No. 22-0909

IN THE

Supreme Court of the United States

OCTOBER TERM, 2022

IN RE PENNY LANE INDUSTRIES, INC., DEBTOR,

ELEANOR RIGBY, PETITIONER

V.

PENNY LANE INDUSTRIES, INC., RESPONDENT.

ON APPEAL FROM THE
UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

BRIEF FOR PETITIONER

TEAM NUMBER 33P

JANUARY 20, 2023

COUNSEL FOR PETITIONER

QUESTIONS PRESENTED

1. Whether the bankruptcy court had legal authority or equitable power to impose non-consensual non-debtor releases ("third-party releases") using creative interpretation of 11 U.S.C. §§ 105(a), 1123(a)(5) and (b)(6), notwithstanding the plain language in 11 U.S.C. §§ 524(a), (e) and (g) and constitutional limitations.

2. Whether 11 U.S.C. § 1192 provides corporate debtors a discharge of debts of the kind specified in U.S.C. § 523(a) when the debtor has elected to proceed under subchapter V of chapter 11 of the Bankruptcy Code and has received the benefits of avoiding the absolute priority rule through completion of a non-consensual plan under 11 U.S.C. § 1191(b).

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The opinion of the court of appeals is located in Case No. 21-0803. R. at 3. The Bankruptcy Court for the District of Moot ruled that (1) bankruptcy courts have authority to approve releases of non-consensual non-debtor claims as part of Chapter 11 reorganization plan, and (2) exceptions to discharge outlined in § 523(a) do not apply to corporate debtors. R. at 7, 10. On Appeal, the United States District Court for the District of Moot and the United States Court of Appeals for the Thirteenth Circuit affirmed both holdings. R. at 23.

STATEMENT OF JURISDICTION

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

RELEVANT STATUORY PROVISIONS

This case involves the interpretation of 11 U.S.C. § 1192 in connection with other provisions of The United State Bankruptcy Code. The relevant provisions are provided in Appendix A.

STATEMENT OF THE CASE

I. Factual History

A. Penny Lane Industries, Inc. is Implicated in the Ground Water Pollution in Blackbird, Moot.

Penny Lane Industries, Inc. ("Debtor") manufactures plastic, glass, and food containers at its facility located in Blackbird, Moot. R. at 4. Debtor is a wholly owned subsidiary of Strawberry Fields Foods, Inc. ("Strawberry Fields"). R. at 4. Extensive reports from the United States Environmental Protection Agency and the Center for Disease Control and Prevention indicate that as far back as 2013, Blackbird residents have been exposed to carcinogenic toxins at 250 to 3,000 times the permissible rates, causing mass sickness, birth defects, and death. R. at 5. Federal and state authorities conclusively established the presence of dangerous pollutants in Blackbird's groundwater supply. R. at 5 n.2. Debtor has been implicated in knowingly contaminating the water supply by the improper disposal of industrial chemicals and pollutants. R. at 5. Meanwhile, the overseeing entity, Strawberry Fields, turned a blind eye to Debtor's repeated reprehensible behavior. R. at 6. As a result of Debtor and Strawberry Fields' conduct, Eleanor Rigby's ("Petitioner") four-year old daughter was exposed to carcinogenic pollutants, developed leukemia, and died. R. at 5.

B. Penny Lane Industries, Inc.—not Strawberry Fields—Filed for Chapter 11 Bankruptcy Relief to Escape Liability in the Face of Mass Tort Action Regarding Their Role in the Pollution f Blackbird's Water Supply.

Debtor commenced a voluntary case under chapter 11 Subchapter V of Bankruptcy Code on January 11, 2021. R. at 6. Neither Strawberry Fields nor any of its executives are debtors in the commenced action. R. at 6 n.4.

For over a year now, the Debtor has steadfastly pursued a resolution designed to release their non-debtor owner, Strawberry Fields, from liability for their utter disregard of the Debtor's

dangerous and unlawful contamination of Blackbird's water supply. In its single-minded pursuit of that goal, the Debtor even obtained an injunction staying all actions against, among others, their current and former owners and the entities associated with the Debtor's alleged misconduct. R. at 6-7. Since the initial filing, the Court has not only approved the temporary stay, but extended it several times, halting the federal, state, and local governments from investigating and pursuing enforcement and regulatory actions against Debtor and Strawberry Fields. R. at 8.

C. The Plan Caters to the Interests of Strawberry Fields and Other Non-Debtor Entities and Does Not Primarily Benefit the Debtor.

The Debtor spent the past several months primarily negotiating with enjoined creditors to secure an agreement of a Plan most favorable to Strawberry Fields. R. at 6, 8. Namely, in exchange for Strawberry Fields providing $100 million to the creditors' trust, Strawberry Fields will be released and discharged, consensually or otherwise, of "**any and all** claims" that third parties have asserted or "**might assert in the future**" against Strawberry Fields. R. at 8 (emphasis added). These terms attempt to discharge claims that are not dischargeable through a Subchapter V bankruptcy filing.

The provisions of this plan prohibit victims from commencing or pursuing any action to collect from Strawberry Fields for their wrongdoing. R. at 8. Meaning, a corporation that would not have qualified for Subchapter V bankruptcy filing would be allowed to take advantage of the benefits of bankruptcy and avoid all accountability for its harmful conduct. R. at 6.

II. PROCEDURAL HISTORY

The Debtor filed for bankruptcy under Subchapter V of chapter 11 on January 11, 2021, after Blackbird residents flocked to the courthouse to file lawsuits alleging that the Debtor and Strawberry Fields knowingly polluted Blackbird's water supply. R. at 5-6. Facing serious legal action, and perhaps fearing impending litigation from the state and local government, Strawberry

Fields agreed to contribute $100 million to a creditor trust established under the terms of the Plan. R. at 8. In exchange, Strawberry Fields demanded a complete release of all direct and derivative claims, regardless of creditor consent. R. at 8.

The victims' loss is Strawberry Field's gain. This release provides Strawberry Fields with the benefits only available to bankruptcy debtors without requiring them to meet any eligibility requirements nor imposing the obligations of a bankruptcy debtor. The fact of the matter is, the Plan allows Strawberry Fields to relinquish far less of their financial assets than required of a debtor, making the estimated distribution 30-40 cents on the dollar payable to only allowed claims. R. at 8.

The Petitioner brings two actions. R. at 7, 9. First, she asserts that her claim for $1 million is non-dischargeable pursuant to §§ 523(a) and 1192(2), which exempts from discharge any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." R. at 7. Second, the Petitioner objects to the non-consensual release of third-party direct claims against Strawberry Fields. R. at 9.[1]

In complete disregard of the applicable statutory and constitutional provisions, the bankruptcy court overruled the Petitioner's objections and confirmed the nonconsensual plan. R. at 10. The District Court of Moot and the Thirteenth Circuit upheld these decisions. R. at 23.

STANDARD OF REVIEW

The facts in the case are not in dispute by the parties. R. at 9. The Thirteenth Circuit's holdings regarding the proper application and interpretation of the Bankruptcy Code and relevant states are questions of law, which are reviewed *de novo*. *Highmark Inc. v. Allcare Health Mgmt.*

[1] In an unrelated action, Norwegian Wood Bank ("Bank"), a secured creditor with a separate class of creditors, objected to the Plan on "fair and equitable" grounds, claiming the value of its collateral was understated. R. at 9. Bankruptcy court overruled Bank's objection. R. at 10.

Sys., Inc., 572 U.S. 559, 562 (2014); *Ornelas v. United States*, 517 U.S. 690, 699 (1996). "Under a de novo standard of review, the reviewing court decides an issue as if the court were the original trial court in the matter." *Razavi v. Comm'r of Internal Revenue*, 74 F.3d 125, 127 (6th Cir. 1996).

SUMMARY OF THE ARGUMENT

This Court should reverse the lower court's decision that: (1) the Bankruptcy Code §§ 105(a), 1123(a)(5), and 1123(b) collectively, notwithstanding § 541(e) and the Constitution, allow third-party releases; and (2) corporate debtors receive a discharge of debts of the kind specified in § 523(a) based on that statute's preamble regarding individual debtors.

I. THIRD-PARTY RELEASES

In this case, the Court must determine whether a non-debtor entity can exit bankruptcy proceedings, with a greater bundle of rights than Debtor, when it has sought relief: (1) reserved solely for the debtor under the Bankruptcy Code; (2) absent consent; (3) without giving any consideration in exchange for the affected non-debtor entity released claims; (4) in violation of the Bankruptcy Code; and (5) in complete disregard of the United States Constitution. The only legally sound answer is—it cannot.

