawberry Fields and ad hoc creditors. R. at 8. The temporary injunction's expiration date has been extended several times while mediated negotiations and litigation proceed. *Id.*

The Plan. After two months of mediation, a complex settlement was memorialized in the Plan by multiple stakeholders. R. at 8. Ms. Rigby did not take part in the settlement reached. *Id.* The Plan establishes a creditor trust funded with: (a): the Debtor's net income for five years, and (b) $100 million paid by Strawberry Fields. *Id.* This Plan would allow creditors to receive a significant distribution of about 30-40 cents on the dollar. *Id.*

As a result of the global settlement funding, Strawberry Fields demanded a release from all claims, including third-party direct claims and estate claims. *Id.* The Plan releases and discharges "any and all claims" that third parties "have asserted or might assert in the future against

Strawberry Fields" if the claims are "based on or related to the Debtor's pre-petition conduct, its estate or this chapter 11 case." R. at 8. The Plan bind parties whether they voted for or against the plan. *Id.* Any claims pursued against Strawberry Fields as it related to the Debtor's ore-petition conduct will be sent to the creditor's trust. R. at 9.

Over 95 percent of creditors who voted, voted in favor of implementing the Plan. R. at 9. Ms. Rigby objected to the plan, stating that under bankruptcy and non-bankruptcy law, the release of third-party claims is not allowed. *Id.* Norwegian Wood Bank (the "Bank"), a secured creditor, objected to the Plan, arguing that the value of its collateral was undervalued, thus making the Plan not "fair and equitable" under sections 1191(b) and 1129(b)(2)(A).[1]

Following a four-day confirmation hearing, the Bankruptcy Court for the District of Moot confirmed the plan, acknowledging Ms. Rigby's objection that such releases are only allowed in extraordinary cases, as is the case here. R. at 10. The court pointed to multiple facts as to why this is an extraordinary case: the number of individuals voting in favor of the Plan, the large and meaningful contribution being made by Strawberry Fields, and the unusual and complex nature of the case. *Id*.

The bankruptcy court determined that creditors would receive more money through the Plan than had the Debtor gone through a chapter 7 liquidation. R. at 10. Moreover, the court stated that Strawberry Field's $100 million contribution was significantly larger than any other recovery from Strawberry Fields. *Id.* Moreover, the court stated that the Plan was fair and reasonable as there were no other means in which the results could be achieved. *Id.* Lastly, the court explained

[1] The Bank approximately $3.5 million and holds the first priority security interest in the Debtor's manufacturing equipment. R. at 9. Debtor valued the collateral at $1.5 million and offered the Bank an allowed secured claim for $3.5 million, which would be paid over a five-year period. *Id*. The remaining $2 million would be an unsecured claim and would be paid out alongside other unsecured creditors. *Id.*

that if the Plan were not to be implanted, risky, complex and prolonged litigation would likely take place, resulting in creditors seeing no immediate benefit. R. at 10.

The Subsequent Litigation. In overruling the Bank's objection, the court held that the Debtor complied with sections 1129(b)(2)(A) and 1191 in their treatment of the Bank's secured claims. *Id.* Ms. Rigby made a timely appeal for both of the bankruptcy court's holdings. R. at 11. The disputes were consolidated and certified for direct appeal to the Thirteenth Circuit. *Id.*

II. Procedural History

On January 11, 2021 ("the "Petition Date"), the Debtor filed this subchapter V chapter 11 case because of the various lawsuits it was facing. R. at 6. Less than $2 million is owed to trade creditors by the Debtor. *Id.* Ms. Rigby filed an unsecured claim against the Debtor totaling $1 million. *Id*. There has been no objection to Ms. Rigby's claim filed. *Id.* Following the Petition Date, Ms. Rigby started an adversary proceeding against the Debtor. R. at 7. Ms. Rigby was seeking to have her $1 million claim regarded as non-dischargeable under section 523(a) and 1192(2). *Id.* In the complaint, Ms. Rigby claimed that the amounts allegedly owed to her are non-dischargeable under section 523(a)(6). *Id.*

In response to Ms. Rigby's complaint, the Debtor filed a motion to dismiss for failure to state a claim for which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. R. at 7. The Debtor argued that the section 523(a) non-dischargeability provisions do not apply to business entities. *Id.* The Bankruptcy Court for the District of Moot ruled in favor of the Debtor, holding that section 523(a) does not apply to business entities, even if the case is filed under subchapter V of chapter 11. *Id.* Ms. Rigby filed a timely notice of appeal. R. at 7.

STANDARD OF REVIEW

The facts in this case are not disputed. R. at 11. The Thirteenth Circuit's holdings that bankruptcy courts have the authority to approve non-consensual releases of third-party direct claims and that section 523(a) exceptions discharge exceptions apply only to individual debtors, are both questions of law, which are reviewed *de novo*. See, e.g., *Texas v. Soileau (In re Soileau),* 488 F.3d 302, 305 (5th Cir. 2007). "Under a de novo standard of review, the reviewing court decides an issue as if the court were the original trial court in the matter." *Razavi v. Comm'r of Internal Revenue,* 74 F.3d 125, 127 (6th Cir. 1996).

SUMMARY OF THE ARGUMENT

The first issue before the Court is whether a bankruptcy court has the authority to approve non-consensual releases of direct claims held by third parties against non-debtor affiliates as part of a chapter 11 plan for reorganization. The Court will find that third-party releases allow creditors to receive the maximum recovery in mass-tort cases while assuring that the releasing parties' best interests are kept in mind. Approval of the releases mimics the three core areas of bankruptcy law: maximizing creditors' recoveries, fair distribution of recovery among creditors, and effectively resolving complex disputes. Bankruptcy courts have broad jurisdictional powers under "related to" jurisdiction. Therefore, the Court should hold that bankruptcy judges can approve such releases when they are fair to the releasing parties, keep the releasing parties' best interest in mind, and are necessary to the Debtor's reorganization.

Authority to approve the Debtor's Plan is codified in 11 U.S.C. §§ 105(a), 1123(a)(5), and 1123(b)(6), all of which afford bankruptcy courts the authority to approve nonconsensual releases of third-party claims. Moreover, the Court should find 11 U.S.C. §§ 524(e), (g), and (h) inapplicable to this case as the language of the sections does not suggest a restraint on a bankruptcy court's ability to permit third-party releases. Lastly, many circuit courts have found third-party

release to be consensual in extraordinary circumstances, such as this case, providing the Court with ample precedent to support the Thirteenth Circuit's and District of Moot's holding.

The second issue before the Court is whether a corporate debtor is subject to the 11 U.S.C. § 523(a) discharge exceptions, as construed by 11 U.S.C. § 1192. The plain language of the statute, as do principles of statutory construction, make clear that the discharge exceptions do not apply to a corporate debtor. Further, the plain meaning of the statute should only be abandoned when its application creates an "absurd result," which is not the case here. Not only is the statute's plain meaning perfectly congruent with the legislative intent under the Small Business Reorganization Act ("SBRA"). Finally, as a matter of policy, finding that discharge exceptions as listed under 11 U.S.C. § 523(a) do not apply to corporate debtors is consistent with decades of bankruptcy policy, as well as the stated intent of SBRA, to increase access to reorganization proceedings for small businesses.

