No. 22-0909

IN THE

Supreme Court of the United States

OCTOBER TERM, 2022

IN RE PENNY LANE INDUSTRIES, INC., DEBTOR,

ELEANOR RIGBY, PETITIONER

V.

PENNY LANE INDUSTRIES, INC., RESPONDENT.

ON WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

BRIEF FOR PETITIONER

TEAM NUMBER 35
COUNSEL FOR PETITIONER

JANUARY 19, 2023

QUESTIONS PRESENTED

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

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

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The Thirteenth Circuit Court of Appeals' decision is available at No. 21-0803 and reprinted at Record 2. Both the bankruptcy court and the district court decided in favor of Penny Lane Industries, Inc., Debtor. On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed in favor of Penny Lane Industries, Inc., Debtor.

STATEMENT OF JURISDICTION

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

RELEVANT STATUTORY PROVISIONS

This action requires statutory construction of certain provisions of Title 11 of the United States Code.

28 U.S.C. § 157(A):

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

28 U.S.C § 157(C)(1):

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

28 U.S.C. § 157(C)(2)(L):

> (2) Core proceedings include, but are not limited to:
>
> > (L) confirmations of plans;

11 U.S.C § 524(e):

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

11 U.S.C. § 541:

> (a)The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
>
>> (1)Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

11 U.S.C. § 105(a):

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title...

11 U.S.C. § 1123(b)(6):

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

11 U.S.C. § 1123(a)(5):

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

11 U.S.C. § 524(g)(4)(A)(ii):

> (G)(2)(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;

(G)(4)(A)(ii)Notwithstanding the provisions of section 524(e), such an injunction may bar any action directed against a third party who is identifiable from the terms of such injunction (by name or as part of an identifiable group) and is alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor to the extent such alleged liability of such third party arises by reason of--

(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;

U.S. Const. amend. XIV, § 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

18 U.S.C. 3231:

The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

28 U.S.C. § 157(c)(2):

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

The subchapter V rule for discharge provides, in pertinent part, that:

If the plan of the debtor is confirmed under section 1191(b) of this title . . . the court shall grant the debtor a discharge of all debts provided in section 1141(d)(1)(A) of this title, and all other debts allowed under section 503 of this title and provided for in the plan, *except any debt . . . .* ***(2)*** *of the kind specified in section 523(a) of this title*.

> 11 U.S.C. § 1192(2).

The list of non-dischargeable debts provides, in pertinent part, that:

> (a) A discharge under section 727, 1141, 1192, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—
>
> > (6) for willful and malicious injury by the debtor to another entity or to the property of another entity.
> >
> > 11 U.S.C. § 523(a)(6).

STATEMENT OF THE CASE

This appeal arises out of the Debtor's attempt to circumvent fundamental bankruptcy principles in order to capitalize on its Plan of Reorganization at the expense of several creditors, including the Petitioner. The Petitioner's appeal seeks to restore consistency and equity in this area of bankruptcy law by demonstrating that the prohibition of non-consensual third-party releases and denial of corporate debtor exemption from the non-dischargeable debt list are supported by the Code's language and bankruptcy policy.

I. Factual History

Penny Lane Industries, Inc. (the "Debtor") is a manufacturer of plastic, glass, and metal food containers based in the City of Blackbird and is a wholly owned subsidiary of Strawberry Fields Foods, Inc. ("Strawberry Fields"). R. at 4–5. In the course of manufacturing, the Debtor knowingly disposed of environmental pollutants on its property, thereby contaminating the area's groundwater supply. *Id.* at 3. Petitioner Eleanor Rigby ("Ms. Rigby") and her daughter were some of the tens of thousands of local residents that were exposed to the contaminated water, creating the potential for sickness, birth defects, and even death. *Id.* at 5. Unfortunately, Ms. Rigby's daughter died as a result of the pollutants dumped by the Debtor, and Ms. Rigby subsequently filed suit. *Id.*

Ms. Rigby alleged that the Debtor disposed pollutants on its property and that the Debtor's then Chief Executive Officer was aware of this act and its potential danger. *Id.* at 5. Further, she alleged that Strawberry Fields is also liable because it knew or should have known of the Debtor's misconduct. *Id.* at 6. Hundreds of similar lawsuits were later filed against the Debtor by other local residents, all of which the Debtor disputed. *Id.* In response to the accumulating lawsuits, the Debtor filed a subchapter V chapter 11 case on January 11, 2021. *Id.* Ms. Rigby filed an unsecured claim against the Debtor for $1 million, falling within the nearly 10,000 claims asserting cumulative damages of almost $400 million were filed. *Id.*

Ms. Rigby commenced an adversary proceeding against the Debtor seeking to have her $1 million claim deemed non-dischargeable under sections 523(a) and 1192(2). *Id.* at 7. She argued that under section 523(a)(6) any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity" is excepted from discharge. *Id.* The Debtor moved to dismiss Ms. Rigby's complaint, asserting that the non-dischargeability provisions of section 523(a) are not applicable to business entities. *Id.* The bankruptcy court dismissed the adversary proceeding and held that the exceptions to discharge in section 523(a) do not apply in a case where the debtor is a corporation, even in cases filed under subchapter V of chapter 11. *Id.*

Once this bankruptcy case was commenced, the onset or continuation of all non-bankruptcy litigation was automatically stayed pursuant to section 362(a). *Id.* Because that did not stay pending litigation against Strawberry Fields and other non-debtors, the Debtor sought and obtained a temporary injunction halting all actions against the Debtor's "current and former owners, officers, directors, employees and associated entities" related to the conduct of the Debtor. *Id.* at 7–8. The bankruptcy court conclude that the injunction was implemented to facilitate negotiation of a global settlement. *Id.* at 8. The eventual resolution was memorialized in the Plan, which most notably released Strawberry Fields from all claims, including both estate claims and third-party direct claims in exchange for funding the settlement. *Id.* The Plan release was non-consensual, binding parties regardless of whether they participated in the bankruptcy case and regardless of whether they voted against the Plan. *Id.* Ms. Rigby objected to the Plan and argued that the non-consensual are not permissible under applicable bankruptcy and non-bankruptcy law. *Id.* The bankruptcy court reluctantly confirmed the Plan despite admitting that non-consensual releases of third-party direct claims, like the one granted to Strawberry Fields, are only permitted in extraordinary circumstances. *Id.* at 10.

II. Procedural History

The Bankruptcy Court for the District of Moot faced two issues in this case and ruled in favor of the Debtor on both. *Id.* at 4. First, the court dismissed Ms. Rigby's non-dischargeability action, holding that the provisions of section 523 do not apply in cases where the debtor is corporation. *Id.* The court also overruled Ms. Rigby's objection to the Plan, concluding that it has the authority to approve the non-consensual third-party releases and the release in this case was appropriate. *Id.* Ms. Rigby timely appealed both bankruptcy court rulings, and the disputes were certified for direct appeal to the United States Court of Appeals for the Thirteenth Circuit under 28 U.S.C. § 158(d). *Id.* at 11. The Thirteenth Circuit affirmed on both issues. *Id.*

STANDARD OF REVIEW

The parties do not dispute the facts as set forth. The questions presented are based on statutory interpretation and policy implications of the Bankruptcy Code[1] and are therefore purely issues of law. Accordingly, the standard of review for this appeal is *de novo*. *Texas v. Soileau (In re Soileau)*, 488 F.3d 302, 305 (5th Cir. 2007). Under a *de novo* standard of review, the reviewing court decides issues as if the court were the original trial court in the matter, without deference to the prior decisions. *Razavi v. Comm'r of Internal Revenue*, 74 F.3d 125, 127 (6th Cir. 1996) (quotation omitted).

SUMMARY OF THE ARGUMENT

Bankruptcy courts lack statutory and constitutional authority to order non-consensual third-party releases of direct claims against non-debtors as part of a chapter 11 plan of

[1] The Bankruptcy Code is set forth in 11 U.S.C. §§ 101 *et seq*. Specific sections of the Bankruptcy Code are identified herein as "section __."

reorganization. This limit on bankruptcy courts' power is pervasive in the Bankruptcy Code and the Constitution. First, bankruptcy courts lack the jurisdiction required to order releases of direct claims between two non-debtors because these claims do not stem from the bankruptcy proceeding and would not be resolved in the claims allowance process. Second, the Bankruptcy Code does not grant bankruptcy courts statutory authority to order non-consensual third-party releases of direct claims against non-debtors. Lastly, non-consensual third-party releases of direct claims against non-debtors are unconstitutional because they violate the claimant's due process right to a full adjudication on the merits, and the right to adjudication in an Article III court. This court should reverse the decision of the Thirteenth Circuit and rule that bankruptcy courts have no authority to order non-consensual third-party releases of direct claims against non-debtors.

