No. 22-0909

IN THE

Supreme Court of the United States

IN RE PENNY LANE INDUSTRIES, INC., DEBTOR,

ELEANOR RIGBY, PETITIONER

V.

PENNY LANE INDUSTRIES, INC., RESPONDENT.

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

BRIEF FOR PETITIONER

TEAM NUMBER 37

JANUARY 19, 2023 COUNSEL FOR PETITIONER

QUESTION PRESENTED

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

II. Under 11 U.S.C. § 1192, may a corporate debtor proceeding under subchapter V of chapter 11 of the Bankruptcy Code may 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 opinion can be located at Case No. 22-0909. The Thirteenth Circuit and the affirmed the Bankruptcy Court of Moot's decision that third-party releases may be included in chapter 11 plans, and section 1192(2)'s incorporation of section 523(a) discharge exceptions apply only to individual debtors.

STATEMENT OF JURISDICTION

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

STATUTORY PROVISIONS

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. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. §523
(a) A discharge under section 727, 1141, 1192, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

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

11 U.S.C. §524
(e) Except as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.
(g)(1)

> **(A)** After notice and hearing, a court that enters an order confirming a plan of reorganization under chapter 11 may issue, in connection with such order, an injunction in accordance with this subsection to supplement the injunctive effect of a discharge under this section.
>
> **(B)** An injunction may be issued under subparagraph (A) to enjoin entities from taking legal action for the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery with respect to any claim or demand that, under a plan of reorganization, is to be paid in whole or in part by a trust described in paragraph (2)(B)(i), except such legal actions as are expressly allowed by the injunction, the confirmation order, or the plan of reorganization.

(2)

(A) Subject to subsection (h), if the requirements of subparagraph (B) are met at the time an injunction described in paragraph (1) is entered, then after entry of such injunction, any proceeding that involves the validity, application, construction, or modification of such injunction, or of this subsection with respect to such injunction, may be commenced only in the district court in which such injunction was entered, and such court shall have exclusive jurisdiction over any such proceeding without regard to the amount in controversy.

(B) The requirements of this subparagraph are that—

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

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

11 U.S.C. §1123
(a) Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall—
(5) provide adequate means for the plan's implementation
(b)

11 U.S.C. §1141
(d) (2) A discharge under this chapter does not discharge a debtor who is an individual from any debt excepted from discharge under section 523 of this title.

11 U.S.C. § 1181
((a) In General. Sections 105(d), 1101(1), 1104, 1105, 1106, 1107, 1108, 1115, 1116, 1121, 1123(a)(8), 1123(c), 1127, 1129(a)(15), 1129(b), 1129(c), 1129(e), and 1141(d)(5) of this title do not apply in a case under this subchapter.
(c) Special Rule for Discharge. If a plan is confirmed under section 1191(b) of this title, section 1141(d) of this title shall not apply, except as provided in section 1192 of this title.

11 U.S.C. § 1192
If the plan of the debtor is confirmed under section 1191(b) of this title, as soon as practicable after completion by the debtor of all payments due within the first 3 years of the plan, or such longer period not to exceed 5 years as the court may fix, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided in section 1141(d)(1)(A) of this title, and all other debts allowed under section 503 of this title and provided for in the plan, except any debt

(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.

28 U.S.C. § 151

In each judicial district, the bankruptcy judges in regular active service shall constitute a unit of the district court to be known as the bankruptcy court for that district. Each bankruptcy judge, as a judicial officer of the district court, may exercise the authority conferred under this chapter with respect to any action, suit, or proceeding and may preside alone and hold a regular or special session of the court, except as otherwise provided by law or by rule or order of the district court

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

(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(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.

(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.

STATEMENT OF FACTS

Eleanor Rigby, like many, have long called the City of Blackbird, Moot, home. R. at 5. Blackbird is home to tens of thousands of individuals and families. *Id.* Because a home is meant to be a safe environment, it's no surprise that Ms. Rigby decided to birth and raise her only daughter in Blackbird. *Id*. Little did she know, however, that Blackbird was anything but safe. *See id.* Thanks to the alleged conduct of Penny Lane Industries, Inc. ("Penny Lane"), Ms. Rigby's only daughter died at four years old from leukemia. *Id.*

