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 TO THE UNITED STATES COURT OF APPEALS FOR THE THIRTEENTH CIRCUIT

BRIEF FOR THE RESPONDENT

Team Number 36

Counsel for Respondent

QUESTIONS PRESENTED

1. 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.

2. 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).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

OPINIONS BELOW

The United States Bankruptcy Court for the District of Moot answered both questions presented in favor of the debtor. The United States Court of Appeals for the Thirteenth Circuit affirmed the judgment of the bankruptcy court which held that: (1) it was authorized to approve a non-consensual release of claims against the debtor's parent; (2) 11 U.S.C. § 523(a) exceptions to discharge apply only to individual debtors. The Thirteenth Circuit Court of Appeals' opinion is reproduced as the record in this appeal.

STATEMENT OF JURISDICTION

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

STATUTORY PROVISIONS

In relevant part, 11 U.S.C. § 1192 states:

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

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

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

In relevant part, 11 U.S.C. § 523(a)(6) states:

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

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

STATEMENT OF FACTS

I. Factual History

A. Background Information

The debtor, Penny Lane Industries, is a manufacturer of plastic, glass and metal food containers based in the City of Blackbird, Moot. R. at 4. Penny Lane is a major employer in Blackbird, an economically disadvantaged community. R. at 12. The debtor is a wholly owned subsidiary of Strawberry Fields, a company that produces cereal and convenience food sold in supermarkets throughout the country. R. at 4–5. The debtor has been subject to allegations that it knowingly disposed of industrial chemicals and pollutants at its manufacturing facility in Blackbird, contaminating the area's ground water supply. While the source of the contamination has not been conclusively determined, the exposure of toxins in the ground water has been linked to sickness, birth defects, and death between 2013 through 2017. R. at 5.

Residents of Blackbird including the petitioner, Eleanor Rigby, have filed hundreds of lawsuits against Penny Lane and Strawberry Fields, claiming injuries caused by groundwater contamination. R. at 6. Penny Lane and Strawberry fields deny all allegations that they allowed waste from the debtor's facilities to infiltrate Blackbird's groundwater supply. Id. No judicial determination has been made regarding the claims asserted against the debtor or its corporate parent in any forum. Id.

B. Chapter 11 Bankruptcy

Faced with mounting lawsuits and seeking an orderly process to resolve potential claims, Penny Lane filed a subchapter V chapter 11 case on January 11, 2021. R. at 6. Ms. Rigby filed an unsecured claim against the debtor in the amount of $1 million, one of nearly 10,000 claims filed asserting cumulative damages of nearly $400 million. Id. In addition to the debtor's section

362(a) automatic stay, the debtor sought and obtained a temporary injunction which stayed all litigation against its parent Strawberry Fields. R. at 7–8. At this point Strawberry Fields was faced with a choice. Strawberry Fields could liquidate Penny Lane to handle tort liabilities against its subsidiary in the bankruptcy system and identify funding to settle the direct claims against itself. Or Strawberry Fields could make a capital contribution to Penny Lane that would fund a reorganization of the subsidiary if a plan could be confirmed that also settled its own direct tort liabilities. But it was not feasible for the parent to make the capital contribution necessary to avoid a liquidation of its subsidiary and leave itself open to millions of dollars in potential liability from tort claimants. R. at 10.

After two months of court ordered mediation, during which the temporary injunction was extended several times, a plan was proposed which provides for the establishment of a creditor trust that would be funded with: (a) the Debtor's disposable net income for five years, and (b) far more significantly, $100 million to be paid by Strawberry Fields. R. at 8. The bankruptcy court found that such trust will result in an estimated distribution for creditors of approximately 30–40 cents on the dollar. Id. The bankruptcy court also found that this estimated distribution is significantly higher than what creditors would obtain if the debtor were liquidated and they pursued claims directly against the parent. Id. Under the plan, Strawberry Fields would receive a broad release from all claims, including both estate claims and third-party claims. Id. "Any and all claims" that potential claimants "have asserted or might assert in the future against Strawberry Fields" would be barred by an injunction entered by the bankruptcy court in conjunction with confirmation of the plan, to the extent that these claims are "based on or related to the Debtor's pre-petition conduct, its estate or this chapter 11 case." Id.

II. Procedural History

The Bankruptcy Court for the District of Moot ruled in favor of the Debtor on both issues. R. at 11. The Plan was confirmed with 95 percent of the creditors who submitted ballots voting in favor of Plan confirmation. R. at 9. Among the objections to confirmation was Ms. Rigby, who objected on the ground that non-consensual releases of third-party direct claims against Strawberry Fields are not permissible under applicable bankruptcy and non-bankruptcy law. R. at 9. She also objected on the grounds that section 1192 of the Bankruptcy Code would prohibit a debtor like Penny Lane from receiving a discharge for a debt arising from willful and malicious conduct to another entity or its property. The bankruptcy court confirmed the plan, permitting the non-consensual releases of third-party direct claims and finding that section 1192 did not apply section 523(a)'s exceptions to discharge to corporate small business debtors like Penny Lane. R. at 10. Ms. Rigby's objections to the plan were overruled. Id. The court acknowledged the downsides of rejecting the plan. Id. It found that rejection would likely result in complex and protracted litigation, to the detriment of the creditors. Id. Ms. Rigby thereafter timely appealed to the Thirteenth Circuit Court of Appeals, which also affirmed the ruling that third-party releases may be included in chapter 11 plans and that section 523(a) exceptions to discharge apply only to individual debtors. Id. The Petitioner timely petitioned this Court for writ of certiorari, which this Court granted.

STANDARD OF REVIEW

The facts in this case are not disputed by the parties. R. at 11. The questions presented are both questions of law based on statutory interpretation, which are reviewed *de novo*. Highmark Inc. v. Allcare Health Mgmt. Sys., Inc., 572 U.S. 559, 562 (2014); Texas v. Soileau (*In re*

Soileau), 488 F.3d 302, 305 (5th Cir. 2007). "Under a de novo standard of review, the reviewing court decides an issue as if the court were the original trial court in the matter." Razavi v. Comm'r of Internal Revenue, 74 F.3d 125, 127 (6th Cir. 1996).

SUMMARY OF THE ARGUMENT

The goal of a chapter 11 reorganization is to keep the underlying business running and maximize creditor recovery. Those goals are doubly important in this case, where the Debtor is a vital part of the Blackbird economy. Failure to approve the release of claims of direct claims against the Debtor's parent company will force the business into a chapter 7 liquidation, leading to a prolonged and uncertain claims process for creditors, and further harm an already struggling local economy. Such a result would frustrate the purposes of chapter 11, and increase the harm suffered by the Blackbird community. The goals of chapter 11 are also fulfilled by reading the exceptions to discharge found in 11 U.S.C. § 523(a) to not apply corporate debtors. The Thirteenth Circuit Court of Appeals accomplished these goals by finding (1) that the bankruptcy court had the authority to approve a non-consensual release of direct claims against Strawberry Fields, and (2) that the section 523(a) exceptions to discharge apply only to individual debtors.

With regards to the first question on appeal, approval of the release is necessary to an effective reorganization of the debtor. The bankruptcy court had jurisdictional authority to confirm the plan providing for the release under 28 U.S.C. §§ 1334(b) and 157(b)(2)(L). This Court's previous decisions support the assertion that a release of claim against the debtor's parent does not exceed the constitutional limits on bankruptcy court authority imposed by Article III and the Seventh Amendment. The release of claims is authorized by 11 U.S.C. §§ 1123(b)(6) and 105(a) because it does not violate or circumvent any provision of the Bankruptcy Code.