This Court should also reverse the Thirteenth Circuit's holding that the list of non-dischargeable debts do not apply to corporate subchapter V debtors. The plain text of the subchapter V discharge rule does not limit the scope of the list of non-dischargeable debts to only individual debtors, but rather, all debtors. The relationship between the subchapter V discharge rule and the list of non-dischargeable debts is ambiguous as the introductory clause to the list specifically names an "individual debtor." However, the Bankruptcy Code and applicable case law provides that the subchapter V discharge rule applies the list of non-dischargeable debts to all debtors. Therefore, the subchapter V discharge rule must be read to encompass both individual and corporate debtors to the list of non-dischargeable exceptions because the discharge rule limits the scope of the list. Further, synonymous language to the subchapter V discharge rule is read within other sections of the Bankruptcy Code to apply to both individual and corporate debtors. Finally, subjecting corporate debtors in the subchapter V context to the list of non-dischargeable exceptions furthers the Congressional intent of balancing the interests between debtors in creditors.

ARGUMENT

I. BANKRUPTCY COURTS LACK STATUTORY AND CONSTITUTIONAL AUTHROITY TO APPROVE NON-CONSENUSUAL THIRD-PARTY RELEASES OF DIRECT CLAIMS AGAINST NON-DEBTORS AS PART OF A CHAPTER 11 PLAN OF REORGANIZATION.

The Bankruptcy Code and the Constitution precluded bankruptcy courts from ordering non-consensual third-party releases of direct claims against non-debtors. This limit on a bankruptcy court's power is rooted in the protections guaranteed by the Due Process Clause and Article III of the constitution. Understanding where bankruptcy courts get their authority and how this authority differs from that of Article III courts is necessary to answering the question before the Court today. Bankruptcy courts are creatures of statute, and this puts limitations on their jurisdiction to hear claims and their constitutional authority to order relief. A judgment on a direct claim between two non-debtors falls outside of bankruptcy courts' jurisdiction as well as the authority granted to them by the Bankruptcy Code. Further, the non-consensual third-party release of a direct claim against a non-debtor by a bankruptcy court violates the third-party claimant's rights under the Due Process Clause and Article III.

To prevent bankruptcy courts from encroaching on powers reserved for Article III courts, bankruptcy courts may only hear claims that are at least related to a bankruptcy case. For the same reason, bankruptcy courts may only enter final judgments on claims that arise under the Bankruptcy Code or arise in a case that arises under the Code. Bankruptcy courts lack the power to order the release of direct claims between two non-debtors because these claims do not arise under the Bankruptcy Code, or in a case that arises under the Code. Bankruptcy courts also lack statutory authority to order releases of direct claims between two non-debtors because section

524(e) of the Bankruptcy Code precludes the discharge of non-debtors' liability. Lastly, bankruptcy courts may not order non-consensual third-party releases of direct claims against non-debtors because this violates a third-party claimant's due process right to a full adjudication on the merits, and their right to adjudication in an Article III court. Prohibiting bankruptcy courts from ordering releases of direct claims between two non-debtors aligns with statutory and constitutional grants of authority and prevents the violation of claimant's constitutional rights. This Court should reverse the decision below and hold that bankruptcy courts lack statutory and constitutional authority to order non-consensual third-party releases of direct claims against non-debtors.

A. Bankruptcy courts lack jurisdiction to order releases of direct claims between two non-debtors because these claims do not stem from the bankruptcy proceeding and would not be resolved in the claims allowance process.

District courts, as Article III courts, have original and exclusive jurisdiction over bankruptcy matters. U.S. Const. art. III. Bankruptcy courts are creatures of statute, created by Congress through its Article I power. As creatures of statute, bankruptcy courts must possess both subject matter jurisdiction to hear a claim, and statutory authority to order relief on the claim. *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 679 (2015). Bankruptcy courts cannot order the releases of direct claims between two non-debtors because they lack the requisite subject matter jurisdiction.

The Supreme Court has emphasized that Congress cannot bypass the Constitution's jurisdiction requirements by enacting legislation that allows bankruptcy courts to decide claims "simply because a proceeding may have some bearing on a bankruptcy case." *Stern v. Marshall*, 564 U.S. 462, 499 (2011). Bankruptcy courts possess subject matter jurisdiction over the following three types cases listed under 28 U.S.C. § 157(a): (1) cases that arise under title 11; (2) cases that arise in a title 11 case; and (3) cases that are "related to" a case under title 11. 28 U.S.C

§ 157(a). The type of subject matter jurisdiction a bankruptcy court possesses dictates its constitutional authority to grant relief. *Stern*, 564 U.S. at 473.

Claims that arise (1) under title 11 or (2) arise within a title 11 case are considered "core" claims, meaning that the claim "stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process." *Id.* at 474, 499. Only in core proceedings does a bankruptcy judge have the statutory and constitutional authority to enter final judgments. *Id.* A bankruptcy court also has jurisdiction to hear claims that are "related to" a title 11 case, which are known as "non-core" claims. 28 U.S.C. § 157(c). A claim is non-core, giving a bankruptcy court "related to" jurisdiction, when the proceeding's outcome may have any conceivable effect on the bankruptcy estate. *Stern*, 564 U.S. at 474–75. "Related to" jurisdiction is the bare minimum a bankruptcy court must possess to hear a claim, and it provides the bankruptcy judge with the least amount of authority. *Id.* When hearing a non-core claim, a bankruptcy judge can at most submit its proposed findings of fact and conclusions of law to the district court as a recommendation. 28 U.S.C. § 157(c)(1). Unless the parties' consent, a bankruptcy judge has no authority to enter a final judgment in a non-core proceeding. *See Stern*, 564 U.S. 462.

If a claim is before a bankruptcy court, the court must determine if the claim is core or non-core to determine the scope of authority to issue relief. The Supreme Court in *Stern* explained that courts should make this determination by analyzing the content of the claim, rather than its categorization. *Stern*, 564 U.S. at 489–99. The Court did this by determining if the factual and legal circumstances necessary to resolve the third-party's claim were integral to resolving the claims against the estate. *Patterson v. Mahwah Bergen Retail Grp., Inc.*, 636 B.R. 641, 669 (E.D. Va. 2022). By focusing on the content of a claim and where it stemmed from, courts cannot bypass constitutional limitations by categorizing a variety of claims from a case as "core." *Id.* This analysis demonstrates bankruptcy courts' inability to order non-consensual third-party releases of direct claims against non-debtors. *See Patterson v. Mahwah Bergen Retail Grp., Inc.*, 636 B.R. 641, 668 (E.D. Va. 2022).

A bankruptcy court only has jurisdiction to hear a claim when the outcome could have any conceivable effect on the bankruptcy estate. *Stern*, 564 U.S. at 474–75. Direct claims between two non-debtors have no effect on the bankruptcy estate. R. at 27 (McCartney, J., dissenting). Not only are these claims between two non-debtors, they are "direct claims," meaning one non-debtor harmed another directly. *In re Tronox Inc.*, 855 F.3d 84, 100 (2d Cir. 2017). These claims have no connection to the property of the debtor nor have any impact on the bankruptcy estate. Bankruptcy courts do not have "related to" jurisdiction to hear these claims. R. at 27 (McCartney, J., dissenting).

Even if this Court were to find that direct claims between non-debtors do affect the bankruptcy estate, bankruptcy courts lack authority to issue final judgments on the claims because they are at most non-core claims that confer "related to" jurisdiction. *Patterson*, 636 B.R. at 669–672; *see In re Purdue Pharma, L.P.*, 635 B.R. 26, 82–83 (Bankr. S.D.N.Y. 2001), *certificate of appealability granted,* No. 21-7532 , 2022 WL 121393 (S.D.N.Y. Jan. 7, 2022) ("The release of most third-party claims against a non-debtor touches the outer limit of the bankruptcy court's jurisdiction."). A direct claim between two non-debtors is not a core claim because it does not stem from the bankruptcy itself and is not integral to the restructuring of the debtor-creditor relationship. R. at 27 (McCartney, J., dissenting). Thus, without the consent of the parties, a bankruptcy court has no jurisdiction to issue final judgments on these claims. *Patterson*, 636 B.R. at 669–672.