ARGUMENT

This Court should affirm the Thirteenth Circuit Court of Appeals' decision that approval of Debtor's Plan falls within the broad jurisdiction of the bankruptcy court. This Court should further affirm the circuit court's decision that pursuant to 11 U.S.C. § 1192, a corporate debtor electing to proceed under Subchapter V of Chapter 11 of the U.S. Bankruptcy Code may discharge debts of types as specified under paragraphs (1) through (19) of 11 U.S.C. § 523(a).

I. Bankruptcy Courts have the Authority to Approve Non-Consensual releases of Third-party Direct Claims Against Non-Debtor Affiliates as Part of a Chapter 11 Plan of Reorganization

A. The Jurisdiction of Federal Bankruptcy Courts is Broad and Encompasses Third Party Disputes

In granting third-party release, bankruptcy courts have "related to" jurisdiction. *Cole v. Nabors Corp. Servs., Inc. (In re CJ Holding Co.)*, 2019 U.S. Dist. LEXIS 21199, at *27 (S.D. Tex. Feb. 8, 2019). "[A] civil proceeding is related to a title 11 case if the action's outcome might have any conceivable effect on the bankrupt estate." *Parmalat Capital Fin. Ltd. v. Bank of Am. Corp.*, 639 F.3d 572, 579 (2d Cir. 2011); *see also SPV OSUS, Ltd. V. UBS AG*, 882, F.3d 333, 340 (2d Cir. 2018). "If the court answers the question in the affirmative[], the litigation falls within the" bankruptcy court's "'related to' jurisdiction." *In re Cuyahoga Equip. Corp.*, 980 F.2d 110, 114 (2d Cir. 1992). "An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate." *Id.* at 308 n. 6.

Congress granted bankruptcy courts comprehensive jurisdiction for them to efficiently handle matters related to bankruptcy estates. *Celotex Corp v. Edwards*, 514 U.S. 300, 308 (1995). While not limitless, "related to" jurisdiction is broad, including "suits between third parties which have an effect on the bankruptcy estate," *id.* at 307 n. 5, "the touchstone for bankruptcy jurisdiction remains whether its outcome might have any conceivable effect on the bankruptcy estate." *In re Quigley Co., Inc.*, 676 F.3d 45, 57 (2d Cir. 2012).

Here, the Bankruptcy Court for the District of Moot has "related to" jurisdiction. The cause of action is the Debtor's alleged conduct, which would likely grant Strawberry Fields indemnification and contribution rights against the Debtor. Because of this, the Bankruptcy Court for the District of Moot has "related to" jurisdiction because the outcome could alter whether the Debtor can implement the Plan, whether Strawberry Fields will have to contribute $100 million, and if Debtor has to provide five years of disposable (net income). R. at 8; *see In re Cuyahoga Equip. Corp.*, 980 F.2d at 114. Additionally, the suit between Ms. Rigby and Strawberry Fields

impacts bankruptcy estate as Strawberry Fields, while a non-debtor third party, will significantly contribute to the Plan. R. at 12; *see Celotex,* 514 U.S. at 307 n. 5.

B. The Confirmation of Third-Party Releases is Consistent with Constitutional and Statutorily Authority

It has been acknowledged that bankruptcy court plays a "special remedial" role in third-party litigation rights. *Martin v. Wilks,* 490 U.S. 755, 762 n.2 (1989). Congress possesses exceedingly "broad power 'To establish . . . uniform Laws on the subject of Bankruptcies throughout the United States.'" *Wright v. Vinton Branch of Mountain Trust Bank of Roanoke*, 300 U.S. 440, 470 (1937) (quoting U.S. Const. art. 1, § 8, cl. 4). "Congress intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficient and expeditiously with all matters connected with the bankruptcy estate." *Pacor, Inc. v. Higgins,* 743 F.2d 984, 994 (3d Cir. 1984). This Congressional intent is evident in the 1989 Bankruptcy Act (the "1989 Act") where bankruptcy courts were vested power to:

> "Make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this Act." Act of July 1, 1898, 30 Stat. 546.

If Congress intends for there to be certain actions in enacted statutes, it will use mandatory words, such as "shall" or "will." Congress would have used such terms to limit the bankruptcy court's ability to implement non-consensual releases. *Airadigm Commc'n., Inc. v. FCC (In re Airadigm Commc'n)*, 519 F.3d 640, 656 (7th Cir. 2008). Moreover, had Congress intended to prohibit third-party releases, it would not have included the language "on, or … for, such debt" as this language coincides with specific debts for which specific third parties have an obligation. *Id.* For example, Congress clearly limited the bankruptcy court's power in 11 U.S.C. § 105(b) ("[A] court may not appoint a receiver in a case under this title"), and by creating requirements for plan

confirmation, *see, e.g.*, 11 U.S.C. § 1129(a) ("The court shall confirm a plan only if the following requirements are met. . ."). *Id.*

In *Law v. Siegel*, this Court reiterated the principle that any "equitable powers … in the bankruptcy courts must and only be exercised within the confines of the Bankruptcy Code" and cannot abuse the Bankruptcy Code's statutory command. 517 U.S. 415, 421 (2014) (quoting *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988)). This precedent should be followed as it states that "substance will not give way to form, that technical considerations will not prevent substantial justice." *MacArthur Co. v. Johns-Manville Corp.*, 837 F.2d 89, 94 (2d Cir. 1988), (*quoting In re U.N.R. Industries, Inc.*, 725 F.2d 1111, 1119 (7th Cir. 1984)).

Bankruptcy proceedings extend to "suits between third parties which have an effect on the bankruptcy estate." *Celotex Corp*, 514 U.S. at 307-08 n. 5. *See* 1 COLLIER ON BANKRUPTCY P 3.01[3]e[ii] (2022). In *Stern v. Marshall*, this Court allowed bankruptcy courts to adjudicate matters that are fundamental to restructuring the debtor-creditor relationship. *See* 564 U.S. 462 (2011); *see also In re Millennium Lab Holdings II, LLC.*, 945 F.3d 126, 138 (3d Cir. 2019). This is evident in this case. Under *Stern*, the conformation order is fundamental to this case's modification of the Debtor-creditor relationship. The Debtor's implementation of the Plan would prevent innocent claimants, including Ms. Rigby, from being victimized again by avoiding risky, costly, and lengthy litigation, allowing them to recover more money.

It is common for the legislature to "define the terms" in a statute and "limit the implications of their terms—which means that a … statute can exclude a canon of construction." SCALIA & GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 232-33. In applying sections 105(a), 1123(a)(5), and 1123(b)(6), the Bankruptcy Court for the District of Moot and the

Thirteenth Circuit were correct in reading the sections as allowing the release of a non-debtor from a creditor's claim. Therefore, both courts followed Congress' intended and instructed approach.

i. The District of Moot and Thirteenth Circuit Court's Reading of 11 U.S.C. § 1123(b) is Correct and Should be Followed

As the Thirteenth Circuit noted, "the essence of chapter 11 is flexibility." R. at 14. Section 1123(b) states that "a plan may ... include any other appropriate provision not inconsistent with the applicable provisions of this title." 11 U.S.C. § 1123(b)(6). Courts interpret this to grant the bankruptcy courts authority "…to release third parties from liability to participating creditors if the release is "appropriate" and not inconsistent with any provision of the bankruptcy code." *In re Airadigm Commc'n, Inc.*, 519 F.3d at 675; 8 COLLIER ON BANKRUPTCY P 1190.05; *see In re G-I Holdings, Inc.*, 2009 U.S. Dist. LEXIS 108339, at * 168 (D.N.J. Nov. 12, 2009) (holding a plan as permissible as it was "necessary to the success of a reorganization plan." 11 U.S.C. § 1123(b)(6)).