Further, the release respects the due process rights of the tort claimants whose claims it extinguishes. The chapter 11 plan confirmed by the bankruptcy court will allow tort claimants to recover significantly more for their injuries than if the debtor were liquidated and they attempted to collect on a judgment against its parent.

The Thirteenth Circuit's holding on the second issue should also be upheld. Broadly recognized principals of statutory construction support the conclusion that the section 523(a)'s exceptions to discharge do not apply to Penny Lane as a corporate, small business debtor. A reading of the statute which denies discharge to a corporate debtor on section 523(a) grounds ignores the plain language of section 1192 and would render section 523(a)'s inclusion of section 1192 meaningless. In addition to these principles of statutory construction, the history of section 1192 demonstrates a clear Congressional purpose to treat the discharges of corporate debtors different from those of individual debtors in the application of section 523(a).

The Thirteenth Circuit Court of Appeals correctly answered both questions presented, and this Court should affirm in favor of the Respondent.

ARGUMENT

I. The Thirteenth Circuit's Holding that the Bankruptcy Court had the Authority to Approve a Non-Consensual Release of Direct Claims Against Strawberry Fields Should be Upheld

A. Without a Release of Claims Against Strawberry Fields, Penny Lane Will Be Liquidated

The release approved by the bankruptcy court is necessary to a reorganization of the Debtor. The necessity of the release is relevant to this appeal for two reasons. First, Penny Lane is a major employer in the Blackbird community and if it cannot reorganize its debts by way of a chapter 11 plan, it will be liquidated under chapter 7; the debtor's manufacturing business will cease to exist, and jobs will be lost. R. at 10. Second, whether the release and its concomitant injunction are necessary to an effective reorganization bears directly on whether the bankruptcy court has the jurisdictional authority to approve such a release.

The bankruptcy court found that there was not a "reasonably conceivable alternative" to granting Strawberry Fields a release that would allow for a reorganization of Penny Lane. Id. This factual finding is not disputed on appeal. R. at 11. Instead of liquidating Penny Lane and creating a reserve of funds to settle direct lawsuits against itself, Strawberry Fields is providing capital that will allow its subsidiary to reorganize. But Strawberry Fields cannot make this contribution unless the plan provides for a release of claims against it "based on or related to the Debtor's pre-petition conduct, its estate or this chapter 11 case." R. at 8. Because there will be no $100 million payment to Penny Lane without the release, and the debtor would be liquidated but for this injection of capital, the release is necessary to Penny Lane's reorganization. See *In re* Millennium Lab Holdings II, LLC, 945 F.3d 126, 137, 140 (3d Cir. 2019).

In Millennium, the bankruptcy court found that the debtor's shareholders were only willing to make a $325 million contribution to fund the reorganization if they could obtain releases for all claims stemming from their participation in a credit agreement the debtor entered into a year before it filed chapter 11. Id. at 131, 137. The bankruptcy court also found that the debtor would not be able to settle a lawsuit with the federal government without this contribution. Id. at 137. Thus, the court of appeals determined that the bankruptcy court's conclusion that the releases were essential to the debtor's ability to reorganize, as opposed to being forced to liquidate, was supported by the record. Id. The reasoning in Millennium aligns with that of other Courts of Appeals like the Eleventh Circuit. See SE Prop Holdings, LLC v. Seaside Eng'g & Surveying (*In re* Seaside Eng'g & Surveying), 780 F.3d 1070 (11th Cir. 2015). The court in Seaside held that for claims against third parties to be non-consensually enjoined in connection with a chapter 11 plan, such an injunction must be "necessary for the success of the reorganization." Id. at 1078. The factual findings by the bankruptcy court in this case establish that Penny Lane will need to be liquidated and jobs will be lost if a plan of reorganization cannot be confirmed. Strawberry Fields can fund this reorganization with its $100 million investment, or it can face claims from tort claimants injured by the groundwater plume. It cannot afford to do both.

B. The Bankruptcy Court had the Jurisdictional Authority to Confirm a Plan Releasing Strawberry Fields from Direct Tort Claims

(1) The Bankruptcy Court's Confirmation of a Plan Containing a Release of Claims Against Strawberry Fields was Proper under 28 U.S.C. §§ 1334 and 157(b)(2)(L)

Federal district courts have jurisdiction over "all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). The confirmation of a chapter 11 plan is a civil proceeding arising under Title 11. Though the plan enjoined claims against a non-debtor, Strawberry Fields, Congress's grant of subject matter jurisdiction to the federal courts for proceedings related to title 11 cases is broad. Celotex Corp v. Edwards, 514

U.S. 300, 307–08 (1995) ("The jurisdictional grant in § 1334(b) was a distinct departure from the jurisdiction conferred under the previous [bankruptcy] Acts, which had been limited to either possession of property by the debtor or consent as a basis for jurisdiction."). The phrase "related to" in section 1334(b) covers a larger variety of proceedings when, as here, the debtor is attempting to reorganize as opposed to when the case is a chapter 7 liquidation. See id. at 310–11 (citing court of appeals' decisions that identified instances where bankruptcy courts properly approved releases of claims against non-debtors in chapter 11 cases). This Court found that the injunction at issue in Celotex met the requirement of being "related to" a case under title 11 because a failure to grant the injunction would have had "a direct and substantial adverse impact" on the debtor's "ability to undergo a successful reorganization." Id. at 310. The same is true for Penny Lane. Liquidation will occur if Penny Lane cannot obtain the $100 million contribution from Strawberry Fields that is contingent on the release. The entry of the injunction which enabled the release directly affects whether Penny Lane can reorganize. Therefore, the proceeding at issue here falls squarely within section 1334(b)'s grant of subject matter jurisdiction.

All the federal district courts have elected to refer "core" bankruptcy proceedings to the bankruptcy judges for their districts pursuant to 28 U.S.C. § 157. In core proceedings, according to statute, bankruptcy courts may enter "appropriate orders and judgments" in cases where federal district courts have subject matter jurisdiction pursuant to section 1334. 28 U.S.C. § 157(b)(1). Core proceedings include confirmations of plans. 28 U.S.C. § 157(b)(2)(L). Therefore, the bankruptcy court had the necessary jurisdictional authority pursuant to section 157(b)(2)(L) to enter an order and injunction as part of its confirmation of Penny Lane's chapter 11 plan that released Strawberry Fields from direct tort claims.

(2) The Bankruptcy Court's Approval of the Release Did Not Exceed the Constitutional Limits Imposed by Article III and the Seventh Amendment

In Stern v. Marshall, this Court clarified that even if a proceeding is classified as core under 28 U.S.C. § 157(b)(2), a bankruptcy court may still lack the constitutional authority to enter a final judgment in it if it is not "integral to the restructuring of the debtor-creditor relationship." 564 U.S. 462, 497–499 (2011) (internal citations omitted) (holding that, despite subsection (b)(2)(C)'s classification of proceedings to resolve counterclaims brought by the debtor against creditors as core proceedings, the bankruptcy court's entry of a final judgment on a counterclaim for tortious interference with an *inter vivos* gift brought by the debtor against a tort creditor violated Article III). The bankruptcy court's entry of an order confirming Penny Lane's chapter 11 plan and enjoining claims against Strawberry Fields does not offend Article III or the Seventh Amendment's guarantee of jury trials because the release of claims is integral to the restructuring of Penny Lane's relationship with its creditors.

