No. 22-0909

IN THE

Supreme Court of the United States

MARCH TERM, 2023

IN RE PENNY LANE INDUSTRIES, INC., DEBTOR,

ELEANOR RIGBY, PETITIONER,

v.

PENNY LANE INDUSTRIES, INC., RESPONDENT.

On Appeal from the
United States Court of Appeals
for the Thirteenth Circuit

BRIEF FOR RESPONDENT

Team Number 30

Counsel for Respondent

QUESTIONS PRESENTED

I. Whether bankruptcy courts are permitted to grant third-party releases when exercising the discretion afforded by section 1123(b)(6) in the plan confirmation process.

II. Whether chapter 11's section 1192 permits a corporate debtor's discharge to be limited by a section 523(a) claim when the exceptions to discharge provided under section 523(a) are explicitly limited to individual debtors and it is well established that corporate debtors are generally immune from section 523(a) claims under chapter 11.

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The opinion from the Court of Appeals for the Thirteenth Circuit is available at No. 22-0909 and reprinted at Record 2. The United States Bankruptcy Court for the District of Moot ruled in favor of Penny Land Industries, Inc. on both questions of law. R. at 4. On review, the United States Court of Appeals for the Thirteenth Circuit affirmed the bankruptcy court's ruling on both legal questions. *Id.*

STATEMENT OF JURISDICTION

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

STATUTORY PROVISIONS

Both legal issues in this case involve the statutory interpretation of several provisions within Title 11 of the United States Code. The following statutes are restated in full in the Appendix.

The relevant provisions of 11 U.S.C. § 105 provide:

> **(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.

The relevant provisions of 11 U.S.C. § 523 provide:

> A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—
>
> **(a)(6)** for willful and malicious injury by the debtor to another entity or to the property of another entity;

The relevant provisions of 11 U.S.C. § 524 provide:

> **(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)(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 of, claims against, or demands on the debtor to the extent such alleged liability of such third party arises by reason of—

The relevant provisions of 11 U.S.C. § 1123 provide:

> **(a)** Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall—
>
> **(5)** provide adequate means for the plan's implementation [. . .]
>
> **(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.

The relevant provisions of 11 U.S.C. § 1141 provide:

> **(d)(2)** 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.
>
> **(d)(6)** Notwithstanding paragraph (1), the confirmation of a plan does not discharge a debtor that is a corporation from any debt—
>
> (A) of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit, or owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar State statute; or . . .

The relevant provisions of 11 U.S.C. § 1192 provide:

> 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.

The relevant provisions of 28 U.S.C. § 1334 provide:

> **(b)** Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

STATEMENT OF FACTS

I. FACTUAL HISTORY

Both issues on appeal before this Court arise from a subchapter V bankruptcy proceeding under chapter 11 of the U.S. Bankruptcy Code (the "Code"). R. at 3. This particular case presents unique challenges as it involves mass tort claims against Penny Lane Industries, Inc. (the "Debtor"). *Id.* The Debtor is a wholly owned subsidiary of its parent corporation, Strawberry Fields Food, Inc. ("Strawberry Fields"). *Id.* at 4–5. Strawberry Fields' line of business involves the manufacturing of cereal and convenience food products which it sells to large supermarket chains across the country. *Id.* at 5. The Debtor's role as a subsidiary entails the manufacturing of plastic, glass, and metal food containers. *Id.* at 4. Currently, the Debtor owns a manufacturing plant located in the City of Blackbird, Moot. *Id.* The mass tort claimants in this case are primarily local residents from Blackbird and the surrounding community. These individuals allege that the Debtor improperly disposed of toxic chemicals which polluted the local ground water. *Id.* at 5. In recent years, the residents sought to recover damages for physical injuries that they purport are the result of the Debtor's pre-petition conduct. *Id.* The influx of litigation following these accusations prompted the Debtor to file for subchapter V bankruptcy under chapter 11 of the Code. *Id.* at 3.

A. Mass Tort Claims

The onslaught of litigation against the Debtor and Strawberry Fields began in 2017 when Eleanor Rigby, a long-time resident of Blackbird, filed a lawsuit alleging that both parties were responsible for her four-year old daughter's leukemia diagnosis and untimely death. *Id.* at 5. Furthermore, Ms. Rigby accused the Debtor of purposely ignoring the groundwater contamination since 2014 in an effort to cut disposal costs. *Id.* Upon investigation, Federal and State officials located a substantial groundwater plume beneath the surface of the Blackbird community. *Id.*

According to a study released by the United States Environmental Protection Agency and the Centers for Disease Control and Prevention, between 2013 to 2017, thousands of Blackbird residents were exposed to contaminated ground water containing dangerously high levels of toxins. *Id.* Groundwater plumes can form when toxic waste is dumped into ground water from above the surface and mixed with an underground aquifer system.[1] *Id*.

Ms. Rigby hypothesized that the Debtor must have dumped the hazardous waste on its premise which eventually leaked into the Liverpool River. *Id.* While the river is located behind the Debtor's manufacturing plan, *dozens* of other manufacturing plants are located upstream. *Id.* at 6. In fact, there is no compelling evidence that the contaminates found in the ground water are associated with the Debtor's manufacturing plant. *Id.* Despite the contentious accusations from local residents, the Debtor has assured the public that it adhered to the appropriate environmental laws and regulations when disposing of all its waste. *Id.* Furthermore, the Debtor rejected Ms. Rigby's contention that it had knowledge of any illegal waste disposal practices. *Id.* Importantly, a judicial finding has yet to be made in regards to whether the Debtor is responsible for the groundwater contamination in Blackbird. *Id.*

Regardless, Ms. Rigby's accusations spurred local residents with similar claims to join her in pointing the finger at the Debtor. *Id.* Several of these lawsuits named Strawberry Field as a co-defendant. *Id.* On January 11, 2021, these damaging allegations ultimately drove the company to file for subchapter V bankruptcy under chapter 11 of the Code.[2] *Id.* The residents of Blackbird dominated the Debtor's bankruptcy estate by filing roughly 10,000 disputed tort claims and demanding approximately $400 million in damages. *Id.* In particular, Ms. Rigby demands $1

[1] Typically, the contaminates within a groundwater plume follow the direction of the groundwater flow. However, that is not always the case. *See* R. at 5.
[2] The Debtor fulfilled the requirements to qualify as a "small business debtor" under section 1182 of the Code. *See id.* at 6.

million from the Debtor to which no objection has been filed. *Id.* Finally, the Debtor's trade creditors demand less than $2 million. *Id.*

B. Non-dischargeability Action

Shortly after the Debtor filed its subchapter V petition, Ms. Rigby commenced an adversary proceeding in which she insisted that her sizable $1 million distribution be classified as a non-dischargeable debt pursuant to sections 523(a) and 1192(2) of the Code. *Id.* at 7. Ms. Rigby argued that her claim against the Debtor is non-dischargeable under section 523(a)(6) of the Code because this provision excepts debts relating to "willful and malicious injury by the debtor to another entity or to the property of another entity." *Id.* The Debtor responded with a motion to dismiss Ms. Rigby's complaint for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and Rule 7012 of the Federal Rules of Bankruptcy Procedure. *Id.* In its motion, the Debtor explained that the introductory language of section 523(a) renders this section inapplicable to corporate debtors. *Id.* The court favored the Debtor's interpretation and concluded that section 523(a)(6) applies solely to individual debtors, not corporate debtors proceeding under chapter 11's subchapter V. *Id.* Thus, the bankruptcy court granted the Debtor's motion to dismiss Ms. Rigby's adversary proceeding. *Id.*

C. Plan Dispute

When the Debtor filed for bankruptcy under subchapter V, the automatic stay set forth in section 362(a) precluded creditors from commencing or continuing any non-bankruptcy litigation against the estate. *Id.* at 7. The Debtor obtained a temporary injunction to further stay the proceedings against Strawberry Fields and other non-debtors. *Id.* at 7–8. The bankruptcy court reasoned that the injunction was necessary in order to assist the Debtor and Strawberry Fields throughout the negotiation and mediation process with its creditors. *Id.* at 8. The parties devised

a settlement plan (the "Plan") that would be funded through (1) the Debtor's disposable net income over a period of five years, and (2) Strawberry Fields' considerable $100 million payout. *Id.* The Plan would provide creditors with a substantial distribution "(estimated at 30-40 cents on the dollar)." *Id.* In return for its sizable payout, Strawberry Fields requested a broad release from both estate and third-party direct claims. *Id.* Furthermore, it requested that any future claims in connection with the Debtor's pre-petition conduct be discharged. *Id.* Thus, future claimants would be compensated through the creditors' trust. *Id.* at 9.