Accordingly, the bankruptcy court, with the ability to resolve large and complex litigation, has the "power to reorder creditor-debtor relations needed to achieve a successful reorganization." *Class Five Nev. Claimants v. Dow Corning Corp (In re Dow Corning Corp.)*, 280 F.3d 648, 656 (6th Cir. 2002). The third-party releases "flow from a federal statutory scheme," including sections 1123(b)(6). *Lynch v. Lapidem Ltd. (In re Kirwan Offices S.A.R.L.)*, 592 B.R. 489, 511 (S.D.N.Y. 2018) (quoting *Stern*, 564 U.S. at 493). Giving bankruptcy court the authority under section 1123(b)(6) to approve the Plan allows the creditors to receive more money and permit the Debtor to receive allocations that form the crux of the reorganization and Plan. *See In re Mallinckrodt PLC*, 629 B.R. 837, 907 (D. Del. 2022) (holding a plan permissible because of on-estate professional fees that allowed the debtors to settle rather than litigate their claims). Additionally,

this Court has recognized section 1123(b)(6) to be a source of "residual authority" consistent with bankruptcy's traditional equitable character. *U.S. v. Energy Res. Co.*, 495 U.S. 545, 549 (1990).

ii. 11 U.S.C. § 1123(a)(5) Provides Additional Authority for Confirmation of the Plan

11 U.S.C. § 1123(a)(5) requires a plan to "provide adequate means for the plan's implementation." 11 U.S.C. § 1123(a)(5). The inclusion of provisions, such as the releases and the channeling injunction that are crucial, and required to securing Strawberry Fields' $100 million contribution, are necessary to implement the Plan. Because of this, the Bankruptcy Court for the District of Moot is authorized to approve the Debtor's Plan under section 1123(a)(5).

iii. 11 U.S.C. § 105(a) Grants Bankruptcy Courts Authority to Approve Debtor's Plan

Section 105(a) authorizes courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). This section is construed "liberally to enjoin suits that might impede the reorganization process." *Johns-Manville Corp.*,837 F.2d at 93-94 (citing *In re Johns-Manville Corp*., 801 F.2d 60, 64 (2d Cir. 1986); *In re Davis*, 730 F.2d 176, 184 (5th Cir. 1984)). Bankruptcy courts "are essentially courts of equity, and their proceedings inherently proceedings in equity." *Local Loan Co. v. Hunt,* 292 U.S. 234, 240 (1934); *see NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 525 (1984) (explaining that "the polices of flexibility and equity [are] built into Chapter 11 of the Bankruptcy Code"). Section 105(a) provides bankruptcy courts broad equitable powers to approve settlements containing releases and injunctions, such as the global settlement here. Moreover, section 105(a) grants authority to "carry out" the provisions of the Code, but "it is quite impossible" to "carry out" the provisions of the Code by "taking action that the Code prohibits." *Siegel*, 571 U.S. at 421.

A bankruptcy court is permitted to select a remedy it considers equitable while considering applicable statutory constraints, the factual record, and the broader context of the case. *Wells Fargo, N.A. v. Sagendorph (In re Sagendorph)*, 562 B.R. 545, 557 (D. Mass 2017) *See*, e.g., *In re Aéropostale, Inc.*, 555 B.R. 369, 396-97 (S.D.N.Y. 2016) (observing "Bankruptcy courts 'have broad equitable powers and the ability to invoke equitable principles to achieve fairness and justice in the reorganization process.'" (quoting *LightSquared LP v. SP Special Opportunities LLC (In re LightSquared Inc.)*, 511 B.R. 253, 346 (S.D.N.Y. 2014)).

C. Third Party Releases Promote Core Attributes of Bankruptcy Law and Should Thus be Permitted in this Matter

In appropriate cases, non-consensual third-party releases should be permitted as they are an important tool in promoting bankruptcy's core principles: maximizing creditors' recoveries, fairness in distributed compensation among creditors, and the importance of effectively resolving complex disputes. Each will be discussed in turn.

First, releases encourage third parties to fund plans of reorganization, especially when such liabilities may be connected to a debtor's conduct and funding can "maximiz[e] property available to satisfy creditors." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. Salle St. P'ship*, 526 U.S. 434, 453 (1999). In a mass-tort bankruptcy, such as Debtor's, the entity does not typically have the necessary funds to pay victims for their claims. This situation shows the importance of third-party releases, giving third parties, such as Strawberry Fields, an incentive to financially contribute to improve the victim's recoveries in exchange for protection against future tort-related litigation.

Second, third-party releases promote fair recovery distribution. When appropriate, releases allow plans to move forward and enable recoveries by preventing costly and uncertain litigation between third parties and the debtor. D*rexel Burnham Lambert Trading Corp. v. Drexel Burnham*

Lambert Group, Inc. (In re Drexel Burnham Lambert Grp. Inc.), 960 F.2d 285, 293 (2d Cir. 1992). Litigation in mass-torts can create large disparities in verdicts where trials act as a lottery system. *In re Joint E. & S. Dist. Asbestos Litig.*, 129 B.R. 710, 749 (E.D.N.Y & S.D.N.Y. 1991). Third-party releases prevent a "race to the courthouse" issue where victims who sue early have quicker access to a finite pool of resources. These releases allow victims who cannot pay for litigation to still recover from the Plan.

Lastly, third-party releases effectively resolve complex disputes. By removing individual litigation, third-party releases promote fair and centralized "compromises" to resolve disputes. *In re W.R. Grace & Co.*, 475 B.R. 34, 77 (D. Del. 2012). Allowing a large volume of cases to be litigated on the same matter unnecessarily wastes public and private resources when one dispute can be handled in a bankruptcy court through a plan of reorganization. Moreover, approval of a plan by the bankruptcy court avoids liquidation. This would allow Debtor to maintain their factory, save local jobs, and maximize the creditors' recovery.

D. Ms. Rigby's Reading of Section 524 is Inconsistent with Section 524 as a Whole

A non-consensual third-party release is consistent with other provisions of the Bankruptcy Code. The text of the three sections at issue, 524(e), 524(g), and 524(h), provide no indication that Debtor's third-party release is inadmissible under the Bankruptcy Code.

11 U.S.C. § 524(e) states that "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." Section 524(e) establishes the boundaries for a bankruptcy court's discharge order. "Pursuant to § 524(e), the discharge of the debtor's debt does not itself affect the liability of a third party, but § 524(e) says nothing about the authority of the bankruptcy court to release a non-debtor from a creditor's claims." *SE Prop. Holding, LLC v. Seaside Eng'g & Surveying (In re Seaside Eng'g & Surveying)*, 780 F.3d 1070,

1078 (11th Cir. 2015) (emphasis added). The language contained in section 524(e) does not imply a limitation or restraint on a bankruptcy court's power to grant a third-party release. *In re Specialty Equip. Cos., Inc.,* 3 F.3d 1043, 1047 (7th Cir. 1993).