Stern built on the holdings of two other cases decided since the enactment of the Bankruptcy Reform Act of 1978 where this Court held that a bankruptcy court's exercise of authority violated the requirements of Article III and/or the Seventh Amendment: N. Pipeline Construction. Co. v. Marathon Pipeline, 458 U.S. 50 (1982), and Granfinanciera v. Nordberg, 492 U.S. 33 (1989). Stern, 564 U.S. at 485–93. In Northern Pipeline, a plurality of this Court held that the bankruptcy court erred in denying a non-creditor third party's motion to dismiss on the grounds that the debtor's suit against the third party for claims including breach of contract and duress would violate the Constitution if determined by a non-Article III bankruptcy judge. 458 U.S. 50. The Northern Pipeline court distinguished the adjudication of a "state created private right" like the right to recover for breach of contract from a proceeding that involves "the restructuring of debtor-creditor relations, which is at the core federal bankruptcy power." Id. at

71. In Granfinanciera, this Court held that a non-creditor defendant to a fraudulent conveyance action brought by a bankruptcy trustee had a Seventh Amendment right to a jury trial because the section 548 lawsuit did not "arise 'as part of the process of allowance and disallowance of claims.' Nor [was it] integral to the restructuring of debtor-creditor relations." 492 U.S. 33, 58 (internal citations omitted).

In analyzing whether the bankruptcy court's entry of a final judgment on the debtor's counterclaim triggered constitutional concerns like those in Northern Pipeline and Granfinanciera, the Stern Court identified an example of a valid exercise of bankruptcy court authority in its per curiam opinion in Langenkamp v. Culp, 498 U.S. 42 (1990). Stern, 564 U.S. at 497. In Langenkamp, this Court rejected a demand for a jury trial advanced by defendants to a voidable preference action brought by a bankruptcy trustee because the defendants had submitted claims against the bankruptcy estate. 498 U.S. 42. The Langenkamp court distinguished the preference defendants from the fraudulent transfer defendant in Granfinanciera who *was* entitled to a jury trial on the basis that the defendant bank in Granfinanciera had not filed a claim against the estate and therefore had not "subject[ed] [it]self to the bankruptcy court's equitable power." Id. at 44. This reasoning is based on the principle that bankruptcy courts are courts of equity, and "the right to a jury trial . . . does not extend to cases of equity jurisdiction." Katchen v. Landy, 382 U.S. 323, 337 (1966) (internal citations omitted); Langenkamp, 498 U.S. at 44–5 ("If the creditor is met . . . with a preference action from the trustee, that action becomes part of the claims-allowance process which is triable only in equity. . . As such, there is no Seventh Amendment right to a jury trial.") (internal citations omitted). Summarizing its analysis in Langenkamp, the Stern Court explained that a preference claim "can be heard in bankruptcy when the allegedly favored creditor has filed a claim, because *then* 'the ensuing preference action by the trustee becomes integral to the restructuring of the debtor-creditor relationship.'" 564 U.S. at 497 (emphasis in original) (internal citations omitted).

The Stern Court went on to determine that the debtor's stepson's filing of a defamation claim against the bankruptcy estate was an insufficient basis to allow the tortious interference suit to be determined by a non-Article III judge. 564 U.S. at 497–99. This was different from the preference action which needed to be adjudicated to determine if the Langenkamp creditors would be entitled to any recovery in that bankruptcy case. For the debtor-stepmother to prevail on her counterclaim, there were additional elements that she would need to prove that would not be resolved in the adjudication of the stepson's counterclaim. Id. at 497–8. Because the Stern Court found that the counterclaim did not "stem[] from the bankruptcy itself" and would not "necessarily be resolved in the claims allowance process," it held that the stepson was entitled to have the claim adjudicated by an Article III judge. Id. at 499. This holding extended the Northern Pipeline Court's distinction between the adjudication of state-created private rights and the restructuring of debtor-creditor relations, from the breach of contract setting where the dispute in Northern Pipeline arose, to the tort context. Id. at 494

> ("the dissent reads our cases differently, and in particular contends that more recent cases view Northern Pipeline as 'establishing only that Congress may not vest in a non-Article III court the power to adjudicate, render final judgment, and issue binding orders in a traditional contract action arising under state law, without consent of the litigants . . . .' Just so: Substitute 'tort' for 'contract,' and that statement directly covers this case.") (internal citations omitted).

Stern's determination that the debtor's counterclaim arising in state tort law could not be adjudicated by a bankruptcy court without violating Article III did not purport to address the propriety of a bankruptcy court's authority to enter an injunction as part of the confirmation of a chapter 11 plan that is necessary to allow the debtor to reorganize.

None of this Court's decisions in Northern Pipeline, Granfinanciera, or Stern addressed the jurisdictional authority of a bankruptcy court to order relief necessary to allow for a debtor to reorganize under chapter 11. See 458 U.S. 50; 492 U.S. 33; 564 U.S. 462. This Court has declined to rule on whether a bankruptcy court can enjoin direct claims against non-debtors as part of a plan of reorganization. Travelers Indem. Co. v. Bailey, 557 U.S. 137, 155 (2009). However, the reorganization model authorized by chapter 11 contemplates that injections of capital are the lynchpin of a business's ability to restructure its debts and emerge from bankruptcy with an opportunity for success.

The Bankruptcy Code provides rules that a trustee or debtor in possession must adhere to if they wish to obtain credit on an unsecured or secured basis during the pendency of a bankruptcy case. 11 U.S.C. § 364. The party seeking to obtain credit must provide notice to the court and interested parties, and the bankruptcy court must hold a hearing on the request to obtain credit prior to approving it. Id. Prior to confirming a plan of reorganization, a bankruptcy judge must make several findings about the plan including its likelihood of success (often referred to as the feasibility requirement). 11 U.S.C. § 1129(a)(11). A chapter 11 debtor who defaulted on its pre-filing debts may use the protections of the Code as an opportunity to re-negotiate obligations with its existing creditors or obtain sufficient capital from a new lender to pay off its existing debts and have funds to run the reorganized business. However a debtor utilizes chapter 11 to change its capital structure, the feasibility requirement was Congress's way of mandating bankruptcy judges to examine a business-debtor's likelihood of avoiding liquidation before allowing the debtor to receive the discharge that is entered upon plan confirmation. Compare 11 U.S.C. § 1141(d)(1) (providing for discharge upon confirmation of a chapter 11 plan for business debtors) with 11 U.S.C. § 727(a)(1) (limiting discharges in chapter 7 to individuals). A Congressional intent to organize business restructurings around infusions of capital is also found in the Code section that explicitly allows for non-consensual releases of asbestos related claims against third parties. Subparagraph (4) of subsection 524(g) allows for a channeling injunction to bar asbestos-related demands against specified third parties, if the bankruptcy court determines that the injunction's identification of the third-party "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 third party." See 11 U.S.C. § 524(g)(4)(B)(ii). In other words, a bankruptcy judge must enter a factual finding about whether the benefits provided by a third-party seeking a section 524(g)(4) release to asbestos demand holders justify ordering a channeling injunction.