First, third-party releases directly contradict the United States Constitution and are not authorized under the Bankruptcy Code. Such releases are prohibited because they violate victims' due process rights by extinguishing their claims against non-debtors without adjudication, consent, and notice. All three of these requirements are cornerstone constitutional principles that must be satisfied for the Plan to be enforceable.

Second, third-party releases encroach on the States' sovereign power to protect the welfare of their residents—a power reserved to the States by the Tenth Amendment and protected by the Bankruptcy Code. The language in third-party release encompasses all claims, including any future

claims by government agencies and discharges them, effectively precluding Moot from exercising its police and regulatory power.

Third, the bankruptcy court cannot authorize third-party releases because the court lacks jurisdiction to do so. Given bankruptcy judges do not derive their authority from Article III, they cannot enter final judgments on non-core matters. Non-core matters include issues that involve state law issues and are to be resolved outside of the bankruptcy courts. Petitioner sued Debtor for wrongful death through polluting the city water supply and alleged that Strawberry Fields knew or should have known about Debtor's misconduct. State law traditionally governs these types of claims. Therefore, by terminating state law claims in the Plan, the bankruptcy court acted outside its authority as an Article I court.

Fourth, third-party releases are not sanctioned by statute and are expressly prohibited by at least three circuit courts of appeal. Only one statutory provision allows a limited release of non-debtor claims against other non-debtors. But that provision only applies in asbestos-related cases under specific factual conditions that do not exist in this case.

Finally, there are alternative equitable methods to secure justice for the victims and preserve constitutional and statutory safeguards.

II. DISCHARGABLE DEBT

When Congress enacted the Small Business Reorganization Act of 2019 ("SBRA"), it created Chapter 11, Subchapter V of the Bankruptcy Code to streamline the process for small business reorganizations. Section 1181(c) of Chapter 11, Subchapter V Congress declares that when a Chapter 11, Subchapter V debtor confirms a nonconsensual plan under § 1191(b), the traditional provision that governs under Chapter 11, § 1141(d), is replaced with § 1192. 11 U.S.C. §§ 1141(d), 1181(c), 1191(b), 1192. Section 1192 provides individual and corporate debtors a discharge but excepts from that discharge, debts "of the kind specified in § 523(a) of this title." 11

U.S.C. § 1192(2). The preliminary text of 11 U.S.C. § 523(a) was also amended to add § 1192 to the list of discharges where individual debtors are not discharged of the specific debts listed in § 523.

Corporate debtors who are eligible for a discharge under § 1192 are not discharged of debts specified in § 523(a) because: (1) 11 U.S.C. § 523(a) may not change the scope of an § 1192 discharge; (2) the language in § 1192 excludes these debts from discharge regardless of debtor type, and (3) adopting that interpretation would violate public policy and disrupt the fundamental purposes of the Bankruptcy Code. Thus, we ask this court to reverse the lower court's decision.

Should this Court uphold the lower court's decision, it will epitomize why many Americans believe there are two systems of justice in this country—one for the rich, and one for everyone else. Such a ruling would allow a company alleged to have a central role in the knowing contamination of an entire city's water supply—Strawberry Fields—to retain its ill-gotten gains while leaving ordinary American families to wonder why their loved ones trapped and affected by this toxic environment are left to pay the price. Loved ones like a four-year old girl who suffered a debilitating disease that deteriorated the quality of her short life and caused her to pay the ultimate price. This Court should reject such an unlawful and unjust outcome.

ARGUMENT

I. THE PLAN VIOLATES THE UNITED STATES CONSTITUTION AND THE BANKRUPTCY CODE, WHILE THE BANKRUPTCY COURT LACKS LEGAL AUTHORITY AND JURISDICTION TO APPROVE THIRD-PARTY RELEASES IN CHAPTER 11 PLANS.

The Court should reverse the Thirteenth Circuit because the Plan violates the United States Constitution and the Bankruptcy Code. But even if the Plan were constitutionally and statutorily sound, the bankruptcy court lacks legal authority under Article I and subject matter jurisdiction under 28 U.S.C. § 1334 to approve the Plan.

First, the Plan violates the victims' due process rights by forcing them into a "settlement." The Plan effectively terminates victims' litigation rights against non-debtors without their consent. It does so without reasonable notice to thousands of victims that their claims against hundreds of as-yet-unspecified non-debtors would be terminated.

Second, approving the Plan unconstitutionally encroaches on the States' sovereign power to protect the welfare of their residents, a power reserved to the States by the Tenth Amendment and protected by the Bankruptcy Code. Congress did not authorize the grant of third-party releases and injunctions against state police power claims, in the Bankruptcy Code.

Third, the bankruptcy code has no jurisdiction to extinguish the direct claims against Strawberry Fields and related non-debtors. Only one code provision allows a limited release of non-debtor claims against other non-debtors, and only in asbestos-related cases under specific conditions that are not satisfied here. But this is not an asbestos-related case. And, even if it were, the Plan does not meet the threshold statutory requirements: claim preclusion against unidentified non-debtors; prohibitions from limiting the scope of liability and appointment of future claimant's representatives.

Fourth, the bankruptcy court does not have statutory authority to approve the Plan, when it benefits the non-debtor and extinguishes the non-debtor liabilities. Such non-debtor claims may not be discharged under the Bankruptcy Code.

Finally, parties are free to engage in private settlement negotiations and coordinate them with a reorganization plan in the bankruptcy court. This alternative resolution ensures consent of the parties and is both constitutional and in compliance with the statutory regulations.

A. Releasing Third-Party Claims as Part of Chapter 11 Plan Is Unconstitutional.

1. Because litigation rights are property rights, potential victims and non-consenting creditors are deprived of their right to property without adjudication and consent.

Legal claims are sufficient to constitute property such that a deprivation would trigger due process scrutiny. *N.Y. State Nat'l Org. for Women v. Pataki*, 261 F.3d 156, 169–70 (2d Cir. 2001). The deprivation of a "state created right to recover full compensation for tort injuries" is a cognizable property right subject to and is protected by the Due Process Clause. *Duke Power Co. v. Carolina Env't Study Grp., Inc.*, 438 U.S. 59, 94 (1978) (Stewart, J., concurring). Therefore, before depriving victims of their litigation rights, any court must follow the processes implemented in the Due Process Clause.

Everyone should have their day in court—this is a fundamental right guaranteed by the Due Process Clause of the United States Constitution. *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 846 (1999) (quoting *Martin v. Wilks*, 490 U.S. 755, 762 (1989)). But by approving the Plan in this case, the victims of the pollution are forever stripped not only of their day in court, but even the opportunity to choose settlement or litigation.

The Eastern District of Virginia found that the third-party releases implicated "the most fundamental right guaranteed by the due process clause in our judicial system: the right to be heard before the loss of one's rights." *Patterson v. Mahwah Retail Group, Inc.*, No. 3:21 cv 167 (DJN), 2022 WL 135398, *16 (E.D. Va. Jan 13, 2022). The court further expanded that affected parties "are entitled to be heard" and those who choose to resolve litigation through settlement "may not dispose of the claims of a third party, and a fortiori may not impose duties or obligations, without that party's agreement." Id. at *1.

Moreover, the law "does not sanction efforts by trial judges to effect settlements through coercion." *Kothe v. Smith*, 771 F.2d 667, 669 (2d Cir. 1985). The Plan coerces exactly such a so-

called "settlement." Likewise, a plan may not constitutionally compel victims to forfeit their property rights against non-debtors without consent. *Loc. No. 93, Int'l Ass'n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501, 529 (1986) (finding that "parties who choose to resolve litigation through settlement may not dispose of the claims of a third party"); *United States v. Ward Baking Co.*, 376 U.S. 327 (1964) (holding that a court cannot enter a consent decree to which one party has not consented).

The Plan terms ensure that any claim of action subject to the release agreement will never be brought, heard, or adjudicated in any court. The Plan makes all possible actions impossible by broadly releasing any potential claims that may be brought against Strawberry Fields, thus unconstitutionally depriving victims and non-consenting creditors of their litigation rights.

2. The Plan deprives victims of their claims without adequate notice.

At the core of due process is notice and the opportunity for an adjudication of a claim on its merits before a competent tribunal. U.S. Const. amend. V. As the Court has noted, "[m]any controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950).