In the instant case, the claim is a non-core claim which the bankruptcy court had no authority to release. Ms. Rigby's claim before this Court is analogous to the claim at issue in *Stern*. The Court in *Stern* found that the counterclaim for tortious interference with a gift was a non-core claim because it derived from state common law claim independent of federal bankruptcy law and was not necessarily resolvable in the claim allowance process. *Id.* at 487. Ms. Rigby challenges the release of her tort negligence claim against Strawberry Fields for their actions. Like the claim in *Stern*, Ms. Rigby's claim derives from state common law and is not necessarily resolvable by the claims allowance process. For this reason, the bankruptcy court lacked jurisdiction to issue a final judgment approving the release of Ms. Rigby's claim. *See* R. at 27 (McCartney, J., dissenting).

The Thirteenth Circuit held that the bankruptcy court had jurisdiction to approve the release of Ms. Rigby's claim because the release was incorporated into the Plan of Reorganization. R. at 12. The court explained that because the confirmation order itself is a core matter to the bankruptcy proceeding under 28 U.S.C. § 157(b)(2)(L), the bankruptcy court had the requisite jurisdiction to approve the release. *Id.* This argument overstates the authority granted by section 157. *Patterson*, 636 B.R. at 671. As previously stated, bankruptcy courts are required to possess both subject matter jurisdiction to hear a claim as well as statutory authority to adjudicate the claim. While section 157 gives bankruptcy courts statutory authority to adjudicate plan confirmation proceedings as core proceedings, it does not confer the requisite subject matter jurisdiction over the claims which the plan releases. *Id.* If disposing of a claim in a plan of reorganization gave bankruptcy courts the constitutional authority to adjudicate the claim, parties would manufacture this authority by simply including otherwise non-core claims into plans. *In re Purdue Pharma*, L.P., 635 B.R. at 80. Further, bankruptcy courts cannot rely on their inherent *in rem* jurisdiction over debtors' property as an independent source of subject matter jurisdiction because *in rem* jurisdiction does not give courts authority over third-party claims that are not against the estate or property of the estate. *See In re Johns-Manville Corp.*, 600 F.3d 135, 153–54 (2d Cir. 2010).

Direct claims between two non-debtors do not affect the bankruptcy estate and are not integral to the restructuring of the debtor-creditor relationship. At most, direct claims between two non-debtors are "related to" the bankruptcy case, making them non-core claims. Bankruptcy courts may not enter final judgments on non-core claims. Bankruptcy courts therefore may not order non-consensual third-party releases of direct claims against non-debtors.

B. The Bankruptcy Code does not grant bankruptcy courts statutory authority to order non-consensual third-party releases of direct claims against non-debtors.

Bankruptcy Courts must possess both subject matter jurisdiction to hear a claim and statutory authority to enter a final judgment on the claim. *Wellness Int'l Network, Ltd.*, 575 U.S. at 679. Title 11 of the United States Code contains the Bankruptcy Code that governs bankruptcy procedure and proceedings. The Bankruptcy Code outlines bankruptcy courts' authority to order relief. *American Hardwoods, Inc. v. Deutsche Credit Corp.* (*In re American Hardwoods, Inc.*), 885 F.2d 621, 624 (9th Cir. 1989). The Bankruptcy Code does not grant bankruptcy courts statutory authority to order non-consensual third-party releases because section 524(e) expressly precludes this action, and the general breadth of authority granted by sections 105(a), 1123(b)(6), and 1123(a)(5) does not include the power to order the releases.

1. 11 U.S.C § 524(e) does not allow the discharge of a non-debtor's liability.

Section 524 of title 11 covers the effects of discharges as included in a bankruptcy plan of reorganization. Section 524(a) explains that a discharge releases a debtor from personal liability for any debts. *In re Lowenschuss*, 67 F.3d 1394, 1401 (9th Cir. 1995). Section 524(e) limits the breadth of 524(a) by stating that the "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." 11 U.S.C § 524(e). The language of section 524(e) clearly shows Congress' intent for discharges to affect debtors only and not the liabilities of non-debtors. *In re American Hardwoods, Inc.*, 885 F.2d at 626. When Congress unambiguously states its intent, courts are not to substitute this intent for their own. Section 524(e)'s outright preclusion of non-debtor discharges is further evidenced by the section's legislative history and well-established bankruptcy policy. *Id.* at 625–26.

The Ninth Circuit in *In re American Hardwoods* used the history of section 524(e) to confirm that the provision precludes bankruptcy courts from ordering the release of non-debtors' direct liability to other non-debtors. *In re American Hardwoods, Inc.*, 885 F.2d at 626. Section 524(e) was part of the Bankruptcy Reform Act of 1978. Section 524(e) is a reenactment of section 16 of the Bankruptcy Act of 1898. *Id.* Section 16 of the 1898 Act provided that, "[t]he liability of a person who is a co-debtor with, or guarantor or in any manner a surety for, a bankrupt shall not be altered by the discharge of such bankrupt." Bankruptcy Act of 1898, ch. 541, § 16. The 1898 Act was amended by the 1938 Act to state that the discharge of a corporation in bankruptcy "shall not release its officers, the members of its board of directors or trustees or of other similar controlling bodies, or its stockholders or members, as such, from any liability under the laws of a State or of the United States." Bankruptcy Act of 1938, ch. 575, § 4(b). The Code's previous equivalents of section 524(e) illustrate the Code's history of not allowing the release of a debtor's liability to also release the liabilities of the debtor's guarantors. *In re American Hardwoods, Inc.*, 885 F.2d at 625. Under the old acts, owners and guarantors could remain liable despite the release of the corporate entity's liability. *Id.* This is because the bankruptcy court has no power to release the liability of a bankrupt's guarantor as the court can only affect the relationships of a debtor and its creditors. *Id.* (citing *Underhill v. Royal*, 769 F.2d 1426, 1432 (9th Cir. 1985)).

Section 524(e)'s preclusion of non-debtor discharges is further supported by bankruptcy policy. It is well-established that the goal of bankruptcy is to reorganize a debtor by restructuring the relationship between a debtor and its creditors. *Wright v. Union Cent. Life Ins. Co.*, 304 U.S. 502, 513–14 (1938). The debtor devotes its assets to the bankruptcy court in exchange for the court's reorganization efforts. *See Green v. Welsh*, 956 F.2d 30, 33 (2d Cir. 1992); 11 U.S.C. § 541 (defining estate property). The bankruptcy court compiles the assets and uses them to reorganize the debtor's relationships with its creditors. *Id.* A discharge is one way reorganizing this relationship by releasing a creditor's claim for a debt against the debtor in exchange for a payout from the estate. *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440, 447 (2004). This "give and take" deal between debtor and creditor furthers the goal of bankruptcy and has no relation to the direct liability of a non-debtor to another non-debtor. *See In re W. Real Est. Fund, Inc*., 922 F.2d 592, 600 (10th Cir. 1990). Section 524(e)'s preclusion of non-debtor discharges is supported its plain language, legislative history, and bankruptcy policy. Moreover, section 524(e)'s specific preclusion of non-debtor discharges invalidates interpretations of general provisions as granting this power.

2. Interpreting 11 U.S.C. §§ 105(a), 1123(b)(6), and 1123(a)(5) as granting the authority to order releases of direct claims between non-debtors contradicts bankruptcy policy by allowing non-debtors to reap the benefits of bankruptcy without being bound by the Bankruptcy Code.

The Respondent argues that Code sections 105(a), 1123(b)(6), and 1123(a)(5) together grant bankruptcy courts authority to order non-consensual third-party releases of direct claims against non-debtors. The Respondent's arguments overstate and misapply the authority granted by each provision.