Like 11 USC § 524(e), sections § 524(g) and (h) do not bar third-party releases. Section 524(g) gives a framework to bankruptcy courts for third-party releases involving asbestos. 11 USC § 524(g)(1)(B) Moreover, section 524(g) "expressly states it operates notwithstanding section 524(e)." 4 COLLIER ON BANKRUPTCY ¶ 524.05. 11 USC § 524(h) applies to already confirmed asbestos plans. In ratifying sections 524(g) and (h), Congress specified that "nothing in" in the two sections "shall be construed to modify, impair, or supersede any other authority the court has to issue injunctions in connection with an order confirming a plan of reorganization." Bankruptcy Reform Act of 1994, Public Law 103-394 § 111(b), 108 Stat. 4106, 4117. "[A]ll of the time" legislatures will "not only define the terms" in a statute but also "limit the implications of their terms—which means that a . . . statute can exclude a canon of construction." SCALIA & GARNER, READING LAW 232–33. That is what Congress did by instructing that "nothing" in sections 524(g) and (h) should be "construed" as effecting "any other authority" that a bankruptcy court must issue an injunction. Such "interpretation clauses are to be carefully followed." *Id.* at 225.

In conclusion, no Bankruptcy Code provision "explicitly authorize[s]" nonconsensual third-party releases, but there is also no provision that "prohibits" such releases. *Law,* 571 U.S. at 421. Therefore, third-party releases are consistent with the Bankruptcy Code and should be implemented by bankruptcy courts in proper situations.

E. The Majority of Circuits have Held Nonconsensual Third-Party Releases as Acceptable in Certain Situations

The Second, Third, Fourth, Sixth, Seventh, and Eleventh Circuits hold that the Bankruptcy Code allows for such third-party releases in appropriate circumstances. 5-84 COLLIER BANKRUPTCY PRACTICE GUIDE ¶ 84.02[1][c][v] (Alan N. Resnick & Henry J. Sommer eds., 2014). With most circuit courts finding third-party releases permissible, this Court should do the same.

The Second Circuit has held that "a court may enjoin a creditor from suing a third party, provided the injunction plays an important part in the debtor's reorganization plan." *Deutsche Bank A.G. v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.)*, 416 F.3d 136, 141 (2d. Cir. 2005) (quoting *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, at). Moreover, the Second Circuit explained that "a court may enjoin a creditor from suing a third party." *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 141 (2d Cir. 2005) (quoting *Drexel*, 960 F.2d at 293); *see also In re Sabine Oil & Gas Corp.*, 2016 WL 4203551, at *6 (S.D.N.Y. Aug. 9, 2016) ("[A] bankruptcy court has the power to approve third-party releases as part of the confirmation of a plan.").

In the Third Circuit, third-party releases are approved by a court when they play an integral role to the restructuring and when they are well-reasoned and well-supported. *In re Millennium Lab Holdings II, LLC*, 945 F.3d at 140; *see also In re Continental Airlines*, 203 F.3d 203, 211 (3d Cir. 2000); *see also Opt-Out Lenders v. Millennium Lab Holdings II, LLC (In re Millennium Lab Holdings II, LLC)*, 591 B.R. 559, 777 (D. Del. 2018). The Third Circuit explained that by only permitting plans integral to the debtor's restructuring, it supports the authority of bankruptcy courts, thus protecting the integrity of Article III. *Id.* at 139. The Court went on to explain that the

appellee's "floodgate" argument, like the dissent's argument in the case at hand, is unfounded as hypothetical "gamesmanships" were not permitted by the Court. *Id.*

The Fourth Circuit upheld a reorganization plan approved that was essential to creating a workable reorganization. Since it was necessary, the plan approval fell within the bankruptcy court's equitable powers. *Menard-Sanford v. Mabey (In re A.H. Robins Co.*), 880 F.2d 694, 702 (4th Cir. 1989). The Court reasoned that the plan was permissible as it allowed the claimants to receive more money than if each claimant had brought their own claim. *Id.* at 697.

The Sixth Circuit held that the Bankruptcy Code, consistent with section 105(a)'s wide broad granting of authority, allows bankruptcy courts significant discretion in approving reorganization plans. *In re Dow Corning Corp.*, 280 F.3d at 656. The Sixth Circuit explained that Bankruptcy Code section 524 "does not prohibit a court from releasing a non-debtor from liability." *Papas v. Buchwald Capital Advisors, LLC (In re Greektown Holdings, LLC),* 728 F.3d 567, 578 (6th Cir. 2013); *see generally In re Equine Oxygen Therapy Res.*, 2015 Bankr. LEXIS 900 (Bankr. E.D. Ky. Mar. 20, 2015).

In *In re Airadigm*, the Seventh Circuit looked to Supreme Court precedence to establish that third-party releases are permissible under Bankruptcy Code provisions. 519 F.3d at 656. "A bankruptcy court "appl[ies] the principles and rules of equity jurisprudence," *Pepper v. Litton,* 308 U.S. 295, 304 (1939), and its equitable powers are traditionally broad."" *Energy Res. Co., Inc.*, 495 U.S. at 549; *see also In re Specialty Equipment, Co.*, 3 F.3d at 1046-47 (approving of consensual non-debtor releases).

The Eleventh Circuit permits non-debtor releases in bankruptcy cases at least under some circumstances. *In re Seaside Eng'g & Survey*, 780 F.3d at 1077-78; *see also In re Fibrant, LLC,* 2108 Bankr. LEXIS 1911 at *84-85 (Bankr. S.D. Ga, May 29, 2019) (finding the third-party

releases to be fair and equitable under the circumstances). In holding that the nonconsensual release was permissible, the Court noted that such releases should not be issued frivolously. *In re Seaside Eng'g & Survey*, 780 F.3d at 1078. Rather, they should be reserved for unusual matters where a release is necessary for the reorganization's success, and only when the release is fair and equitable under the facts and circumstances. *Id.* at 1078-79.

Also, various treatise writers agree with most circuit courts that third-party releases are permissible under the Bankruptcy Code. *See* 2 COLLIER ON BANKRUPTCY ¶ 105.04 ("Cases from the Second and Seventh Circuits also approve third-party releases, albeit on different grounds"); 6 NORTON BANKR. L. & PRAC. 3d § 109:22 (Jan. 2022) ("[T]he Second, Third, Fourth, Sixth, Seventh and Eleventh Circuits permit them under certain circumstances."). For instance, "[o]ther courts, including the Second . . . have ruled the bankruptcy court has the power to approve a plan containing a provision enjoining suits against and releasing liabilities of non-debtors, reasoning that either § 105(a) or § 1123(b)(6) give the court authority to approve such provisions." 2 BANKRUPTCY LAW MANUAL § 11:58 (5th ed. Dec. 2021). To hold that bankruptcy court lacks the authority to approve a third-party release would go against most of the circuit courts and be contrary to multiple treaties. Next, the Court's analysis should turn to the discharge exceptions that, pursuant to 11 U.S.C. § 1192, only apply to an "individual debtor" as specified by 11 U.S.C. § 523(a).

II. Subchapter V of Chapter 11 of the Bankruptcy Code Allows a Corporate Debtor, Pursuant to 11 U.S.C. § 1192, to Discharge Debts of the Types Specified in Subparagraphs (1) through (19) of 11 U.S.C. § 523(a), as Said Discharge Exceptions Only Apply to Individual Debtors.

