No. 22-0909

In The

Supreme Court of the United States

October Term, 2022

In Re Penny Lane Industries, Inc., Debtor,

Elanor 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 THE PETITIONER

January 19, 2023

TEAM NUMBER 29
COUNSEL FOR PETITIONER

QUESTIONS PRESENTED

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

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

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The opinion of the United States Court of Appeals for the Thirteenth Circuit is available at No. 21-0803 and reprinted at Record 3.

STATEMENT OF JURISDICTION

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

STATUTORY PROVISIONS INVOLVED

This action implicates statutory construction of certain provisions of Title 11 of the United States Code. The relevant statutory provisions in this case are listed below.

The relevant portion of 11 U.S.C. § 523:

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

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

The relevant portion of 11 U.S.C. § 524:

(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."

(g)(2)(B)(i)
"The injunction is to be implemented in connection with a trust that, pursuant to the plan of reorganization –

(g)(2)(B)(i)(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."

(g)(4)(A)(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, claims against, or demands on the debtor to the extent such alleged liability of such third party arises by reason of –

(g)(4)(A)(ii)(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."

The relevant portion of 11 U.S.C. § 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—

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

STATEMENT OF THE CASE

The petitioner, Eleanor Rigby, is a decades long resident of Blackbird, Moot, having lived there for the past forty years. Circuit Court Record (R) at 5. The City of Blackbird is also home to Penny Lane Industries, Inc., ("Penny Lane"), a manufacturer that produces plastic, glass, and metal food products. R4. Penny Lane is a wholly owned subsidiary of Strawberry Fields, Inc., ("Strawberry Fields"), a large company that produces cereal and convenience foods for several well-known brands sold across the country. R4-5.

In 2017, Ms. Rigby faced tragedy when her daughter, just four years old, lost her battle with leukemia. R5. Shortly after her daughter's death, Ms. Rigby was shocked to learn that her community's groundwater had contained toxins at up to 3,000 times the maximum allowable level. R5. Government agencies, including the United States Environmental Protection Agency and Centers for Disease Control and Prevention, determined tens of thousands of people in the community had been exposed to the toxins for up to four years, and would likely experience sickness, birth defects, and death from the exposure. R5. This meant that Ms. Rigby's daughter bathed in and drank contaminated water during the short time she was alive.

After learning of the contamination, the community filed hundreds of lawsuits against Penny Lane and Strawberry Fields, alleging that their manufacturing facilities had dumped toxic byproducts directly into the Liverpool River, which runs through the community. R5. Both corporations admit that they disposed of chemicals at their facility but assert that the disposal complied with all regulations at that time. R6. When the community had learned about the extent of the contamination, Strawberry Fields and Penny Lane faced 10,000 tort claims valued at nearly $400 million. R6. Ms. Rigby filed a $1 million lawsuit against Penny Lane and Strawberry Fields, which amounted to just a quarter of a percent of the total liability the corporations face. R6.

Facing the growing lawsuits, Penny Lane filed for bankruptcy as a small business debtor under subchapter V of the Bankruptcy Code. R7. After months of mediation, Penny Lane and several stakeholders came up with a proposed reorganizational plan that provides, in part, for the establishment of a creditor trust to resolve the mass tort claims. R8. Strawberry Fields agreed to help fund the trust, but those suffering from injury or death from Penny Lane and Strawberry Fields conduct would only recover about thirty to forty cents on each dollar of their claims. R8. In exchange for their funding contribution, Strawberry Fields, a non-debtor parent company, demanded a broad release from all claims, including third-party direct claims, R8. The Plan expressly discharges “any and all claims” 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 Debtor’s prepetition conduct, its estate or this chapter 11 case.” R8-9. While over 95 percent of creditors who submitted ballots voted in favor, Ms. Rigby did not agree to waive any future claims and opposed the plan. R8.

During the bankruptcy proceedings, Ms. Rigby argued that there was no statutory authority to grant third party non-consensual releases. R7. Ms. Rigby also argued that Penny Lane’s debt resulted from “willful and malicious injury” and thus was non-dischargeable under § 523(a) and § 1192(2) of the Bankruptcy Code. R7. The bankruptcy court dismissed both of Ms. Rigby’s objections, holding that § 523(a) applied only to individual debtors. R7. The bankruptcy code acknowledged that non-consensual plans, like the one Penny Lane is proposing, were permitted "only in extraordinary cases" and the dismissal was an "extremely hard pill to swallow" but was necessary because the alternative meant continued litigation. R10-11.

On appeal, the Thirteenth Circuit dismissed Ms. Rigby's suit, holding that Strawberry Fields, a third-party non-debtor, could be released from liability as part of Penny Lane's bankruptcy plan. R12. It reasoned that the alternative would result in a closed factory and lost jobs, in what it described as an "already economically challenged Blackbird community." R12. It also held that even though circuit courts have permitted these kinds of releases in "narrow circumstances", none of the statutory limitations applied in Ms. Rigby's case. R13-14.

The Thirteenth Circuit also affirmed the bankruptcy court's finding that § 523(a) only applied to individual debtors. R15. While the circuit court acknowledged that the language of § 523(a) was ambiguous and unclear it nonetheless concluded that Congress expressed its intent "in clear and unmistakable language." R17, R18. Ms. Rigby appeals.

II. Procedural History

The Bankruptcy Court for the District of Moot ruled in favor of Penny Lane and confirmed their Chapter 11 Plan of Reorganization and the District. R11. In doing so they 1) Dismissed Ms. Rigby's non-dischargeability action, concluding section 523 only applies in cases where Debtor is an individual; and 2) overruled Ms. Rigby's objection to the Plan, holding it had authority to approve the releases within it. R4. Ms. Rigby then appealed both the bankruptcy court's rulings pursuant to 28 U.S.C. § 158(d). R11. Upon review, the Thirteenth Circuit affirmed the bankruptcy court's decision on both issues.

STANDARD OF REVIEW

The parties do not dispute the facts as set forth herein. Rather, the issues that we address in this appeal involve questions of law. Thus, our review is de novo. *See*, e.g. *Texas v. Soileau (In re Souileau),* 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. *See,* e.g., *Razavi v. Comm'r of Internal Revenue*, 74 F. 3d 125, 127 (6th Cir. 1996) (quotation omitted).

SUMMARY OF THE ARGUMENT

The Thirteenth Circuit erred when it determined that Strawberry Fields, a non-debtor could benefit from the discharge and nonconsensual release of Ms. Rigby's third-party claim against them for their role in the death of her four-year old daughter. Additionally it erred when it concluded that a corporate debtor who is proceeding under subchapter V in a chapter 11 bankruptcy may discharge the debts of the types specified in subparagraphs (1) through (19) of U.S.C. § 523(a) pursuant to 11 U.S.C. §1192.