In a case remarkably similar to this, the bankruptcy court provided an example of sufficient notice. *In re Purdue Pharma L.P.*, 633 B.R. 53 (2021). The Sacklers, non-debtors, are the principal owners of Purdue Pharma, the company that distributed and marketed its signature product—Oxycontin. *Id.* at 58. Purdue Pharma filed for bankruptcy in the face of lawsuits over the opioid epidemic caused by their production of Oxycontin, *Id.* Sacklers, non-debtors, contributed funds to the creditors trust and in return demanded protection from the tsunami of lawsuits against them. *Id.* The third-party release required discharge of any and all cause of action based on, related to,

arising out of, or legally related to Purdue Pharma's conduct. *Id.* at 60–61. The court reasoned that noticing program was established and reached roughly 98% of the United States adult population and approximately 86% of Canadian adults, with an average frequency of message exposure of four times. *Id*. at 59–60. The program was then extended worldwide to include locations where the opioid based products created and marketed by Purdue might have caused harm. *Id.* The court found notice sufficient based on the debtor's efforts to fulfill the notice requirements outlined in the reorganization plan.

Here, the terms defining what claims were released and who may or may not be sued under the Plan defy comprehension. The Plan effectively includes unnamed individuals and entities making it impossible to know who is encompassed in the scope of the Plan, let alone who should be notified. R. at 8-9. The extent of what claims are terminated—those "based on or related to Debtor's pre-petition conduct, its estate or this Chapter 11"—is broad enough to include everything but a kitchen sink. R. at 8. Debtors did not make any efforts to at least outline a method to provide proper notice. As such, there is no practical way, even if Strawberry Fields was so inclined, to provide all intended creditors with adequate notice or even information regarding the extinguishment of their right to sue Strawberry Fields.

B. The Bankruptcy Court, and in Turn the Thirteenth Circuit, Impermissibly Preempted the State's Police Powers Under the Constitution.

The bankruptcy court's confirmation of the Plan, which contains broad third-party releases that encroach on the state police power, overthrows foundational principles of the federalist system. *N.F.I.B. v. Sebelius*, 567 U.S. 519, 536 (2012); *Jacobson v. Massachusetts*, 197 U.S. 11, 24–25 (1905) (indicating that states did not forfeit police powers simply by becoming members of the union).

The Bankruptcy Code broadly defines "claims" to encompass future claims, including those brought by the government. 11 U.S.C. § 101(5). Therefore, any attempt at equitable remedy by Moot or Blackbird will fall under "any and all claims" outlined as released in the Plan. R. at 8. Neither the Bankruptcy Clause nor the Supremacy Clause preempt state law—particularly areas that are historically regulated by the states. U.S. Const. art. VI, § 2; *Hillsborough City of Fla. v. Automated Med. Lab'ys. Inc.*, 471 U.S. 707, 713 (1985). By allowing this broad release, the Court will fail to consider and apply the long-standing presumption against preemption.

1. *Any attempt by local and state government to invoke their police and regulatory powers to address and remediate the wrongs alleged against Strawberry Fields are part of the claims released in the Plan.*

The Bankruptcy Code defines a claim as any right to payment or equitable remedy even if it is unliquidated, contingent, unmatured, or disputed. 11 U.S.C. § 101(5). The Court held that a debtor's environmental cleanup obligation constituted a claim. *Ohio v. Kovacs*, 469 U.S. 274 (1985). The third-party releases in bankruptcy, by their terms, apply to future conduct when allegations relate to the same core facts and events of outlined in the releases. *In re Nat'l Rural Utils. Co–Op. Fin. Corp.*, 467 B.R. 59, 68 (Bankr. D. Del. 2011). The pertinent release in the Plan indicates that Strawberry Fields will be released and discharged, consensually or otherwise, of "any and all claims" that third parties have asserted or "might assert in the future" against Strawberry Fields. R. at 8.

If the Court upholds the lower court's confirmation of the Plan, the release language in the Plan, along with the Code's broad definition of "claim", preempts state and local government from invoking its police and regulatory powers.

2. The third-party releases and injunctions are impermissible and violate the long-standing principle that the Bankruptcy Code does not preempt a state's exercise of its police and regulatory powers in health and safety matters.

This Court has previously ruled that there are "two cornerstones of our preemption jurisprudence." *Wyeth v. Levine*, 555 U.S. 555, 565 (2009). The first is "the purpose of Congress is the ultimate touchstone." *Id.* The second is the automatic and unequivocal assumption that the states' historic police powers are not to be superseded unless that was the manifest purpose of Congress. *Id.* Additionally, state laws that regulate health and safety are specifically protected against federal preemption. *Id.* at 565.

Reid v. Colorado, 187 U.S. 137, 148 (1902) denied the defendant's claim that a federal law regarding the exportation of diseased animals preempted Colorado law criminalizing the introduction of infectious diseases among cattle and horses in the state. *See id.* at 147–48. Moreover, *Hillsborough City of Fla. v. Automated Med. Lab'ys. Inc.*, 471 U.S. 707, 713 (1985) held that federal preemption does not affect state's exercise of its police and regulatory power and recognizes the historical role of the states in protecting health and safety. *Id.* at 713.

The Court again emphasized the presumption against preemption, especially in health and safety matters: "several States have exercised their police powers to protect the health and safety of their citizens" as such, the "States have had great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort and quiet of all persons." *Medtronic v. Lohr*, 518 U.S. 470, 475, (1996).

The bankruptcy court is not immune from this preemption. The Court specifically ruled that a Bankruptcy Code provision permitting a debtor to abandon property did not preempt state environmental laws forbidding abandonment to protect health and safety of the community. *Midlantic Nat'l Bank v. New Jersey Dept. of Env't Protection*, 474 U.S. 494, 504-05 (1986).

Therefore, bankruptcy courts cannot approve third-party releases, which terms preempt the states' police and regulatory power to protect health and safety of its community.

3. The purpose and structure of the Bankruptcy Code demonstrates Congressional intent not to preempt state police powers.

The structure and purpose of the Code evidences Congressional intent to protect the state's ability if it exercises police and regulatory powers. The Bankruptcy Code contains many examples where an exception to the code provision applies to exempt government exercise of its police and regulatory powers.

For example, § 362(b)(4) states that the "automatic stay" is not enforceable against the government if it exercises its police power. 11 U.S.C. § 362(b)(4). Similarly, § 523(a)(7) renders the Code unenforceable against a fine or penalty owed to a governmental unit. *Id.* § 523(a)(7). And § 1129(d) specifically protects the interest of the government by prohibiting plan confirmations where its purpose is to avoid government enforcement. *Id.* § 1129(d). Under § 959(b), a debtor is obligated to comply with the laws of the state in which it holds property. *Id.* § 959(b). Finally, § 524(e) provides that a discharge does not affect the liability of any other entity but the debtor. *Id.* § 524(e).

These examples suggest congressional intent to permit enforcement of state law claims against third parties regardless of the debtor's discharge.

C. The Bankruptcy Court Has Neither Subject Matter Jurisdiction nor Article III Jurisdiction Over the Third-Party Releases.

1. By terminating state law claims without constitutional authority to adjudicate under Stern, the Bankruptcy Court acted outside its authority as an Article I court.

The bankruptcy court lacked constitutional authority to extinguish the third-party claims against Strawberry Fields and other non-debtors. Under this Court's ruling, bankruptcy judges, as non-Article III judges, do not have constitutional authority to enter a final judgment on state law

claims between private parties absent all parties' knowing and informed consent. *Stern v. Marshall*, 564 U.S. 462, 482 (2011); *In re Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 669 (2015). The Court clarified that when the central issues in the suit are those within traditional common law actions brought in federal courts, they are considered non-core matters for the purposes of bankruptcy proceedings, and "the responsibility for deciding that suit rests with Article III judges in Article III courts." *Stern*, 564 U.S. at 484.