Because the Plan is non-consensual, creditors are bound to its terms whether they participated in the process or not. *Id.* at 9. Furthermore, each creditor is bound by the Plan despite any lack of approval. *Id.* In this case, nearly the entire class (95%) of unsecured creditors demonstrated strong support for the Plan. *Id.* However, two creditors objected to the Plan's confirmation, one of which was Ms. Rigby. *Id.* In her objection, Ms. Rigby argued that the Plan was not permissible because bankruptcy courts do not possess the authority to release third-party direct claims against Strawberry Fields. *Id.*

The second objector was Norwegian Wood Bank (the "Bank"), a secured creditor which holds a first priority security interest in the Debtor's manufacturing equipment. *Id.* The Plan sought to bifurcate the $3.5 million that the Debtor owed to the Bank. *Id.* Since the Bank's collateral was valued at $1.5 million, the Plan limited the Bank's secured claim to that exact amount. *Id.* According to the Plan, the remaining $2 million that the Debtor owed to the Bank would be treated as an unsecured claim and paid through the creditor's trust. *Id.* The Bank argued that the distribution was not "fair and equitable" according to sections 1191(b) and 1129(b)(2)(A) because the equipment (collateral) was undervalued. *Id.* Because of this, the Debtor could not

attain a consensual plan under section 1191(a). *Id.* Instead, it sought a non-consensual plan through the subchapter V "cramdown provisions" within section 1191(b). *Id.*

Following a lengthy confirmation hearing, the bankruptcy court confirmed the Plan. *Id.* at 10. In terms of Ms. Rigby's objection, the court recognized that third party non-consensual releases are reserved for rare or unusual circumstances. *Id.* The court categorized this case as an extraordinary circumstance because Strawberry Fields contributed a sizable distribution and the unsecured creditors strongly approved of the Plan. *Id.* The court established that the Plan provides a "substantially greater" payout than the creditors would receive had the Debtor liquidated its assets under chapter 7. *Id.* In terms of the claims against Strawberry Fields, the court found that the Plan provides each creditor with a greater distribution than he or she would likely receive by litigating the matter outside the bankruptcy case. *Id.*

The bankruptcy court established that the terms of the Plan were the only "reasonably conceivable means" to resolve the bankruptcy estate. *Id.* The Plan provided its creditors with a "significant and immediate benefit" while also allowing the Debtor to move forward with its fresh start. *Id.* Moreover, the court also noted that the failure to confirm the Plan would have likely resulted in a complicated litigation process accompanied by delays, risks, and excessive costs. *Id.* Finally, the court also rejected the objection of the Bank, concluding that the Debtor's bifurcation of its claims were permissible pursuant to sections 1129(b)(2)(A) and 1191. *Id.*

II. PROCEDURAL HISTORY

The U.S. Bankruptcy Court for the District of Moot addressed two issues of law and decided in favor of the Debtor in both instances. *Id.* at 4. The court overruled Ms. Rigby's objection to the Plan because bankruptcy courts possess the authority to approve third party non-consensual releases. *Id.* Furthermore, the court rejected Ms. Rigby's contention that her claims

against the Debtor should remain non-dischargeable pursuant to sections 523(a)(6) and 1192 because those provisions only apply to individual debtors, not corporate debtors. *Id.* Ms. Rigby filed a timely appeal. *Id.* On review, the U.S. Court of Appeals for the Thirteen Circuit affirmed the decision of the bankruptcy court. *Id.*

STATEMENT OF ARGUMENT

The Thirteenth Circuit correctly held that the Code grants bankruptcy courts the authority to confirm plans of reorganization that contain non-consensual third-party releases and subchapter V corporate debtors are immune from section 523(a) claims.

Congress has granted bankruptcy courts the authority to confirm plans of reorganization. Further, the Bankruptcy Code empowers bankruptcy courts to include within plans of reorganization those features which bankruptcy courts determine are appropriate to effectuate the broad goals and objectives of the Code, even non-consensual third-party releases. This grant of authority is reflected in multiple Code provisions. Section 105(a) grants authority to bankruptcy courts to modify relationships between creditors and debtors, limited only by the express provisions of the Code. Section 1123(b)(6), on the other hand, is a grant of authority untethered from specific Code provisions, allowing bankruptcy courts to include anything in a plan of reorganization deemed "appropriate," requiring only that those features are "not inconsistent" with the Code. The grant of third-party releases does not violate any express provision of the Code, making their inclusion within plans of reorganization appropriate.

Additionally, Congress granted bankruptcy courts subject-matter jurisdiction over claims like the one Ms. Rigby brought against Strawberry Fields. As this Court and lower courts have recognized, a matter need only be broadly "related to" a case under title 11 to be within the scope of the district court's jurisdiction. 28 U.S.C. §1134(b). Congress granted such broad jurisdiction

to facilitate efficient resolution of all matters related to a case arising under title 11. Therefore, the grant of third-party releases is properly within the bankruptcy court's jurisdiction. Under this Court's precedents, because the bankruptcy court is not entering a final judgment without Ms. Rigby's consent, Article III of the Constitution is not offended.

Finally, because third-party releases are expressly provided for in the Code in other contexts, Ms. Rigby's due process claim is without merit. The Code values efficient resolution over obtaining the consent of each individual interested party. Indeed, this notion is foundational to the confirmation of chapter 11 plans when particular classes of creditors withhold their consent. Because the class of claimants of which Ms. Rigby is a part approved the release, she did not suffer a due process violation.

Turning to the second issue, the Thirteenth Circuit also correctly held that subchapter V corporate debtors are immune from section 523(a) claims for several reasons. First, section 523(a)'s preamble explicitly states that the kinds of debts excepted from discharge are debts against an individual debtor—not debts against a corporate debtor. Section 1192's reference to section 523(a) incorporates section 523(a)'s preamble, and thus, section 1192 does not allow corporate debtors' discharge to be limited by section 523(a) claims. Moreover, section 1192 read in context with section 1141(d)—the only provision outside of section 1192 that controls a subchapter V corporate debtor's discharge—indicates that Congress did not intend to hold subchapter V corporate debtors liable for section 523(a) claims. In addition, due to the expansive nature of the corporate discharge under chapter 11 and the purpose of subchapter V, it would defy reason for Congress to have intended to increase corporate debtors' discharge liability under subchapter V. Lastly, excluding corporate debtors under subchapter V from section 523(a) helps to achieve the Code's fundamental goal of providing a fresh start and promotes fairness among

creditors. For these reasons, the Thirteenth Circuit correctly held that subchapter V corporate debtors are immune from section 523(a) claims.

STANDARD OF REVIEW

There is no factual dispute between the parties in this case. The legal issues before this Court are purely questions of law, and thus, should be decided under a *de novo* standard of review. *See, e.g.*, *Texas v. Soileau (In re Soileau)*, 488 F.3d 302, 305 (5th Cir. 2007). A *de novo* standard of review requires appellate courts to rule upon the legal issues in question as though it were the original trial court. *See, e.g.*, *Razavi v. Comm'r of Internal Revenue*, 74 F.3d 125, 127 (6th Cir. 1996).

ARGUMENT

I. BANKRUPTCY COURTS HAVE 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.

Bankruptcy courts have sufficient statutory authority to approve third-party releases as part of the plan confirmation process. In addition to their statutory authorization, third-party releases do not violate any explicit provision of the Code. The bankruptcy court's jurisdiction over Ms. Rigby's claim is proper under 28 U.S.C. § 1334(b) and this Court's precedent. Third-party releases further the objectives of the Bankruptcy Code while not violating Article III of the Constitution nor infringing the due process rights of individuals who have not consented to a release as part of the plan confirmation process.

A. Third-Party Releases are Authorized by the Bankruptcy Code.

Congress has conferred statutory authority on bankruptcy courts to approve third-party releases as part of the Chapter 11 plan confirmation process. Such releases do not violate any of the express provisions of the Bankruptcy Code.

1. Bankruptcy courts possess statutory authority to confirm plans of reorganization that include third-party releases.

The bankruptcy court's authority to confirm plans of reorganization is beyond dispute. 28 U.S.C. § 157(b)(2)(L). Courts have understood this grant of authority to confirm plans to also include the power to incorporate third-party releases in reorganization plans. *Matter of Specialty Equip. Co., Inc.*, 3 F.3d 1043, 1045 (7th Cir. 1993). Though these releases affect claims outside the scope of the immediate proceedings before a bankruptcy court, the authority granted to bankruptcy courts to confirm plans of reorganization is sufficient to permit the inclusion of such releases. *In re AOV Indus., Inc.*, 792 F.2d 1140, 1145–46 (D.C. Cir. 1986).[3]

2. § 105(a) confers a measure of authority on bankruptcy courts.