Section 105(a) grants bankruptcy courts authority to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The

Respondent argues that this provision grants bankruptcy courts broad equitable authority to approve settlements containing third-party releases when the release is necessary to achieve implementation of the plan. R. 14–15. Because Strawberry Fields' financial contribution to the Plan is contingent upon the release of all third-party claims against them, the Respondent argues that the release is authorized by section 105(a), in conjunction with sections 1123(b)(6) and (a)(5). *Id*. This contention overstates the authority granted by section 105(a). *See In re Purdue Pharma, L.P.*, 635 B.R. 26, 106 (Bankr. S.D.N.Y. 2021). While the Bankruptcy Code does grant bankruptcy courts broad authority, this authority has its limits. *Law v. Siegel*, 571 U.S. 415, 421 (2014). If the Respondent's interpretation of section 105(a) was correct, bankruptcy courts would have authority to order any provision of a plan that the parties make their cooperation contingent upon. *In re Purdue Pharma, L.P.*, 635 B.R. at 106. Section 105(a) does not grant bankruptcy courts the broad power to create substantive rights that are otherwise unavailable under the Code. *In re Dairy Mart Convenience Stores, Inc.*, 351 F.3d 86, 92 (2d Cir. 2003). The authority granted by section 105(a) is limited by sections such as section 1123, which details what may be included in a plan.

Section 1123(b)(6) states that a plan may "include any other appropriate provision not inconsistent with the applicable provisions of this title." 11 U.S.C. § 1123(b)(6). The Respondent argues that section 1123(b)(6) is a clear grant of authority to include "any imaginable provision in a plan," with only the limitation that the provision be appropriate and not inconsistent with other Code provisions. R. at 14. The Respondent argues that the first limitation is not at issue in this case, and that the second limitation is satisfied as section 524(e) does not prohibit releases of non-debtor liability but merely clarifies that a debtor's discharge does not *by itself* discharge the claims of others. *Id.* at 15. This argument falls short for two reasons. First, it contradicts the plain language of section 524(e), as discussed above. *In re American Hardwoods, Inc*., 885 F.2d at 626. Second, applying the Respondent's interpretation of section 524(e) yields results at odds with the goal of bankruptcy and the purpose of a discharge. *In re W. Real Est. Fund, Inc*., 922 F.2d 592, 600 (10th Cir. 1990); *Tennessee Student Assistance Corp.*, 541 U.S. at 447. As previously stated, bankruptcy maintains a "quid pro quo" of debtors devoting their assets to the court in exchange for a plan of reorganization. *See Green*, 956 F.2d at 33. Only the debtor has submitted to the bankruptcy process, making only him entitled to its protections. *In re W. Real Est. Fund, Inc*., 922 F.2d at 600. A discharge of the debtor's liability is one of the protections a debtor gains for his sacrifice. *Id.* Allowing a non-debtor to discharge its liability without making any sacrifice disrupts the quid pro quid and allows the non-debtor to benefit without ever filing bankruptcy or being bound by the Code. *Id.* Article III does not "allow third-party debtors to bootstrap any and all of their disputes into a bankruptcy case to obtain relief." *Patterson,* 636 B.R. at 672. Congress did not intend to extend such benefits to bystanders, therefore section 1123(b)(6) does not confer substantive authority to grant third-party releases. *In re W. Real Est. Fund, Inc*., 922 F.2d at 600; *In re Purdue Pharma, L.P.*, 635 B.R. at 106.

The Respondent's interpretation of section 1123(a)(5) also overstates the authority granted by the provision. Section 1123(a)(5) requires that a plan "provide adequate means for the plan's implementation." 11 U.S.C. § 1123(a)(5). The Respondent argues that because the release of Strawberry Fields' liability is crucial to securing its financial contribution, section 1123(a)(5) requires inclusion of the release. R. at 14. Again, this provision is not a grant of authority so broad that a bankruptcy court may include any otherwise impermissible provision in a plan as long as such is necessary for the plans' implementation. *In re Purdue Pharma, L.P.*, 635 B.R. at 18–19. This circular reasoning argued by the Respondent is not enough to justify invoking section 105(a) as independent authority. *Dairy Mart*, 351 F.3d at 92. The Second Circuit rejected this exact argument in a case where, like the case at hand, a non-debtor's crucial financial contribution was contingent upon the discharge of its liability. *In re Purdue Pharma, L.P.*, 635 B.R. at 18–19. The court explained that the debtor's resources should be used to implement a plan of reorganization, not the resources of a third-party. *Id.* at 108. Section 1123(a)(5) does not grant bankruptcy courts authority to approve discharges of non-debtors' liability.

Congress did not intend for section 1123(a)(5) to grant independent statutory authority to approve non-consensual third-party releases when the court feels it is necessary. *Id.* Congress reserved this power for itself. Vol. E., *Collier on Bankruptcy*, at App. Pt. 9-78 (reprinting 140 Cong. Rec. H10, at 764 (Oct. 4, 1994) (statement of Rep. Brooks)). For example, section 524(g) allows non-consensual third-party releases of direct claims against non-debtors for injuries caused by asbestos. 11 U.S.C. § 524(g). Section 524(g) is an exception to section 524(e)'s general preclusion of third-party releases. *In re Purdue Pharma, L.P.*, 635 B.R. at 93–94. The Congressional Committee explained that section 524(g) was explicitly for the asbestos area because of the magnitude of claims involved. Further, the Committee expressed how this mechanism's success "in the asbestos area may help the Committee judge whether the concept should be extended into other areas." Vol. E., *Collier on Bankruptcy*, at App. Pt. 9-78 (reprinting 140 Cong. Rec. H10, at 764 (Oct. 4, 1994) (statement of Rep. Brooks)). If Congress intended bankruptcy courts to possess the authority to order non-consensual third-party releases in exceptional circumstances, it would have enacted legislation clarifying such as it did in section 524(g). *In re Purdue Pharma, L.P.*, 635 B.R. at 93–94.

Bankruptcy Code sections 105(a), 1123(b)(6), and 1123(a)(5), read separately or together, do not grant bankruptcy courts authority to approve non-consensual third-party releases of direct claims against non-debtors. *In re Purdue Pharma, L.P.*, 635 B.R. at 78. These provisions merely direct bankruptcy courts to order plans which provide adequate means for their implementation when their terms are consistent with other provisions of the Code. *Id.* The provisions offered by the Respondent are general provisions that make no mention of releases; section 524(e), however, specifically governs them. The principle that courts should adhere to specific provisions over general ones "applies with particular force in bankruptcy, where Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 640 (2012). The Respondent's argument is further contradicted by Congress' enactment of section 524(g) as a specific exception to the prohibition in section 524(e). *In re Purdue Pharma, L.P.*, 635 B.R. at 93. The Respondent ignores the plain language of section 524(e) and argues interpretations that contradict Congress' intent and bankruptcy policy by allowing non-debtors to reap the benefits of bankruptcy. *See In re Purdue Pharma, L.P.*, 635 B.R. 26 (2021); *In re W. Real Est. Fund, Inc.*, 922 F.2d 592 (1990). More than these broad, generally applicable provisions is needed before courts may authorize action that is a major departure from foundational bankruptcy policies. *See Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 984 (2017).

C. Non-consensual third-party releases of direct claims against non-debtors are unconstitutional because they violate due process and Article III protections.

The United States Constitution guarantees certain protections based on the type of claim brought. The issue before this Court concerns the releases of third-parties' direct claims against non-debtors. These claims are for the enforcement of private rights held by the third-parties. When a claim enforcing a private right is before a court, the claimant has a constitutional right to adjudication of the claim in an Article III court. *Stern*, 564 U.S. at 471. The release of a third-party's claim also concerns the deprivation of property, because legal claims are considered personal property. *Logan v. Zimmerman Brush Co*., 45 U.S. 422, 428 (1982). When a person's property is at stake, due process is triggered. Due process guarantees the right to a full adjudication on the merits of the claim. *Local No. 93, Int'l Ass'n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501, 529 (1986). Non-consensual releases of third-parties' direct claims against non-debtors violates both of these rights by permanently releasing the claim without any adjudication on the merits, and without adjudication by an Article III judge. *In re Purdue Pharma, L.P.*, 635 B.R. at 80–82.

1. Non-consensual third-party releases of direct claims against non-debtors violate third-parties' due process right to a full adjudication on the merits of their claim.

The Fourteenth Amendment's Due Process Clause guarantees procedural protections against the government's arbitrary denial of a person's life, liberty, or property. U.S. Const. amend. XIV, § 1. One guaranteed protection is the right to a full adjudication on the merits of the claim before being denied life, liberty, or property. *City of New York v. New York, N.H. & H. R. Co*., 344 U.S. 293, 297 (1953). The Supreme Court held that a legal claim is property and the deprivation of a claim triggers due process. *Logan*, 45 U.S. at 428. Parties must be heard before a final judgment involving personal property is entered. *See United States v. Ward Baking Co*., 376 U.S. 327, 334 (1964). Courts have no authority to dictate settlement terms or to force parties to release their claims. *Id.* Courts also have no authority to enforce an agreement between two parties to dispose of claims belonging to a third-party. *Local No. 93, Int'l Ass'n of Firefighters, AFL-CIO C.L.C*, 478 U.S. at 529.