This Court then set out the test for determining when a bankruptcy court has constitutional authority to enter final judgment on a claim: "the question is whether the action at issue stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process."[2] *Stern*, 564 U.S. at 499. Because the debtor's tortious interference counterclaim neither stemmed from the bankruptcy nor would necessarily be resolved in the claims allowance process, the Court held the bankruptcy court had no constitutional authority to adjudicate it. *Id.*

Applying the test in *Stern*, the bankruptcy court, as an Article I court, lacked constitutional authority to confirm the Plan, forever barring victims from bringing direct state law claims against Strawberry Fields and other non-debtors. The third-party releases involve rights defined by state law against non-debtor, private parties that arise independently of Debtors' bankruptcy filing. R. at 5–6. Petitioner sued Debtor for wrongful death through polluting the city water supply and alleged that Strawberry Fields knew or should have known about Debtor's misconduct. R. at 5. State law traditionally governs these types of claims. Thus, they do not "stem from the bankruptcy itself." *Stern*, 564 U.S. at 499. Nor would they "necessarily" be resolved in the claims process because that process is solely for claims against the debtors' estate. *See* 11 U.S.C. §§ 501–503.

[2] The Bankruptcy Code provides procedures for the allowance or disallowance of creditors' claims and claims for reimbursement of the bankruptcy estate's administrative expenses. 11 U.S.C. §§ 501-503.

Accordingly, only an Article III court may finally resolve these claims, and the bankruptcy court lacked constitutional authority to release them.

The Thirteenth Circuit incorrectly held that, because a confirmation proceeding is a "central aspect of this Chapter 11 case's adjustment of the debtor creditor relationship," under *Stern* the bankruptcy court has constitutional and statutory authority. R. at 12-13. Under this rationale, Article III contains no limitation on a bankruptcy courts' powers to confirm a plan and no restriction on a bankruptcy courts' ability to resolve disputes between private parties through a plan. The Thirteenth Circuit failed to apply the test articulated in *Stern* which instructs that the constitutional analysis must focus on the claims being adjudicated, not the characterization of the proceeding as core. *Stern*, 564 U.S. at 499. Indeed, *Stern* does not authorize Congress to strip parties who want to contest *Stern* matters of their constitutional right to an Article III adjudicator. *Id.* at 499-502. Nor does *Stern* authorize bankruptcy courts to adjudicate claims reserved to Article III judges merely because they are raised in the context of a plan. *See id.* at 502. Rather, Stern makes clear that the judicial power may not be exercised outside of Article III. *Id.*

2. Even if the Court determines third-party releases as core proceeding, subject matter jurisdiction, as indicated in the statutory relevant provisions, only extends to actual "civil proceedings."

The Bankruptcy Court lacked statutory subject matter jurisdiction over many of the third-party claims. The Court derives subject matter jurisdiction from 28 USC §1334; however, part (b) of the section limits this jurisdictional authority only to "civil proceedings arising under title 11 or arising in or related to cases under title 11." To be sure, §1334(a) creates exclusive jurisdiction "of all cases under title 11" and grants jurisdiction over the bankruptcy itself, including claims filed against the debtor or scheduled by the debtor. Meanwhile, third-party claims against non-debtor entities are at best related to a bankruptcy case. This Court noted that "related to" jurisdiction covers "suits between third parties which have an effect on the bankruptcy estate." *Celotext Corp.*

v. Edwards, 514 U.S. 300, 307 n.5 (1995). Consequently, even if someone's claim against a non-debtor is "related to" the bankruptcy case, there is still no federal subject matter jurisdiction unless there is a pending "civil proceeding" brought against the non-debtor.

This case presents a different fact pattern, namely that many, given the magnitude and severity of the contamination, perhaps most, of the third-party claims released have not been litigated or even presented as civil litigation. There is no telling how many unborn children will be affected by the exposure to these pollutants or the number of individuals whose symptoms have not yet manifested.

At best, potential plaintiffs' claims against Strawberry Fields might be "related to cases under title 11" in the future. However, absent an actual lawsuit, there is no "civil proceeding," and hence no statutory subject matter jurisdiction.

3. Because many potentially released claims have not ripened, Article III jurisdiction does not extend to those claims.

Not only is statutory subject matter jurisdiction lacking over many of the third-party claims, so too is constitutional jurisdiction. Article III extends the judicial power solely to "cases" and "controversies." U.S. Const. art. III, § 2. Obviously, "case" or "controversy" requires a party to bring an actual litigation, otherwise there is nothing for the court to adjudicate.

This jurisdictional limitation means that if there was no actual litigation pending on third-party release at the time of the Plan Confirmation Order, then there could not be Article III jurisdiction for any federal court to enter such Release of that claim. If a creditor or other third party merely has a potential claim against Strawberry Fields or other non-debtors, but has not yet sued, federal courts lack Article III jurisdiction to resolve that potential claim until it ripens into actual litigation, whether through a lawsuit brought by the claimant or a declaratory judgment action.

Only some of the Released Claims involved pending litigation against Strawberry Fields. The rest could merely be asserted in litigation. Federal courts, including Bankruptcy Court, lack Article III and statutory subject matter jurisdiction over such unripened claims.

D. The Bankruptcy Court Does Not Have Statutory Authority for Third-Party Releases Conferred Upon Strawberry Fields and Other Non-Debtors in Connection With Chapter 11 Plan Confirmation.

1. The Bankruptcy Code does not authorize terminating third-party claims against non-debtors in non-asbestos cases when it affects non-debtor's liability.

The Bankruptcy Code discharges **only the debtor's** liabilities upon plan confirmation. 11 U.S.C. §§ 524(a), 1141(d)(1)(A). The Code specifies that a "discharge of a debt of the debtor **does not affect the liability of any other entity**." 11 U.S.C. § 524(e) (emphasis added). Congress authorized bankruptcy courts to impose non-debtor releases only under § 524(g)'s one narrow circumstance—and that applies exclusively to asbestos cases. *See, e.g., In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 142-43 (2d Cir. 2005) (recognizing that while some cases have allowed such releases, "the only explicit authorization in the Code for third-party releases is 11 U.S.C. § 524(g)"). Because Congress expressly authorized only this one exception, courts may not create others. The Court described the Bankruptcy Code as "mind-numbingly detailed" and "meticulous", which evidenced that lists of exemptions and exceptions to them confirms that "courts are not authorized to create additional exceptions." *Law v. Siegel*, 571 U.S. 415, 424 (2014).

In support of this notion, the Fifth, Ninth, and Tenth Circuits have held that the Bankruptcy Code prohibits third-party releases. *Feld v. Zale Corp.*, 62 F.3d 746, 760 (5th Cir. 1995) (5th Cir. 1995); *In re Lowenschuss*, 67 F.3d 1394, 1401 (9th Cir. 1995); *accord, In re We. Real Estate Fund Inc.*, 922 F.2d 592, 600 (10th Cir. 1990) ("Obviously, it is the debtor, who has invoked and submitted to the bankruptcy process, that is entitled to its protections; Congress did not intend to

extend such benefits to third-party bystanders."); *but see Blixseth v. Credit Suisse*,[3] 961 F.3d 1074, 1084-85 (9th Cir. 2020) (holding 11 U.S.C. § 524(e) did not preclude approval of exculpation clause).

Here, the Plan granted the non-debtor entity greater relief than it could receive if it had filed for bankruptcy itself, and the Plan did so without the associated obligations imposed on debtors. Strawberry Fields—the non-debtor—had its liabilities (including those for willful and malicious conduct) extinguished even though such claims may not be discharged under the Bankruptcy Code.

2. The Bankruptcy Code does not authorize terminating third-party claims against non-debtors in non-asbestos cases without express applicable provisions of the Bankruptcy Code.

For the bankruptcy court to assert necessary or appropriate authority to carry the Bankruptcy Code's provisions, it must ultimately be anchored to an express grant of authority elsewhere in th11 U.S.C. § 105(a)§ 105(a); *Metromedia*, 416 F.3d at 142. Contrary to this set precedent, the Thirteenth Circuit found that the bankruptcy court had statutory authority to approve third-party releases based almost entirely on the Bankruptcy Code provisions §§ 105, 1123(a)(5) and 1123(b)(6). R. at 14.

Likewise, the power to impose non-debtor releases outside of § 524(g) cannot derive solely from § 1123(b)(6). This section limits the plan provisions to those "**not inconsistent with the applicable provisions of this title**." 11 U.S.C. § 1123(b)(6) (emphasis added). However, the third-party releases here directly contradict several sections of the Bankruptcy Code: 1) § 524(a), which

[3] The Ninth Circuit Court of Appeals affirmed the validity of a **narrowly tailored exculpation clause** that released a lender from certain potential claims against it arising from the bankruptcy proceedings and not with respect to the debtor's discharged debts themselves. *See Blixseth v. Credit Suisse*, 961 F.3d 1074 (9th Cir. 2020). The Ninth Circuit held that § 524(e) does not bar narrowly tailored exculpation clauses covering conduct arising out of the bankruptcy case. *Id.* at 1079, 1081.

allows only for the discharge of the debtor; 2) § 524(e), which provides that the discharge of the debtor "does not affect the liability of any other entity on, or the property of any other entity for, such debt;" and 3) § 524(g), which defines the limited asbestos-related circumstances when releases are permitted. 11 U.S.C. §§ 524(a), (e), (g). Thus, § 1123(b)(6) cannot be read to permit the Plan's extinguishment of claims against Strawberry Fields.