This Court has previously recognized the "broad authority" granted to bankruptcy courts by § 105(a) "to modify creditor-debtor relationships." *United States v. Energy Resources Co., Inc.*, 495 U.S. 545, 549 (1990). In *Energy Resources*, despite the requirements of the Internal Revenue Code, this Court affirmed the bankruptcy court's ability under § 105(a) to compel the IRS to abide by a debtor's designation of tax payments "if the bankruptcy court determines that this designation is necessary to the success of a reorganization plan." *Id*. at 548–49. Importantly, the bankruptcy court was found to have this authority despite the lack of an explicit grant by the Code. Thus, in some circumstances, the lack of an explicit statutory basis in the Code is not a limit on a bankruptcy court's authority. Lower courts have extended this reasoning under § 105(a) to approve third-party

[3] The third-party releases expressly approved in the asbestos context can be issued "in connection with" an order confirming a plan of reorganization. § 524(g)(1)(A). Releases proceed "pursuant to the plan of reorganization." § 524(g)(2)(B)(i).

releases. *See In re A.H. Robins Co., Inc.*, 880 F.2d 684 (4th Cir. 1989); *Nat'l Heritage Found., Inc. v. Highbourne Found., Inc.*, 760 F.3d 344 (4th Cir. 2014); *In re Seaside Eng'g & Surveying*, 780 F.3d 1070 (11th Cir. 2015).

Section 105(a), however, is not an unlimited grant of discretionary authority. The bankruptcy court's authority functions "within the confines" of the Code. *Law v. Siegel*, 571 U.S. 415, 421 (2014) (quoting *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988)). That is, the power of the bankruptcy court under § 105(a) can never operate to contravene an explicit provision of the Code. *Law v. Siegel*, 571 U.S. at 420–21. Thus, "'[a] bankruptcy court may not exercise its authority to "carry out" the provisions of the Code' *by taking an action inconsistent with its other provisions*." *In re Purdue Pharma, L.P.*, 635 B.R. 26, 95 (S.D.N.Y. 2021) (quoting *Law v. Siegel*, 571 U.S. at 425) (emphasis added).

3. Section 1123(b)(6) is a broader and more explicit grant of statutory authority.

Lower courts are divided over the extent to which § 105(a) is a sufficient statutory basis for granting third-party releases. *E.g., Purdue Pharma*, 635 B.R. at 106.[4] Section 1123(b)(6), however, is a more appropriate statutory foundation for approving third-party releases. This foundation is less clear when § 1123(b)(6) is treated as a recapitulation of § 105(a) and is understood to confer no greater authority than § 105(a). For example, the *Purdue Pharma* court held, without demonstrating, that § 1123(b)(6) is "substantively analogous" to § 105(a). *Id.* The court then dismissed § 1123(b)(6) as a sufficient statutory basis for granting third-party releases: "[i]f [§ 105(a)] does not confer any substantive authority on the bankruptcy court . . . then [§

[4] It should be noted, however, that "[t]he majority of circuits find . . . releases permissible by relying on the equitable powers granted to bankruptcy courts under § 105(a) of the Code." Dorothy Coco, *Third-Party Bankruptcy Releases: An Analysis of Consent Through the Lenses of Due Process and Contract Law*, 88 FORDHAM L. REV. 231, 241 (2019).

1123(b)(6)] can in no way be read to do so." *Id*. The court's reasoning requires two untenable assumptions: first, that § 105(a) should be read as conferring no substantive authority on bankruptcy courts and, second, that the analysis under § 1123(b)(6) is the same as under § 105(a). These impermissible assumptions obscure the differences between the two statutes.

Sections 1123(b)(6) and 105(a) are substantively dissimilar for two reasons. First, § 105(a) applies generally to each portion of the Code, but § 1123(b)(6) refers specifically to permissible components of Chapter 11 plans. Second, the provisions are grammatically dissimilar, each requiring a different analysis. The context and unique grammatical features of § 1123(b)(6) are instructive and require attention.

Section 1123(a) lists separate items that a plan "shall" include, while § 1123(b) provides guidance regarding what a plan "may" do. This initial distinction places § 1123(b)(6) in a broader, more permissive category. The text of § 1123(b)(6) is also revealing: a chapter 11 plan can include "any other appropriate provision" beyond the "applicable provisions" of the Code. Applicable provisions refer to the specific set of enumerated rules in the Code, but a plan is free to include "any" provision, so long as a court deems it "appropriate." Thus, the two uses of "provision" in the statute have different referents. The "applicable provisions" are those specifically enumerated in the Code, but "any appropriate provision" includes items that do not have a textual basis in the Code, including third-party releases.

Additionally, § 1123(b)(6)'s conspicuous double negative provides compelling support for this reading. Double negatives appear elsewhere in the Code, causing difficulty for courts. *See, e.g., In re BFW Liquidation, LLC*, 889 F.3d 1178, 1196 (11th Cir. 2018) (finding that the double negatives in § 547(c)(4)(B) "make for some difficult parsing"). Double negatives are grammatically incorrect; they often are an understandable result of the excessively hypotactic

nature of the Code and the resulting awkward syntax nested within dependent clauses, as in § 547(c)(4)(B). The double negative in § 1123(b)(6), on the other hand, exists by legislative choice. Section 1123(b)(6) could have been written in a grammatically correct manner to say that a court can include in a plan of reorganization any provision that *is consistent* with the express provisions of the Code. This phrasing ties a court's discretion closely to the express provisions of the Code. However, Congress chose to write the statute with a grammatical error, thereby expanding the bankruptcy court's authority. Thus, a plan can include any feature as long as it is "not inconsistent" with the Code's provisions. This subtle shift functions to untether the bankruptcy court's discretion with respect to plan elements from the express provisions of the Code. That is, unless a component of a plan of reorganization directly contradicts an express provision of the Code, such a component is permissible under § 1123(b)(6) should a court, exercising its discretion, find such a component "appropriate."

In this case, then, the burden falls on petitioners to demonstrate under § 1123(b)(6) that the grant of a third-party release directly contradicts an express provision of the Code, since § 1123(b)(6) places such a grant within the range of permissible components of a confirmed plan of reorganization. *See also In re Boy Scouts of America*, 642 B.R. 504, 594 (Bankr. D. Del. 2022) (holding that "[t]hird-party releases are not inconsistent with other provisions of this title. While the Code does not explicitly authorize releases, neither does it prohibit them."). That is, petitioners bear the burden to show that an express provision of the Code forecloses the release granted by the bankruptcy court in this case.

a. The third-party release granted here does not violate § 524(e).

Section 524(e) explains the effect of the discharge of a debt, but its express terms do not prohibit the release of a non-debtor. *In re Dow Corning Corp.*, 280 F.3d 648, 657 (6th Cir. 2002).

In the context of Chapter 11, a plan containing a release can be confirmed despite the objections of individual creditors or an entire class of creditors, and § 524(e) simply limits the effect of the (non-consensual) discharge. *Specialty Equip. Co.*, 3 F.3d at 1046. Thus, § 524(e) should not be read more broadly than the text permits: the section "provides only that a discharge does not affect the liability of third parties. This language does not purport to limit or restrain the power of the bankruptcy court to otherwise grant a release to a third party." *Id.* at 1047; *Behrmann v. Nat'l Heritage Found.*, 663 F.3d 704, 710 (4th Cir. 2011). Section 524(e) "says nothing about the authority of the bankruptcy court to release a non-debtor from a creditor's claims." *Seaside Eng'g & Surveying*, 780 F.3d at 1078.

Therefore, in this case, because § 524(e) concerns only the effect of a discharge, and a third-party release is not a discharge (*see* § 524(g)(1)(A)), § 524(e) cannot form the basis of a claim that the court overstepped its statutory authority. Under § 1123(b)(6), for a bankruptcy court to overstep its authority, it must include in a plan of reorganization a feature that directly contravenes an express provision of the Code. Since § 524(e) is silent with respect to third-party releases, the grant of a third-party release pursuant to § 1123(b)(6) does not in any way violate § 524(e). Had Congress intended § 524(e) to impose a limitation on third-party releases, it would done so expressly, with clear language. *In re Airadigm Communications, Inc.*, 519 F.3d 640, 656 (7th Cir. 2008).[5]

i. The challenge of § 524(g)(4)(A)(ii).

Section 524(g)(4)(A)(ii) has been read to suggest that § 524(e) prohibits third-party releases. *E.g., Purdue Pharma*, 635 B.R. at 92 (holding that the release authorized by § 524(g)

[5] Because § 1123(b)(6) provides statutory authority to bankruptcy courts to grant third-party releases as part of the plan confirmation process, additional authority is granted by § 1123(a)(5) to ensure that adequate means are available for the plan's implementation.

operates despite a restriction against it in § 524(e)). Such a conclusion is incorrect for two reasons. First, as noted *supra*, § 524(e) concerns the effect of a *discharge* on a third party's liability; nothing in the text of § 524(e) concerns third-party releases. Section 524(g) says nothing about a discharge; § 524(g)(1)(A) makes clear that the injunction approved in § 524(g) "supplement[s] the injunctive effect of a discharge." Thus, while a discharge has some injunctive effect, § 524(g) concerns an injunction extending beyond a discharge for the benefit of third parties. Second, the "notwithstanding" clause of § 524(g)(4)(A)(ii) concerns liability: § 524(e) provides a general rule that a discharge does not affect the liability of another entity; § 524(g)(4)(A)(i)-(ii) provide that the particular injunctive relief in question (the injunctive relief that supplements a discharge) can protect a third party, the question of liability notwithstanding.

b. The third-party release granted here does not violate § 524(g).