These provisions require bankruptcy courts to make specific factual determinations before entering orders to allow debtors to obtain credit, confirm plans, or obtain releases from asbestos-related demands for third parties. The constitutional authority of bankruptcy courts to adjudicate questions involving these provisions has never been litigated at the Supreme Court level. But a court following Northern Pipeline, Granfinanciera, and Stern should determine that proceedings that require an adjudication as to whether these statutory requirements are met are within the constitutional authority of bankruptcy courts because the legal actions that require their adjudication, namely plan confirmation, are integral to the restructuring of the debtor-creditor relationship. Similarly, this Court should conclude that the bankruptcy court's confirmation containing a release of claims against Penny Lane's parent did not offend Article III or the Fifth Amendment because a reorganization of the debtor would not be possible without the release.

The release is integral to the restructuring of Penny Lane's relations with its creditors. There is no "reasonably conceivable" alternative that would allow for Penny Lane to reorganize and not liquidate that does not involve a release of claims for Strawberry Fields. See discussion *supra*, part I.A. The Third Circuit read Stern correctly when it rejected the objecting creditors' argument that direct tort claims against a non-debtor cannot be constitutionally adjudicated, by means of a binding injunction, by a non-Article III judge. Millennium, 945 F.3d at 137–8. The objecting creditors in Millennium argued that, based on Stern, whether something is integral to the restructuring of debtor-creditor relations (and therefore a proper subject of bankruptcy court's adjudication), is limited to whether it must "necessarily be resolved in the claims allowance process." Id. (quoting Stern, 564 U.S. at 499). The court of appeals determined that this argument misreads Stern. 945 F.3d at 138. It based this conclusion on the Stern Court's interpretation of Langenkamp where the voidable preference action against the creditors could be decided as part of the bankruptcy court's factual finding on the size of their allowed claim against the bankruptcy estate. Id.

> ("Had the Stern Court meant its 'integral to the restructuring' language to be limited to the claims-allowance process, it would not have said that a bankruptcy court may decide a matter when a 'creditor has filed a claim, because *then*' – adding its own emphasis to that word – 'the ensuing preference action by the trustee becomes integral to the restructuring of the debtor-creditor relationship.' That phrasing makes clear that the reason bankruptcy courts may adjudicate matters arising in the claims-allowance process is because those matters are integral to the restructuring of debtor-creditor relations, not the other way around."). Id. (emphasis in original) (internal citations omitted).

This Court should adopt the Third Circuit's reading of Stern and recognize that the "integral to the restructuring" standard followed in the line of cases from Northern Pipeline to Stern includes injunctions like the one issued by the bankruptcy court below. The injunction at issue in this case was negotiated over the course of the development of Penny Lane's chapter 11 plan between Strawberry Fields itself and Penny Lane's creditors to give Penny Lane an opportunity to exist post-bankruptcy while at the same time ensuring that Strawberry Fields had the financial wherewithal to fund a reorganization of its subsidiary. Because claims against Strawberry Fields needed to be released for a reorganization to occur and the integral to the restructuring standard for Article III compliance is met, the claims against Strawberry Fields are properly within the equity jurisdiction of the bankruptcy court. This means that entities with direct claims against Strawberry Fields that are covered by the release have no Seventh Amendment jury trial right for the prosecution of these claims. See Katchen v. Landy, 382 U.S. at 337.

Recently, some courts including the Federal District Court for the Southern District of New York have misinterpreted the scope of this Court's decision in Stern as it applies to the legality of third-party releases. See *In re* Purdue Pharma, L.P., 635 B.R. 26, 81–2 (S.D.N.Y 2021). Penny Lane admits that District Judge McMahon was correct when she concluded that a release of claims against the Sacklers would constitute a "final determin[ation]" of those claims by "extinguishing [them], so that [they] cannot be adjudicated on the merits." Id. at 82. The Judge was also correct to reason that an adjudication of this sort triggers concerns about constitutional authority that motivated the decision in Stern. Id. Where Judge McMahon misapplied Stern was in rejecting the argument that a bankruptcy court may have the requisite constitutional authority to approve a release of claims against a non-debtor if the release is integral to the restructuring of the debtor-creditor relationship. Id. at 81.

Because Judge McMahon found that the claims neither stemmed from Purdue's bankruptcy itself nor would necessarily be resolved in the claims allowance process, she concluded that Bankruptcy Judge Drain did not have the constitutional authority to enter an order enjoining direct claims against the Sacklers. Id. What Judge McMahon failed to recognize is that the two-part question this Court applied to analyzing the constitutionality of a bankruptcy court's final order on the stepmother's counterclaim was not a generally applicable rule that displaced the integral to the restructuring standard. See Millennium, 945 F.3d at 138. Rather, the question was this Court's way of analyzing whether the stepmother's particular counterclaim could properly be decided by a bankruptcy Judge. See Stern, 564 U.S. at 497–9 (contrasting the stepmother's counterclaim, the success of which depended on elements that would not be resolved in adjudicating the stepson-creditor's defamation claim, from the actions against creditors at issue in Katchen and Langenkamp.). Further, this Court said that its holding in Stern was narrow. Id. at 502 ("If our decision today does not change all that much, then why the fuss?"). This Court should reject an application of Stern's two-part question to analyses about the authority of bankruptcy courts to determine proceedings that must take place as part of the plan confirmation process.

Instead of allowing debtors who are facing liquidation to negotiate with their creditors and non-debtor third parties for an infusion of capital in exchange for a release of claims against the third party, the reading of Stern advanced by Judge McMahon would almost certainly throw out the possibility for non-consensual releases as inherently violative of Article III. This Court can avoid this result by following the integral to the restructuring standard that it has adhered to as early as Northern Pipeline. Further, this Court should determine that releases of claims against non-debtors can respect Article III and the Seventh Amendment, so long as there is a sufficient factual basis for concluding that they are necessary for a reorganization. There certainly may be due process issues that parties objecting to third-party releases should be able to raise. These objectors will have their day in court. But Northern Pipeline, Granfinanciera, and Stern teach that there is no reason these claimants cannot have their day in a *bankruptcy* court.

C. The Non-Consensual Release of Tort Claims Against Strawberry Fields is Permitted by the Bankruptcy Code

(1) 11 U.S.C. §§ 1123(b)(6) and 105(a) Authorize Penny Lane to Confirm a Plan Containing a Non-Consensual Release and Allow the Bankruptcy Court to Enter an Injunction Enabling the Release

Chapter 11 has been described as "an invitation to negotiate." *In re* Indianapolis Downs, LLC, 486 B.R. 286, 297 (Bankr. D. Del. 2013). Various provisions of the Bankruptcy Code provide business debtors with the opportunity to bring their creditors to the negotiating table with the goal of finding a path out of financial distress in an orderly, fair, and equitable process. See id. (noting provisions like the automatic stay, adequate protection rules, and the three month exclusivity period which "provide stakeholders with leverage or bargaining chips to advance their respective agendas."). Congress's goal of allowing debtors and creditors to use the bankruptcy system to effectuate creative restructuring transactions is embodied in the provisions that govern the contents of a chapter 11 plan, namely section 1123. Subsection (b) of this section allows for a plan to "include any other appropriate provision not inconsistent with the applicable provisions of this title." 11 U.S.C § 1123(b)(6). Because the release of claims against Strawberry Fields is consistent with the Code, it was properly included in Penny Lane's chapter 11 plan and approved by the bankruptcy court.