The only section in the Bankruptcy Code that addresses releases is § 524, and it does not authorize the releases imposed here. 11 U.S.C. § 524. Therefore, the third-party releases were approved in violation of the Bankruptcy Code, which in turn makes the Plan unconfirmable. *See* 11 U.S.C. § 1129(a)(1). Section 1129(a)(1) expressly prohibits confirmation of a plan that does not comply with "applicable provisions" of the Bankruptcy Code, while § 1141(d), which specifies the scope of discharge upon confirmation, does not include non-debtors. 11 U.S.C. §§ 1129(a)(1), 1141(d).

3. Even if this case fell within the purview of asbestos related claims under § 524(g), the Plan does not meet the statutory requirements for its approval.

The language of § 524(g) has been interpreted to be sufficiently broad to authorize the issuance of a supplemental channeling injunction with respect to both asbestos-related liabilities and non-asbestos-related liabilities. *See In re Eagle-Picher Industries, Inc.,* 203 B.R. 256, 267 (S.D. Ohio 1996). However, it expressly authorizes the extension of injunctive relief to non-debtor entities only to the extent the liabilities asserted against them fall within the specific relational categories enumerated in § 524(g)(4)(A)(ii*)*. 11 U.S.C. §524(g)(4)(A)(ii).

Section 524(g) requires that: (1) the releasees are identifiable from the terms of the injunction; (2) they are "alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor"; and (3) that liability must "arise by reason of" one of four "statutory relationships." 11 U.S.C. § 524(g)(4)(A)(ii); *In re W.R. Grace Co.,* 13 F.4th 279 (3d Cir.2021).

Here, the Plan precludes claims against **unidentified non-debtors** and is not limited to claims where liability is both based on the debtor's conduct and arises from one of the four statutory relationships to the debtor. *See* 11 U.S.C. § 524(g)(4)(A)(ii). The broad language of the release extends to any and all claims "**based on or related to the Debtor's pre-petition conduct**, its estate or this Chapter 11 case." *Id.* § 524(g)(2)(4)(A)(ii); R. at 8. As such it fails to meet the second required element for an effective release under § 524(g).

E. The Alleged Benefits of Third-Party Releases Are Not Lost by Prohibiting Third-Party Releases.

A consensual third-party release is just another name for a settlement between a creditor and a non-debtor. There is no need to include such a settlement in a plan confirmation order if it does not involve the debtor or the property of the bankruptcy estate.

An example of such resolution involves major cigarette manufacturers, including Philip Morris USA, R. J. Reynolds, Brown & Williamson, and Lorillard, and 46 states that sued to recover Medicaid and other costs the states incurred in treating sick and dying cigarette smokers. *State v. Philip Morris USA, Inc.*, 193 666 S.E.2d 783, 786 (N.C. Ct. App. 2008). The Master Settlement Agreement of 1998—which was complex, involved numerous parties, was designed to compensate for and abate the public health consequences of a harmful product, and was larger than the plan here—was negotiated outside of any one court proceeding. *See* Tobacco Control Legal Consortium, Pub. Health L. Ctr., *The Master Settlement Agreement: An Overview* (2015).

This resolution prevents the alleged downfall of refusing these third-party settlements—years-long value-destructive litigation with lower, if any victim recoveries.

For the reasons set forth above, this Court should reverse the Thirteenth Circuit's decision and find that bankruptcy court lacked both the statutory and constitutional authority to confirm the Plan that included third-party releases.

II. SECTION 1192 EXCEPTS FROM DISCHARGE ANY DEBTS OF THE KIND SPECIFIED IN SECTION 523(A) FOR SUBCHAPTER V DEBTORS REGARDLESS OF WHETHER THEY ARE INDIVIDUALS OR CORPORATIONS.

This Court should reverse the Thirteenth Circuit because discharge exceptions outlined in 11 U.S.C. § 523(a) apply to corporate debtors under Subchapter V. These exceptions apply because: (1) the SBRA specifically added 11 U.S.C. § 1192 to the Bankruptcy Code and governs discharge of both individual and corporate debtors who file under Subchapter V; (2) the plain language of § 1192 excepts from discharge debts "of the kind specified" in § 523(a); and (3) the legislative history supports this interpretation and application of § 1192 and § 523(a).

The only legally sound approach to properly adjudicate Subchapter V filings is to apply § 1192 to non-dischargeability issues. The language in § 1192 along with its context in the statutory scheme support a judicial interpretation that all debtors are subject to the same discharge exceptions when they confirm a nonconsensual plan under Chapter 11, Subchapter V of the Bankruptcy Code.

The most plausible plain language reading of § 1192(2) excepts "*debts of a kind*" from discharge specified in § 523(a)—not any type of debtor qualified to file under Subchapter V. In fact, even when read in conjunction with the cross reference in the preamble of § 523(a), the plain meaning of § 1192 is not altered. Since the language in § 1192 is plain and unambiguous, the lower court should not have relied on the examination of legislative history. However, even if it were forced to, the Thirteenth Circuit overlooked the modifications introduced through Subchapter V to the policies that underline the Bankruptcy Code.

Following this application and analysis gives the statute its intended effect and promotes the fundamental goals of the Bankruptcy Code—offering debtors a fresh start and providing a system of equitable distribution for creditors.

The Thirteenth Circuit erred by holding that the that the exceptions to discharge in § 523(a) did not apply to corporations or other entities in Subchapter V because, among other things, the legislative history did not expressly support this notable change in bankruptcy law. Thus, this Court should reverse.

A. As The Governing Statute in Chapter 11 Subchapter V Filings, 11 U.S.C. § 1192 Controls the Scope of Discharge Exceptions.

1. It is a settled precedent of statutory construction that a more specific statute governs over the broad one.

As the provision specifically created to control the debtors discharge in Subchapter V, § 1192 should govern the inquiry into its meaning. When statutes intersect, the specific statutes trump the general, particularly where Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions. *Loving v. IRS*, 917 F.Supp.2d 67, 77 (D.D.C. 2013). Because the SBRA specifically adds § 1192 to the Bankruptcy Code, this specific section governs discharge in Subchapter V filing. The question of statutory interpretation stems from the newly enacted 11 U.S.C. § 1192, which provides a discharge to debtors who choose to proceed under subchapter V of chapter 11 of the Bankruptcy Code and confirm a nonconsensual plan through the § 1191(b) "cramdown" provision. 11 U.S.C. § 1191(b).

When this Court faced two overlapping statutes, each asserted to be the more specific, it recognized that the statute designed specifically for the issue at hand controlled over the statute with broad application. *Bloate v. United States*, 599 U.S. 196, 206-07 (2010). Specifically, this Court held that the universal statute that applies broadly should not presume to govern over another specifically designed to cover the issue. *Id.* at 207 (citing *D. Ginsberg & Sons, Inc. v. Popkin*, 285 U.S. 204, 208 (1932)). The Court further reasoned that the desire to avoid a particular result does not justify reading the general statute as a restriction on the specific statute. *Id.* at 208.

In fact, this analysis and application of a specific statute over a more general one is supported by many holdings and throughout many Circuit Courts. When related statutes conflict, the more specific provision will prevail over the more general. *See, e.g.,* C*ircuit City Stores v. Adams*, 532 U.S. 105 (2001); *Universal Am. Mort. Co. v. Bateman* (*In re Bateman*), 331 F.3d 821, 825 (11th Cir. 2003) "A general statutory rule usually does not govern unless there is no more specific rule." *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 524 (1989); *RadLAX Gateway Hotel, L.L.C. v. Amalgamated Bank*, 566 U.S. 639, 648, 132 S. Ct. 2065, 2072 (2012) (holding that the specific provision governs when the conduct at issue falls within the scope of both a specific and general provision).

2. The bankruptcy court adopted the same principle – specifically designed statutes trump the general one –and applied it to the Bankruptcy Code.