Under the authority granted to bankruptcy courts by § 1123(b)(6), *any* provision can be included in a plan of reorganization, subject only to the requirements that the court find the provision "appropriate" and that the provision is "not inconsistent" with the express provisions of the Code. Thus, a plan feature is inconsistent with the Code when it violates an *express* statutory provision; such provision must be express because, under § 1123(b)(6), the text of the Code is the *objective* restraint on the bankruptcy court's *subjective* judgment regarding "appropriate" plan components. The text of the Code provides the confines within which the bankruptcy court can exercise its judgment.

Therefore, in this case, the bankruptcy court's grant of a third-party release would have to be expressly forbidden by a specific Code provision. Section 524(g) is not that provision: "the language of the statute itself contains no requirement that claims of another sort must be excluded[.]" *In re Eagle-Picher Indus., Inc.*, 203 B.R. 256, 267 (Bankr. S.D. Ohio 1996). Section

524(g) does, in fact, "expressly authorize[] a bankruptcy court to enjoin third party claims against non-debtors without the consent of those third parties." *Purdue Pharma*, 635 B.R. at 91. Congress passed this section of the Code specifically to codify and affirm the legitimacy of the practice began by the *Manville* court. *Id*. at 92. Section 524(g) does not explicitly authorize third-party releases outside the asbestos context, but it does not have to: under § 1123(b)(6), the bankruptcy court's judgment only has to be "not inconsistent" with the express provisions of the Code. Section 524(g) would have to expressly forbid the use of third-party releases outside the asbestos context, which it does not. *In re Boy Scouts of America*, 642 B.R. at 594. Further, it is difficult to argue that a third-party release is appropriate when the proximate cause of injury is asbestos, but not lead or contaminated ground water. To argue that a third-party release in this case is inconsistent with § 524(g) is to argue from silence; the Code does not expressly forbid the third-party release in this case, thus it was properly granted pursuant to § 1123(b)(6).

B. The Bankruptcy Court Has Subject-Matter Jurisdiction Over Ms. Rigby's Claim Against Strawberry Fields.

The jurisdiction of bankruptcy courts is broad and encompasses Ms. Rigby's claim against Strawberry Fields, which she alleges is liable because it should have known about the debtor's alleged conduct. R. at 6. The jurisdiction of the bankruptcy courts extends to "all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). This Court has previously defined the breadth of this grant of jurisdiction.

In *Celotex Corp. v. Edwards*, this Court addressed whether the bankruptcy court's jurisdiction was broad enough to encompass a proceeding by one of the debtor's judgment creditors against a non-debtor entity over a matter that did "not directly involve" the debtor. 514 U.S. 300, 309 (1995). This Court held that the matter was within the bankruptcy court's jurisdiction because, were the judgment creditors successful, the non-debtor entity would seek to

lift an additional injunction imposed by bankruptcy court to access property of the estate. *Id*. at 310. This matter was sufficiently "related to" a case under Chapter 11 that the Court affirmed the reach of the bankruptcy court's jurisdiction.

Indeed, "related to" jurisdiction under § 1334(b) has "some breadth." *Id*. at 307–08. The "'related to' language of § 1334(b) must be read to give district courts (and bankruptcy courts under § 157(a)) jurisdiction over more than simple proceedings involving the property of the debtor or the estate." *Id*. at 308. This Court recognized "that 'Congress intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate.'" *Id*. (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3rd Cir. 1984)).

Lower courts have described the expansive scope of "related to" jurisdiction granted to bankruptcy courts by Congress and recognized by this Court. Regardless of whether a matter "arises under" a bankruptcy proceeding, jurisdiction is proper if the matter is at least "related to" to the bankruptcy. *Matter of Zale Corp. (Feld v. Zale)*, 62 F.3d 746, 752 (5th Cir. 1995). "The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether *the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy*." *Pacor, Inc.*, 743 F.2d at 994 (emphasis in original). The proceeding does not need to even be against the debtor or the debtor's property; "[a]n 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*.

This broad grant of jurisdiction extends to third-party releases like the one granted in this case. *See, e.g., Purdue Pharma*, 635 B.R. at 83 (holding that "the Bankruptcy Court had subject

matter jurisdiction over the direct (non-derivative) third party claims against [non-debtors], under the 'related to' prong of bankruptcy jurisdiction."). Indeed, the purpose of this broad Congressional grant of jurisdiction is to force matters like this into the bankruptcy court for efficient adjudication:

> [t]he reference to cases related to bankruptcy cases is primarily intended to encompass tort, contract, and other legal claims by and against the debtor, claims that, were it not for bankruptcy, would be ordinary stand-alone lawsuits between the debtor and others but that section 1334(b) allows to be forced into bankruptcy court so that all claims by and against the debtor can be determined in the same forum. . . . A secondary purpose is to force into the bankruptcy court suits to which the debtor need not be a party but which may affect the amount of property in the bankrupt estate.

Zerand-Bernal Grp., Inc. v. Cox, 23 F.3d 159, 161–62 (7th Cir. 1994).

Therefore, because Ms. Rigby's claim against Strawberry Fields could have an effect on the debtor's bankruptcy, the bankruptcy court had jurisdiction over her claim. This outcome is consistent with the objectives of Congress expressed in § 1334(b).

C. Release of Ms. Rigby's Claim Does Not Violate Article III of the Constitution.

Bankruptcy courts have jurisdiction over claims like Ms. Rigby's and statutory authority to confirm plans of reorganization. § 157(b)(2)(L). Including a third-party release in a plan of reorganization does not violate the Constitution.

Bankruptcy courts violate the separation of powers framework embedded in Article III of the Constitution by "purporting to *resolve* and *enter final judgment* on a state common law claim[.]" *Stern v. Marshall*, 564 U.S. 462, 487 (2011) (emphasis added). There are claims that bankruptcy courts are statutorily authorized to hear, but "Article III of the Constitution prohibits bankruptcy courts from finally adjudicating certain of those claims." *Exec. Benefits Ins. Agency v. Arkison*, 573 U.S. 25, 28 (2014). More specifically, the Constitution is violated with respect to

these claims when "*the parties have not consented* to final adjudication by the bankruptcy court[.]" *Id*. at 34. The Constitutional violation does not lie in the bankruptcy court's final adjudication of these claims, per se: this Court's "precedents make clear that litigants may validly consent to adjudication by bankruptcy courts." *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 674 (2015). Indeed, "the cases in which this Court has found a violation of a litigant's right to an Article III decisionmaker have involved an objecting defendant forced to litigate involuntarily before a non-Article III court." *Id*. at 682–83.

The constitutional claim that Ms. Rigby *could* assert under this Court's precedents, therefore, is that her claim was litigated and finally adjudicated without her consent. But, that is not the claim she is asserting: instead, the alleged violation is that she did not have the opportunity to have her claim adjudicated. R. at 27–28. When a third-party release is incorporated in a plan of reorganization, the claim is not adjudicated and no final judgment is entered. Therefore, no Article III violation occurs. Courts have claimed, however, that "non-consensual releases and injunction[s] are the equivalent of a final judgment for *Stern* purposes," a proposition for which no authority is cited. *Purdue Pharma*, 635 B.R. at 82. While a non-consensual release may have the equivalent *effect* of a final judgment, a non-consensual third party release is not actually a final adjudication of a claim on the merits. Ms. Rigby would have suffered a "*Stern* violation" had she been entitled to adjudication of her claim by an Article III court, but instead had been forced, without her consent, to have a final judgment entered by a bankruptcy court after adjudication on the merits. Because that did not occur in this case, the Constitution has not been violated.

D. Third-Party Releases Do Not Raise Due Process Concerns.

Statutes enacted by a coordinate branch of government are entitled to a presumption of constitutionality. *United States v. Morrison*, 529 U.S. 598, 607 (2000). As noted, *supra*, § 524(g)

expressly authorizes third-party releases in the asbestos context. Therefore, third-party releases are entitled to a presumption of constitutionality. Petitioners bear the burden to demonstrate that a properly enacted portion of the Bankruptcy Code condones a constitutionally forbidden practice.

"To find that a due process violation exists, courts must determine if there is a deprivation of a person's life, liberty, or property without the opportunity to be heard." Coco *supra* note 2, at 247. With respect to third-party releases granted as part of the plan confirmation process, "it must be determined whether the court is unlawfully depriving such an interest via a release that is not expressly consensual, or even expressly nonconsensual." *Id*. at 247–48.

In this case, though Ms. Rigby did not consent to the release, the class of creditors of which she is a part did "overwhelmingly" consent to plan confirmation and the corresponding release. R. at 9. In Chapter 11, to facilitate efficient reorganization and to avoid holdout problems,[6] individuals and their claims are grouped into classes. § 1122. Ms. Rigby brought her claim to the bankruptcy court, and her claim was properly classified with other substantially similar claims. Plans of reorganization can, and often do, proceed over the objections of individuals or classes of impaired creditors. *See* § 1129(b). Confirmed plans bind the debtor, even if that debtor has not accepted the plan. *See* § 1141(a). Ms. Rigby's class spoke for her to approve the plan and release, despite her lack of consent. Therefore, Ms. Rigby did not suffer a due process violation.