This Court does not need to look beyond the plain introductory language of 11 U.S.C. § 523(a) to determine the discharge exceptions as outlined in 11 U.S.C. § 1192 applies only to individual debtors. When the statutory text is unambiguous on its own, does not create an absurd outcome, and the text is coherent and consistent, then there is no further analysis required. *In re Lively*, 467 B.R. 884, 891 (Bankr. S.D.Tex. 2012); *U.S. v. Ron Pair Enter., Inc.*, 489 U.S. 235, 241 (1989); *see also Lamie v. United States Trustee*, 540 U.S. 526, 536 (2004). Therefore, this Court need not extend its analysis beyond the plain statutory language. Even if the statutory language is deemed ambiguous, any ambiguity must be construed in favor of the debtor. Finally, to interpret the statutory language in a way which goes against long standing bankruptcy policy by creating twenty-one new corporate discharge exceptions, would be an absurd outcome.

A. The Plain Language of Sections 523(a) and 1192 Unambiguously Limits the Discharge Exceptions to Individual Debtors Only

The statutory review should begin and end with the plain meaning of the terms written within the four corners of the paper. A cardinal canon of statutory interpretation makes clear that Congress "says in a statute what it means and means in a statute what it says there." *U.S. v. Aldrich*, 566 F.3d 976, 978 (11th Cir. 2009). Statutory language should be read such that no language is deemed surplusage or redundant. *Blue Ridge Investments, LLC v. Republic of Argentina*, 902 F.Supp.2d 367, 380 (S.D.N.Y 2012). The reference in 11 U.S.C. § 1192 to 11 U.S.C. § 523(a), which includes the introductory clause reference to "individual debtor" plainly makes clear which debtors, and which debt, is non-dischargeable. To ignore the term would require a reading in which "individual" is rendered superfluous. Each term has a clear and unambiguous meaning, the review need not extend beyond the statutory text.

While Ms. Rigsby argues that her interpretation is also reached through a plain language analysis, to understand "kind," as written "any debt . . . of the kind specified in section 523(a)" requires a narrow reading of "kind" which is inconsistent with its dictionary definition. 11 U.S.C. § 1192(2). "Kind" is the "class, grade, or sort." Black, Henry. Sixth Edition. 2006. Page 870. The same definition has been adopted by the courts. *City of St. Louis v. James Braudis Coal Co.,* 137 S.W.2d 668, 670 (Mo.App. 1940). To presume that "kind" only refers to the list of exclusions and flatly ignores the phrase "individual debtor," is without merit and requires a reading which runs opposite the natural meaning of the phrase. This reading also is consistent with the canon of interpretation which seeks to avoid a reading where certain language is deemed extraneous or unnecessary. *Sacirbey v. Guccione,* 589 F.3d 52, 66 (2d Cir. 2009); *Filler v. Hanvit Bank,* 378 F.3d 213, 220 (2d Cir. 2004). This interpretation is consistent by giving effect to every word included in the statute. *Gaske v. Satellite Rests, Inc. Crabcake Factory USA* (*In re Satellite Rests, Inc. Crabcake Factory USA),* 626 B.R. 871, 876 (Bankr. Md. 2021). There is no reason why "kind" should be narrowly construed to only refer to the specific list of debts, without regard to the qualifying phrase of "individual debtor." Surely, "individual debtor" can help to distinguish what "kind" of debt is subject to discharge.

The Bankruptcy Code includes many references to the word "kind," many of which reference "debt of a kind" in a manner like 11 U.S.C. § 1192(2). The plain language approach does not require reading the statute in a vacuum, it must be read together with statutory provisions, structure, and its purpose. *Abramski v. U.S.*, 573 U.S. 169, 179 (2014); *In re Johnson,* 408 B.R. 811, 815 (W.D. Miss. 2009). Looking elsewhere in the code to references of the same section, it reads, "a debt of a kind in *paragraph (1) or (5) of section 523(a)*." 11 U.S.C. § 522(c)(1) (emphasis added). Compare that to the language in question, which includes a slightly different reference,

"except any debt . . . of the kind *specified in section 523(a)* of this title." 11 U.S.C. § 1191. The difference between referencing debt of a kind in the subsections, as compared to the specific reference to the introductory paragraph cannot make the distinction clearer. The "individual debtor" language is not included by accident, to believe so would run afoul of the canons of statutory construction. Courts presume that Congress said what it means and means what it says. *In re Hedrick*, 524 F.3d 1175, 1186 (11th Cir. 2008); *In re Racing Services, Inc.*, 408 B.R. 498, 505 (8th Cir. 2015). The reference to 11 U.S.C. § 523(a) in its entirety, *including its introductory phrase*, can only be taken to mean that 11 U.S.C. § 1191(2) only includes the discharge exceptions to an "individual debtor."

This is not the first time the language under 11 U.S.C. § 523(a) has been considered, courts have typically found that the discharge exceptions only apply to individuals. *Catt v. Rtech Fabrications, LLC (In re Rtech Fabrications, LLC)*, 635 B.R. 559, 566 (Bankr. D. Idaho 2021); *Jennings v. Lapeer Aviation, Inc. (In re Lapeer Aviation, Inc.)*, No. 22-3002, slip. op. at 5 (Bankr. E.D. Mich. 2022) (finding that the plain language is "clear"); *In re MF Global Holdings Ltd.*, 2012 WL 734175, at *3 (S.D.N.Y. 2012) (holding that it is well settled that 11 U.S.C. § 523(a) discharge exceptions do not apply to corporate debtors). These decisions from other courts through the years are persuasive, as they demonstrate that the language of "individual debtor" is not superfluous. The language enacted by Congress is done so on purpose and the plain language analysis should be the end of the line.

As discussed above, most courts have found the statutory reference to "kind" under 11 U.S.C. § 1192(2) includes both the types of debts, as well as the class of debtor, as referenced by "individual debtor." *See* 11 U.S.C. § 1192(2). The primary case which stands for the notion that "kind" only refers to the list of twenty-one discharge exceptions was decided last summer in the

Fourth Circuit. *Cantell-Cleary Co. v. Cleary Packaging LLC (In re Cleary Packaging LLC*), 36 F.4th 509 (4th Cir. 2022). To reach its desired outcome, the Fourth Circuit reads "kind" to mean a "category or sort" or "a group united by common traits or interests." *Id*. at 515. The court reasoned that this reading of the word "kind" inexplicably results in finding that the reference only applies to the kind of debt and ignores the kind of debtor. *Id*. This Court should reject the reasoning applied by the Fourth Circuit in its *In re Cleary Packaging LLC* decision. Its decision adds in meaning to state that "kind" amounts to not just "class or sort," but to mean the "class of the kind." *Id*. At 513. To in effect, inexplicably narrow the natural meaning of "kind" to only mean "kind of debt" goes against the plain language and natural meaning of the statute. This Court should reject this unnatural meaning of the phrase "kind," as it only makes sense that this definition does include the nature of the debtor.