There is no doubt that a third-party's direct claim against a non-debtor is property for due process purposes. *See In re Purdue Pharma, L.P.*, 635 B.R. 26. This means that a third-party has the right to have their "day in court" to be heard before a court issues a final judgment. *In re Aegean Marine Petroleum Network Inc.*, 599 B.R. 717, 725–26 (Bankr. S.D.N.Y. 2019). Forcing the release of these claims not only denies this right by having no adjudication on the merits, it also prevents the claimant from ever exercising this right in the future. *Id.* Ordering third-parties to release their direct-claims against non-debtors is a clear example of a court exceeding its constitutional authority and wrongly depriving the third-party claimants of their property. *In re Purdue Pharma, L.P.*, 635 B.R. at 82.

The Respondent argues that Ms. Rigby's due process rights have not been violated because the bankruptcy court did not adjudicate her claim and issue a final judgment, but merely approved the Plan to channel the claims to the creditor's trust. R. at 13. The Respondent is correct that there was no adjudication on the merits, which is part of the issue. But the Respondent incorrectly insinuates that because no final judgment was issued, there was no due process violation. This assertion is incorrect because the release of a claim has the effect of a final judgment. *In re Aegean Marine Petroleum Network Inc.,* 599 B.R. 717, at 725–26. Res judicata applies to the release of a party's claim, which has the effect of a final judgment in favor of the non-debtor without due process. *See In re Digital Impact, Inc*. 223 B.R. 1, 12–13 n.6 (Bankr. N.D. Okla. 1998); *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 152 (2009) (holding that the release of a claim has the effect of res judicata); *In re Purdue Pharma, L.P.*, 635 B.R. at 82 ("The Supreme Court has twice held that non-consensual third-party releases confirmed by final order are entitled to res judicata claim preclusion barring any subsequent action bringing a released claim . . . ."). Ms. Rigby, and any third-party whose claim is released, has no ability to later bring this claim in another court, which is the key attribute of a final judgment. *In re Aegean Marine Petroleum Network Inc.*, 599 B.R. at 671. This is a violation of third-parties' due process right to a full adjudication on the merits of their claim and is an arbitrary denial of property.

2. Non-consensual third-party releases of direct claims against non-debtors violate a third-party's right to adjudication in an Article III court.

With a grant of power from Article III, Congress created the district courts, which have original jurisdiction over federal matters. *Stern*, 564 U.S. at 482–85; 18 U.S.C. § 3231. Judges of these Article III courts are protected by the constitutional grant of tenure and a salary that cannot be diminished. *Id.* These protections are meant to "ensure the integrity and independence of the Judiciary." *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 668 (2015). To guarantee this safeguard over federal matters, the Constitution prohibits Congress from depriving Article III courts of "any matter which from its nature is the subject of a suit at common law, in equity, or admiralty." *Stern*, 564 U.S. at 485 (quoting *Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. 272, 284 (1856)). This requirement is necessary because judges of non-Article III courts do not enjoy the protections of tenure and a set salary. *Id.* at 482–85. This leaves non-Article III judges exposed to outside pressures. Bankruptcy judges fall into this category. With a grant of power from Article I, Congress created bankruptcy courts to handle strictly bankruptcy cases. *Id.* Since bankruptcy judges are not Article III judges, they do not enjoy the constitutional protections of tenure and a set salary. *Id.* This means their authority must be limited to remain within the bounds of Article III. *Id.* This is why bankruptcy courts may only enter final judgements in core proceedings—those that arise under title 11 or within a title 11 case. *Stern*, 564 U.S. at 473–75, 482–85; 28 U.S.C § 157(b)(1). Bankruptcy courts may not enter final judgments in proceedings that are only "related to" the bankruptcy case as these claims inherently belong in Article III courts. *Stern*, 564 U.S. at 473–75, 482–85. Claimants with claims that are only "related to" a bankruptcy case have a right to have their claim adjudicated before an Article III judge who is protected by tenure and a set salary. *Id.* This is a fundamental right that may only be waived when both parties consent to the bankruptcy court adjudicating and entering final judgment on the claim. 28 U.S.C. § 157(c)(2). Bankruptcy courts cannot force third-parties to release their direct claims against non-debtors without violating the Constitution.

The Supreme Court in *Stern* held that the bankruptcy court exceeded its constitutional limitations by entering a final judgment on a state law counterclaim. *See Stern*, 564 U.S. 462 (2011). The Supreme Court explained that the claim inherently belonged to an Article III court because the case (1) involved a final, binding judgment (2) by a bankruptcy court that only held "related to" jurisdiction, (3) the claim was a common law claim, and (4) the cause of action was for a private right that had nothing to do with a federal regime. *Id*. at 494. These factors comprise "the most prototypical exercise of judicial power" which belongs to Article III courts. *Id.* Under this analysis, bankruptcy courts do not have constitutional authority to order non-consensual third-party releases of direct claims against non-debtors. *See Patterson,* 636 B.R. 641 (E.D. Va. 2022). These releases are (1) effectively final judgments (2) being made by a bankruptcy court that holds at most "related to" jurisdiction, (3) discharging common law claims that are (4) direct claims between two non-debtors for a private right that has nothing to do with a federal regime. *Id.* The nature of these claims falls under the inherent judicial power given to Article III courts by the Constitution. *Id*. at 668–69. Third-party claimants have a constitutional right to adjudication in an Article III court, making a non-consensual release of this right unconstitutional. R. at 27.

The Thirteenth Circuit sided with the majority of circuit courts when holding that non-consensual third-party releases of direct claims against non-debtors are permissible in rare and unique circumstances. R. at 13. The majority approach is the application of a multi-factor test that determines how crucial the release of a claim is to a plan's implementation. Under this test, if the release is crucial, then the bankruptcy court has authority to order the release. *See, e.g.*, *Deutsche Bank A.G. v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.)*, 416 F.3d 136 (2d Cir. 2005); *In re Millennium Lab Holdings II, LLC*, 945 F.3d 126 (3d Cir. 2019); *In re Dow Corning Corp*., 280 F.3d 648 (6th Cir. 2002); *SE Prop. Holdings, LLC v. Seaside Eng'g & Surveying (In re Seaside Eng'g & Surveying)*, 780 F.3d 1070 (11th Cir. 2015). This approach is incorrect for three reasons. First, the determination of a bankruptcy court's scope of authority is how integral a claim is to the bankruptcy case, not how crucial the release of a claim is to a plan. *See Patterson,* 636 B.R. 643 (2016). Second, no matter how crucial a release is to a plan, there is no statutory authority allowing non-consensual third-party releases of direct claims against non-debtors. *See In re Lowenschuss*, 67 F.3d 1394 (1995). The Supreme Court has stated that bankruptcy has no "rare case" rule that allows courts to contradict other provisions of the Bankruptcy Code. *In re Purdue Pharma, L.P.*, 635 B.R. at 37. Third, even if there was statutory authority granting the power to approve these releases, no "rare" and "unique" circumstances can bypass due process protections and the constitutional limitations of Article III. *See Patterson,* 636 B.R. 643 (2016). A court cannot force a third-party claimant to forgo their right to a full adjudication on the merits in an Article III court, no matter how crucial a release is to a plan. *Id.* Further, the argument that the majority's approach avoids liquidation and awards creditors more than they would receive otherwise holds little weight. Just because a certain approach is "efficient, convenient, and useful in facilitating functions of government . . . will not save it if it is contrary to the Constitution." *INS v. Chadha*, 462 U.S. 919, 944 (1983). Congress is tasked with policy decisions of weighing the outcomes of different approaches to issues, not the courts. *Hartford University Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 13–14 (2000). Equitable considerations do not trump a claimant's rights under Article III of the Constitution.

Third-parties with direct claims against non-debtors enjoy the protections of due process because the release of their claims is a deprivation of property. Due process guarantees the right to a full adjudication on the merits of the claim, which is violated when the claim is permanently released without any adjudication. Further, third-party claimants have a right to adjudication of their claim in an Article III court before a judge protected by tenure and a set salary because their non-core, private claims inherently belong in Article III courts. Without the parties' consent to adjudication in bankruptcy court, third-party releases of direct claims against non-debtors violate the Due Process Clause and Article III of the Constitution.