First, the Bankruptcy Court incorrectly held that it possessed the authority to allow the releases against Strawberry Fields. The court did not have any statutory authority to do so as the plain language of 524(e) expressly provide this benefit to debtors, making no mention of any other type of non-debtor that may also benefit. This understanding is further supported by a plain reading of 524(g), which makes it apparent the only kind of non-debtor the code does consider to benefit from releases only in the context of asbestos claims. This reading of 524(g) is also backed up by the legislative history found in the enactment the provision. The bankruptcy court tries to support its claim of statutory authority by pointing to the general equitable provisions found in 105(a), 1123(b)(6) and 1123(a)(5). This ignores the fact that these general equitable provisions can only be applied in conjunction with another substantive provision within the code. The court has no constitutional authority authorize this type of release either, as Article III forbids bankruptcy courts from entering final judgement on private rights. A decision permitting bankruptcy courts to hold this type of authority also undermines the purpose of the bankruptcy code, as it both allows courts to create their own law to determine if such release against non-debtor is such a rare circumstance that it should be allowed and by allowing so it gives the non-debtor the benefits of a bankruptcy proceeding without needing to go jump through the necessary hoops found in the code they would normally be required to as a debtor.

Second, the Thirteenth Circuit incorrectly held that § 523(a) only applies to individual debtors. Corporate debtors who are filing a non-consensual bankruptcy plan as small business debtors, like Penny Lane does here, must comply with the discharge provisions of 11 U.S.C. § 1192. The plain language of that statute is clear: "[t]he court . . . shall grant the debtor a discharge of all debts . . . except any debt . . . of the kind specificized in § 523(a) of this title." (emphasis added). Section 523(a) then lists nineteen different types of debt that are non-dischargeable, including those for "willful and malicious conduct." 11 U.S.C. § 523(a)(6).

The issue in this case revolves around the preamble to § 523(a), which states that a "discharge under . . . section 1192 . . . of this title does not discharge an individual debtor from any debt." (emphasis added). When the Thirteenth Circuit tried to reconcile this issue, it ignored the plain language of the statute and instead placed all its weight on Congressional intent. This is an important factor, but not the sole one to consider. The Thirteenth Circuit also erred because it did not consider the "specific over general" canon of construction. The court dismissed this canon because it felt that § 1192 and § 523(a) were able to be harmonized. This appeal, and the constant litigation around this issue, show that the two statutes are not in harmony. Further, the only other circuit court to have looked at this issue has already ruled that § 523(a) applies to corporations.

A deep dive of the legislation history of the statutes show that, in fact, Congress has already subjected corporations to § 523(a) before. When subchapter V bankruptcy provisions were being considered, nothing in the Congressional record indicates that members intended to treat corporations any differently than individuals. Finally, Penny Lane's reading of the law opens the bankruptcy code to bad actors, because corporations could simply discharge the financial consequences of their willful and malicious conduct. An overarching goal of the bankruptcy code is to protect honest debtors, so dishonest or irresponsible corporate debtors should not be treated any differently than dishonest or irresponsible individual debtors.

ARGUMENT

This Court should reverse the Thirteenth Circuit's decision that 524(e) does not preclude non-debtors benefiting from non-consensual releases as a part of a Chapter 11 plan of reorganization, and that Bankruptcy Courts have authority to authorize such releases. Additionally, this court should further reverse the circuit court's decision that a corporate debtor proceeding under subchapter V of chapter 11 of the Bankruptcy Code may, pursuant to 11 U.S.C. §1192, discharge debts of the types specified in subparagraphs (1) through (19) of U.S.C. § 523(a)

I. THE THIRTEENTH CIRCUIT INCORRECTLY HELD THAT A BANKRUPTCY COURT HAS AUTHORITY TO AUTHORIZE NON-CONSENSUAL RELEASES OF DIRECT CLAIMS AGAINST NON-DEBTOR AFFILIATES STRAWBERRY FIELDS AS PART OF A CHAPTER 11 PLAN OF REORGANIZATION

That the bankruptcy code is a tool to be used by debtors that allows them to emerge from the process unencumbered by debt is without question. However, the circuit courts affirmation that the same tool can be used to benefit non-debtors has no merit. The Thirteenth Circuit in their below decision erroneously held a bankruptcy court has the authority to allow non-debtors to enjoy the benefit of a claims release. This decision goes against clear statutory language found within the bankruptcy code and Article III of the United States Constitution, both of which delegate bankruptcy courts to release claims only in specific instances. This understanding of the bankruptcy codes authority is further reflected in its purpose for enactment as the code was designed to be an efficient and comprehensive scheme to benefit a debtor has let themselves be subjected to requirements of the bankruptcy code

A. A Plain Reading of the Provisions Found In 524 Clearly Shows That Bankruptcy Code Does Not Allow Release Of Claims Against Non-Debtor Strawberry Fields To Be Included As Part Of Debtor Penny Lane's Plan Of Reorganization.

To determine a dispute over the correct interpretation of §524, the task begins where all inquiries must begin, with the language of the statute itself. *United States v. Ron Pair Enters*., 489 U.S. 235, 241 (1989). This means that when reading a statute, courts must presume that a legislature says what it means and means what it says within the statute. *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-254 (1992). The Supreme Court has consistently held that where the language of the disputed statute is plain the inquiry ends there, and the court's sole function is to enforce it according to its terms. *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000); Connecticut Nat'l Bank, 503 U.S. at 254; Ron Pair Enters., 489 U.S. at 241.

1. <u>The Plain Language of 524(e) only allows for releases of claims against debtors.</u>

The bankruptcy court incorrectly interprets 524(e) as merely clarifying that a debtors discharge does not by itself discharge claims of others. R. at 15. The text of 524(e) states that "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt" 11 USCS §524(e). When reading a codes provision, it is important to give words that are repeated in different parts of the same statute the same meaning. *Law v. Siegel*, 571 U.S. 415, 422 (2014). In this instance the word "debtor" appears in multiple instances throughout the code and is clearly defined under §101(13) as a "person or municipality concerning which a case under this title has been commenced". 11 USCS §101(13). This definition makes clear that the fresh start 524(e) provides is only intended to benefit debtors, those that commence the bankruptcy action. *Bank of N.Y. Tr. Co., NA v. Official Unsecured Creditors' Comm. (In re Pac. Lumber Co.),* 584 F.3d 229 (5th Cir. 2009). The fact that the provision authorizes a specific action, the discharge of debt, and names the debtor as a particular party empowered to take that action further supports the position such party only may act as it is inappropriate to assume non-exclusivity. Hartford Underwriters Ins. Co., 530 at 6-7.