Some courts of appeals have rejected the validity of third-party releases on the basis of Code section 524(e) which states in relevant part that "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." See, e.g., Resorts Int'l v. Lowenschuss (*In re* Lowenschuss), 67 F.3d 1394, 1401–02 (9th Cir. 1995) (summarizing Ninth Circuit decisions that have held that section 524(e) "precludes bankruptcy courts from discharging the liabilities of non-debtors."). But this reading of section 524(e) misreads its plain language. Though the discharge of a debt does not itself change any other entity's liability for the same debt (such as the liability of a guarantor), this provision is silent about a bankruptcy court's authority to alter the liabilities of non-debtors. Therefore, section 524(e) should not be interpreted as a bar to a bankruptcy judge's ability to approve a release of claims against a non-debtor. See SE Prop Holdings, LLC v. Seaside Eng'g & Surveying (*In re* Seaside Eng'g & Surveying), 780 F.3d 1070, 1078 (11th Cir. 2015) ("§524(e) says nothing about the authority of the bankruptcy court to release a non-debtor from a creditor's claims.") (citing Airadigm Commc'ns., Inc. v. FCC (*In re* Airadigm Commc'ns., Inc), 519 F.3d 640, 656 (7th Cir. 2008)); Accord Class Five Nev. Claimants v. Dow Corning Corp. (*In re* Dow Corning Corp.), 280 F.3d 648, 657 (6th Cir 2002) (determining that section 524(e) "explains the effect of a debtor's discharge" but "does not prohibit the release of a non-debtor."). These courts correctly interpret section 524(e) as not limiting a bankruptcy court's ability to approve a plan that contains a release of claims against non-debtors under section 1123(b)(6).

Further, the existence of rules for releases of claims against non-debtors under section 524(g)(4) does not mean that the only types of third-party releases permitted by the Code are those involving asbestos demands. Congress enacted subsections (g) and (h) of section 524 to statutorily authorize the Second Circuit's approval of a channeling injunction for demands against the debtor (who was the country's largest asbestos manufacturer) and its insurers in MacArthur Co. v. Johns-Manville Corp. (*In re* Johns-Manville Corp.), 837 F.2d 89, 91 (2d Cir. 1988). See Purdue, 635 B.R. at 92 (describing the origins of the Code's rules on channeling injunctions for asbestos-related demands). In approving the result in MacArthur as part of the Bankruptcy Reform Act of 1994, Congress passed Public Law 111(b). Bankruptcy Reform Act of 1994, Pub. L. No. 103–394 § 111(b), 108 Stat. 4106, 4115 (1994) (uncodified). Section 111(b) contains a rule of construction which states that nothing in section 524(g)–(h) "shall be construed to modify, impair, or supersede any other authority the court has to issue injunctions in connection with an order confirming a plan of reorganization." Id. If Congress wanted to limit third-party releases to bankruptcies involving asbestos demands, it would not have passed this rule of construction which suggests that courts have the authority to approve of third-party releases for non-asbestos related claims. Alternatively, if Congress wanted to prohibit such releases and channeling injunctions outside of the asbestos context, it could have added language to the Code specifying such prohibition when it amended section 524 in the 1994 Act. See Airadigm, 519 F.3d at 657 (citing 11 U.S.C. §§ 105(b) prohibiting the appointment of receivers in bankruptcy cases, and 1129(a)'s mandatory requirements for plan confirmation as examples where Congress has explicitly "limited the powers of the bankruptcy court.").

(2) Strawberry Fields is Not Using the Release to Circumvent 11 U.S.C. § 523(a)

Section 523(a) of the Code lists 19 types of debts which individual debtors may not discharge in bankruptcy. Because it is a corporation and not an individual, Strawberry Fields would not be barred from receiving a discharge under section 523(a) grounds if it filed bankruptcy and confirmed its own chapter 11 plan. This contrasts with the claims that the Sackler family was seeking a release from in the plan that was overturned by Judge McMahon. See 635 B.R. at 106. Unlike Strawberry Fields which is seeking a release from claims it may face as a corporation, the members of the Sackler family who sought to benefit from the channeling injunction in the Purdue plan wanted releases from lawsuits that targeted or would have targeted them as individual defendants. See id. The fact that Purdue's plan did not "carve out" claims for fraud or willful or malicious injury to other entities from its releases of claims against the Sacklers was one of the reasons given by Judge McMahon for reversing Judge Drain's confirmation of the plan. See id.; 11 U.S.C. § 524(a)(2), (4), (6). One can assume for the sake of argument that Judge McMahon is right and a release of a claim against an individual third-party that the individual would not be able to discharge in her own bankruptcy is "inconsistent with the applicable provisions of [Title 11]." 11 U.S.C. § 1123(b)(6). Even making this assumption, such a limitation on section 1123(b)(6)'s general authorization for the use of chapter 11 in bespoke restructuring transactions is inapplicable to the case at bar because if Strawberry Fields confirmed its own chapter 11 plan, it could discharge the direct tort liabilities against it.

Because a release of claims against Strawberry Fields is not prohibited by section 523, section 524(e), (g), (h), or any other provision of the Code, the bankruptcy court had the authority to confirm a plan containing it under section 1123(b)(6). Further, the injunction of claims that the court approved to enable Penny Lane's reorganization to be carried out according to the confirmed plan was authorized under section 105(a).

D. The Amount of Funding that Strawberry Fields Will Provide in Exchange for an Enjoinment of Tort Claims Allows for the Due Process Rights of Claimants to be Respected

In reconciling Congress's constitutional authority to enact uniform laws on the subject of bankruptcies with the Fifth Amendment, this Court has held that a bankruptcy statute does not infringe on due process rights if its "provisions are consonant with a fair, reasonable, and equitable distribution of [the bankruptcy estate's] assets." Kuehner v. Irving Trust Co, 299 U.S. 445, 452 (1937) (holding that a provision of the Bankruptcy Act of 1898 which capped damage claims for breach of a lease to an amount equivalent to three years of rent did not violate the lessor-appellant's due process rights). The Code provisions involving releases of asbestos related demands against third parties, specifically those under section 524(g)(4)(B), demonstrate a Congressional motivation to ensure that section 524(g) would respect the requirements of due process. See 4 Collier on Bankruptcy ¶ 524.07 (16th ed. 2022). Strawberry Field's contribution to Penny Lane allows the plan to achieve a result for current and potential tort claimants that the protections of section 524(g)(4)(B) similarly seek to ensure for asbestos demand holders. Because Penny Lane's plan respects due process in a way that parallels the Congressionally authorized framework for releases of asbestos claims, the Thirteenth Circuit's approval of the confirmed plan should be affirmed.

Congress recognized that the channeling injunction mechanism it was authorizing in section 524(g) was extraordinary in that it extinguished the tort claims (therefore destroying the property rights) of both creditors and potential demand-holders who had not yet filed claims against the debtor. To use the section 524(g) channeling injunction to settle the asbestos liabilities of a debtor requires that the injunction be issued "in connection with [an] order" confirming a chapter 11 plan. 11 U.S.C. § 524(g)(1)(A). This means that any debtor who seeks such an injunction will need to have a confirmable plan (like the "cramdown" plan that Penny Lane was able to confirm). However, the "demands" that are channeled into the 524(g) trust do not receive the same rights that claimholders do in the plan confirmation process; demands are defined differently. 11 U.S.C. § 524(g)(5) (defining demand as a present or future demand for payment, but not one that was a claim "during the proceedings leading to the confirmation of the plan . . ."). Holders of asbestos related demands receive two key protections quite apart from those that claim holders are entitled to in bankruptcy. A section 524(g) injunction can bar demands against a debtor or a third party if the bankruptcy court: (1) appoints a legal representative for the purpose of protecting the rights of potential demand holders, and (2) determines that the "identification" of the debtor or third-party as shielded from demands by the injunction is "fair and equitable" with regards to potential demand holders and the "benefits" that the debtor or third-party intends to contribute to the trust. 11 U.S.C. § 524(g)(4)(B).