Application and preference of a specific statute over a broad one is consistent with the structure of the Bankruptcy Code and has been regularly applied in statutory construction cases related to bankruptcy. *Universal Am. Mortg. Co. v. Bateman (In re Bateman),* 331 F. 3d 821, 825 (11th Cir. 2003) (recognizing that 11 U.S.C. §§1—560 were general provisions, while Chapter 13 provided the specific rights and duties for that chapter). Though general provisions may define the initial scope of application, chapter specific provisions expand or narrow the extent of that application. *S.W. Ga. Farm Credit, ACA v. Breezy Ridge Farms, Inc. (In re Breezy Ridge Farms, Inc.),* 2009 WL 1514671 (Bankr. M.D. Ga. 2009) (holding that despite the language in § 523(a) setting the scope of the discharge provision to individual debtors, the Chapter 12 specific provision, § 1228, incorporated the list apply to all debtors); *Bloate,* 559 U.S. at 207.

When determining what constitutes property of the estate in a Chapter 13 case, the Fourth Circuit recognized that while 11 U.S.C. § 541 provides an initial list of items included in property of the estate, the more specific § 1306(a) applied. *Carroll v. Logan*, 735 F.3d 147 (4th Cir. 2013).

The more specific § 1306(a) expanded the general definition of the "property of the estate" and referenced § 541 in its introductory language. 11 U.S.C. §§ 541, 1306(a); *Carroll*, 735 F.3d at 152. The court held that § 1306 is the more specific statute because its function is to modify the application of the more general statute that is intended to apply to multiple chapters of bankruptcy. *Carroll*, 735 F.3d at 152.

Here, the competing discharge provisions are § 523(a) and § 1192. Using the settled precedent, § 1192 is the more specific provision governing Debtor's discharge in this case. Throughout the Bankruptcy Code, Section 523(a) acts as a general exception to discharge and is implemented or used to provide a shorthand reference to a list of debts. *See, e.g.,* 11 U.S.C. §§ 727(b); 1141 (d)(2), (d)(6); 1192(2); 1228(a)-(b), 1328(b). Section 523(a) lists nineteen subparagraphs with types of debts that may be excluded from discharge and states, "[a] discharge under section 727, 1141, 1192, 1228(b), or 1328(b) of this title does not discharge an individual from [these] debt[s]" 11 U.S.C. § 523(a). Whether an individual debtor chooses to file under Chapter 7, 11, 12, or 13, they typically remain liable for all § 523(a) debts.[4] Conversely, the only circumstances in which § 1192 applies are in Chapter 11, Subchapter V cases where the debtor confirms a nonconsensual plan and successfully completes all payments within the specified period.

Although § 523(a) includes a comprehensive list of debts, and is even titled "Exceptions to Discharge," it broadly overlaps with other provisions, and is not the most specific statute here. In contrast, § 1192 is narrowly tailored for specific application when the debtor confirms a nonconsensual plan under Chapter 11, Subchapter V, and completes their plan payments. Therefore, § 1192 is the specific statute governing issues of discharge and dischargeability. The

[4] Debtors who receive a discharge pursuant to 11 U.S.C. § 1328(a) my discharge certain debts not dischargeable through other chapters. See 11 U.S.C. § 1328(a)(2).

Court should give deference to the language of § 1192, not § 523(a), in determining whether debts of the kind specified in § 523(a) are discharged for corporations under § 1192.

A. The Language in § 1192 Excepts Debts of The Kind Specified in Section 523(a) From All Debtors Receiving a Discharge Under §1192.

The specific language in § 1192 makes it clear that individuals and corporations are treated the same and neither may discharge § 523(a) debts. Section 1192 excepts any debt "of the kind specified in § 523(a) of this title" from the discharge of a debtor who confirms a nonconsensual plan under Subchapter V of the Bankruptcy Code. The ordinary and specialized meanings of "debts", "debtors" and "of the kind", along with the coinciding contextual limitations, support the interpretation that corporate debtors may discharge § 523(a) debts pursuant to § 1192.

1. *The ordinary meaning of "debt" and "debtor" make it clear that corporations are subject to the statute's terms, including its exceptions to discharge.*

Congress uses specific words and phrases in § 1192 to identify the statute's scope and function. Statutory interpretation begins with the language of the statute and words are given their plain and ordinary meaning. *Bailey v. United States*, 516 U.S. 137, 144-145 (1995). *Smith v. United States*, 508 U.S. 223, 229 (1993) (determining the ordinary meaning of the word in light of its context.); *Muscarello v. United States*, 524 U.S. 125, 128-29 (1998) (considering that the Courts must presume that "a legislature says in a statute what it means and means in a statute what it says"); *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (quoted in *State ex rel. Biafore v. Tomblin*, 782 S.E. 2d 223 (W. Va. 2016); *Schwegmann Brothers v. Calvert Distillers Corp.*, 341 U.S. 384, 396 (1951) (holding that the Court does not "inquire what the legislature meant; we ask only what the statute means.") (Jackson, J., concurring) (quoting Holmes, J.). When the language of the statute is clear, a court should not rely on other sources to ascertain its meaning.

Ron Pair Enters., 489 U.S. at 240–41; *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842 (1984)).

While a statutory definition may provide meaning to some terms, the court may decide the meaning of others by "seek[ing] to afford the law's terms their ordinary meaning at the time Congress adopted them." *Niz-Chavez v. Garland,* 141 S. Ct 1474 (2021) (citing *Wis. Cent. Ltd. v. United States,* 138 S. Ct. 2067, 2074, (2018)). Courts presume that "identical words used in different parts of the same act are intended to have the same meaning," *Atlantic Cleaners & Dyers, Inc.* v. *United States*, 286 U.S. 427, 433, (1932)).

The term "debt" and "debtor" have ordinary meanings related to bankruptcy, and § 1192 has the authority to limit the scope of those terms in its application. The term "debtor" is defined in the Bankruptcy Code and is expressly defined as "a person . . . concerning which a case . . . has been commenced." 11 U.S.C §101(13). "Person" is also defined within the code and includes individuals and corporations. *Id.* §101(41). It is not unusual for Congress to treat individual and corporate debtors differently, however, when they choose to do so, they do it explicitly. *Id.* §1192.

Rather than differentiate between individual and corporate debtors, § 1192 uses the term "debtor" generally. Thus, the use of "debtor" in § 1192 refers to both individuals and corporations and both debtors are governed under § 1192. If Congress intended that individual and corporate debtors have different exceptions to discharge, they could have explicitly stated so as they did in § 1141 for traditional Chapter 11 debtors, and Subchapter V for debtors who confirm and complete a consensual plan.

2. *The ordinary meaning of "of the kind" references to § 523(a) only to provides a list of debts and does not alter the debtors to which the § 1192(a) exception applies.*

While "of the kind" is not expressly defined in the Bankruptcy Code, a natural reading of the statutory language "of the kind specified in section 523(a) of this title" suggests that it adopts

"the ordinary meaning of the word 'kind' as 'category' or 'sort.'" *Cantwell-Cleary Co. v. Cleary Packaging, LLC (In re Cleary Packaging, LLC)*, 36 F.4th 509, 515 (4th Cir. 2022) (citing American Heritage Dictionary of the English Language (online ed.)). In addition to this ordinary meaning, "of a kind" and "of the kind" have been used to apply § 523(a) debts to corporations before, and thus have a specialized meaning. 11 U.S.C. § 1141(d)(6) (excepting certain § 523(a) debts from a corporation's discharge when the debtor files under traditional Chapter 11 and when a corporate Subchapter V debtor completes a plan that was filed consensually); *See, e.g., Breezy Ridge Farms*, 2009 WL 1514671 at *1-2; (finding that § 523(a) was incorporated as a shorthand list to provide the scope of discharge exceptions for corporations through the "of a kind" language) *see also, New Venture P'ship v. JRB Consol., Inc. (In re JRB Consol., Inc.)*, 188 B.R. 373 (Bankr. W.D. Tex. 1995) (discussing that debts "of the kind" do not necessarily transmit their characteristic as the debt of an individual.) *Bloate*, 559 U.S. at 204 (finding the presence of a limiting term and the legislature's departure from previous language significant in interpreting the meaning of the statute).