Penny Lane is a wholly owned subsidiary of Strawberry Fields Foods, Inc. ("Strawberry Fields"). R. at 4. According to Ms. Rigby and hundreds of other residents of Blackbird and surrounding communicates, Penny Lane knowingly disposed of industrial chemicals and pollutants at its manufacturing facility in Blackbird. R. at 5. In doing so, Penny Lane contaminated Blackbird's ground water supply. *Id.* Although the source of the contamination has not been determined, Federal and State authorities confirmed that hazardous substances, pollutants, or contaminants are present within Blackbird's aquifer system. *Id.* According to the United States Environmental Protection Agency, tens of thousands of residents drank and bathed in Blackbird's which toxins at concentrations of 250 to 3,000 times the safe level. *Id.*

Tragically, Blackbird's poisoned water is linked to the sickness, birth defects, and even death of many individuals, like Ms. Rigby's daughter. *Id.* Ms. Rigby and hundreds of others affected by Penny Lane's wrongdoing sued Penny Lane for damages related to death or injury caused by the contaminated local water supply. R. at 6. Some suits went as far as to name Strawberry Fields as a defendant. *Id.*

Penny Lane and Strawberry Fields both maintain their innocence. *Id*. That said, rather than face the injured residents of Blackbird in Court, Penny Land and Strawberry Fields have

shamefully attempted to avoid the mounting lawsuits by twisting the Bankruptcy Code. R. at 6-7. Penny Lane and Strawberry Fields are no strangers to taking shortcuts to save their bottom line. First, it was with improperly disposing waste to save money. R. at 5. Now, it is abusing the Bankruptcy Code to avoid liability.

In response to the influx of litigation, Penny Lane filed a subchapter V chapter 11 case. R. at 6. Nearly 10,000 claims were asserted, totaling close to $400 million. *Id.* Within weeks of Penny Lane's petition, Ms. Rigby commenced an adversary proceeding against Penny Lane seeking to have her $1 million claim deemed non dischargeable under section 523(a) and 1192(2). R. at 7. Ultimately, the bankruptcy court held that the 523(a)'s exceptions to discharge did not apply because Penny Lane was a corporation that filed under subchapter V of chapter 11. *Id.*

Over the next two months, stakeholders negotiated a complex settlement framework reflected in Penny Lane's plan of reorganization ("Plan"). R. at 8. Most pertinent to this appeal is the Plan's provision for a trust that would be funded with Debtor's disposable net income for five years and, more importantly, by Strawberry Fields. *Id.* Under the Plan Strawberry fields will pay $100 million to the trust. *Id.* The trust is anticipated to result in creditors with allowed claims receiving a merely 30-40 cents on the dollar. *Id.*

Ms. Rigby who lost her only daughter would only receive somewhere between $300-$400 thousand. *See id.* The slap to Ms. Rigby's face does not stop there. The measly $300-400 thousand would be conditioned upon a broad release of all claims against Strawberry Fields. *Id.* The Plan releases and discharges all claims asserted or that will be asserted against Strawberry fields if the conduct relates to the Debtor's pre-petition conduct. *Id.*

It's easy to see why the bankruptcy court thought that the plan was a tough "pill to swallow," and yet the bankruptcy court reluctantly confirmed it. R. at 11. Ms. Rigby appealed the bankruptcy court's decision directly to the 13th Circuit. *Id*. The 13th Circuit, however, erroneously concluded that third party releases may be included in Chapter 11 Plans and that Section 523(a)'s exemptions only applied to individual debtors. R. at 15. This appealed follows.

SUMMARY OF ARGUMENT

The Bankruptcy Code is silent concerning third-party releases. However, this very silence prohibits the bankruptcy courts from confirming plans that authorize their release. Had the Bankruptcy Court acted within its statutory authority when it confirmed the plan releasing Ms. Rigby's claim against Strawberry Fields, it still overstepped its jurisdictional authority to do so because Ms. Rigby's claim was a non-core claim. Moreover, the Bankruptcy Court erred when it determined that Ms. Rigby's claim could be discharged in the first place.

ARGUMENT

I. Bankruptcy Courts lack authority to releases third-party claims against non-debtors.

A bankruptcy court has no authority to approve third-party releases. First, bankruptcy courts lack the statutory authority in the bankruptcy code to do so. Outside of the asbestos context there is no mention of third-party releases in the bankruptcy code. Second, it is unconstitutional for a bankruptcy court to approve non-consensual third-party releases. Non-consensual third-party force deprive victims of their constitutional rights to have their day in court to tell their story to a jury of their peers. Third, non-consensual third-party releases represent an abuse of the bankruptcy process. Non-consensual third-party releases allow organizations to escape liability and hide their wrongdoing for potentially pennies on the door. For these reasons, the Thirteenth Circuit erred in approving releases for third-party claims against Strawberry Fields, a non-debtor third party.