Had congress intended the provision to be broadly available it simply could have said so. Id. at 7. Reading 524(e) to allow a Bankruptcy Court to authorize a discharge between two non-debtors would provide a huge exception to the code, and as the Supreme Court has said, "congress does not hide elephants in mouseholes." *Czyzewski v. Jevic Holding Corp*. 580 U.S. 451, 465 (2017). Accordingly, because in this instance the release would affect two non-debtor entities the court should find that 524(e) does not provide authority to allow a discharge.

2. <u>The plain language found in the 524(g) exception of non-debtor discharges in instances of asbestos claims in 524(g) further show that 524(e) disallows non-debtor discharges in general.</u>

The bankruptcy court was also incorrect in holding that 524(g) does not set an exception to section 524(e). This is because a plain reading of 524(g) clearly shows that 524(e) does not allow courts to authorize release of claims against non-debtors generally. In re Metromedia Fiber

Network, Inc., 416 at 142. Instead, section 524 (g)(2)(b)(i)(I) clearly states that these injunctions are an allowance only the context of asbestos cases, requiring that injunctions implemented are done where a debtor " has been named as a defendant in personal injury, wrongful death, or property-damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products." 11 USCS §524 (g)(2)(b)(i)(I). The text of 524(g) makes this apparent in the language found in 524(g)(4)(A)(ii), which states in part "notwithstanding the provisions of section 524(e) such an injunction may bar any action directed against a third party. . ." 11 USCS §524 (g)(4)(A)(ii). The word notwithstanding as defined means "despite; in spite of". Notwithstanding, Black's Law Dictionary (11th ed. 2019). The inclusion of this word makes clear that the type of action authorized by Congress in 524(g) would be barred by 524(e) in its absence. *In re Purdue Pharma, L.P.,* 635 B.R. 26, 92 (S.D.N.Y. 2021). This interpretation is further supported by the commonplace rule that the specific governs the general. *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012). The application of the general/specific canon has particular force where Congress intentionally limited a specific and targeted solution, here the release of third-party claims against non-debtors, to a specific identified problem, asbestos claims in bankruptcy proceedings. *In re Purdue Pharma, L.P*., 635 at 92.

Due to the inclusion of both the word "notwithstanding" and the specific provisions outlining the requirements to release third party claims against non-debtors for asbestos claims in bankruptcy proceedings, the court should hold that the plain language of 524(g) also precludes courts from authorizing discharges for the release of third-party claims against non-debtors generally.

3. <u>The legislative history supports our plain language interpretation that 524(g) serves as the only exception to the rule that 524(e) disallows non-debtor releases in discharges generally.</u>

Because the language of 524(e) and 524(g) sufficiently express the legislative intent to preclude non-debtors benefiting from a release of a third-party claim except in the context of asbestos claims, reference to legislative history is hardly necessary. Ron Pair Enters., 489 at 241. Although it is not necessary, a look to the legislative history of 524(g) also supports our plain reading of these statutes. 524(g) was drafted in direct response to the Johns-Manville case, which authorized the injunction and release of third-party claims of asbestosis, so as to clear up any concerns about the legitimacy of such discharge by the bankruptcy court. H.R. Rep. 103-835 at 41; *see also MacArthur Co. v. Johns-Manville Corp*., 837 F.2d 89 (2d Cir. 1988) (holding a discharge including releases of third-party claims against non-debtors without citing its authority to do so). The legislative history of that statute explicitly states that 524(g) was passed in consideration of establishing a procedure for dealing with a chapter 11 reorganization proceeding with future personal injury claims based on exposure to asbestos and did not consider the availability of the same outside of this specific context. H.R. Rep. 103-835 at 40. Further supporting this is the Congressional Record which shows that while the Committee provided explicit authority in the area of asbestos claims, they retained for themselves the authority to expand this authority to other areas. *See* 140 Cong. Rec. H10752-01, H10766, 1994 WL 545773 (explaining that seeing how 524(g) works in the asbestos area "may help the Committee judge wither the concept should be expanded into other areas"). The Congressional silence on this issue since the statutes initial enactment 30 years ago indicates they have chosen not to do so. *In re Purdue Pharma, L.P*., 635 at 94.

As the Supreme Court has noted, where the most natural reading of 524(e) is that it only extends to the debtor, the respondent's burden to persuade that the section must be read to allow use by other parties is "exceptionally heavy". Hartford Underwriters Ins. Co, 530 at 9. Where, as in the instant case, both the natural reading and legislative history point to the same outcome the court should affirm that consistent interpretation as the respondent's burden to persuade otherwise is almost impossible to overcome.

B. The Bankruptcy Court Does Not Have Statutory Authority, Nor Constitutional Authority To Authorize Non-Consensual Releases Of Direct Third Party Claims Against Non-Debtors.

The jurisdictional authority of the bankruptcy courts, like that of other federal courts, is both grounded in and limited by statute. *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 (1995). Although it may be said that a bankruptcy court is a court of equity, the Supreme Court has made clear that whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code. *Law v. Siegel*, 571 at 421. Neither can the bankruptcy courts equitable considerations permit a court to contravene express provisions of the Code, as it is not for the courts to alter the balance struck by the statute. Id. at 426-427.

Additionally, even if a bankruptcy court is found to have statutory authority to enter a judgement, it may still be found to lack constitutional authority to do so. *Stern v. Marshall*, 564 U.S. 462, 469 (2011). This is because Article III of the constitution forbids bankruptcy courts from entering final judgement on private rights, and Congress cannot withdraw an Article III courts' any matter which is the subject of a suit at the common law, or in equity, or admiralty. Id. at. 489, 499

1. <u>The Bankruptcy Code Does Not Provide Statutory Authority to Approve non-consensual discharge of claims against non-debtors.</u>

The Thirteenth Circuit points to a number of statutory provisions they claim authorize a bankruptcy courts' authority to approve a global settlement releasing non-consensual third party claims against the non-debtor Strawberry Fields. R14. However, they incorrectly assert that these provisions in and of themselves authorize the court to act, this cannot be further from the truth as any equitable authority a bankruptcy court is empowered to use must be tied to some specific substantive grant of authority found in the Code. *In re Purdue Pharma, L.P.,* 635 at 78. This is based on the understanding that Congress intended to put together a comprehensive scheme when designing the Code. Id. at 109. The Codes meticulously detailed enumeration of exemptions and exceptions to those exemptions further supports this understanding that statutory authority cannot be inferred simply from Congressional silence. *Law v. Siegel*, 571 at 424; *In re Purdue Pharma, L.P.*, 635 at 109.