B. Applying Respondent's Reading of "Individual Debtor" in Section 523(a) to Limit Debt of the Kind Under Section 1192 Does Not Create Absurd Result

So long as the plain language of a statute does not create an absurd result, the sole function of the courts is to enforce a statute as written. *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000). The fact that a statute is awkward, or ungrammatical, does not render said statute as ambiguous. *Lamie,* 540 U.S. at 534. It is not the role of the courts to soften the import of the words chosen by Congress, even if its application leads to a harsh outcome. *Id.* at 528. There are times in which absurd results from legislation would make it unreasonable to believe that Congress had in fact intended to include certain acts within the scope of legislation. *Holy Trinity Church v. U.S.*, 143 U.S. 457, 459 (1892). Ignoring plain language is only permissible in rare and exceptional circumstances where the absurdity of the outcome is "so gross as to shock the general moral or common sense." *Crooks v. Harrelson,* 282 U.S. 55, 59-60 (1930). Meeting

the threshold of "absurdity" is a high bar that is well-established with almost one hundred years of jurisprudence. It is not enough to simply state that the outcome is inconsistent, illogical, or harsh; but rather if its application would "shock the general moral or common sense." *Id.* This standard is simply not met. In fact, the ramifications of the plain meaning approach are consistent with legislative intent of the SBRA, as its stated intent was to not burden small businesses with excessive administrative expenses in restructuring. U.S. Department of Justice, Executive Office for United States Trustees, *Handbook for Small Business Chapter 11 Subchapter V Trustees*, U.S. DEPARTMENT OF JUSTICE, EXECUTIVE OFFICE FOR UNITED STATES TRUSTEES (Feb. 2020) 3-22, https://www.justice.gov/ust/file/subchapterv_trustee_handbook.pdf/download.

The outcome in applying the plain language is logical, and is not absurd, under the SBRA. The SBRA outlines the process for when and how debt is discharged under Subchapter V of Chapter 11. When a plan is confirmed non-consensually, the discharge generally does not take place until after all payments as outlined under the plan. *See* 11 U.S.C. § 1192. This is separate and distinct from the exceptions to discharge under 11 U.S.C. § 1192(2). In reading that corporate debt is discharged under 11 U.S.C. § 1192(2), the outcome is not absurd. There are numerous distinctions in this and other sections between various sorts of debts. For example, there are circumstances where there is a delay in the discharge of individual debts that do not apply to corporate debts under Subchapter V. *See* 11 U.S.C. § 1181(a). Further, the "disposable income" factors apply differently to corporate and individual debtors, so far as it applies to future domestic support payments, maintenance, and certain business expenses. *See* 11 U.S.C. § 1191(d). These distinctions are many, between a corporate and individual debtor. To take the plain language of the statute and read it in a way which simply creates another distinction, is far from a rare and exceptional circumstance in which an "absurd" outcome justified reading a statute differently than

its plain meaning. By taking the statute at its plain meaning, the result is not absurd and there is no basis to read 11 U.S.C. § 1192(2) in a way which is contradictory to the plain language of the introductory clause of 11 U.S.C. § 523(a). With no "absurd" result, "individual debtor," should be taken to mean "individual debtor," and not "individual or corporate debtor."

C. Applying Respondent's Reading of the Text Fits Well Within the Coherent Structure of the Statute

Congress created a new form of bankruptcy by passing the SBRA. Pub. L. No. 116-54 (2019). The legislation devised a newly formed Subchapter V bankruptcy action, which allows a small business debtor to confirm a reorganization plan. *See* 11 U.S.C § 1191. The newly created restructuring method offers a range of benefits for small business debtors, including that it does not require creditor committees, it includes the appointment of a trustee to facilitate a plan, and it does not require creditor approval. *What Are the Benefits of a Subchapter V Bankruptcy?*, CHIPMAN BROWN CICERO & COLE (June 1, 2022), https://www.chipmanbrown.com/blog/2022/06/what-are-the-benefits-of-a-subchapter-v-bankruptcy/. Plans can be either consensual or non-consensual, with each option being governed by slightly different rules as it pertains to discharge. *In re Rtech Fabrications, LLC*, 635 B.R. at 563. If the plan is confirmed consensually, then the discharge applicable to the debtor pursuant to 11 U.S.C § 1141(d), largely mirrors the discharge option under a traditional chapter 11 plan. *Id*. *See* 11 U.S.C § 1181(c).

There are ample benefits to obtaining a consensual plan, rather than a nonconsensual plan. These benefits include that under a consensual plan, the Subchapter V trustee's services terminate when the plan has been "substantially consummated;" and there is an automatic discharge upon confirmation of a consensual plan. Michael J. Riela, *Plan Confirmation Requirements in a*

Subchapter V Chapter 11 Case Under the SBRA, *in* WESTLAW PRACTICAL (2020) 2, https://www.thsh.com/uploads/Plan-Confirmation-Requirements-in-a-Subchapter-V-Chapter-11-Case-Under-The-SBRA-w-024-0298.pdf; *see also* 11 U.S.C § 1183(c), 11 U.S.C § 1141(d). There are plenty of incentives for a small business restructuring under Subchapter V to pursue with a consensual plan, it is not as if there are no other reasons. It is not enough for courts to read in a perhaps favorable policy outcome. The reality is that these incentives were already designed and created by Congress, the rules are congruent and perfectly coherent within the statute.

In rare circumstances, it is appropriate to look beyond the plain statutory language when its literal application runs contrary to the intent of Congress. *Ron Pair Enters., Inc.*, 489 U.S. at 242. To meet this rare circumstance, it is necessary to show that the intent was contrarily expressed by Congress. *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). To overcome the plain language, this statutory intent must represent an unambiguous direction to suggest deviating from what is plainly written. *Cantell-Cleary Co. v. Cleary Packaging LLC (In re Cleary Packaging LLC*), 630 B.R. 466, 476 (Bankr. D. Md. 2021). This standard can be met when pivotal language is necessary to give effect to the intent of the legislature. Nothing suggests that reading in language to include discharge exceptions to corporate debtors is necessary, helpful, or at all consistent with the intent of Congress. *See* H.R. Rep. No. 116-171 (2019). There can be grounds to ignore the plain language of the statutory scheme when apply the plain language will not allow a statute to operate as intended by Congress. *King v. Burwell*, 576 U.S. 473, 518 (2015). That is not the case here. The reality is that interpreting the statute as written is in fact well within the coherent structure of the statute. There is no compelling reason to revise, add, or change language. The statutory text already falls within the coherent structure of the statute, as written by Congress.

D. Any Ambiguity in the Statute Should be Construed Liberally in Favor of the Debtor

Even if the language is ambiguous, it should be construed liberally in favor of the debtor. Doubts or ambiguities regarding discharge exceptions should be construed liberally in favor of the debtor, the creditor is in no position to insist that ambiguities be resolved in its favor. *Wright v. Union Cent. Life Ins. Co.*, 311 U.S. 273, 278-79 (1940). In construing ambiguities in this light, the debtor will be afforded the protections Congress intended. *Id*. Further, "narrow formalistic interpretations" will not be used to ignore the spirit and letter of federal bankruptcy law. *Id*. While this liberal interpretation does not mean that debtors always win when there is a potentially ambiguous provision, there must be specific legislative history or some other compelling reason to rule against the debtor. *Chirsto v. Yellin (In re Christo)*, 192 F.3d 36, 39 (1st Cir. 1999). There is no such evidence here that the SBRA had intended to greatly increase the number of discharge exceptions for corporate debtors in small business reorganization. The spirit of the law unequivocally errs on the side of promoting reorganization for small businesses, not to add hurdles or barriers. While the plain language is clear in its discharge exceptions for an "individual debtor," even if the language is deemed to be ambiguous, it should be construed liberally in favor of the debtor and the cross-reference should be taken to include the "individual debtor" phrase. *Johnston v. Johnson*, 63 F.2d 24, 26 (4th Cir. 1933). If the language in question is ambiguous, the language must be construed in preference of the debtor. As such, if the language is deemed to be ambiguous, then the only interpretation of "individual debtor" consistent with the canons of statutory construction is to presume that the phrase serves the purpose of limiting discharge exceptions to individual debtors only.