[6] "[T]he bankruptcy court, as a forum for resolving large and complex mass litigations, has substantial power to reorder creditor-debtor relations needed to achieve a successful reorganization." *Dow Corning*, 280 F.3d at 656. For this reason, *inter alia*, third-party releases are a particularly appropriate tool for bankruptcy courts to accomplish the objectives of Chapter 11. "[T]he sheer volume and complexity of the issues presented in cases like these require creative solutions. . . . Bankruptcy policy often requires flexibility rather than adherence to a strict inflexible model because the goal is to get the debtors through to the other side." *In re Mallinckrodt, PLC*, 639 B.R. 837, 881 (Bankr. D. Del. 2022). Multiple lower courts raise concerns about the potential for abuse and have developed multi-prong tests for determining when third-party releases are appropriate. For an overview, see Coco *supra* note 2, at 242. These approaches are misguided: "[e]ither statutory authority exists or it does not." *Purdue Pharma*, 635 B.R. at 37. Because third-party releases are permitted by statute and do not violate the Constitution, this Court should broadly affirm their use and defer to Congress to constrain their use. Protection against abuse is present in other Code provisions, e.g., the good faith requirement of § 1129(a)(3). *See, e.g., Behrmann*, 663 F.3d at 709–10.

II. UNDER CHAPTER 11'S SUBCHAPTER V, CORPORATE DEBTORS ARE NOT LIABLE FOR SECTION 523(A) CLAIMS.

The Petitioner's contention that 11 U.S.C. § 1192 allows the Debtor—a corporate entity—to be held liable for a claim under 11 U.S.C. § 523(a) is misplaced. This is because corporate debtors proceeding under chapter 11's subchapter V are able to discharge all debts specified in subparagraphs (1) through (19) of section 523(a).

For reference, section 1192 governs the discharge procedure "for cases in which the debtor elects to proceed under Chapter 11, Subchapter V, and seeks to confirm a plan under the Subchapter V cramdown provision in Section 1191(b)." *Gaske v. Satellite Rest., Inc. Crabcake Factory USA (In re Satellite Restaurants, Inc. Crabcake Factory USA)*, 626 B.R. 871, 875 (Bankr. D. Md. 2021). In the present case, the Debtor is proceeding under chapter 11's subchapter V, and seeks to confirm a plan under section 1191(b). R. at 9. Therefore, section 1192 applies. Section 1192 provides, in pertinent part:

> If the plan of the **debtor** is confirmed under section 1191(b) . . . the court shall grant the **debtor** a discharge of all debts . . . **except any debt** . . . **(2) of the kind specified in section 523(a).**

11 U.S.C. § 1192 (emphasis added). Since the word "debtor" encompasses corporate entities,[7] section 1192 appears to preclude subchapter V corporate debtors from discharging the kinds of debts specified under section 523(a). However, the preamble to section 523(a) conflicts with this interpretation. It provides that "a discharge under section . . . 1192 . . . does not discharge an **individual debtor** from any debt . . . [of the type outlined in the following 19 subparagraphs]." 11 U.S.C. § 523(a) (emphasis added). Thus, section 523 appears to only provide exceptions from

[7] *See In re GFS Indus., LLC*, 2022 WL 16858009 at *3 ("[I]t is evident that the term 'debtor' in § 1192 encompasses corporations, not just individuals.").

discharge to individuals debtors. Consequently, the question arises as to whether section 523(a) applies to subchapter V corporate debtors.

The starting point to answering this question requires an analysis of the language within sections 523 and 1192. *Pa. Dept. of Pub. Welfare v. Davenport*, 495 U.S. 552, 557–58 (1990) ("[S]tatutory interpretation begins with the language of the statute itself."). This analysis considers "the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997) (citations omitted). In addition, this Court may also employ the canon of statutory construction against surplusage which provides that "'[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.'" *In re Satellite Restaurants, Inc. Crabcake Factory USA*, 626 B.R. 871, 876 (Bankr. D. Md. 2021) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)). In other words, "every word must be given meaning so that no word in a statute is rendered superfluous." *Id.*

In this case, the language itself of sections 523(a) and 1192, the specific context in which such language is used, the legislative history of chapter 11's subchapter V, and the fundamental aims of the Code all strongly indicate that Congress did not intend for subchapter V corporate debtors to be liable for section 523(a) claims.

A. The Language in Sections 523(a) and 1192 Indicates that Subchapter V Corporate Debtors are Immune from Section 523(a) Claims.

When read together, the language in sections 523(a) and 1192 indicates that subchapter V corporate debtors are not liable for claims under section 523(a). This is because the preamble of section 523(a) explicitly limits the kinds of debts excepted from discharge in section 1192 to debts of an "individual debtor." 11 U.S.C. § 523(a). As previously mentioned, section 523(a)'s preamble states that "a discharge under section . . . **1192** . . . does not discharge an **individual debtor** from

any debt . . . [of the type outlined in the following 19 subparagraphs]." 11 U.S.C. § 523(a) (emphasis added). Thus, the language itself indicates that the only kinds of debts excepted from discharge under section 1192 are the debts of an individual debtor. Several bankruptcy courts have similarly relied on this language to arrive at this conclusion. *Catt v. RTECH Fabrications, LLC (In re RTECH Fabrications, LLC)*, 635 B.R. 559, 564 (Bankr. D. Idaho 2021) ("By its own terms, § 523(a) only applies to individual debtors."); *Jennings v. Lapeer Aviation, Inc. (In re Lapeer Aviation, Inc.)*, 2022 WL 1110072 at *2 (Bankr. E.D. Mich. Apr. 13, 2022). ("[T]he first sentence of § 523(a) clearly limits the denial of discharge to 'an individual debtor.'"); *In re Satellite Restaurants, Inc. Crabcake Factory USA*, 626 B.R. at 876 ("The language of Section 523(a) is clear and unambiguous that it applies only to individual debtors.).

Moreover, the language itself also implies that subchapter V corporate debtors are not liable for claims under section 523(a) because "§ 1192(2)'s reference to § 523(a) *only incorporates* the list of nondischargeable debts, without expanding it." *In re GFS Indus., LLC*, 2022 WL 16858009 at *4 (Bankr. W.D. Tex. Nov. 10, 2022) (emphasis added). In other words, the cross reference in section 1192(2) incorporates the entirety of section 523(a) without divorcing its preamble and, as previously mentioned, the preamble expressly limits the kinds of debts discharged under section 523(a) to those of an individual debtor. As the court *In re GFS Indus., LLC* explained:

> Because § 523(a) unequivocally applies only to individuals, the language of § 1192(2) does not empower § 523(a) to cast a wider net than the text of § 523(a) permits. Had Congress included a phrase in § 1192(2) explicitly stating that the list found in § 523(a) applies to all debtors proceeding in Subchapter V, then the interpretation would be straightforward. Congress's choice not to insert this language is instructive.

2022 WL 16858009 at *4. Further, if Congress only intended to incorporate the list of nondischargeable debts—and not the language in section 523(a)'s preamble—it "could have easily

done so by further refining the reference found in 1192(2) to '523(a)(1)-(19).'" *In re RTECH Fabrications, LLC*, 635 B.R. at 565.

In addition, "[w]hen Subchapter V was passed, Congress also amended § 523(a) to add the newly enacted § 1192 to the list of discharge provisions incorporated in the scope of § 523(a)'s discharge exceptions." *In re GFS Indus., LLC*, 2022 WL 16858009 at *4. "[H]ad Congress intended § 523(a) exceptions to apply to [corporate] entities as well, it would be unnecessary to add § 1192 to a statute that plainly applies to individual debtors only." *Id.* Importantly, the canon of statutory construction against surplusage also supports this conclusion. *Id.* at *5. This canon direct courts to "'lean in favor of a [statutory] construction which will render every word operative, rather than one which may make some idle and nugatory.'" *Id.* (quoting Antonin Scalia & Bryan A. Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 69, 174 (2012). Because "interpreting § 523 as excepting from discharge debts of corporate debtors in Subchapter V would be to ignore the import of § 1192 into § 523(a)," *In re GFS Indus., LLC*, 2022 WL 16858009 at *5, the canon of statutory construction against surplusage indicates that Congress did not intend to increase corporate debtor discharge liability through section 1192(2).[8]

For these reasons, the language itself strongly indicates that Congress did not intend to expand a subchapter V corporate debtor's discharge liability.