Admittedly, non-creditor-potential-claimants were not appointed a legal representative in the proceedings that led to the bankruptcy court's issuance of the injunction. However, this lack of alignment with the requirements of section 524(g)(4)(B)(i) is not fatal to Penny Lane's plan because the interests of potential claimants who have not filed lawsuits against the debtor or Strawberry Fields were adequately represented by the nearly 10,000 tort plaintiffs who have filed claims against the estate. R. at 6. In a Third Circuit decision issued prior to the enactment of section 524(g), the Court of Appeals considered whether a legal representative needed to be appointed on behalf of future tort claimants in the chapter 11 case of an asbestos manufacturer. *In re* Amatex Corp., 755 F.2d 1034 (3d Cir. 1985). The court reasoned that the future claimants did need a legal representative because they had a stake in the outcome of the reorganization that was sufficient to warrant representation, and "none of the parties currently involved in the reorganization proceedings have interests similar to those of future claimants . . . ." Id. at 1042–3. Demand-holders who have not filed a claim against the debtor's estate and would be enjoined from suing Penny Lane and Strawberry Fields upon plan confirmation are affected by the reorganization. But it cannot be said that their claims against the debtor and its parent are so different from those of the thousands of tort claims filed against the estate that independent legal representation is required to ensure due process and fairness. Here the claims of the tort plaintiffs who have filed claims in the bankruptcy case and the potential claims of individuals who might file claims against the creditors' trust stem from the same cause of action: personal injury resulting from alleged pollution by the debtor. R. at 4–5. The petitioner does not assert that there are different types of claims where the amount or likelihood of recovery might differ from those of current claimants in a way that would cast doubt on the soundness of the bankruptcy court's determination about the fairness of the global settlement that can be effectuated by Penny Lane's plan.

Ultimately, the purpose of a section 524(g)(1) style channeling injunction like the one at issue here is to enjoin claims for monetary recovery. 11 U.S.C. § 524(g)(1)(B) ("An injunction may be issued . . . to enjoin entities from taking legal action for the purpose of directly or indirectly collecting, recovering or receiving payment or recovery . . ."). A section 524(g) channeling injunction does not impair the rights of enjoined parties to seek declaratory or injunctive relief against the parties released from claims. The property right being affected by this type of channeling injunction is, at root, a tort claim for money damages. Therefore, the measuring stick for determining the extent to which the adjustment of this property right respects due process should be a comparison of a tort claimant's ability to recover under their claim with and without the injunction.

The bankruptcy court has entered factual determinations about the contribution being made by Strawberry Fields to the debtor which, if this were an asbestos case, would satisfy the fair and equitable requirement under section 524(g)(1)(B)(ii). The bankruptcy court entered detailed factual findings and determined that the $100 million contribution that Strawberry Fields would make to the trust in exchange for the release is substantially greater than what potential claimants would be able to recover from prosecuting their claims against the parent. R. at 10. This is undisputed on appeal. R. at 11. Because the $100 million payment to the trust allows Penny Lane to avoid liquidation, Penny Lane can dedicate five years of its after-tax net income to creditors. R. at 8. As such, the bankruptcy court found that creditors will be able to be paid significantly more under the plan than they would if the debtor were to be liquidated. R. at 10. The bankruptcy court also found that Penny Lane's chapter 11 plan and its constituent creditor trust, release, and injunction would allow for an immediate resolution of claims against Penny Lane and Strawberry Fields. R. at 10. The court contrasted this with its estimation of what would occur if the plan were not approved: significant costs and delays faced by creditors in their attempts to litigate complex tort claims against Strawberry Fields and a much lower recovery from a liquidated Penny Lane. Id.

By comparing the quantum and likelihood of recovery for creditors in non-release liquidation scenario to the recovery creditors would be entitled to under the plan, the bankruptcy court conducted an analysis that aligns with that required for a plan containing a channeling injunction to be approved. See 11 U.S.C. § 524(g)(4)(B)(ii). As a result of these factual findings, the bankruptcy court determined that the plan was fair and reasonable and overruled petitioner Rigby's objections to plan confirmation. R. at 10. This ruling conforms with this Court's jurisprudence on the broad equitable powers provided to bankruptcy courts in sections 1123(b)(6) and 105(a) of the Code. See United States v. Energy Resources Co., 495 U.S. 545, 549 (1990) (describing these provisions as "consistent with the traditional understanding that bankruptcy courts, as courts of equity, have broad authority to modify creditor-debtor relationships."). Given this broad authority and the detailed factual findings that supported the district court's conclusion that tort claimants will fare significantly better under a plan containing a release than in a liquidation scenario, the district court's confirmation of the plan aligned with the "fair, reasonable, and equitable distribution" standard required by this Court to ensure that bankruptcy law respects due process. See Kuehner, 299 U.S. at 452.

II. The Thirteenth Circuit's Holding that § 523(a) Exceptions to Discharge Apply Only to Individual Debtors Should Be Upheld

A. 11 U.S.C. § 1192(2) Only Incorporates the Non-Dischargeable Debts of § 523(a), It Does Not Expand Them

A plain reading of 11 U.S.C. §§ 1192 and 523 requires that the Small Business Reorganization Act's (SBRA) section 1192(2) to be interpreted to apply section 523(a)'s exceptions to discharge to individual debtors. When there is disagreement about the meaning of a statute, a court's analysis must begin with an examination of the statutory text itself. U.S. v. Ron Pair Enters., Inc., 489 U.S. 235, 241 (1989). As the Supreme Court has often said, "when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." Lamie v. U.S. Tr., 540 U.S. 526 (2004) (citing other cases) (internal quotations omitted). Thus, the analysis here must begin with the plain language of sections 1192 and 523.

Section 1192 governs discharges for debtors who seek to confirm nonconsensual plans of reorganization under Subchapter V of Chapter 11. Section 1192 provides in relevant part: "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 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. Section 523(a), in turn, states that "A discharge under section . . . 1192 . . . of this title does not discharge an individual debtor from any debt" of the kind specified in the 19 subparagraphs under subsection (a). 11 U.S.C. § 523(a).

The statutory language is clear and unambiguous: section 523(a) applies only to individual debtors. Section 1192 covers nonconsensual plans for debtors proceeding under Subchapter V. This section itself does not differentiate between individual or corporate debtors. When it references exceptions to discharge, section 1192 incorporates the exceptions of section

523(a). The language of section 523(a) was only amended by the Small Business Reorganization Act of 2019 to add "1192" to its list of sections of the Bankruptcy Code that provide for discharges. Pub. L. 116–54, § 4 (a)(8), 133 Stat. 1086. The language of section 523(a) is unequivocal, its exceptions to discharge apply only to individual debtors.