II. THE SUBCHAPTER V RULE FOR DISCHARGE DOES NOT EXEMPT CORPORATE DEBTORS FROM THE LIST OF NON-DISCHARGEABLE DEBTS.

Chapter 11 of the Bankruptcy Code governs a debtor's reorganization plan. *See* 11 U.S.C. § 1101–1195. Subchapter V of chapter 11 provides how a small business debtor reorganizes after filing for bankruptcy. *See* 11 U.S.C. §§ 1181–1195. Yet many chapter 11 provisions are inapplicable in subchapter V cases even though subchapter V falls within chapter 11. *See* 11 U.S.C. § 1181. For example, the absolute priority rule, 11 U.S.C. § 1129(b), and the rule for who may file a plan of reorganization, 11 U.S.C. § 1121, are omitted from subchapter V. 11 U.S.C. § 1181.

These deviations are not the only examples of how subchapter V deviates from chapter 11. Subchapter V deviates from traditional Chapter 11 plans of reorganization when a debtor's reorganization plan is *non-consensual*. *See* 11 U.S.C. § 1181(c). A court may confirm a non-consensual subchapter V reorganization plan as a cramdown. 11 U.S.C. § 1191(b). When this happens, the subchapter V special rule for discharge provides that discharges within confirmed cramdowns are governed by the subchapter V. *See* 11 U.S.C. §§ 1181(c); 1192(2). In a subchapter V context, the traditional chapter 11 rules for discharge apply to confirmed *consensual* subchapter V plans of reorganization. *See* 11 U.S.C. § 1881(a) (emphasis added).

Congress excluded the absolute priority rule from subchapter V. In a traditional chapter 11 reorganization plan, the absolute priority rule applies. *Cantwell-Clearly Co., Inv. v. Cleary Packaging, LLC (In re Cleary Packaging), LLC*, 36 F.4th 509, 514 (4th Cir. 2022). The absolute priority rule requires a debtor's reorganization plan to provide that the dissenting class of creditors be paid in full before any class below the dissenting class receives payment. *Id*. (citing *In re Maharaj*, 681 F.3d 558, 562 (4th Cir. 2012)); 11 U.S.C. § 1129(b). Further, if a reorganization plan violates the absolute priority rule, then the court may deny the reorganization plan, inherently denying the plan's discharges of debt. *Id.* This rule is strict, and it may deny reorganizations to debtors who require their business's owners to continue managing the bankruptcy estate because such retention of the estate property violates the priority rule. *Id.* This rule is too strict for small business owners. *Id.*

The strictness of the absolute priority rule is a key part in why Congress enacted subchapter V in the Small Business Reorganization Act of 2019. *Id.* Instead of the absolute priority rule, the subchapter V discharge rule only requires a debtor's cramdown to provide that the debtor will pay its projected disposable income to its creditors over a three-to-five-year period. 11 U.S.C. § 1191(c). This new rule mirrors chapter 12's rule for plan confirmation. *See* 11 U.S.C. § 1225. Chapter 12's rule requires a debtor's cramdown to provide that the debtor will pay its "projected disposable income" in a three-year period to the creditor for plan confirmation. 11 U.S.C. § 1225(b).

Moreover, only the debtor in subchapter V settings may file a plan for reorganization. 11 U.S.C. § 1189(a). Creditors in a traditional chapter 11 setting may file competing plans of reorganization against the debtor when there is a plan dispute. 11 U.S.C. § 1121. Subchapter V again distinguishes itself from chapter 11 and instead mirrors chapter 12, which also only allows debtors to file a plan of reorganization. 11 U.S.C. § 1221.

There is a stark difference in the plain language between the traditional chapter 11 rules for discharge and the subchapter V rules for discharge for non-consensual plans. The traditional discharge rules independently set out different rules for different debtors, whereas the subchapter V rules do not. The traditional rules distinguish "individual" and "corporate" debtors. *See* 11 U.S.C. §§ 1141(d)(2), (d)(6). The traditional rules provide that chapter 11 does not exempt individual debtors from discharging any debts from the list of non-dischargeable debts under 11 U.S.C. § 523. 11 U.S.C. § 1141(d)(2). Moreover, the traditional rules provide that corporate debtors are exempt from the list of non-dischargeable debts except for debts obtained through the likes of fraud and tax evasion. 11 U.S.C. §§ 1141(d)(6), 523(a)(2)(A)–(B).

Unlike the traditional discharge rules, the subchapter V discharge rule does not distinguish between types of debtors. Subchapter V's rule for discharge uses the term "debtor" by itself. *See* 11 U.S.C. § 1192(2). This discharge rule allows a "debtor" to discharge debts except for those within the list of non-dischargeable debts. 11 U.S.C. § 1192(2). Therefore, both individual and corporate debtors are subject to the list of non-dischargeable debts. If Congress wanted to distinguish types of debtors in the subchapter V discharge rule, then it could have as seen in the traditional chapter 11 rules for discharge.

Here, the cramdown included discharges from "any and all claims" third parties have or might have against Strawberry Fields. R. at 8. This includes Ms. Rigby's claim for willful and malicious injury. *See* 11 U.S.C. § 523(a)(6). If this case concerned a corporate debtor's consensual subchapter V reorganization plan, the debtor's discharges of claims against Strawberry Fields may be granted pursuant to 11 U.S.C. § 1141(d)(6). Subchapter V's rule for discharge does not explicitly name "corporate debtors" as exempt from the list of non-dischargeable debts like the traditional discharge rules do. *Compare* 11 U.S.C. § 1192(2), *with* 11 U.S.C. § 1141(d)(6).

This case concerns a corporate debtor's cramdown. R. at 9-10. The subchapter V discharge rule governs cramdowns and its language defines the scope of the list of non-dischargeable debts to apply to all debtors. Therefore, the proper way to read the list of non-dischargeable debts into the subchapter V discharge rule is by applying the list to both individual and corporate debtors. In turn, Ms. Rigby's suit against Strawberry Fields that her four-year-old daughter died of leukemia caused by exposure to pollutants dumped by the Debtor may not be discharged pursuant to the list of non-dischargeable debts. *See* 11 U.S.C. §§ 1192(2), 523(a)(6).

A. The language of the subchapter V rule for discharge does not distinguish between individual and corporate debtors.

The plain language of subchapter V's rule for discharge governs Penny Lane Industries' discharges within its cramdown. R. at 9–10. This rule features two decisive aspects within its plain language. First, this subchapter V rule allows a "debtor" to discharge debts provided within the cramdown. 11 U.S.C. § 1192. Second, the rule provides debtors are not exempt from the "kind" of debts specified within the list of non-dischargeable debts under 11 U.S.C. § 523(a). 11 U.S.C. § 1192(2).

The list of non-dischargeable debts is not simply a list of debts a debtor may discharge within its cramdown. The list's provision includes an introductory clause, which also contains two key aspects. *See* 11 U.S.C. § 523(a). First, the clause provides cross references to bankruptcy discharge rules, including the subchapter V rule. Second, the clause provides that a plan of reorganization may not discharge an "individual debtor" from the list of non-dischargeable debts. 11 U.S.C. § 523(a); *see In re GFS Indus., LLC*, No. 22-50403-CAG, 2022 WL 16858009, at *4 (Bankr. W.D. Tex. Nov. 10, 2022).

The issue in this case hinges on what type of debtor is susceptible to the list of non-dischargeable debts. There are two possible readings here. One reading provides that the cramdown of a subchapter V debtor, whether a corporate or individual, is susceptible to the list of non-dischargeable debts. The second reading provides that only the cramdown of an individual subchapter V debtor is susceptible to the list of non-dischargeable debts. Each reading rests on a single term. R. at 18. The appropriate reading of the relationship between the two provisions is that the cramdown of a subchapter V debtor, whether individual or corporate, is susceptible to the list of non-dischargeable debts.