First we turn to the Thirteenth Circuit's assertion that section 105(a) authorizes the courts "issue any order, process or judgement that is necessary or appropriate to carry out the provisions of this title" in instances of non-debtor releases. R.14; 11 U.S.C. § 105(a). That this provision gives broad authority for to court to act equitably is patently false. As multiple courts have held, this authority must be tied to another provision of the bankruptcy code. In re Metromedia Fiber Network, Inc., 416 at 142*; Landsing Diversified Props. II v. First Nat'l Bank and Trust Co. of Tulsa (In re W. Real Estate Fund, Inc.),* 922 F.2d 592, 601 (10th Cir. 1990); *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).

The Thirteenth Circuit claims this authority can be found in 1123(b)(6), as that provides "a plan may . . . include any other appropriate provision not inconsistent with the applicable provisions of this title. 11 U.S.C. § 1123(b)(6). However, if the substantively analogous authorization of 105(a) does not confer the necessary substantive authority on the bankruptcy courts, then 1123(b)(6) likewise cannot be read to do so. *In re Purdue Pharma, L.P.,* 635 at 106.

The lower court further asserts that the 1123(a)(5) requirement a plan "provide adequate means for . . . implementation" not only authorizes but requires the inclusion of the nonconsensual claims' releases against non-debtors. 11 U.S.C. § 1123(a)(5). This reading is inconsistent with that provision, as every single example in subsections (a) through (j) provision concerns the courts authority to do something with the debtor's assets and make no mention of injunctions or releases of third-party claims against non-debtors. Id.at 106.

Moreover, both 105(a) and 1123(b)(6) specify that these provisions do not authorize relief inconsistent with other provisions of the Code. 11 U.S.C. § 105(a); 11 U.S.C. § 1123(b)(6). When read in conjunction with the provisions found in 524 it becomes clear that the nonconsensual releases of third-party claims against non-debtors for the reasons outlined previously, as the courts likewise held in the 9th Circuit. *Resorts Int'l, Inc. v. Lowenschuss (In re Lowenschuss),* 67 F.3d 1394, 1401-02 (9th Cir. 1995) Additionally, multiple circuit courts have held that discharges including releases that would provide non-debtors with broader protections than debtor would be allowed in their own releases, including those that would otherwise authorize these releases. *SE Prop. Holdings, LLC v. Seaside Eng'g & Surveying (In re Seaside Eng'g & Surveying),* 780 F.3d 1070, 1081 (11th Cir. 2015) (release is allowable if narrowly limited in scope to claims arising out of the chapter 11 case & doesn't include claims arising out of fraud, gross negligence, or willful misconduct); *see also Airadigm Comm's., Inc. v. F.C.C. (In re Airadigm Comm's., Inc.),* 519 F.3d 640, 657 (7th Cir. 2008) (narrowly tailored release is allowable if it only applies to claims "arising out of or in connection with" reorganization itself and does not include "willful misconduct"); *see also In re Metromedia Fiber Network, Inc*., 416 at 142 (release is not allowable when protecting against for "tort, fraud, contract, violations of federal or state securities laws, or otherwise, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured.").

The foregoing reasoning makes apparent that in this case the Thirteenth Circuit was wrong in finding the bankruptcy court had statutory authority to authorize the releases as they were not able to point to any specific statutory authority that would allow this action. Furthermore, the action was wholly inconsistent with the code, first because 524 precludes releases of non-debtors in a discharge, and because the broadly worded release would afford Strawberry Fields protections the Code would not allow had they filed as debtors in bankruptcy themselves.

2. <u>The Bankruptcy court does not have the Constitutional authority to adjudicate direct claims against non-debtor third parties.</u>

The Supreme Court has made perfectly clear that Article III of the Constitution limits a bankruptcy courts' authority to enter a final judgement on any matter subject to a suit at the common law, in equity or in admiralty. *Stern v. Marshall*, 564 at 499. This means that although a court may enter final judgment in core proceedings arising under, or arising in a Title 11 case, where a bankruptcy court has only "related to" jurisdiction, pursuant to 157(c)(1) they may only submit a proposed findings of fact and conclusions of law. Id. at 473, 499.

The Thirteenth Circuit claims in its decision that because the confirmation of plan with a third-party injunction is a core matter the bankruptcy court had the constitutional authority enter a final judgement. R12. This is a fundemental misunderstanding of the Supreme Court's decision in Stern. Focus should instead be placed on whether the third-party claims that are released and enjoined either stem from the bankruptcy itself, or would necessarily be resolved in the claims allowance process, not whether they would be "integral to the restructuring of the debtor-creditor relationship." *In re Purdue Pharma*, L.P., 635 at 81. Here, Ms. Rigby's objection is not to the release of derivative claims related to the adjustment of the debtor-creditor relationship. R12. Instead, they stem from the death of her four-year old daughter, a particularized injury released by the Plan that can be directly traced back to Strawberry Fields conduct. R5. Ms. Rigby's claims against Strawberry fields would therefore not be resolved in the claims allowance process, as the Code mandates that process only applies to claims against debtors. *Stern v. Marshall*, 564 at 499.

As Ms. Rigby's claims against Strawberry Fields neither stem from the bankruptcy itself, nor would be resolved through the claims allowance process, the confirmation of a plan including their release is not a core matter and the bankruptcy court has no authority to enter a final judgment on them by releasing them.

C. Allowing Strawberry Fields To Benefit From A Discharge Without Going Through The Bankruptcy Process Is Counter To The Purpose Of The Bankruptcy Code.

Allowing a bankruptcy court to include nonconsensual third-party releases of claims against non-debtors in a reorganization plan in rare circumstances undermines the purpose of the bankruptcy code in two ways. First, Congress intended that the Bankruptcy Code be a comprehensive scheme. RadLAX Gateway Hotel, 566 at 645. This means that the code should be read as complete and including all elements. *In re Purdue Pharma*, L.P., 635 at 110. Allowing courts to formulate their own standards in rare circumstances weakens the comprehensiveness of its scheme.

Second, the primary policy of Chapter 11 is to permit successful rehabilitation of debtors. *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 527 (1984). To further this purpose the code allows for a debtor who surrenders property he owns at the time of bankruptcy to be granted a new opportunity unencumbered by debt. *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934). To allow a discharge to release nonconsensual third party claims against a non-debtor would be giving him the benefit of a bankruptcy without being subjected to the strict and watchful eye of the bankruptcy court.

1. The Bankruptcy Code Is A Comprehensive Scheme and Allowing Deviation In Rare Circumstances Would Undermine its Uniformity

Allowing courts to create their own standards to determine if non-debtor releases are available in rare circumstances outside of the asbestos context in the face of a comprehensive scheme would result in detrimental consequences, as the uncertainty of such an allowance would lead to similar claims being made in many, just not a few cases." *Czyzewski v. Jevic Holding Corp*. 580 at 470. The Supreme Court decision in Czyzewski makes clear that this cannot stand. Id. at 471. Congress did not authorize a rare case exception and the courts should not a balance struck by the statute, not even in those rare circumstances where they believe creditors would be better off. Id.