E. To Apply Petitioner's Reading to Determine Congress Silently Intended to Reverse Decades of Policy in Creating New Discharge Exceptions Creates an Absurd Result

Reading into the SBRA that Congress intended to silently create twenty-one new corporate discharge exceptions creates an absurd result, which goes against decades of bankruptcy policy. Corporate discharge has long been a topic of debate under Chapter 11, with exceptions having existed since at least 1898. *In re Cleary Packaging LLC,* 630 B.R. at 807. Yet Congress chose to largely remove exceptions to discharge when the Bankruptcy Code was introduced in 1978, as the Bankruptcy Code removed causes of action which had previously allowed creditors to seek a dischargeability determination against corporate debtors in Chapter 11 proceedings. *Id.* at 474. Today, the only corporate discharge exceptions took eight years to enact after their introduction and debate. *In re GFS Indus., LLC,* 2022 WL 16858009, at *6 (Bankr. W.D. Tex. Nov. 10, 2022). The debts specifically included to meet the discharge exception are narrow, such as filing a fraudulent tax return or willfully attempting to avoid a tax. *See* 11 U.S.C. § 1141(6)(B). The history behind corporate discharge exceptions in bankruptcy is extensive, Congress has generally permitted far reaching exceptions to discharge for corporate debtors. To read "individual debtor" in section 523(a) as superfluous represents a radical departure from decades of bankruptcy policy. The result is so departed from reality, that it is "so gross as to shock . . . common sense." *See Crooks,* 282 U.S. at 59-60.

If Congress had intended to increase the liability felt by corporate debtors under the SBRA and the newly formed Subchapter V of Chapter 11 of the U.S. Bankruptcy Code, it sure had a way to express its sympathy to creditors. Subchapter V of Chapter 11 greatly expanded the ability for certain debtors to restructure, even allowing a plan to be confirmed without a single creditor signing off, all without allowing competing plans from being introduced by creditors. Pub. L. No.

116-54 (2019). Under traditional bankruptcy proceedings, discharge exceptions are limited for corporate debtors. *In re MF Glob. Holdings, Ltd.*, 2012 WL 734175, at *3 (Bankr. S.D.N.Y. 2012). A corporate debtor's discharge under a traditional chapter 11 is generally all encompassing and the carveout exceptions under 11 U.S.C § 523(a) do not apply to corporate debtors, these exceptions *only* apply to individual debtors. *In re Spring Valley Farms, Inc.*, 863 F.2d 832, 834 (11th Cir. 1989); *In re MF Glob. Holdings, Ltd.*, 2012 WL 734175 at * 3. To read "individual debtor" to also include corporate debtor would render Congress' use of the term "individual" meaningless. *Yamaha Motor Corp. v. Shadco. Inc.*, 762 F.2d 668, 670 (8th Cir. 1985). To read in statutory language from legislation that was fully introduced with the intention to reduce barriers to entry for corporate restructuring, requires an absurd outcome that could not be further from the intent of Congress and from the decades of law. Yet, this is exactly what the Fourth Circuit does in its *In re Cleary Packaging, LLC* decision. *See generally* 36 F.4th 509. With any citation to justify its conclusion as to the intent of Congress, the court concludes "Congress understandably applied limitations on the discharge of debts to provide an additional layer of fairness and equity to creditors to balance against the altered order of priority that favors the debtor." *Id*. at 517. Despite the Court's assertion that the intent of Congress was consistent with the interpretation to overlook the term "individual debtor," no public statement, and no document suggests this was the case.

SBRA established subchapter V to Chapter 11 of the Bankruptcy Code. Subchapter V was intended to strike a balance between Chapter 7 liquidation and the expensive nature of Chapter 11 to the U.S. Bankruptcy Code. Pub. L. No. 116-54 (2019). There are some primary differences between Subchapter V and a traditional Chapter 11 case, including the ability to have a plan confirmed over the objection of certain creditors. *See* 11 U.S.C. § 1191. There are certain major

differences under Subchapter V between how corporate and individual debtors are treated. *See* Section 1141(d) (““A discharge under this chapter does not discharge a debtor who is an individual from any debt excepted from discharge under section 523 of this title.”).

In a traditional Chapter 11 case with a corporate debtor, exceptions to discharge are generally limited. *In re MF Glob. Holdings, Ltd.*, 2012 WL 734175, at *3. Further, any question regarding the statutory language should be construed liberally in favor of the creditor. *Johnston*, 63 F.2d at 26. A non-individual debtor's discharge in a chapter 11 case is generally all encompassing. *See In re Spring Valley Farms, Inc.*, 863 F.2d at 834 (“A corporate debtor is not an individual debtor for the purposes of Section 523.”); *Yamaha Motor Corp.*, 762 F.2d at 670 (concluding that applying § 523 to a corporate debtor would “render meaningless employment by Congress of the term ‘individual’”); *In re MF Glob. Holdings, Ltd.*, 2012 WL 734175, at *3 (holding that “it is well-settled that Section 523 does not apply to corporate debtors.”).

If Congress had intended to drastically increase the scope of corporate discharge exceptions, it did not do so in secret, as nothing in the legislative history indicates any intention to create such carve outs. These exceptions largely involve the third-party waiver provisions. A controversial topic which has been around for years. This would have been seen in Congress removing these exceptions and would have been apparent in the drafting of the legislation.

The SBRA lowers costs and streamlines the plan confirmation process to make it more feasible for small businesses to survive bankruptcy and retain control of their operations. Through Chapter 7 liquidation, corporations do not receive a discharge, but their assets are liquidated, as a business is unable to survive and retain control of its operations after a Chapter 7 bankruptcy. Subchapter V also provides favorable terms for small business debtors as compared to a traditional

Chapter 11, as it allows for the debtor to retain control, does not allow for creditors to propose plans, and a creditors committee is not required to be appointed by the court. 11 U.S.C. § 1181(b).

Before SBRA, small businesses could either file for Chapter 7 and liquidate their assets, or file for Chapter 11 and retain control over their operations but face increased oversight and costly requirements. The SBRA allows small businesses to retain control of their operations while reorganizing and appointing a trustee to oversee the case and perform duties like those in a Chapter 13 case. Additionally, the SBRA eliminates the requirement to appoint a creditor committee, streamlines the plan confirmation process, and allows the debtor to retain ownership of their business if the plan is fair and equitable.