Bankruptcy courts that have analyzed this question since the SBRA was enacted have agreed that the plain meaning of section 1192 does not apply the exceptions to discharge in section 523(a) to entity debtors. See Jennings v. Lapeer Aviation, Inc. (*In re* LaPeer Aviation, Inc.), 2022 WL 1110072 (Bankr. E.D. Mich. 2022); Catt v. Rtech Fabrications, LLC (*In re* Rtech Fabrications LLC), 635 B.R. 559 (Bankr. D. Idaho 2021); Gaske v. Satellite Rest., Inc. Crabcake Factory USA (*In re* Satellite Rest., Inc. Crabcake Factory USA), 626 B.R. 871 (Bankr. D. Md. 2021). The Fourth Circuit stands alone in its ruling that section 1192(2) "provides discharges to small business debtors, whether they are individuals or corporations, except with respect to the 21 kinds of debts listed in § 523(a)." *In re* Cleary Packaging, LLC, 36 F.4th 509, 517 (4th Cir. 2022). The only way the court in Cleary could reach this conclusion was to ignore the plain meaning of the statute. The plain text of sections 1192 and 523 demonstrate that section 523(a)(6)'s exception to discharge for individual debtors is inapplicable to Penny Lane, Inc. as a corporate, small business, debtor.

B. Section 523(a) Must Be Read So That its Reference to Section 1192 Is Not Meaningless

The inclusion of section 1192 in section 523(a) would be meaningless if section 523(a) were interpreted to apply to corporations who seek a discharge under section 1192. When reading statutes, a court should "give effect, if possible, to every clause and word of a statute, avoiding . . . any construction which implies that the legislature was ignorant of the meaning of the language it employed." Montclair v. Ramsdell, 107 U.S. 147, 152 (1882). A statute should be read and interpreted "so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.'' Hibbs v. Winn, 542 U.S. 88, 101 (2004) (internal citations omitted).

Appellant's interpretation, if accepted, would render the reference to section 1192 in section 523(a) superfluous. Indeed, appellant's argument asks the court to focus on every part of section 523 *except* for subsection (a). Appellant asks that a court, pursuant to section 1192(2), subject a debtor proceeding under Subchapter V to all the exceptions to discharge in section 523, regardless of the type of debtor (individual or corporate). Appellant's argument requires section 523(a) to be made inoperative. Section 523(a) was amended by the SBRA to include a reference to section 1192 so that it currently reads, "A discharge under section . . . 1192 . . . of this title does not discharge an individual debtor from any debt." 11 U.S.C. § 523(a); Pub. L. 116–54, § 4 (a)(8), 133 Stat. 1086. Surely Congress meant for this addition to have meaning; there would be no need to add it otherwise. The only reasonable interpretation of this addition is that Congress wished to subject individual debtors who seek to reorganize their business debts under Subchapter V to the 19 exceptions to discharge under section 523(a).

Appellant's argument relies on a restrictive interpretation of section 1192(2)'s phrase, "any debt . . . of the kind specified in §523(a)." Appellant argues that "kind" refers only to the factual or legal basis of the claim (for example a tax duty or domestic support obligation) and that therefore section 1192(2) must be understood to incorporate the various factual and legal types of claims listed in section 523(a). "Kind," is derived from the Old English "*cynd"* (kin) and means "fundamental nature or quality," or, "a group united by common traits." Merriam-Webster's Collegiate Dictionary (11th ed. 2019). Congress obviated the need for delving into the etymology of the word "kind" by adding the reference to section 1192 in section 523(a) when it passed the SBRA. Without that reference, an argument could be made that section 1192 merely incorporates the *kinds* of debts listed in section 523(a) without regard to the character of the debtor. The reference *was* added however, so it must be considered. See Satellite Restaurants, 626 B.R. at 876. The rule of statutory construction against surplusage, requires that *each* word must be given "its ordinary, contemporary, common meaning." See Star Athletica, LLC v. Varsity Brands, Inc., 580 U.S. 405, 414 (2017) (internal citations omitted) (internal quotations omitted). The court in Cleary, however, found what they perceive to be a decisive ambiguity in the statute by focusing on the meaning of the word "kind." 36 F.4th at 515.This disregards the reference to section 1192 that Congress chose to add to 523(a). The only reasonable interpretation that does not render the amendment to section 523(a) superfluous follows the plain reading of the text: section 523(a) exceptions to a debtor's discharge, even a discharge under section 1192, apply only to individuals.

C. Congress Acted Purposefully With Regards to What it Excluded from Section 1192

If Congress wanted section 523(a)'s exceptions to discharge for individuals to also apply to corporate debtors in Subchapter V, it could have easily written section 1192(2) to read, for example, " . . . except any debt – of the kind specified in section 523(a)(1)–(19)." Rtech, 635 B.R. at 565. Congress did not however, and that omission, considered in light of the foregoing discussion on the plain meaning of the statute and the canon against surplusage, is meaningful. Avion Funding LLC v. GFS Indus., LLC (*In re* GFS Indus., LLC), 2022 WL 16858009 at *4–5 (Bankr. W.D. Tex. 2022).

The cannon of statutory interpretation known as *expressio unius est exclusio alterius* creates a presumption that when a statute speaks specifically regarding a subject, it acts intentionally and purposefully with regards to its inclusions or exclusions. United States v.

Fuller, 531 F.3d 1020, 1027 (9th Cir. 2008). Here, Congress did not include any language in section 1192(2) to specify what types of debtors will be subjected to section 523(a), nor did it circumscribe its section 523 reference to the 19 categories of exceptions within subsection (a). Congress did, however, amend section 523(a) to reference the newly passed section 1192: "[a] discharge under section . . . 1192 . . . of this title does not discharge an individual debtor from any debt." Congress' silence in section 1192 is meaningful here and supports an interpretation that does not make section 523(a)'s reference to section 1192 and "individual" debtors superfluous. Rtech, 635 B.R. at 565.

Congress is "presumed to be aware" of judicial interpretations of its laws. NLRB v. Bildisco & Bildisco, 465 U.S. 513, 525 (1984). The court in Cleary pointed to two bankruptcy court decisions interpreting section 1228 where section 523(a) has been interpreted to apply to corporate farming and fishing businesses. 36 F.4th at 516. But if Congress was aware of, and did approve of these interpretations, it would not have left it up to courts to correctly guess that two non-binding bankruptcy decisions interpreted section 1228 correctly and that such interpretation also must be applied to section 1192. Congress could have stated that section 523(a) applies to all non-consensual subchapter V plans, regardless of debtor, but it did not. Appellant's interpretation seeks to add meaning where Congress has not spoken and ignore legislative intent where it has.

D. Section 1192 Is Best Understood Within the Overall Context of Chapter 11, Which Grants Different Discharges to Individual and Corporate Debtors

The relevant Code sections are clear and unambiguous on their face. Still, a review of sections 1192 and 523(a), considering Chapter 11 as a whole, support the holding of the court below. Penny Lane is not subject to the section 523 exceptions to discharge. Corporate debtors receive a generous discharge in Chapter 11 proceedings. 11 U.S.C. § 1141. Individual debtors in

Chapter 11 are subject to a wide range of exceptions. 11 U.S.C. § 1141(d)(2). When Congress intended to limit the wide discharge that corporations in Chapter 11 receive it has done so explicitly and specifically. See 11 U.S.C. § 1141(d)(6) (limiting the complete discharge provided to Chapter 11 entity debtors in section 1141(d)(1) by incorporating the specific exceptions to discharge in sections 523(a)(2)(A)–(B)).