The courts which allow nonconsensual third-party releases of non-debtors in such "rare circumstances" makes the Supreme Courts fear of uncertainty manifestly clear. The 6nd Circuit lays out a seven-factor analysis to determine whether there is such a rare circumstance that would allow these releases. In re Dow Corning Corp., 280 at 658. In contrast, the 2nd circuit only considers four factors when determining if a rare circumstance exists. In re Metromedia Fiber Network, Inc., 416 at 142. The 11th circuit does apply the seven-factor analysis set forth in Dow to determine if there is a rare circumstance to allow a release, but also adds additional considerations for the "fair and equitable" requirement pursuant *to Munford v. Munford (in Re Munford, Inc.),* 97 F.3d 449 (11th Cir. 1996). In re Seaside Eng'g & Surveying 780 at 1081.

The Thirteenth Circuit is not immune from these uncertainties themselves. Though they acknowledge the requirement of the existance of these rare circumstances that would allow third-party releases, they did not make this determination based on a specific factor analysis. Rather they simply confirmed the analysis entered by the bankruptcy court and evidenced its appropriateness apropos of the multiple circuit court decisions finding third party releases based on their varying applied standards. R13.

As the variety of requirements used by different courts make clear the fear of uncertainties detrimental consequences expressed by the Supreme Court is being realized. Because Congress did not authorize such a rare case exception and courts should not alter the balance struck by the stuck by such a comprehensive statute, non-debtors should not be empowered to benefit from third party releases outside of any context not found expressly within the code.

2. Allowing Non-Debtors to Benefit From Bankruptcy While Not Beholden To Its Regulations.

The main purpose of the bankruptcy act is that it allows an honest debtor who surrenders the property they own at the time of bankruptcy for distribution a new opportunity in life clear from preexisting debt. *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934). The various provisions of the code both benefiting and regulating the debtor were enacted in light of that view. Id at 245. To take advantage of this remedial scheme, debtors must declare bankruptcy, disclose assets, and apply nearly all to the resolution of their creditors claims with minimal exception. *In re Purdue Pharma, L.P.,* 635 at 114. It also protects debtors from needing to relitigate prior released debts by making those claims equitably moot, a doctrine invoked to avoid disturbing a reorganization plan once it has been implemented. In re Metromedia Fiber Network, Inc., 416 at 144.

The crux of the issue found in this instance is that the Thirteenth Circuit is allowing Strawberry Fields, a non-debtor, to enjoy on of the largest benefits the bankruptcy code provides by including in Penny Lanes' Plan a release for any an all claims third parties have asserted or might assert in the future to the extent such claims are based on or related to Penny Lanes prepetition conduct. R8. When such a release is written for a debtor in bankruptcy, the code lays out a claim allowance process so creditors can file their claims against the debtor and provides a mechanism so they may be litigated to determine their value. *In re Purdue Pharma, L.P*., 635 at 114. Where the beneficiary of a release is a non-debtor there are no such similar mechanisms provided, making creditors unable to both determine the value of their claim, and the value of the property a non-debtor may have to back up their liability for such claim. This issue is exacerbated further where, like here, claims third parties may assert in the future are also barred without being required to go through the codes necessary protections to ensure these claims are also compensated as necessary. In fact, the concern about the treatment of potential future claims congress provides in its reasoning for their enactment of 524(g), as it lays out a process to fairly determine what the amount of those claims may be. H.R. Rep. 103-835 at 40.

In this instance it is very likely that there will be more future claims related to Penny Lane's prepetition conduct of dumping industrial waste on its property and contaminating Blackbirds water supply. This mainly due to the carcinogenic nature of the harm caused by drinking and bathing in water contaminated with toxins at concentrations 250 to 3,000 times the permitted level, as Ms. Rigby can sadly personally attest to. R5. Unfortunately, the latency period between the time of exposure and when a cancer is detected usually takes a long time. Agency for Toxic Substances and Disease Registry, Chemicals, Cancer and You, 2 https://www.atsdr.cdc.gov/emes/public/docs/Chemicals,%20Cancer,%20and%20You%20FS.pdf . This reality is further evidenced by the fact that although tens of thousands of citizens of Blackbird and the surrounding areas were exposed to the contamination, the lawsuits filed remained in the hundreds. R5-6. Those who may have been harmed at the time of the Plan's discharge would simply have no recourse against Strawberry Fields and the injury they may cause as the release would clearly preclude them from being able to pursue those claims. Even if the future harmed citizens did try to recover for them, they would be prevented from doing so by the doctrine of equitable mootness.

It is simply beyond the pale that a Strawberry Fields, a large national corporation would be able to benefit so greatly from such a release without being bound by a process that would help dictate a more fair outcome for those they have harmed. It seems counter to the policy of the bankruptcy code that by simply contributing an unknown portion of their capital Strawberry Fields is able to avoid any liability for such a large amount of claims without being subjected to the normal regulations and requirements of the bankruptcy process. As this kind of benefit is so beyond what is allowable through the bankruptcy code, the bankruptcy court should not be authorized to provide Strawberry Fields with the non-debtor release found in Penny Lane's Chapter 11 reorganization plan.

II. THE THIRTEENTH CIRCUIT INCORRECTLY HELD THAT § 523(a) ONLY APPLIES TO INDIVIDUAL DEBTORS.

To give small business a more streamlined approach to the bankruptcy code, Congress enacted the "Small Business Reorganization Act" in 2019. Under the act, which has been codified in subchapter V of Title 11 of the Bankruptcy Code, small businesses are now able to keep their ownership interests, so long as the business can work with their creditors and come up with a repayment plan. This new legislation helps the "honest, but unfortunate debtor . . . a new opportunity in life and a clear field for future effort." 24 Am. Bankr. Inst. L. Rev., 757, 759 (2005).

It is axiomatic, therefore, that those honest small businesses – just like individuals – should not be able to escape from certain debts that came about because of their negligence or dishonesty. This position is supported by both the language of the bankruptcy code itself, and from the legislative context and history of the Small Business Reorganization Act. From a public policy standpoint, putting corporations on the same footing as individuals is the only way that the bankruptcy code can be fair, equitable, and just.

A. The explicit language of the Small Business Reorganization Act means corporations cannot escape from debts "of the kind" specified in Section 523(a).

The explicit language of the Bankruptcy Code is clear: corporate debtors, just like individual debtors, are subject to the debt discharge limitations in 11 U.S.C. § 523(a) (2020).