While § 1192 references § 523(a), it does so to avoid relisting lengthy exceptions to discharge. Section 1192 continues to be the specific provision that governs here. Should Congress have intended for the reference to encompass the types of the debtors as well as the types of debts under § 523(a), there would be no reason to include "of the kind." Its omission suggests that the discharge excludes any debt "specified in 523(a) under this title." Moreover, the Bankruptcy Code does not always treat individuals and corporations the same. In cases where they are treated differently, Congress uses explicit language. *See, e.g.,* 11 U.S.C. § 1141(d)(2), (5), (6). In enacting Subchapter V, Congress chose to create a new provision to provide a regime for when specific

circumstances arise. Congress did not choose to subject individual and corporate debtors to the same discharge exceptions.

Congress introduced the list of exceptions with the limiting phrase "except debts" to make it clear that the purpose of the subsections is to identify types of debts already identified in the preamble to be excepted from the debtor. The ordinary use of "[o]f the kind" references a type or category and its interaction with debt as the qualifier. This indicates Congress did not intend the phrase to incorporate § 523 as a whole, but merely to be a shorthand reference to apply the list of debts to all types of debtors in this specific provision. Congress stated, "except debts—" and this should not be construed in a way that allows § 523 to seize the authority of § 1192.

In enacting Subchapter V, Congress took multiple traditional Chapter 11 provisions that differentiated between individual and corporate debtors and replaced them with provisions that treat all types of debtors the same. Section 1115 expanded what property of the estate includes beyond the list in § 541 when the debtor is an individual. That provision is inapplicable in Subchapter V and is replaced by § 1186 which only expands property of the estate when the debtor utilizes the cramdown provision. 11 U.S.C. § 1186.

Unlike corporate debtors, individual debtors in a traditional chapter 11 case do not receive a discharge upon confirmation of a plan—they are required to complete all payments under the plan. 11 U.S.C. § 1141(5). This distinction between debtors was eliminated in Subchapter V and debtors are treated the same whether they confirm a consensual plan and receive a discharge via §§ 1141(d) or 1192.

Section 1141(d)(1)(A) is the general provision granting discharge in a Chapter 11 case. It first specifies which debtors may receive such a discharge then lays out exceptions that might apply, depending on the type of debtor. *Id.*at § 1141(d)(1)(A). Individual debtors are not

discharged of any debt excepted from discharge under § 523. Section 1141(d)(6) has used this language to apply the § 523(2)(A) and (B) exceptions to discharge corporate debtors despite the reference to individual debtors in the preliminary language.

If Congress considered the preliminary language of § 523(a) to render the list of debts inherently individual simply because they are excepted from an individual's discharge, then the entire provision of § 1141(d)(2) would be superfluous.

The respondents argue that although § 1192 governs all types of debtors and does not list their exceptions separately, the types of debts in § 523 are inherently individual debts due to the preliminary language excluding the list from discharge for individual debtors. This argument that the types of debts listed in § 523 are inherently individual debts due to the preliminary texts is not consistent with § 1141 (a)(6) which allows for the phrase "debts of a kind" to provide certain exceptions to discharge.

3. The specialized use of "of the kind" further clarifies that, pursuant to § 1192, corporate debtors do not receive a discharge *from § 523(a) debts.*

In traditional Chapter 11 cases, Congress narrowed the scope of discharge for individuals and corporations separately under § 1141(5) and (6). Rather than use language treating individual and corporate debtors differently, § 1192 first identifies that the provision applies to "debtors" who confirm a nonconsensual plan, then instructs the court to grant "the *debtor* a discharge . . ." 11 U.S.C. § 1192 (emphasis added).

The use of this language is consistent with how Congress used this phase in a traditional Chapter 11 bankruptcy to apply § 523 (a)(2)(A) and (B) to corporate debtors in § 1141 (d)(6). While that provision separated the application by type of debtor, the present statute identifies its application to all Subchapter V debtors who confirm a non-consensual plan. The scope of this

discharge is only narrowed by the type of debt—there is no need for § 1192 to mirror § 1141 with debtor specific exceptions to discharge because doing so would be superfluous.

Congress constructed the Subchapter V discharge provision with the understanding that courts would interpret its language considering the Bankruptcy Code's full statutory context and settled judicial interpretations. As discussed earlier, courts have already settled that debts "of a kind specified in Section 523" are excepted from discharge for all debtors under § 1228. *Breezy Ridge Farms,* 2009 WL 1514671 at *1-2.

The lower opposing courts point out that the exceptions to a corporate debtor's discharge in § 1141(d)(6) took nearly eight years to become part of the Bankruptcy Code. *Cantell-Cleary Co. v. Cleary Packaging LLC (In re Cleary Packaging LLC),* 630 B.R. 466, 475 n.17 (Bankr. D. Md. 2021) (citing Roger S. Goldman et al., *Discharging False claims Liability in Bankruptcy, Section 1141(d)(6)(A) of the Bankruptcy Code: An Incentive to Settle FCA Cases*?, ABA J. (2010)). Thus, it says "the suggestion that Congress incorporated nineteen new exceptions to discharge for small corporations in a bill that was introduced and [signed] in April 2019 . . . seems not only improbable but also contradicts years of bankruptcy law and policy." *In re Cleary Packaging LLC,* 630 B.R. at 475.

The enactment of an entirely new subsection of Chapter 11 containing fifteen new provisions and modifying many existing provisions inevitably results in major changes to the Bankruptcy Code. It is not for a court to decide when and how Congress legislates, nor should legislative history be used as a method of statutory interpretation to justify judicial redrafting inconsistent with the plain language and statutory context of the provision. *Associates Com. Corp. v. Rash,* 520 U.S. 953 (1997).

Just as Chapter 12 was enacted to provide an equitable system for family farmers, this system was similarly enacted to provide an equitable system for small business debtors to reorganize. To balance competing interests, Subchapter V provides debtors with control over the content of their plan, and rewards confirmation of consensual plans with a discharge under § 1141(d).

If the respondent's interpretation is to be followed, the phrase "of the kind" would be superfluous. The argument that all debts listed in § 523(a) are characteristically individual debtor debts by order of the preliminary language then Congress would not have used the phrase "of the kind." Eliminating this phrase would simply except from discharge debts "specified in § 523(a),"

"Courts should avoid constructing a statute in a way that renders the language superfluous, void, or insignificant." *Bloate* at 209; *Carroll*, 735 F.3d at 152 (rejecting the argument that § 541 (a)(5) is the specific provision in a Chapter 13 case and noting that such an application would render § 1306(a) superfluous while the opposite interpretation would give effect to both statutes).

B. Permitting Corporations Who Confirm a Non-Consensual Plan to Discharge Debts of The Kind Specified In § 523(a) Would Violate Public Policy And Contradict The Fundamental Purposes of The Bankruptcy Code.

The interpretation that corporations may discharge debts of the kind found in § 523(a) through an § 1192 discharge violates public policy and the fundamental purposes of bankruptcy. Such an interpretation would provide corporations with a system to discharge all liabilities while avoiding the absolute priority rule and retaining their equity. Providing exceptions that act as incentives for corporate debtors and creditors to avoid confirming a consensual plan for a shot at a more favorable discharge available to them is untenable. The lower court's interpretation would discharge debts that are otherwise not dischargeable under other sections of the bankruptcy code, including debts related to false claims that are not dischargeable under 11 U.S.C. § 1141 (d)(6). In

the enactment of Subchapter V, Congress included a specific provision identifying who constitutes a debtor in the applicable chapter. *See* § 1182. This task inevitably involved the balancing of debtor and creditor protections. By electing to file under subchapter V, debtors avoid competing plans, disclosure statements, and the creditors committee. Additionally, debtors may avoid the absolute priority rule and the competing interests of creditors by confirming a nonconsensual plan through the "cramdown" provision of § 1191(b).

To prevent inequity, Congress sought to protect creditors by imposing a debt limit, withholding discharge to debtors who fail to complete their plan payments, and limiting the scope of discharge when debtors utilize the cramdown provision and subject creditors to nonconsensual plans.

For the reasons stated above, this Court should reverse the Thirteenth Circuit's decision and find that discharge exceptions outlined in 11 U.S.C. § 523(a) apply to corporate debtors under Subchapter V. First, these exceptions apply because 11 U.S.C. § 1192 —the statute specifically created for Subchapter V debtors—governs discharge of both individual and corporate debtors. Second, the plain language of § 1192 excepts debts "of the kind"—**not types of debtors**—from discharge. Finally, the legislative purpose supports application of discharge exceptions to corporate debtors in accordance with § 1192 and § 523(a).