[8] Petitioner may contend that another canon of statutory construction—that a more specific provision should govern over a more general one—should be applied in this case to find that Congress did intend to expand the discharge exceptions of section 523(a) to subchapter V corporate debtors. However, the court in *In re GFS Indus., LLC*, explained why this canon should not be applied here: "[t]he 'general/specific' canon only applies 'when conflicting provisions simply cannot be reconciled—when the attribution of no permissible meaning can eliminate the conflict.'" 2022 WL 16858009 at *8 (citing Scalia & Garner, *supra*, at 183). Since the language of section 523(a) and 1192(2) can be reconciled (for the reasons mentioned above), this canon of statutory interpretation is inapplicable. *Id.*

B. The Language of Section 1192(2) Read in Context Also Indicates Congress Did Not Intend to Hold Subchapter V Corporate Debtors Liable Under Section 523(a).

Furthermore, the language of section 1192(2) read in context with the language of section 1141(d) also implies that Congress did not intend this result. *Id.* at *4. For reference, section 1141(d) is the only provision outside of section 1192 that controls the discharge of debts for a subchapter V corporate debtor. *Id.* at *3. Section 1141(d)(2) provides, in pertinent part, that "[a] discharge under [chapter 11] does not discharge a debtor who is an individual from any debt excepted from discharge under section 523 of this title." *Id.* at *5. Thus, generally under chapter 11, only individuals are liable for the discharge exceptions under section 523(a). *Id.* Significantly, section 1141(d)(6) delineates the only exceptions to discharge for corporations under chapter 11. *Id.* at *7. Section 1141(d)(6) provides, in pertinent part, that "the confirmation of a plan does not discharge a debtor *that is a corporation* from any debt . . . of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit . . . ." 11 U.S.C. § 1141(d)(6) (emphasis added). Importantly, this exception was so controversial that it took eight years to be enacted. *In re GFS Indus., LLC*, 2022 WL 16858009 at *7 (citing *Cantwell-Cleary Co., Inc. v. Cleary Packaging, LLC (In re Cleary Packaging LLC)*, 630 B.R. 466, 474 (Bankr. D. Md. 2021), *rev'd* 36 F.4th 509 (4th Cir. 2022)). Thus, the language itself of section 1141(d)(6) and its legislative history indicate that Congress knew how to designate dischargeability based on the type of debtor when it drafted section 1192. *In re GFS Indus., LLC*, 2022 WL 16858009 at *4, 7. However, since Congress elected not to include language in section 1192 specifying which types of debtors are subject to section 523(a)'s exceptions to discharge, "one must look to the language of § 523(a), which unequivocally applies only to individuals." *Id.* at *4.

The Petitioner may allege this interpretation is incorrect because it renders section 1141(d)(6) ineffectual. Namely, that if section 1192(2)'s phrase "of the kind specified in section 523(a)" is interpreted to incorporate section 523(a)'s preamble, then section 1141(d)(6)'s phrase—"of a kind specified . . . of section 523(a) . . ."—must incorporate the preamble, as well. Purportedly, this would render section 1141(d)(6) ineffective because this provision only applies to corporations. However, this contention is misplaced. The court in *In re GFS Indus., LLC* explained that in this context "'it [is] appropriate to interpret the same words differently.'" 2022 WL 16858009 at *9 (citing Hon. Paul W. Bonapfel, Guide to the Small Business Reorganization Act of 2019, 204–05 (2022), https://www.ganb.uscourts.gov/sites/default/files/sbra_guide_pwb.pdf). This is because section 1141(d)(6) applies section 523(a) very narrowly. *In re GFS Indus., LLC*, 2022 WL 16858009 at *9. ("Section 1141(d)(6) references specific subparagraphs of § 423(a)(2), and only provides an exception to discharge for debts from [government] entities.") On the other hand, section 1192(2) is drastically different because it applies section 523(a) very broadly. *Id.* ("There are no limitations placed on how §523(a) would apply to a potential corporate defendant [under section 1192(2)]."). For these reasons, it is appropriate to construe the same words differently.

Relatedly, the Petitioner may allege that language from chapter 12 should be used to assist this Court in construing language in chapter 11. However, this contention is misplaced. At the outset, there are major differences between chapter 11 and chapter 12. *Id.* at 7. For instance, "Chapter 12 is only available to a small and specific subset of debtors, [and consequently,] Chapter 12 cases have unique considerations that are not present in Chapter 11 cases." *Id.* Moreover, chapter 12 does not distinguish between individual and corporate discharges, unlike chapter 11. *Id.* at 9. For these reasons, several bankruptcy courts have found that language from chapter 12

should not be relied upon to construe similar language in chapter 11. *Id.* Thus, the Petitioner's contention does not clearly show that specific context in which the language of section 1192(2) is used suggests that Congress intended to expand corporate debtors' discharge liability under subchapter V. Rather, for reasons previously mentioned, it is much more likely that Congress intended for subchapter V corporate debtors not to be held liable to section 523(a) claims.

C. The Legislative History of Subchapter V Does Not Demonstrate Congressional Intent to Hold Corporate Debtors Liable for Section 523(a) Claims.

The legislative history of subchapter V does not demonstrate that Congress intended to suddenly depart from the well-established principle that, generally, corporate debtors proceeding under chapter 11 are immune to dischargeability actions under section 523(a).

Initially, it is important to note that from as far back as 1898 to the late 1900's corporate debtors were not immune to dischargeability actions. *Id.* at *7 (citations omitted). However, this all changed with the passing of the Bankruptcy Code in 1978. *Id.* (citations omitted). Through such legislation, Congress "*intentionally* remov[ed] causes of action that enabled creditors to seek a determination of dischargeability against a corporate debtor in Chapter 11." *Id.* (emphasis added). Congress effectuated such changes "in part to soothe problems with implementing a corporate exception to discharge that arose under the previous scheme." *Id.* at *9 (citing *In re Rtech Fabrications, LLC*, 625 B.R. at 565).

Accordingly, Congress has since been reluctant to increase corporate debtor discharge liability under chapter 11. *Id.* at *7 (citing *Cantwell-Cleary Co., Inc. v. Cleary Packaging, LLC (In re Cleary Packaging LLC)*, 630 B.R. 466, 474 (Bankr. D. Md. 2021), *rev'd* 36 F.4th 509 (4th Cir. 2022)). Notably, "[t]he only exception to discharge for corporations in the current version of the Bankruptcy Code is found in § 1141(d)(6)." *Id.* at *7. However, "[t]his exception was

controversial enough that it took eight years to be enacted." *Id.* (citing *In re Cleary Packaging, LLC*, 630 B.R. at 474.)

Moreover, by passing subchapter V in 2019, Congress evinced the intent of creating a simpler and easier bankruptcy option under chapter 11 for small business debtors. *Id.* at * 2 ("Commentators and courts have determined that [subchapter V's] purpose is to provide recourse to small business owners and individual debtors without the attendant costs and restraints imposed in traditional Chapter 11 cases."). For instance, "[s]ubchapter V cases do not require the payment of US Trustee fees, filing of a disclosure statement, or application of the absolute priority rule." *Id.* The changes promulgated under subchapter V, "have largely proven beneficial to those debtors who are able to take advantage of them." *Id.* Thus, practically speaking, the Petitioner's contention that Congress intended to expand corporate debtor discharge liability through the passage of subchapter V makes little sense. *Id.* at *10 ("[The] effect of making § 523(a) applicable to corporations in Subchapter V cases, but not in traditional Chapter 11 cases would disincentivize corporations from availing themselves of the benefits of Subchapter V.") Put simply, it would defy reason for "Congress to create this simpler option for a corporation to pursue bankruptcy while simultaneously implementing impediments to the debtor achieving a discharge of its debts." *Id.*

In addition, the legislative history of subchapter V shows no indication that Congress intended to expand the existing chapter 11 corporate discharge exceptions. *Id.* at *5, n.6. This is significant because "making § 523(a) applicable to corporations is such a deviation from the common understanding of the Bankruptcy Code . . . ." *Id.* at *10. In examining subchapter V's legislative history, the court *In re GFS Indus., LLC* highlighted Judge Paul Bonapfel's point:

> [N]either the Report of the Judiciary Committee of the House of Representatives nor testimony given to the Committee regarding § 1192 acknowledged any

> expansion of existing Chapter 11 corporate discharge exceptions . . . . [H]ad Congress intended to make a *seismic* change to existing Chapter 11 law, one would expect the House Judiciary Committee Report to have pointed out this change.

In re GFS Indus., *LLC*, 2022 WL 16858009 at *5, n.6 (citing Bonapfel, *supra*, at 204–05) (emphasis added). Moreover, if Congress intended to diverge so drastically from chapter 11's statutory scheme "it could have created a new chapter of bankruptcy for small businesses." *Id.* at *10. Indeed, finding that section 1192(2) expands the discharge liability for corporations would "frustrate the entire Chapter 11 statutory scheme." *Id.* Importantly, "Congress . . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes. *In re Cleary Packaging, LLC*, 630 B.R. at 475 (citing *Whitman v. Am. Trucking Ass'ns., Inc.,* 531 U.S. 457, 468 (2001)). Thus, "'the suggestion that Congress incorporated 19 new exceptions to discharge for small corporations in a bill that was introduced in April 2019, and signed in to law by the President in August 2019, seems not only improbable, but also contradicts years of bankruptcy law and policy.'" *Id.* at *7 (quoting *In re Cleary Packaging, LLC*, 630 B.R. at 475). Moreover, Congress's choice to not promulgate a new chapter and instead "include Subchapter V into the broader Chapter 11 scheme" indicates it did not mean to expand subchapter V corporate debtor's discharge liability. *Id.* at *10.