SBRA allowed for a new method of reorganization under the United States Bankruptcy Code. Pub. L. No. 116-54, 133 Stat. 1079 (2019). The SBRA allows for protection for a wide range of debtors, including corporations, individuals, and partnerships. The debtor can have a plan confirmed and unlike other Chapter 11 actions, creditors are not permitted to seek confirmation of their own plan. *See* 11 U.S.C. § 1191. The stated purpose under SBR provides an overview of the policy reasons and goals behind the addition of this subchapter, including providing relief to small business owners who may not have the resources to navigate the traditional Chapter 11 process, making it easier for small businesses to restructure their finances, keep their business operating and pay off creditors in a timely and orderly manner, and helping small businesses get back on their feet and continue to operate while providing a fair and efficient process for creditors to be paid. H.R. Rep. No. 116-171. Notably, the SBRA removes the creditors' committee and disclosure statement requirements, helping to make reorganization easier and allowing for an expedited process. *Id*.

To determine the applicability, the SBRA created a new method for small businesses, adding Subchapter V of Chapter 11 to the U.S. Bankruptcy Code. Pub. L. No. 116-54 (2019). There are some primary differences between Subchapter V and a traditional Chapter 11 case, including the ability to have a plan confirmed over the objection of certain creditors. *See* 11 U.S.C. § 1191. There are certain major differences under Subchapter V between how corporate and individual debtors are treated. *See* 11 U.S.C. §1141(d) ("A discharge under this chapter does not discharge a debtor who is an individual from any debt excepted from discharge under section 523 of this title.").

CONCLUSION

The Thirteenth Circuit was correct in its decisions with respect to both issues. For the foregoing reasons, the Court should hold that the Bankruptcy Court for the District of Moot has the authority to grant Debtor's Plan containing the non-consensual third-party releases. Further, this Court should hold that under Subchapter V of Chapter 11 of the Bankruptcy Code, a corporate debtor, pursuant to 11 U.S.C. § 1192 is subject to discharge debts as specified under 11 U.S.C. § 523, as said exceptions only apply to individual debtors.

Respectfully submitted,

Team 28
Counsel for Respondent

APPENDIX A

11 U.S.C. § 105(a). Power of Court

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

11 U.S.C. § 522(c)(1). Exemptions

(1) A debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in such paragraph).

11 U.S.C. § 523(a). Exceptions to Discharge

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

(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 . . .

(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 . . .

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

(5) for a domestic support obligation;

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

(7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty—

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

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

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

(A)

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

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

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

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

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

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

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

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

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

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

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

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

(16) for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case;
(17) for a fee imposed on a prisoner by any court for the filing of a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the debtor under subsection (b) or (f)(2) of section 1915 of title 28 (or a similar non-Federal law), or the debtor's status as a prisoner, as defined in section 1915(h) of title 28 (or a similar non-Federal law);
(18) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, under--

(A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974, or subject to section 72(p) of the Internal Revenue Code of 1986; or
(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;
but nothing in this paragraph may be construed to provide that any loan 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 of the Higher Education Act of 1965, or under section 733(g) 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).

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

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

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

(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.

11 U.S.C. § 524(h). Application to Existing Injunctions

(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.

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

(a) Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall—
(5) provide adequate means for the plan's implementation, such as—
(A) retention by the debtor of all or any part of the property of the estate;
(B) transfer of all or any part of the property of the estate to one or more entities, whether organized before or after the confirmation of such plan;
(C) merger or consolidation of the debtor with one or more persons;
(D) sale of all or any part of the property of the estate, either subject to or free of any lien, or the distribution of all or any part of the property of the estate among those having an interest in such property of the estate;
(E) satisfaction or modification of any lien;
(F) cancellation or modification of any indenture or similar instrument;
(G) curing or waiving of any default;
(H) extension of a maturity date or a change in an interest rate or other term of outstanding securities;
(I) amendment of the debtor's charter; or
(J) issuance of securities of the debtor, or of any entity referred to in subparagraph (B) or (C) of this paragraph, for cash, for property, for existing securities, or in exchange for claims or interests, or for any other appropriate purpose;

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

(b) Subject to subsection (a) of this section, a plan may—
(6) include any other appropriate provision not inconsistent with the applicable provisions of this title.

11 U.S.C § 1141(d). Effect of Confirmation
(1) Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan—
(A)discharges the debtor from any debt that arose before the date of such confirmation, and any debt of a kind specified in section 502(g), 502(h), or 502(i) of this title, whether or not—
(i) a proof of the claim based on such debt is filed or deemed filed under section 501 of this title;
(ii) such claim is allowed under section 502 of this title; or
(iii) the holder of such claim has accepted the plan; and

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

11 U.S.C § 1181(a). Inapplicability of Other Sections

(a)IN GENERAL.—

Sections 105(d), 1101(1), 1104, 1105, 1106, 1107, 1108, 1115, 1116, 1121, 1123(a)(8), 1123(c), 1127, 1129(a)(15), 1129(c), 1129(e), and 1141(d)(5) of this title do not apply in a case under this subchapter.

11 U.S.C § 1181(c). Inapplicability of Other Sections

(c) a plan is confirmed under section 1191(b) of this title, section 1141(d) of this title shall not apply, except as provided in section 1192 of this title.

11 U.S.C § 1183(c). Trustee

(1)IN GENERAL.—

If the plan of the debtor is confirmed under section 1191(a) of this title, the service of the trustee in the case shall terminate when the plan has been substantially consummated, except that the United States trustee may reappoint a trustee as needed for performance of duties under subsection (b)(3)(C) of this section and section 1185(a) of this title.

(2)SERVICE OF NOTICE OF SUBSTANTIAL CONSUMMATION.—

Not later than 14 days after the plan of the debtor is substantially consummated, the debtor shall file with the court and serve on the trustee, the United States trustee, and all parties in interest notice of such substantial consummation.

11 U.S.C § 1191. Confirmation of Plan

(a)TERMS.—

The court shall confirm a plan under this subchapter only if all of the requirements of section 1129(a), other than paragraph (15) of that section, of this title [1] are met.

(b)EXCEPTION.—

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

(c)RULE OF CONSTRUCTION.—For purposes of this section, the condition that a plan be fair and equitable with respect to each class of claims or interests includes the following requirements:

(1) With respect to a class of secured claims, the plan meets the requirements of section 1129(b)(2)(A) of this title.

(2) As of the effective date of the plan—

(A) the plan provides that all of the projected disposable income of the debtor to be received in the 3-year period, or such longer period not to

exceed 5 years as the court may fix, beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; or

(B) the value of the property to be distributed under the plan in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date on which the first distribution is due under the plan is not less than the projected disposable income of the debtor.

(3)

(A) The debtor will be able to make all payments under the plan; or

(B)

(i)there is a reasonable likelihood that the debtor will be able to make all payments under the plan; and

(ii) the plan provides appropriate remedies, which may include the liquidation of nonexempt assets, to protect the holders of claims or interests in the event that the payments are not made.

(d)DISPOSABLE INCOME.—For purposes of this section, the term "disposable income" means the income that is received by the debtor and that is not reasonably necessary to be expended—

(1)for—

(A) the maintenance or support of the debtor or a dependent of the debtor; or

(B) a domestic support obligation that first becomes payable after the date of the filing of the petition; or

(2) for the payment of expenditures necessary for the continuation, preservation, or operation of the business of the debtor.

(e)SPECIAL RULE.—

Notwithstanding section 1129(a)(9)(A) of this title, a plan that provides for the payment through the plan of a claim of a kind specified in paragraph (2) or (3) of section 507(a) of this title may be confirmed under subsection (b) of this section.

11 U.S.C § 1192. Discharge

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

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

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