When corporations file a plan of bankruptcy under subchapter V and do not have consent from their creditors, § 1192 of the bankruptcy code governs how the debt is discharged. That section provides that "the court . . . shall grant the debtor a discharge of all debts . . . except any debt . . . <u>of the kind</u> specified in § 523(a) of this title." 11 U.S.C. 1192(2) (emphasis added). Section 523(a), in turn, lists several debts which cannot be discharged, including debts for "willful and malicious injury." 11 U.S.C. § 523(a)(6). Confusion arises because § 1192 refers to "debtors", whereas the preamble § 523(a) references "individual debtors". 11 U.S.C. § 523(a). However, relying on the preamble in § 523(a) does not provide the clarity that debtors are waiting for. "It is a well-established principle of statutory construction that specific terms covering the given subject matter prevail over general language of the same or another statute which might otherwise prove controlling." *Kalas v. Cook*, 70 Conn. App. 477, 483 (2002); *see* also *Cleary Packaging, LLC v. Cleary Packaging*, 36 F. 4^{th} 509 (4th Cir. 2022) (holding that "the more specific should govern over the more general."); *In re Breezy Ridge Farms, Inc.*, 2009 WL

1514671 (2009) ("If the two provisions may not be harmonized, then the more specific will control over the general.")

First, the plain language of § 1192 uses the phrase "except any debt . . . of the kind." 11 U.S.C. § 1192(2) (emphasis added). This phrase says nothing about the types of debtors who are subject to § 523(a), but rather the kind of debt that is not dischargeable under a non-consensual case. When Congress used the "of the kind" phrase in § 1192, it was did so because listing each category of non-dischargeable debt in that section would likely result in several new pages to the U.S. Code and would be highly inefficient.

Further, where there is any inconsistency between two statutes, the canons of construction provide much-needed guidance. It is a well-respected canon that specific language dominates over general ones. *See* Kalas, at 483; *see also Cleary Packaging* at 515; *In re Breezy Ridge Farms* at 2. While the circuit court in this case dismissed the "specific over general" canon, it relied on case law which thought § 1192 and § 523(a) "could be easily reconciled." *In re GFS Industries, LLC,* 2022 WL 16858009, 8 (2022). The constant litigation surrounding this issue and our courts' differing readings of the issue show that § 1192 and § 523(a) cannot be reconciled as they stand.

To this point, § 1192(2) is much more specific than § 523(a), so the language in § 1192(2) should take precedence over the language in § 523(a). Whereas § 1192 deals with a narrow group of debtors who are proceeding under non-consensual subchapter V plan, § 523(a) applies broadly to debtors from various titles of the bankruptcy code. Because § 1192(2) is far more specific than the provisions in § 523(a), any inconsistent provisions should be reconciled with the more-exacting language of § 1192(2).

Because § 1192(2) is explicit – debtors may not discharge debts "of the kind" in § 523(a), and because § 1192 is more specific than § 523(a), this Court should hold that the plain language of the statute and the canons of construction mandate that Penny Lane may not discharge the judgment it owes to Ms. Rigby.

1. The only other circuit court to interpret the Small Business Reorganization Act confirmed that Section 523(a) applies to corporate debtors.

Just a few months ago, only one other circuit court ruled that the debts listed as non-dischargeable in § 523(a) apply to corporations. Cantwell-Cleary Co. Inc. v. Cleary Packaging, LLC, 36 F. 4th 509. Since a circuit court has very recently reconciled the splits within lower courts, this Court should find Cleary instructive.

Considering the "textual review . . . and practicable and equitable considerations", Cleary found the explicit language in the statute includes corporate debtors in § 523(a). It reasoned further:

> "The section's use of the word 'debt' is, we believe, decisive, as it does not lend itself to encompass the 'kind' of debtors discussed in the language of § 523(a). This is confirmed yet more clearly by the phrase modifying 'debt' – i.e., 'of the kind.' Thus, the combination of the terms 'debt' and 'of the kind' indicates that Congress intended to reference only the list of non-dischargeable debts found in § 523(a)."

Id. at 515.

In Cleary, debtor Cleary Packaging, LLC filed bankruptcy as a subchapter V small business. Id. at 512. The corporation incurred a multi-million-dollar judgment for its tortious interference with Cantwell-Cleary's contracts, which was an affiliated company. Id. Cantwell-Cleary, the affiliate, argued that the debtor should not be able to discharge its debt resulted from "willful and malicious injury". Id. The trial court dismissed the objection but was recently reversed. Id. In deciding its reversal, the circuit court considered the plain meaning of the statute, but also found that the more specific provisions in § 1192 took precedence over the confusing preamble in § 523(a). Id. at 513.

Ms. Rigby makes substantially similar arguments today. Both the debtor in Cleary and Penny Lane are voluntarily proceeding under subchapter V. Id. at 512. And, just as the debtor in Cleary sought to discharge a debt for "willful and malicious injury", Penny Lane is petitioning to have a debt for "willful and malicious injury" discharged. Id. at 513. Both cases are substantially alike, and because Cleary has already held that corporations are subject to § 523(a), this Court should hold the same.

B. Legislative History Clearly Shows That Corporations Were Meant To Be Included In § 523(A)'S Discharge Exemptions.

A thorough look through the history of the Small Business Reorganization Act reveals that Congress always intended for corporations to be subject to § 523(a) debt discharge exemptions. Because a fundamental duty of the judiciary is to defer to legislative intent, this Court should likewise clarify that § 523(a) applies to corporate debtors.

Consistency is key – and Congress has bound corporations to § 523(a)'s discharge exemptions in other titles of the bankruptcy code. For example, Chapter 11 corporate debtors with consensual plans are bound by § 523(a). 11 U.S.C. § 1141(a)(d) ("the confirmation of a plan does not discharge a <u>debtor that is a corporation</u> from any debt . . . of a kind specified in § 523(a)." (emphasis added). Likewise, corporations proceeding under Chapter 12 bankruptcy – which uses identical discharge language as that of Chapter 11[1] - are bound by §

[1] "[T]he court shall grant the debtor a discharge of all debts . . . except any debt . . . of a kind specified in section 523(a)." 11 U.S.C. § 1228(a).

523(a)'s discharge exemptions. *In re Breezy Ridge Farms* at 1. The House Report accompanying the legislation did not indicate that Congress intended to stray from what it has already done: subject corporate debtors to § 523(a). House Report. No. 116-171, 369 (2019).

In Breezy Ridge, which was a Chapter 12 case, a creditor challenged Breezy Ridge's plan to discharge certain debt, arguing that the debt was of the type prohibited by § 523(a). Id. at 1. The farm argued that it was not bound by § 523(a) because the preamble specifically excluded it. Id. However, the court noted that "[the different definitions across the bankruptcy code] show Congress has applied parts of § 523(a) to corporate debtors, even though such debtors are excluded from § 523(a) by its terms." Id. at 2. Ultimately, the court ruled that "[a]lthough § 523(a) applies to individuals, Congress has used it as shorthand to define the scope of a Chapter 12 discharge for corporations as well as individuals." While this case dealt with provisions of a Chapter 12 bankruptcy, this Court should find it instructive because the discharge language of Chapter 12 and Chapter 11 are virtually identical.