Therefore, due to Congress's commitment to preserve the expansive nature of the corporate discharge under chapter 11 and the aforementioned purpose and legislative history of subchapter V, it would defy reason to conclude that Congress intended section 1192(2) to increase corporate debtors' discharge liability under subchapter V.

D. Excluding Subchapter V Corporate Debtors from Section 523(a) Achieves the Code's Fundamental Aims

The most fundamental aim of the Code is securing a fresh start for the honest, but unfortunate debtor. *Kawaauhau v. Geiger*, 523 U.S. 57, 62 (1998). In fact, subchapter V was

created for the sole purpose of making chapter 11 bankruptcies more accessible to businesses seeking to reorganize. *In re GFS Indus., LLC*, 2022 WL 16858009 at *9 (citing *In re Cleary Packaging, LLC*, 630 B.R. at 474) ("Commentators and courts have determined that [subchapter V's] purpose is to provide recourse to small business owners and individual debtors without the attendant costs and restraints imposed in traditional Chapter 11 cases."). Thus, the Code naturally presents a presumption against exceptions to discharge in the context of subchapter V cases. R. at 21. Furthermore, the Code is committed to ensuring a fair and equitable distribution among classes of creditors. *Howard Delivers Serv., Inc. v. Zurich Am. Ins. Co.*, 547 U.S. 651, 655 (2006) ("The Bankruptcy Code aims, in the main, to secure equal distribution among creditors."). Given the fundamental aims of the Code, the lower courts' ruling excluding corporate debtors from section 523(a) is proper.

By allowing debts, such as Ms. Rigby's, to remain non-dischargeable under §523(a)(6), corporations are forced to pay those debts in full immediately upon discharge. R. at 22. As the Thirteenth Circuit highlights, this maneuver diminishes the amount "dollar for dollar" that the corporation is capable of paying to its other creditors. *Id.* Theoretically, if the Code were to allow for such exceptions to discharge, a single creditor has the potential to derail the entire plan confirmation process. *Id.* For example, if a debtor's non-dischargeable claim rises to an excessive amount, an entire plan voted upon by a class of creditors can no longer be confirmed to the detriment of all parties. *Id.* The Debtor and its creditors will inevitably be subject to lengthy delays, additional costs, and substantial risks. *Id.* at 10. In some cases, these factors may even force a debtor into liquation. *Id.* at 22. Thus, allowing unsecured creditors to indulge in these tactics creates an undesirable standard for all parties involved in a subchapter V case.

The possibility of forced liquidation is especially concerning in the context of this case for two major reasons. First, the bankruptcy court established that creditors in this case would receive a much greater distribution under the Plan than they ever would if the Debtor liquidated under chapter 7. *Id.* at 10. This would undermine the 95 percent of unsecured creditors who strongly supported the Plan and attempted to avoid liquidation. *Id.* at 9. Furthermore, the Debtor's manufacturing plant provides significant economic vitality to the small, struggling town of Blackbird. *Id.* at 10. If the Debtor were to liquidate, it would severely impact the stakeholders within the local community by stifling job opportunities. *Id.* This outcome is directly at odds with the principles set forth in the Code as it relates to reorganization. *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984) ("The fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources.").

Even in the absence of the possibility of liquidation, the Petitioner's request to except her claim from discharge presents significant equitable concerns among the class of unsecured creditors in this case. For example, should the Court deem Ms. Rigby's claim as non-dischargeable, it would inevitably award her with a higher distribution than that of others creditors with similar claims. R. at 22. This would directly contradict the principles set forth by the Supreme Court in the *Howard* opinion. 547 U.S. 651, 655 (2006).

The dissent argues that this policy presents significant concerns because it affords creditors with less resources to challenge the confirmation of a plan in the event of a "cramdown". *Id.* at 34. The dissent endorses the reasoning of the Fourth Circuit by concluding that Congress eradicated the concept of a broad corporate discharge to "provide an additional layer of fairness and equity to creditors to balance against the altered priority that favors the debtor." *In re Cleary Packaging, LLC*, 36 F.4th at 512. This contention could only be accepted as true if Ms. Rigby, alone, was

responsible for determining whether the plan was consensual or not. R. at 22. However, this determination has always depended upon the voting class, never a specific creditor. 11 U.S.C. § 1126. Thus, creditors without non-dischargeable claims are still fully capable of outvoting a creditor with a non-dischargeable claim during the confirmation process. *Id.* Furthermore, under the *Cleary* opinion, a separate class of creditors is capable of triggering a non-dischargeable claim by chance when it rejects a plan. *Id.* That possibility is especially relevant to this case considering the Bank's objection to the Plan. *Id.* at 9.

Thus, the idea that a non-dischargeable claim somehow achieves a sense of fairness is nothing more than an illusion in this context. What is not an illusion is the fact that awarding Ms. Rigby a non-dischargeable claim would be to the detriment of all parties involved in this bankruptcy case. As previously discussed, subjecting the Debtor to §523(a)(6) would severely impede its opportunity to reorganize and provide its other creditors with a fair and sizeable distribution. These outcomes make a mockery of the Code's aim to ensure a fresh start, as well as its commitment to the equitable treatment all creditors. Thus, excluding corporate debtors from the provisions of §523(a) is the most efficient means of ensuring a fair outcome among *all* parties and not a *single* creditor, such as Ms. Rigby.

CONCLUSION

For the foregoing reasons, the Respondent respectfully requests that this Court affirm the decision of the Court of Appeals for the Thirteenth Circuit.

Respectfully Submitted,

Team 30
Counsel for Respondent
DATED: January 19, 2023

APPENDIX

11 U.S.C. § 105. Power of court.

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.
(b) Notwithstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title.
(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.
(d) The court, on its own motion or on the request of a party in interest—

(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and
(2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, may issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—

(A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or
(B) in a case under chapter 11 of this title—

(i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;
(ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;
(iii) sets the date by which a party in interest other than a debtor may file a plan;
(iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;
(v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or
(vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

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

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

(1) for a tax or a customs duty—

(A) of the kind and for the periods specified in section 507(a)(3) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;
(B) with respect to which a return, or equivalent report or notice, if required—
(i) was not filed or given; or
(ii) was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or
(C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;
(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—
(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;
(B) use of a statement in writing—
(i) that is materially false;
(ii) respecting the debtor's or an insider's financial condition;
(iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and
(iv) that the debtor caused to be made or published with intent to deceive; or
(C)
(i) for purposes of subparagraph (A)—
(I) consumer debts owed to a single creditor and aggregating more than $500 for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and
(II) cash advances aggregating more than $750 2 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and
(ii) for purposes of this subparagraph—
(I) the terms "consumer", "credit", and "open end credit plan" have the same meanings as in section 103 of the Truth in Lending Act; and
(II) the term "luxury goods or services" does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor;

(3) neither listed nor scheduled under section 521(a)(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—
(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or
(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination

of dis-chargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request;

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

(5) for a domestic support obligation;

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

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

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

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

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

(A)

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

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

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

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

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

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

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

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

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

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

(14B) incurred to pay fines or penalties imposed under Federal election law;
(15) to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit;
(16) for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case;
(17) for a fee imposed on a prisoner by any court for the filing of a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the debtor under subsection (b) or (f)(2) of section 1915 of title 28 (or a similar non-Federal law), or the debtor's status as a prisoner, as defined in section 1915(h) of title 28 (or a similar non-Federal law);
(18) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, under—

> **(A)** a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974, or subject to section 72(p) of the Internal Revenue Code of 1986; or
> **(B)** a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;
> but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title; or

(19) that—

> **(A)** is for—
>
> > **(i)** the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or
> > **(ii)** common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and
>
> **(B)** results, before, on, or after the date on which the petition was filed, from—
>
> > **(i)** any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;
> > **(ii)** any settlement agreement entered into by the debtor; or

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

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

(c)

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

(2) Paragraph (1) shall not apply in the case of a Federal depository institutions regulatory agency seeking, in its capacity as conservator, receiver, or liquidating agent for an insured depository institution, to recover a debt described in subsection (a)(2), (a)(4), (a)(6), or (a)(11) owed to such institution by an institution-affiliated party unless the receiver, conservator, or liquidating agent was appointed in time to reasonably comply, or for a Federal depository institutions regulatory agency acting in its corporate capacity as a successor to such receiver, conservator, or liquidating agent to reasonably comply, with subsection (a)(3)(B) as a creditor of such institution-affiliated party with respect to such debt.

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

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

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11 U.S.C. § 524. Effect of discharge.