1. Bankruptcy courts do not have statutory authority to release third-party claims against non-debtors.

Bankruptcy courts do not have statutory authority to grant such releases. When determining whether a court has statutory authority, a court must first look at the text of the statute itself. *In re Purdue*. Courts are instructed to "presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous... 'judiciary inquiry is complete." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). Based on these instructions from the Supreme Court, the Thirteenth incorrectly relied on sections 105(a), 524, and 1123 of the bankruptcy court as statutory authority for third party releases.

A. Section 105(a) of the bankruptcy court does not grant the bankruptcy court authority to release non-consensual non-debtor third-party claims.

The Thirteenth Circuit cites section 105(a) as a justification for a bankruptcy courts the authority to authorize non-consensual third-party releases. Section 105(a) allows a court to "issue any orders, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. §105(a). While the purpose of section 105(a) is to provide courts with broad general powers to promote an orderly reorganization, broad power does not equate to unlimited power. *See Law v. Siegel*, 571 U.S. 415, 421 (2014). The limitation is also plainly stated in the language of section 105(a). Section 105(a) grants the bankruptcy court the authority to "carry out the provisions of th[e] [Code]**.**" As such, the Supreme Court has repeatedly held that a bankruptcy court's equitable powers under 105(a) "must and can only be exercised within the confines of' the Bankruptcy Code." *Id.*

A bankruptcy court's authority is limited to the specific rights and powers specified in the Code. *See id.* In *Law*, a unanimous Supreme Court held that the bankruptcy court exceeded its authority under section 105(a) when it denied a debtor's exemptions on grounds not specified in the code. *Id. at* 416 & 425. The unanimous court in *Law* explained that "The Code's meticulous – not to say mind-numbingly detailed – enumeration of exemptions and exceptions to those exemptions confirms that courts are not authorized to create additional exceptions." *Id. at* 424.

B. Section 524 does not grant a bankruptcy court the power to authorize third-party non-consensual releases except in asbestos cases.

Sections 524(g) of the Code also spell out meticulous and "mind-numbingly" detailed enumerations of the conditions for a bankruptcy court to grant releases and channeling injunctions to shield non-debtors from lawsuits. *See* 11 U.S.C. §524(g). To determine whether section 524(g) authorizes third-party non-consensual releases, courts must first look at the

language of the statute itself. A plain reading of the statute indicates that section 524(g) grants third-party non-consensual releases exclusively for asbestos or asbestos-related cases. Section 524(g)(2)(A) states that releases and channeling injunctions are subject to the requirements of section 524(g)(2)(B). 11 U.S.C. § 524(g)(2)(A).

One of the requirements under section 524(g)(2)(B) is that the trust is to assume the liabilities of a debtor "who has been named as a defendant in personal injury, wrongful death, or property-damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to asbestos or asbestos-containing products." 11 U.S.C. § 524(g)(2)(B)(i)(I). The inclusion of subsection 524(g)(2)(B)(i)(I) as a requirement is therefore unambiguous. Third party releases and channeling injunctions granted in §524(g) apply only in the asbestos context. When the language of the statute is unambiguous, the judiciary inquiry is complete. *Conn. Nat'l Bank*, 503 U.S. at 253-54. As such, the Thirteenth Circuit's majority opinion approving non-consensual third-party releases for Strawberry Fields directly contravenes the requirements of section 524(g)(2)(B).

The legislative history and intent of section 524(g) also indicate that the releases and channeling injunctions granted in Bankruptcy Code apply to asbestos or asbestos-related cases only. Congress enacted section 524(g) in 1994 in response to the *Johns-Manville* asbestos cases. *In re Purdue Pharm., L.P.*, 635 B.R. 26, 92 (2021). Congress passed section 524(g) of the bankruptcy code to "remove any doubt" about the legality of third-party non-debtor releases in asbestos cases. *Id*. (citing H.R. Rep. 103-835 at *41). Congress explicitly authorized third-party releases in asbestos cases because of the magnitude of the claims. *Id.* The outcome of these third-party releases in asbestos cases was meant to possibly help Congress determine whether third-party releases should be applied to other types of cases. *Id.* at 94. Since the passage of section

524(g) in 1994, Congress has "been deafeningly silent" on extending releases and channeling injunctions to other areas outside of the asbestos context. *Id.* This silence suggests that the releases and channeling injunctions in section 524(g) only apply to asbestos or asbestos-related cases.