1. The subchapter V discharge rule's use of "debtor" encompasses corporate debtors.

The subchapter V rule for discharge allows a "debtor" to discharge debts within its cramdown. 11 U.S.C. § 1192(2). The plain language omits any modification of the term debtor. Under subchapter V, a debtor may be a person involved in commercial or business activities without debt exceeding $7.5 million. 11 U.S.C. § 1182(1). The Bankruptcy Code generally defines the term "debtor," as a person or municipality. 11 U.S.C. § 101(13). A person may be an individual, partnership, or corporation. 11 U.S.C. § 101(41). A corporation includes limited liability companies like Penny Lane Industries. *See* 11 U.S.C. § 101(9)(A). Therefore, the term "debtor" in the subchapter V context may be either an individual or corporation. *See In re Cleary Packaging, LLC*, 36 F.4th at 514–15. The subchapter V discharge rule governs Penny Lane Industries' cramdown.

2. Congress intended for corporate subchapter V debtors to discharge debts except for the "debt of the kind specified" in the list of non-dischargeable debts.

The Fourth Circuit found that the term "debt" is determinative when it decided that subchapter V subjects corporate debtors to the list of non-dischargeable debts. *In re Clearly*

Packaging, LLC, 36 F.4th at 515. This conclusion is supported by the phrase "of the kind," modifying "debt." *Id.* The combination of the phrase "of the kind" with "debt" indicates Congress's intent to refer the reader solely to the list of the twenty-one non-dischargeable debts. *Id.* (citing 11 U.S.C. § 1192(2)). The phrase "of the kind" modifies the "debt" listed as non-dischargeable pursuant to 11 U.S.C. § 523(a). Therefore, the subchapter V rule for discharge provides that all debtors are not exempt from the kind of "debt" specified in the list of non-dischargeable debts. 11 U.S.C. § 1192(2).

The brief reference to the kind of "debt" serves as a shorthand for the twenty-one types specified in the list of non-dischargeable debts. *Id.* The language of the subchapter V discharge rule subjects both individual and corporate debtors to the list of non-dischargeable debts. Therefore, Ms. Rigby's focus on the word "debt" rather than the corporation's focus on "debtor" should dictate the relationship between the subchapter V discharge rule and the list of non-dischargeable debts. This reading furthers the purpose for why each chapter's rules for discharge limit and define the scope of the list of non-dischargeable debts.

B. Both the chapter 12 and subchapter V discharge rules apply the list of non-dischargeable debts to corporate debtors.

Congress used the same language in the subchapter V discharge rule as it did in the chapter 12 discharge rule. Many aspects of subchapter V are based on the chapter 12 provisions, which apply to family farmers and fishermen. *In re Trepetin*, 617 B.R. 841, 848 (Bankr. D. Md. 2020). The chapter 12 discharge rule provides that a debtor may discharge all debts within the plan, except any debt "of a kind" found in the list of non-dischargeable debts. 11 U.S.C. 1228(c). This is almost identical language found in the subchapter V discharge rule. The subchapter V discharge rule provides that a small business debtor may discharge all debts within the plan, except any debt "of the kind" found in the list of non-dischargeable debts. 11 U.S.C. § 1192. Also, the introductory clause to the list of non-dischargeable debts names both the chapter 12 and subchapter V discharge rules. *See* 11 U.S.C. § 523(a). Even though the introductory clause to the list of non-dischargeable debts only recognizes "individual debtors," bankruptcy courts still apply the list of non-dischargeable debts to individual and corporate chapter 12 debtors alike. *See*, *e.g.*, *Southwest Ga. Farm Credit, ACA v. Breezy Ridge Farms, Inc. (In re Breezy Ridge Farms, Inc.)*, 2009 WL 1514671, at *1–2 (Bankr. M.D. Ga. 2009); *New Venture Partnership v. JRB Consol., (In re JRB Consol., Inc.)*, 188 B.R. 373 (Bankr. W.D. Tex. 1995). This Court should follow suit.

This Court's jurisprudence provides that words and phrases found in the same statute should be treated similarly. *Hall v. United States*, 566 U.S. 506, 519 (2012). A chapter 12 debtor, whether individual or corporate, is subject to the list of non-dischargeable debts, and the chapter 12 discharge rule's language is synonymous with subchapter V's. For example in *In re Breezy Ridge Farms, Inc.*, a creditor filed a complaint alleging that certain claims of willful and malicious injury are non-dischargeable against a chapter 12 corporate debtor because the chapter 12 discharge rule does not distinguish between individual and corporate debtors. *In re Breezy Ridge Farms, Inc.*, No. 08-12038-JDW, 2009 WL 1514671, at *1 (Bankr. M.D. Ga. May 29, 2009). The debtor countered that the introductory clause to the list of non-dischargeable debts only mentions "individual debtors," not corporate. *Id.* (citing 11 U.S.C. § 523(a)). Therefore, the debtor argued that it is entitled to discharge its debts against the creditor because it is a corporate entity, not individual. *Id.* However, the bankruptcy court sided with the creditor and found that the list of non-dischargeable debts does not limit the applicability of chapter 12's discharge rule. *Id.* Rather, the chapter 12 discharge rule limits the applicability of the list of non-dischargeable debts. *Id.*

1. Each chapter's discharge rule defines the scope of the list of non-dischargeable debts.

The list of non-dischargeable debts does not dictate the individual chapter discharge rules. *In re Breezy Ridge Farms, Inc.*, No. 08-12038-JDW, 2009 WL 1514671, at *1 (Bankr. M.D. Ga. May 29, 2009). Rather, the discharge rules in chapters 7, 11, 12, and 13 limit the applicability of the list of non-dischargeable debts. *Id*. For example, and most simply, chapter 7 provides: (1) discharges are unavailable to corporations, 11 U.S.C. § 727(a)(1); and (2) individual debtors may discharge all prepetition debts, except those found in the list of non-dischargeable debts, 11 U.S.C. § 727(b). *Id.* The chapter 7 discharge rule applies the full list of non-dischargeable debts to individual debtors and limits the list from applying to corporate debtors.

Comparatively, the chapter 13 discharge rule also applies to individual debtors. *Id.* (citing 11 U.S.C. § 109(e)). However, chapter 13's discharge rule is much broader than chapter 7's. *Id*. (citing 11 U.S.C. § 1328(a)(2)). Chapter 13's "super discharge rule" extends the scope of what an individual debtor may discharge by omitting some, but not all, of the list of non-dischargeable debts. *Id*. (citing *Pennsylvania Dept. of Public Welfare v. Davenport*, 495 U.S. 552, 562–63 (1990)). This distinction shows how different discharge rules limit the scope of the list of non-dischargeable debts.

Chapter 11 outlines different discharge rules for both individual and corporate debtors. *Id.* at 2. (citing 11 U.S.C. § 1141). Corporate debtors who are going out of business instead of reorganizing are not able to discharge debts. *Id*. (citing 11 U.S.C. § 1141(d)(3)(C)). Individuals may discharge debts once the plan's payments are completed (with some exceptions). *Id.* (citing 11 U.S.C. § 1141(d)(5)). The chapter 11 discharge rule applies the full list of non-dischargeable debts to individual debtors. *Id.* (citing 11 U.S.C. § 1141(d)(2)). On the other hand, the chapter 11 discharge rule limits the list of non-dischargeable debts to corporate debtors for the kind of debts dealing with fraud and tax evasion. *Id.* (citing 11 U.S.C. § 1141(d)(6)). In chapter 11, Congress limited the list of non-dischargeable debts differently for debtors and creditors—another demonstration of how individual discharge rules control the scope of the list of non-dischargeable debts.

The subchapter V discharge rule's limit of non-dischargeable debts is most analogous to the chapter 12 discharge rule. Congress limited the scope of the list of non-dischargeable debts for debtors in the chapter 12 context in two ways. First, if the "debtor" makes all plan payments, the debtor may discharge all debts provided in the plan except debts "of a kind" within the list of non-dischargeable debts. *Id.* (citing 11 U.S.C. § 1228(a)(2)). Second, if the "debtor" fails to make all plan payments, the debtor may still discharge all debts provided in the plan except debts "of a kind" within the list of non-dischargeable debts. *Id.* (citing 11 U.S.C. § 1228(b), (c)(2)). This rule, like subchapter V's, does not limit the scope of the list of non-dischargeable debts to just individual debtors but encompasses both individual and corporate debtors.