CONCLUSION

For the foregoing reasons, the Petitioner asks the Court to REVERSE the decision of the United States Court of Appeals for the Thirteenth Circuit. First, the lower court erred in concluding that the bankruptcy court had constitutional and statutory authority to confirm the plan that included the third-party releases. Second, it misinterpreted the statutory provisions and misapplied

the cannons of statutory construction when analyzing the non-dischargeability contemplated in Subchapter V.

APPENDIX

11 U.S.C. § 101 – Definitions

In this title the following definitions shall apply:

(5) The term "claim" means—

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

(12) The term "debt" means liability on a claim.

(13) The term "debtor" means person or municipality concerning which a case under this title has been commenced.

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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 [11 USCS §§ 101 et seq.].

(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 [11 USCS §§ 101 et seq.] shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28 [28 USCS §§ 1 et seq.]. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 [28 USCS §§ 151 et seq.] 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 [11 USCS §§ 101 et seq.] 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 [11 USCS §§ 1101 et seq.]—

(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. § 362 – Automatic Stay

(b) The filing of a petition under section 301, 302, or 303 of this title [11 USCS § 301, 302, or 303], or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970 [15 USCS § 78eee(a)(3)], does not operate as a stay—

(4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993, to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power;

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

(a) A discharge under section 727, 1141, 1192, 1228(a), 1228(b), or 1328(b) of this title [11 USCS § 727, 1141, 1192, 1228(a), 1228(b), or 1328(b)] 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 [11 USCS § 507(a)(2) or 507(a)(8)], 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 $800 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 $1,100 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 [15 USCS § 1602]; 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 [11 USCS § 521(a)(1)], with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—

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

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

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

(5) for a domestic support obligation;

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

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

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

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

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

(A)

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

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

(B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986 [26 USCS § 221(d)(1)], 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 [11 USCS § 727(a)(2), (3), (4), (5), (6), or (7)], 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; or

(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 [28 USCS § 1915] (or a similar non-Federal law), or the debtor's status as a prisoner, as defined in section 1915(h) of title 28 [28 USCS § 1915(h)] (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 [26 USCS § 401, 403, 408, 408A, 414, 457, or 501(c)], under—

(A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 [29 USCS § 1108(b)(1)], or subject to section 72(p) of the Internal Revenue Code of 1986 [26 USCS § 72(p)]; or

(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5 [5 USCS §§ 8431 et seq.], that satisfies the requirements of section 8433(g) of such title [5 USCS § 8433(g)];

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d) [26 USCS § 414(d)], or a contract or account under section 403(b) [26 USCS § 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 [15 USCS § 78c(a)(47)]), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or

(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

(B) results, before, on, or after the date on which the petition was filed, from—

(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

(ii) any settlement agreement entered into by the debtor; or

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

For purposes of this subsection, the term "return" means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986 [26 USCS § 6020(a)], or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986 [26 USCS § 6020(b)], or a similar State or local law.

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11 U.S.C. § 524 – Effect of discharge

(a) A discharge in a case under this title [11 USCS §§ 101 et seq.]—

(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 [11 USCS § 727, 944, 1141, 1192, 1228, or 1328], 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 [11 USCS § 541(a)(2)] 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) [11 USCS § 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 [11 USCS §§ 523(c) and 523(d)], 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 [11 USCS §§ 701 et seq.] 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 [11 USCS § 727] 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 [11 USCS § 727, 1141, 1192, 1228, or 1328];

(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 [11 USCS § 727, 1141, 1192, 1228, or 1328], 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 [11 USCS §§ 1101 et seq.] 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 [11 USCS §§ 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) [11 USCS § 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 [11 USCS § 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 [enacted Oct. 22, 1994].

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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 [11 USCS § 1122], 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 [11 USCS § 507(a)(2), 507(a)(3), or 507(a)(8)], 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 [11 USCS § 365], 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 [11 USCS §§ 101 et seq.].

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11 U.S.C. § 1129 – Confirmation of plan

(b) (1) Notwithstanding section 510(a) of this title [11 USCS § 510(a)], if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

(2) For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides—

(i) (I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and

(II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(ii) for the sale, subject to section 363(k) of this title [11 USCS § 363(k)], of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or

(iii) for the realization by such holders of the indubitable equivalent of such claims.

(B) With respect to a class of unsecured claims—

(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115 [11 USCS § 1115], subject to the requirements of subsection (a)(14) of this section.

(C) With respect to a class of interests—

(i) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

(ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

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

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 [11 USCS § 502(g), 502(h), or 502(i)], whether or not—

(i) a proof of the claim based on such debt is filed or deemed filed under section 501 of this title [11 USCS § 501];

(ii) such claim is allowed under section 502 of this title [11 USCS § 502]; 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 [11 USCS § 523].

(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 [11 USCS § 727(a)] if the case were a case under chapter 7 of this title [11 USCS §§ 701 et seq.].

(4) The court may approve a written waiver of discharge executed by the debtor after the order for relief under this chapter [11 USCS §§ 1101 et seq.].

(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 [11 USCS §§ 701 et seq.] on such date;

(ii) modification of the plan under section 1127 [11 USCS § 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) [11 USCS § 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) [11 USCS § 522(q)(1)(A)] or liable for a debt of the kind described in section 522(q)(1)(B) [11 USCS § 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) [11 USCS § 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 [31 USCS §§ 3721 et seq.] 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. § 1181– Inapplicability of other sections

(a) In general. Sections 105(d), 1101(1), 1104, 1105, 1106, 1107, 1108, 1115, 1116, 1121, 1123(a)(8), 1123(c), 1127, 1129(a)(15), 1129(b), 1129(c), 1129(e), and 1141(d)(5) of this title [11 USCS §§ 105(d), 1101(1), 1104, 1105, 1106, 1107, 1108, 1115, 1116, 1121, 1123(a)(8), 1123(c), 1127, 1129(a)(15), 1129(b), 1129(c), 1129(e), and 1141(d)(5)] do not apply in a case under this subchapter [11 USCS §§ 1181 et seq.].

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11 U.S.C. § 1191 – Confirmation of plan

(b) Exception. Notwithstanding section 510(a) of this title [11 USCS § 510(a)], if all of the applicable requirements of section 1129(a) of this title [11 USCS § 1129(a)], other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

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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 [11 USCS § 1191(b)], 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 [11 USCS §§ 1101 et seq.], the court shall grant the debtor a discharge of all debts provided in section 1141(d)(1)(A) of this title [11 USCS § 1141(d)(1)(A)], and all other debts allowed under section 503 of this title [11 USCS § 503] 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 [11 USCS § 523(a)].

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11 U.S.C. § 1228 – Discharge

(a) Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, other than payments to holders of allowed claims provided for under section 1222(b)(5) or 1222(b)(9) of this title [11 USCS § 1222(b)(5) or 1222(b)(9)], 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 for by the plan, allowed under section 503 of this title [11 USCS § 503], or disallowed under section 502 of this title [11 USCS § 502], except any debt—

(1) provided for under section 1222(b)(5) or 1222(b)(9) of this title [11 USCS § 1222(b)(5) or 1222(b)(9)]; or

(2) of a kind specified in section 523(a) of this title [11 USCS § 523(a)], except as provided in section 1232(c) [11 USCS § 1232(c)].

(b) Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

(1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

(2) 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 of this title [11 USCS §§ 701 et seq.] on such date; and

(3) modification of the plan under section 1229 of this title [11 USCS § 1229] is not practicable.

(c) A discharge granted under subsection (b) of this section discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of this title [11 USCS § 502], except any debt—

(1) provided for under section 1222(b)(5) or 1222(b)(9) of this title [11 USCS § 1222(b)(5) or 1222(b)(9)]; or

(2) of a kind specified in section 523(a) of this title [11 USCS § 523(a)], except as provided in section 1232(c) [11 USCS § 1232(c)].

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11 U.S.C. § 1328 – Discharge

(a) Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter [11 USCS §§ 1301 et seq.], the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title [11 USCS § 502], except any debt—

(1) provided for under section 1322(b)(5) [11 USCS § 1322(b)(5)];

(2) of the kind specified in section 507(a)(8)(C) [11 USCS § 507(a)(8)(C)] or in paragraph (1)(B), (1)(C), (2), (3), (4), (5), (8), or (9) of section 523(a) [11 USCS § 523(a)];

(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; or

(4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.

(b) Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

(1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

(2) 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 of this title [11 USCS §§ 701 et seq.] on such date; and

(3) modification of the plan under section 1329 of this title [11 USCS § 1329] is not practicable.