Congress surely intends to remain consistent throughout the bankruptcy code. The idea that a corporate debtor proceeding under a consensual plan cannot write off certain debts, but an identical corporate debtor proceeding under a non-consensual plan can, makes hardly any sense. When the thirteenth circuit attempted to explain this issue, it reasoned that because § 1192 was specifically mentioned in the preamble to § 523(a), Congress must have intended for § 523(a) to take effect above all else. Circuit Court Record (R) at 18. However, this reasoning is flawed, and must be addressed. First and foremost, "the House Report [of the Small Business Reorganization Act] described the addition as merely a 'conforming amendment', thus weakening the imperative [that § 523(a) should govern.]" Brief of the United States as Amici Curiae, 17, Cantwell-Cleary Co., Inc. v. Cleary Packaging. In fact, the inclusion of § 1192 in the preamble to § 523(a) is necessary because if "Congress [had] not updated the list to include § 1192, the omission would have created confusion. For example, it might have been argued that the omission of the cross-reference . . . meant that the § 523(a) exceptions did not apply even to individual Subchapter V debtors." Id.

Because Congress has already expressed its desire to subject corporate debtors to the types of debt in § 523(a), and the bankruptcy code should remain consistent, this Court should hold that § 523(a) applies to corporate debtors.

1. The congressperson who sponsored the Small Business Reorganization Act did not intend to exclude corporations like Penny Lane from 523(a).

There is no clearer way to determine Congressional intent than to look to the intent of the statute's framers themselves.

Representative Ben Cline, who sponsored the Small Business Reorganization Act, explained that the purpose of subchapter V was to allow businesses to file for bankruptcy while they continue to "negotiate with creditors." Rep. Cline Legislation to Aid Small Businesses Signed into Law, March 30, 2021, https://cline.house.gov/media/press-releases/rep-cline-legislation-aid-small-businesses-signed-law. Likewise, Representative David Cicilline, the bill's co-sponsor, remarked that the main driver behind the legislation was to support businesses which support their neighbors and "take on a sometimes-insurmountable financial burden." Cicilline Introduces Bipartisan Small Business Reorganization Act, June 20, 2019, https://cicilline.house.gov/press-release/cicilline-introduces-bipartisan-small-business-reorganization-act.

First, Representative Cline's remarks, both in his prepared statements and in speeches on the House floor, mentioned nothing about allowing certain debt to be excluded from corporations.

Representative Cline's statements seem to imply the opposite – corporations should continue to negotiate with creditors. Rep. Cline's Legislation to Aid Small Businesses Signed into Law. Penny Lane seeks to discharge a debt that it owes to Ms. Rigby, without attempting any negotiation in the process.

Representative Cicilline, who co-sponsored the Small Business Reorganization Act, shared the same thoughts. Cicilline placed emphasis on small businesses who "take on . . . financial burdens" [and] which "support their neighbors." Cicilline Introduces Bipartisan Small Business Reorganization Act. Penny Lane does not check either box. Penny Lane, and their corporate subsidiary, Strawberry Fields, took on the financial burden not through an effort to grow their business or invest in their community, but through mounting pressure from hundreds of lawsuits alleging they contaminated their community's groundwater supply. While these claims have not been adjudicated, one fact is clear: Penny Lane and their corporate subsidiary have done nothing to "support their neighbors". They neither admit fault for the contamination they may have caused, nor do they make any real effort to do right by Ms. Rigby.

In this sense, Penny Lane is not the same type of small business that Representatives Cline and Cicilline sought to protect with subchapter V enactment. Statements from the sponsors themselves, and legislative history itself, should guide this Court in holding that corporate debtors should be held to the same standard as individuals in § 523(a).

C. Judicial Opinions That Penny Lane Relies On Fail To Consider The Significant Social Policy Issues In Ms. Rigby's Case.

The few prior judicial opinions that Penny Lane and the lower court relied on were either decided before the enactment of the Small Business Reorganization Act or involve completely different issues. For these reasons, the Court should find them unpersuasive.

Admittedly, there are a handful of cases which held that § 523(a) applies only to individual debtors. But, in reviewing those cases, this Court should remain extremely cautious. For instance, one case involved disputes about fraudulent loan applications. *In re GFS Industries, LLC*, 2022 WL 1685009 (2022). Two more cases revolved around contract obligations and based their decision on case law which has since been overruled. *In re Lapeer Aviation Inc.,* 2022 WL 1110072 (2022); see also *In re Rtech Fabrications, LLC*, 635 B.R. 559 (2021). Another case dealt with wage theft claims by nineteen employees. *In re Satellite Restaurants, Inc. v. Crabcake Factory U.S.A*., 626 B.R. 871 (2021). Other cases were decided decades before the Small Business Reorganization Act fundamentally changed how the bankruptcy code applied to small businesses. *Garrie v. James L. Gray, Inc*., 912 F. 2d 808 (1990); *see also Yamaha Corp. USA v. Shadco Inc., 762 F. 2d 668 (8th Cir. 1985).*

In GFS Industries, the court dealt with a cleaning company which overestimated their growth potential and took on too much debt, too fast. *In re GFS Industries* at 1. After the company declared bankruptcy under Title 11, their creditors petitioned the court to prohibit the cleaning company from discharging the debt it owed to the lenders under § 523(a). Id. Avion, one of the lenders, alleged that GFS made "material misrepresentations concerning whether a bankruptcy filing was imminent and failed to disclose the existence of other, more senior [debts] from which GFS obtained funding." Id. The court thought that the conflicting language in § 523(a) and § 1192 were in harmony with each other. Id. at 8.

Unlike GFS Industries, Ms. Rigby's claim does not allege misrepresentation over a loan application. Penny Lane found itself here not because it overestimated its growth potential like GFS Industries did, but because several hundred neighbors filed intentional tort actions against it. Even if the situations were similar, the court in GFS miscalculated when it remarked that §

1192 and § 523(a) are in harmony with each other – it is precisely the lack of harmony which brings us here today.