The Thirteenth Circuit's analysis of the synonymous language, "of the kind," found in subchapter V, chapter 12 and chapter 13, is too broad. *See* R. at 20. The court provided that "of the kind" was borrowed from chapter 13. R. at 20; *see* 11 U.S.C. § 1328. The Thirteenth Circuit noted how chapter 13 does not apply to corporations and disagreed that Congress would use this same language to apply the list of non-dischargeable debts to creditors. R. at 20 (citing 11 U.S.C. § 109(d)). This broad analysis misguidedly led the court to its conclusion. The court disregarded the intentional limit each chapter's discharge rule places on the list of non-dischargeable debts. This Court should account for how subchapter V's discharge rule applies the scope of the list of non-dischargeable debts to a corporate debtor's cramdown.

2. The subchapter V rule for discharge governs the list of non-dischargeable debts.

Each of the discharge rules demonstrate how the list of non-dischargeable debts is limited in different contexts. Reading these relevant statutes is the prime example for how statutory provisions should be read consistently whenever possible. *Universal Am. Mortg. Co. v. Bateman (In re Bateman)*, 331 F.3d 821, 825 (11th Cir. 2003). Further, this Court provided that when two provisions are not in harmony then the more specific dictates the general. *Id.*

The chapter 12 discharge rule and the list of non-dischargeable debts are read in harmony. Although the list's provision itself only applies to individuals, Congress used a shorthanded cross-reference to the list to "define the scope of a Chapter 12 discharge for corporations as well as individuals." *In re Breezy Ridge Farms, Inc.*, 2009 WL 1514671, at *2. Chapter 12's discharge language is synonymous to subchapter V's as it applies to both individual and corporate debtors. Therefore, like chapter 12's, the subchapter V discharge rule defines the scope of the list of non-dischargeable debts to corporate debtors. The relationship between the subchapter V discharge rule and the list of non-dischargeable debts should be read synonymously as the relationship between the chapter 12 discharge rule and the list of non-dischargeable debts. Even if the subchapter V discharge rule and the list of non-dischargeable debts could not be harmonized, subchapter V's discharge rule should control as it is more specific than and defines the scope of the list of non-dischargeable debts.

C. Subjecting a corporate debtor's subchapter V cramdown to the list of non-dischargeable debts supports the interests of both the debtor and creditor.

Subchapter V has a distinct purpose. *In re Cleary Packaging, LLC*, 36 F.4th at 517. Congress created subchapter V to simplify the process and reduce costs of chapter 11 reorganization plans for small businesses. *Id.* Most notably, Congress removed the absolute priority rule for small business debtors who voluntarily file a reorganization plan under subchapter V. *Id.* Congress intentionally omitted general provisions of chapter 11 discharge from the subchapter V discharge rule, namely by limiting the traditional rule's applicability in the subchapter V context. *Id.* The traditional rules for discharge distinguish individual debtors from corporate debtors and provides what debts are eligible for discharge for each type of debtor. 11 U.S.C. §§ 1141(d)(2), (d)(6). On the other hand, the subchapter V discharge rule provides benefits for small business debtors, whether individual or corporate. *Id.* However, subchapter V's purpose of benefiting small business debtors becomes frustrated when individuals and corporations are treated differently. *Id.*

Applying the list of non-dischargeable debts to subchapter V debtors, whether individual or corporate, in the same way is necessary and fair for both the debtor and creditor. There are clear incentives for debtors to file a subchapter V plan of reorganization as dissenting creditors in a subchapter V context lack the absolute priority rule and an ability to file a competing plan. *Id.* Conversely, dissenting creditors to a reorganization plan in a subchapter V context benefit too as the debtor cannot discharge the debt owed to the creditor. However, under the Thirteenth Circuit's interpretation of the subchapter V discharge rule, the creditor receives such a benefit only when the debtor is an individual.

1. Holding corporate debtors subject to the list of non-dischargeable debts supports Congress' decision to omit the absolute priority rule from the subchapter V context.

A unique quality of subchapter V is the tradeoff it creates for debtors and creditors. Subchapter V plans offer the debtor's owners to retain ownership interests. *Id.* This allows the owners to reorganize even when a creditor votes against the reorganization plan. *Id.* In a traditional context, when a creditor would vote against the reorganization plan, the debtor would be required to pay the dissenting creditor in full to continue reorganizing. *Id.* If the non-consensual reorganization plan does not account for the absolute priority rule the plan will not be confirmed, and in turn, no discharge of debts will be granted. *Id.* Adhering to the chapter 11 absolute priority rule is vital when a debtor's owners must continue management for the reorganization to be successful. *Id.* This is a tough burden for chapter 11 debtors to meet, which is why Congress intentionally omitted the burden for small business debtors. *Id.* However, this burden is necessary for creditors to be paid because the corporate chapter 11 debtor is almost fully exempt from the list of non-dischargeable debts. *See* 11 U.S.C. § 1141(d)(6). Thus, in the traditional context, the balance of interests between a corporate debtor and dissenting creditor is that the dissenting creditors receive full payment of debt while the corporate debtor has almost free reign to discharge the other debts within its confirmed reorganization plan.

The balance shifts in the subchapter V context. A debtor's owners in a subchapter V context may retain their equity in the bankruptcy estate even when creditors object to the plan. *Id.* The dissenting creditors do not benefit from the absolute priority rule in the subchapter V context because it does not exist. *Id.* Yet they still need equitable treatment. The tradeoff here is that a debtor may retain ownership and avoid the absolute priority rule, while the creditor's debts may not be discharged pursuant to the cramdown. *Id.* Therefore, Congress purposefully limited the debtor's ability to discharge debts as a tradeoff and balance supporting "fairness and equity" between a debtor and creditor. *Id.*

Further, the traditional chapter 11 rules for discharge distinguish between individual and corporate debtors. *See* 11 U.S.C. §§ 1141(d)(2), (d)(6). Distinguishing between the two in a subchapter V context is wrong because doing so destroys the balance of interests between the debtor and creditor. Such distinguishment not only undermines this balance, but also improperly incentivizes the corporate debtor. *Id*. Both corporate and individual subchapter V debtors should be subject to the list of non-dischargeable debts. Doing so supports Congress' intentional omission of the absolute priority rule. *Id.* The Thirteenth Circuit's distinction between individual and corporate debtors in the subchapter V context violates both the text and intended policy of the subchapter V rule for discharge.

2. The Thirteenth Circuit's reading of the subchapter V rule for discharge improperly incentivizes the corporate debtor.

The Thirteenth Circuit's interpretation of the subchapter V discharge rule is a lot like having two different types of parents—a "fun" parent and a "strict" parent. If a child wants to do something, whether good or bad, they often know which parent to ask for permission. For example, a high school boy plans to go to a party at a friend's house. The student knows his father will say "yes" no matter what. On the other hand, the student knows that his mother will ask questions with strings attached, such as, "what kids will be there? Will there be alcohol? Will any parents be there?" In this scenario, it is much easier for the student to pursue a conversation with his dad because he knows the conversation will not have any strings attached. Whereas a conversation with his mother would inevitably lead to some strings attached. This is how corporate subchapter V debtors will begin pursuing their reorganization plans.

In the hypothetical, the student is the corporate subchapter V debtor; the mother is a consensual plan; and the father is a non-consensual plan. If the court confirms a consensual subchapter V plan for a corporate debtor, the corporate debtor is subject to the traditional rule for discharge, which means there are a few strings attached to the debts the debtor hopes to discharge. 11 U.S.C. § 1181. The traditional rule for discharge provides that a corporate debtor may not discharge debts owed to governmental units arising from the False Claims Act, fraudulent tax returns, and tax evasion. *See* 11 U.S.C. § 1141(d)(6). Like the mother who questions her son's plan, a consensual plan questions a corporate debtor's planned discharges.

If a court confirms a cramdown, then the subchapter V rules for discharge apply to the debtor's plan of reorganization. 11 U.S.C. § 1181(c). Under the Thirteenth Circuit's interpretation, the subchapter V rule for discharge exempts a corporate debtor from *any* debt found within the list of non-dischargeable debts. This means that small business corporate debtors, like Penny Lane Industries, would be able to discharge debts arising from the False Claims Act, fraudulent tax returns, and tax evasion. Whether a small business corporate debtor is subject to any of the non-dischargeable debts all depends on if the plan is confirmed consensually or as a cramdown. The Thirteenth Circuit's decision allows a corporate subchapter V debtor to be exempt from the full list of non-dischargeable debts because the plan was confirmed as a cramdown. Therefore, the Thirteenth Circuit's interpretation of the subchapter V discharge rule must be reversed because it incentivizes corporate debtors to pursue cramdowns, instead of consensual plans, which tips the balance of interests to the debtor's favor.