Corporations do not receive a discharge following a chapter 7 liquidation. 11 U.S.C. § 727(a)(1). Instead, corporations receive near total discharges of their debts upon confirmation of a chapter 11 plan. See 11 U.S.C. § 1141(d). Corporations do not such expansive discharges in chapter 11 by accident. When it enacted the modern Bankruptcy Code in 1978, Congress rejected existing policy with respect to discharges for corporations. See Ralph Brubaker, Taking Exception to the New Corporate Discharge Exceptions, 13 Am. Bankr. Inst. L. Rev. 757, 765 (2005). Congress limited the exceptions to discharge for corporations in chapter 11 of the Bankruptcy Code so as to minimize uncertainty regarding the possibility of successful reorganizations that could stem from extensive litigation about discharge exceptions. Id. at 766.

Appellant's interpretation of section 1192, if accepted, would abrogate decades of judicial precedent and well-established principles of the U.S. Bankruptcy Code. See Yamaha Motor Corp. v. Shadco, Inc., 762 F.2d 668, 670 (8th Cir. 1985) (concluding based on the plain meaning of section 523(a) and case law interpreting it that Congress "did not intend the term 'corporate debtor' to be used interchangeably with the term 'individual debtor,' as such a construction would 'render meaningless employment by Congress of the term 'individual.'") (internal citations omitted). It is difficult to discern why Congress would subject a corporate debtor proceeding under subchapter V of chapter 11 to more uncertainty regarding the possibility of a successful reorganization than a larger corporate debtor proceeding under "regular" chapter

11. If appellant were to prevail and section 523(a) exceptions were held to apply to corporate small business debtors, the value of subchapter V to these debtors would be diminished as debtors would need to expend time and money litigating over the dischargeability of certain debts. It is unreasonable to conclude that Congress would seek to encumber small-businesses, the bedrock of the American economy, with such costs in their chapter 11 proceedings that entities like General Motors and Texaco need not worry about. See GFS, 2022 WL 16858009 at *10.

E. The Legislative History of section 1192 Does Not Reveal Congressional Intent to Expand the Application of Section 523(a)

The legislative history of section 1192 does not support the conclusion that its reference to section 523(a) extends its exceptions to discharge to non-individual debtors. See Satellite Restaraunts, 626 B.R. at 878; see also Richard P. Cook, Discharges in Subchapter V What Has Changed? What Remains the Same? Are Elephants Hiding in Mouseholes?, 41 Am. Bankr. Inst. J. 24, 24–5 (June 2022). Given the marked difference in the discharges available to individual and corporate debtors in chapter 11, it would be reasonable to expect Congress to note their intentions in legislative reports if they intended the SBRA to expand §523(a) to non-individual debtors. Satellite Restaurants at 878. It is significant then, that such notes are missing. See Whitman v. Am. Trucking Ass'ns, 531 U.S. 457, 468 (2001) ("Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.").

The Report of the Judiciary Committee of the House of Representatives announced that section 1192 excepts debts on which the last payment is due after the plan and "any debt that is otherwise nondischargeable." 290 H.R. Rep. No. 116–171 at 8 (2019). Courts considering this matter have all (except for Cleary, 36 F.4th 509) held that "otherwise nondischargeable" "logically refers to the existing form of §523(a)," which by its plain language only applies to individual debtors. See Satellite Restaurants 626 B.R. at 878; Rtech, 635 B.R. 559; Cook, supra, at 24; Hearing on Oversight of Bankruptcy Law & Legislative Proposals Before the Subcomm. On Antitrust, Commercial and Admin. Law of the H. Comm. on the Judiciary (Revised Testimony of A. Thomas Small on Behalf of the National Bankruptcy Conference), 116th Cong. 2 (making no reference to expanding section 523(a) to include non-individual debtors in subchapter V).

This legislative history does not support appellant's requested interpretation of sections 1192 and 523. Appellant would have this court impose its will against the plain language of the Code, ignore broadly accepted principles of statutory interpretation, and act in defiance of the legislative history of the SBRA.

F. Holding Section 523(a) Exceptions to Discharge Inapplicable to Subchapter V Corporate Debtors Comports with the Legislative Purpose of the Small Business Debtor Reorganization Act

The purpose of the SBRA would be inhibited if section 523(a) exceptions to discharge were held to be applicable to corporate debtors in subchapter V. The purpose of subchapter V is to incentivize Chapter 11 for small businesses by removing obstacles and streamlining the process. Hearing on Oversight of Bankruptcy Law & Legislative Proposals Before the Subcomm. On Antitrust, Commercial and Admin. Law of the H. Comm. On the Judiciary (Revised Testimony of A. Thomas Small on Behalf of the National Bankruptcy Conference), 116th Cong. 2 ("bankruptcy professionals have known for decades that chapter 11 does not work well for small business debtors").

In an effort to make chapter 11 easier or more appealing to small businesses, Subchapter V contains "three core tenets" that are operable in its various provisions. Cook, supra, at 24–5. First, contrary to ordinary chapter 11, a debtor in subchapter V has exclusive control over their plans and confirmation. 11 U.S.C. §§ 1189(a), 1193. Subchapter V also removes the absolute-priority rule of §1129(b)(2)(B)(ii) as well as the acceptance of one impaired class required for a non-consensual plan. 11 U.S.C. §§ 1181(a), 1191(b). Second, cases are meant to be resolved more quickly and cost-effectively in subchapter V than in non-small business chapter 11. Cook, supra, at 25. Third, the SBRA was motivated by Congress's desire to promote consensual confirmation of subchapter V plans. Id, at 25. It uses the phrase "consensual plan of reorganization" multiple times in subchapter V, whereas the term "consensual" appears only once elsewhere in the Bankruptcy Code. See, 11 U.S.C. § 1183(b)(7) ("facilitate the development of a consensual plan of reorganization"); 11 U.S.C. § 1188(c) ("[T] he debtor shall file . . . a report that details the efforts the debtor has undertaken and will undertake to attain a consensual plan of reorganization."); 11 U.S.C. § 522(f)(3)(B) (the one other time consensual is used in the Bankruptcy Code).

These Congressional efforts to create a more streamlined option for a small business to pursue reorganization under subchapter V would be seriously thwarted if this court were to adopt appellant's interpretation of sections 1192 and 523(a). It is puzzling to imagine that Congress would remove the absolute priority rule, give the debtor the exclusive ability to propose a plan, and prefer consensual plans with the passage of the SBRA, yet enact a provision that would encourage costly non-dischargeability litigation. Cook, supra, at 58. Chapter 11 exists to promote reorganization in order to keep businesses alive thus maximizing value for all creditors. Applying section 523(a)'s exception to discharge for individuals to corporations in subchapter V filings would give priority to some creditors over others. See GFS, 2022 WL 16858009 at *10 quoting, Paul W. Bonapfel, Guide to the Small Business Reorganization Act of 2019, Bankr. N.D. Ga., 234 (Jun. 2022), https://www.ganb.uscourts.gov/sites/default/files/sbra_guide_pwb.pdf (“every dollar paid on the nondischargeable debt in excess of a pro rata share of disposable income is a dollar that is not paid to unsecured creditors generally”). Appellant’s interpretation, if applied, would incentivize an impaired creditor to circumvent section 1191(b) simply by arguing their claim is nondischargeable under sections 1192 and 523(a). If successful they would thus receive a “vote” where Congress sought to remove one. 11 U.S.C. § 1191(b).

CONCLUSION

For the forgoing reasons, the Respondent, Penny Lane, respectfully asks this Court to uphold the Thirteenth Circuit’s decision on both issues.