Lapeer Aviation, on the other hand, involved a contract dispute over the construction of an airplane. *In re Lapeer Aviation*, Inc. at 1. When the builder filed for bankruptcy, the plaintiff petitioned the court to exclude the disputed contract amounts under § 523(a) for fraud. Id. The court discharged the debt anyway. Id. However, it based its decision on three cases – MF Global Holdings Ltd., Savony Records Inc. v. Trafalgar Assocs., Williams v. Sears Holding Co., and Garrie v. James L. Gray, Inc. - all of which were decided before the circuit court ruled that § 523(a) applies to corporations. See Cleary, 36 F. 4th 509. Virtually the same happened in the Rtech decision. *In re Rtech Fabrications LLC*, 635 B.R. 559. That case involved a contract dispute over a custom-built car. Id. at 562. The plaintiff sued for breach of contract, fraud, and alter ego viel piercing. Id. When the plaintiff prevailed and Rtech filed for bankruptcy, the plaintiff asked the bankruptcy court to exclude the judgment from discharge under § 523(a). Id. The court held that Rtech could discharge its judgment, but relied on the trial decision in Cleary, well before it was overturned. Id. at 564. The circuit version of Cleary remains the foremost authoritative decision, and it has been clear that corporations are indeed subject to § 523(a). Cantwell-Cleary Co. at 518.

Unlike Lapeer Aviation and Rtech Fabrications, Ms. Rigby's case does not involve a contract dispute over an airplane nor a dispute over a custom-built vehicle. And given both cases also rely on the trial Cleary opinion, there is "no ticket to ride" in relying on either Lapeer or Rtech.

This Court should also reject any reliance on the Satellite Restaurants decision. *In re Satellite Restaurants Inc v. Crabcake Factory,* USA, 626 B.R. 871. First, that case centered around allegations that the restaurant committed wage theft against nineteen employees. Id. 872-73.

When Satellite filed for bankruptcy, the employees invoked § 523(a) to bar the wage proceeds from being discharged in bankruptcy. Id. at 873. Second, the court acknowledged that a few cases already held that corporations were included in § 523(a). Id. at 877. Despite this, it refused to follow one of these cases – Southwest Ga. Farm Credit, ACA v. Breezy Ridge Farms, based solely on the fact that it was not decided in the same jurisdiction. Id.

Ms. Rigby does not allege that Penny Lane committed wage theft, and unlike the Satellite case, Ms. Rigby's case for tortious injury involves not just nineteen plaintiffs but hundreds. When confronted with cases which already decided that corporations were subject to § 523(a), the Satellite opinion does not extensively discuss why it was rejecting them. This Court should likewise reject the Satellite opinion.

Finally, this court should turn away from the decades-old decisions in Garrie v. James L. Gray, 912 F. 2d 808, and *Yamaha Corp. USA v. Shadco Inc*., 762 F. 2d 668. While both courts held that § 523(a) did not apply to corporate debtors, Garrie was decided thirty-two years ago, while *Yamaha* was decided nearly forty years ago. Given that subchapter V bankruptcy was introduced just three years ago, this Court should disregard both cases because they fail to consider the fundamental changes that Congress made when it passed the Small Business Reorganization Act. Even if this Court is inclined to review Garrie and *Yamaha*, the facts are fundamentally different than Ms. Rigby's case. The court in Garrie considered an employment contract dispute between an oil company and boat skipper. Id. at 809-811. Meanwhile, the court in *Yamaha* was dealing with a contract dispute over inventory at a boat dealer. *Yamaha Corp*. at 669.

Unlike Garrie, Ms. Rigby's case does not involve an employment dispute. And unlike the court in *Yamaha*, Ms. Rigby's case does not revolve around boat inventory. *See Yamaha* at 669.

Because the facts in Garrie and *Yamaha* are fundamentally different than Ms. Rigby's case, and because both cases were considered decades before subchapter V bankruptcy was even an option, his Court should not rely on them.

Ms. Rigby does not challenge that other courts have rejected her position, but context is important. A deep dive into the cases relied upon by the lower court reveal that they have little in common with the mass tort at issue in this case.

1. Penny Lane's reading of the law incentivizes bad actors to run from accountability.

Penny Lane's interpretation of the bankruptcy code – that corporations are free to walk away from debt incurred because of willful and malicious injury – gives bad actors free range to use the bankruptcy code to escape from accountability.

The overall goal of the bankruptcy code is to protect honest, but unfortunate debtors. 24 Am. Bankr. Inst. L. Rev. 757, 759. When Congress added subchapter V to the bankruptcy code, it made clear that non-consensual plans should be "fair and equitable." H.R. Rep. No. 116-171, at 370. Bankruptcy experts and scholars agree: the "provisions of § 523(a) [prevent] a corporate debtor from discharging fraud, tax, and other non-dischargeable claims." The Pros and Cons of the Small Business Reorganization Act of 2019, 36 Emory Bankr. Dev. J. 383, 386 (2020). Another policy goal of the bankruptcy code is to promote certainty. Brief of the United States as Amici Curiae, 22, Cleary Packaging, 36 F. 4^{th} 509. Debtors are encouraged to work with creditors and win over their support. Id. at 26.

The key phrases here are "honest debtor", "fairness", and "certainty." A multi-million-dollar corporation that pollutes the groundwater of its neighborhood is far from the honest debtor envisioned by Congress. And when that corporation wants to force a settlement plan onto its victims, it is not acting fairly. If a corporation elects to voluntarily proceed under the Small Business Reorganization Act, it ought to walk, talk, and act like the small business that Congress sought to protect. In this spirit, a corporation should work tirelessly to win over their creditors' support. Penny Lane has not done that.

Perhaps what is more troubling about Penny Lane's argument is that it encourages uncertainty within the Bankruptcy Code. Congress has already explicitly subjected corporations to § 523(a) when they proceed as Chapter 11 consensual plans and as Chapter 12 debtors. 11 U.S.C. § 1141(a); 12 U.S.C. § 1228(a). Thus, Penny Lane's theory would mean that § 523(a) applies unequally to one group of corporations but not to the other. Not only does this lead to disparate impact between debtors, but creditors would no longer have certainty as to whether money that is owed to them is dischargeable or not. Penny Lane's reading of the Bankruptcy Code mean some multi-million-dollar corporations can commit mass torts, call themselves a small business, and then have the financial consequence of their bad acts written off. It is up to this Court to avert that possibility before it happens.

In providing clarity to this complicated issue, the Court should be guided by three factors: the plain language of § 1192(2), legislative intent, and public policy. All three factors support the view that corporations proceeding under subchapter V of the Bankruptcy Code may not discharge the types of debt under § 523(a). Holding debtors of all types to the same standards encourages accountability, promotes certainty, and strengthens the Bankruptcy system that millions of debtors and creditors rely on.

CONCLUSION

For the foregoing reasons this Court should reverse the Thirteenth Circuit's decisions holding that (1) a bankruptcy court has the authority to authorize a non-consensual release of a direct claim against a non-debtor; and (2) 523(a) only applies to individual debtors.

Respectfully submitted,

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