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

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

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

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the

commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1192, 1228(a)(1), or 1328(a)(1), or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

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

(1)

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

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

(2)

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

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

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

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

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

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

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

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

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

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

(ii) any default under such an agreement;

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

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

(6)

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

(i) not imposing an undue hardship on the debtor or a dependent of the debtor; and

(ii) in the best interest of the debtor.

(B) Subparagraph (A) shall not apply to the extent that such debt is a consumer debt secured by real property.

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

(1) inform the debtor—

(A) that such an agreement is not required under this title, under nonbankruptcy law, or under any agreement not made in accordance with the provisions of subsection (c) of this section; and

(B) of the legal effect and consequences of—

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

(ii) a default under such an agreement; and

(2) determine whether the agreement that the debtor desires to make complies with the requirements of subsection (c)(6) of this section, if the consideration for such agreement is based in whole or in part on a consumer debt that is not secured by real property of the debtor.

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

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

(g)

(1)

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

(B) An injunction may be issued under subparagraph (A) to enjoin entities from taking legal action for the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery with respect to any claim or demand that, under a plan of reorganization, is to be paid in whole or in part by a trust described in paragraph (2)(B)(i), except such legal actions as are expressly allowed by the injunction, the confirmation order, or the plan of reorganization.

(2)

(A) Subject to subsection (h), if the requirements of subparagraph (B) are met at the time an injunction described in paragraph (1) is entered, then after entry of such injunction, any proceeding that involves the validity, application, construction, or modification of such injunction, or of this subsection with respect to such injunction, may be commenced only in the district court in which such injunction

was entered, and such court shall have exclusive jurisdiction over any such proceeding without regard to the amount in controversy.

(B) The requirements of this subparagraph are that—

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

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

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

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

(aa) each such debtor;

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

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

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

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

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

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

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

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

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

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

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

(3)

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

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

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

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

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

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

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

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

(4)

(A)

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

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

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

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

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

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

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

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

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

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

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

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

(aa) the debtor;

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

(cc) a predecessor in interest of the debtor.

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

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

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

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

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

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

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

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

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

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

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

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

(B) as part of the proceedings leading to issuance of such injunction and confirmation of such plan, the court had appointed a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands described in subsection (g)(4)(B) with respect to such plan; and

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

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

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

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

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

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

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

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

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

(k)

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

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

different from that set forth in paragraphs (2) through (8), except that the terms "Amount Reaffirmed" and "Annual Percentage Rate" must be used where indicated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(J)

(i) The following additional statements:

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

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

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

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

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

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

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

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

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

reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (or canceled).

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

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

"What if your creditor has a security interest or lien? Your bankruptcy discharge does not eliminate any lien on your property. A 'lien' is often referred to as a security interest, deed of trust, mortgage or security deed. Even if you do not reaffirm and your personal liability on the debt is discharged, because of the lien your creditor may still have the right to take the property securing the lien if you do not pay the debt or default on it. If the lien is on an item of personal property that is exempt under your State's law or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you must make a single payment to the creditor equal to the amount of the allowed secured claim, as agreed by the parties or determined by the court.".

(ii) In the case of a reaffirmation under subsection (m)(2), numbered paragraph 6 in the disclosures required by clause (i) of this subparagraph shall read as follows: "6. If you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court.".

(4) The form of such agreement required under this paragraph shall consist of the following:
"Part B: Reaffirmation Agreement. I (we) agree to reaffirm the debts arising under the credit agreement described below.

"Brief description of credit agreement:

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

"Signature: Date:

"Borrower:

"Co-borrower, if also reaffirming these debts:

"Accepted by creditor:

"Date of creditor acceptance:".

(5) The declaration shall consist of the following:

(A) The following certification:
"Part C: Certification by Debtor's Attorney (If Any).

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

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

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

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

(6)

(A) The statement in support of such agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:
"Part D: Debtor's Statement in Support of Reaffirmation Agreement.

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

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

(B) Where the debtor is represented by an attorney and is reaffirming a debt owed to a creditor defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act, the statement of support of the reaffirmation agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:
"I believe this reaffirmation agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.".

(7) The motion that may be used if approval of such agreement by the court is required in order for it to be effective, shall be signed and dated by the movant and shall consist of the following:
"Part E: Motion for Court Approval (To be completed only if the debtor is not represented by an attorney.). I (we), the debtor(s), affirm the following to be true and correct:

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

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

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

(8) The court order, which may be used to approve such agreement, shall consist of the following:
"Court Order: The court grants the debtor's motion and approves the reaffirmation agreement described above.".

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

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

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

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

(m)

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

in writing by the debtor if the statement includes an explanation that identifies additional sources of funds to make the payments as agreed upon under the terms of such agreement. If the presumption is not rebutted to the satisfaction of the court, the court may disapprove such agreement. No agreement shall be disapproved without notice and a hearing to the debtor and creditor, and such hearing shall be concluded before the entry of the debtor's discharge.

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

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11 U.S.C. § 1141. Effect of confirmation.

(a) Except as provided in subsections (d)(2) and (d)(3) of this section, the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as provided in subsections (d)(2) and (d)(3) of this section and except as otherwise provided in the plan or in the order confirming the plan, after confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors, equity security holders, and of general partners in the debtor.

(d)

(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.

(2) 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.

(3) The confirmation of a plan does not discharge a debtor if—

(A) the plan provides for the liquidation of all or substantially all of the property of the estate;

(B) the debtor does not engage in business after consummation of the plan; and

(C) the debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title.

(4) The court may approve a written waiver of discharge executed by the debtor after the order for relief under this chapter.

(5) In a case in which the debtor is an individual—

(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;

(B) at any time after the confirmation of the plan, and after notice and a hearing, the court may grant a discharge to the debtor who has not completed payments under the plan if—

(i) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on such date;

(ii) modification of the plan under section 1127 is not practicable; and

(iii) subparagraph (C) permits the court to grant a discharge; and

(C) the court may grant a discharge if, after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that—

(i) section 522(q)(1) may be applicable to the debtor; and

(ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B); and if the requirements of subparagraph (A) or (B) are met.

(6) Notwithstanding paragraph (1), the confirmation of a plan does not discharge a debtor that is a corporation from any debt—

(A) of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit, or owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar State statute; or

(B) for a tax or customs duty with respect to which the debtor—

(i) made a fraudulent return; or

(ii) willfully attempted in any manner to evade or to defeat such tax or such customs duty.

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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.

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11 U.S.C. § 1123. Contents of plan.

(a) Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall—

(1) designate, subject to section 1122 of this title, classes of claims, other than claims of a kind specified in section 507(a)(2), 507(a)(3), or 507(a)(8) of this title, and classes of interests;
(2) specify any class of claims or interests that is not impaired under the plan;
(3) specify the treatment of any class of claims or interests that is impaired under the plan;
(4) provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest;
(5) provide adequate means for the plan's implementation, such as—
(A) retention by the debtor of all or any part of the property of the estate;
(B) transfer of all or any part of the property of the estate to one or more entities, whether organized before or after the confirmation of such plan;
(C) merger or consolidation of the debtor with one or more persons;
(D) sale of all or any part of the property of the estate, either subject to or free of any lien, or the distribution of all or any part of the property of the estate among those having an interest in such property of the estate;
(E) satisfaction or modification of any lien;
(F) cancellation or modification of any indenture or similar instrument;
(G) curing or waiving of any default;
(H) extension of a maturity date or a change in an interest rate or other term of outstanding securities;
(I) amendment of the debtor's charter; or
(J) issuance of securities of the debtor, or of any entity referred to in subparagraph (B) or (C) of this paragraph, for cash, for property, for existing securities, or in exchange for claims or interests, or for any other appropriate purpose;
(6) provide for the inclusion in the charter of the debtor, if the debtor is a corporation, or of any corporation referred to in paragraph (5)(B) or (5)(C) of this subsection, of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends;
(7) contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee; and
(8) in a case in which the debtor is an individual, provide for the payment to creditors under the plan of all or such portion of earnings from personal services performed by the debtor after the commencement of the case or other future income of the debtor as is necessary for the execution of the plan.

(b) Subject to subsection (a) of this section, a plan may—
(1) impair or leave unimpaired any class of claims, secured or unsecured, or of interests;
(2) subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;

(3) provide for—

(A) the settlement or adjustment of any claim or interest belonging to the debtor or to the estate; or

(B) the retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose, of any such claim or interest;

(4) provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests;

(5) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims; and

(6) include any other appropriate provision not inconsistent with the applicable provisions of this title.

(c) In a case concerning an individual, a plan proposed by an entity other than the debtor may not provide for the use, sale, or lease of property exempted under section 522 of this title, unless the debtor consents to such use, sale, or lease.

(d) Notwithstanding subsection (a) of this section and sections 506(b), 1129(a)(7), and 1129(b) of this title, if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

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28 U.S.C. § 1334. Bankruptcy cases and proceedings.

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)

(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d) Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and

(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.