Under *Law*, a bankruptcy court's powers are limited to the powers specifically enumerated in the bankruptcy code. *See Law*, 571 U.S. at 421-22. Bankruptcy courts are prohibited from enacting orders that are inconsistent with the provisions of the Bankruptcy Code. *Id.* at 421-22. Ms. Rigby's claim against Strawberry Fields has nothing to do with asbestos. As such, the bankruptcy court violated both the letter and the spirit of section 524(g) in approving the third-party non-consensual releases for Strawberry Fields.

C. Section 1123(a)(5)- (6) does not authorize third-party releases.

The Thirteenth Circuit majority also cited sections 1123(a)(5) and 1123(a)(6) as statutory authority for the bankruptcy court's authority to approve third-party non-consensual releases. Again, the first level of inquiry starts with looking at the plain language of sections 1123(a)(5) and 1123(a)(6).

Section 1123(a)(5) states a requirement that a plan "provide adequate means" for its implementation. 11 U.S.C. §1123(a)(5). The subsections of section 1123(a)(5)(A)-(J) then list the numerous examples to provide adequate means for a plan's implementation. *See* 11 U.S.C. §1123(a)(5)(A)-(J). While the inclusion of the term "such as" in the language of section 1123(a)(5) suggests that the listed examples were not meant to be the only ways a plan can provide "adequate means" for its implementation, every single example listed "authorizes the court to do something with the debtor's assets." *In re Purdue Pharm., L.P.*, 635 B.R. 26, 108 (2021). Actions involving a non-debtor's assets such as third-party releases are nowhere in this

list. *Id.* A bankruptcy court has *in rem* jurisdiction of the *debtor's* assets. *Id.* Thus, actions involving a third party's assets represent a major deviation from the examples provided in the subsections of 1123(a)(5). *See* 11 U.S.C. §1123(a)(5)(A)-(J). Such major deviations from the bankruptcy code require more than "simple statutory silence if, and when Congress were to intend a major departure." *See Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 984 (2017), *Id* . at 110 (quoting *Jevic Holding Corp.*, 137 S. Ct. at 984). Had Congress intended for subsections 1123(a)(5) to include actions involving a non-debtor's assets, it would have included such examples. *See In re Purdue Pharm., L.P.*, 635 B.R. 26, 110 (2021).

D. There is no statutory authority in section 1123(b)(6) to grant third party non-consensual releases.

Section 1123(b)(1)-(6) lists 6 actions that may take place under a plan. None of the six actions explicitly involve third-party releases. *See* §11 U.S.C. §1123(b)(1)-(6). 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)(1)-(6) Section 1223(b)(6) power are substantially akin to that of section 105(a) which authorizes "any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. §105(a), *In re Purdue Pharm., L.P.*, 635 B.R. 26, 34-106 (2021). Section 1123(b)(6) does not grant statutory authority for third-party releases for the same previously stated reasons that section 105(a) does not grant statutory authority for third-party releases.

The Bankruptcy Code is meant to provide "a *comprehensive* federal system to govern the orderly conduct of debtor's affairs and creditors' rights." *In re Purdue Pharm., L.P.*, 635 B.R. 26, 110 (2021) (quoting *E. Equip. & Servs. Corp. v. Factory Point Nat'l Bank, 23*6 F.3d 117, 120 (2d Cir. 2001). This suggests that had Congress intended for third-party releases to be permissible outside the asbestos context, Congress would have expressly stated so in the

Bankruptcy Code. Further, another purpose of the Bankruptcy Code is "to free the debtor of his personal obligations *while ensuring that no one else reaps a similar benefit.*" *Id.* (quoting *Green v. Welsh,* 956 F.2d 30, 33 (2d Cir. 1992). This purpose is further evidenced in section 524(e) of the Bankruptcy Code which states the discharge of a debtor's debt "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 whole point of third-party releases is to relieve third parties of liability. As such, third-party releases outside of the asbestos context conflicts with the overall purpose of the bankruptcy code and that of section 524(e). Thus, third-party releases are also incompatible with section 1123b(6).

2. Even if bankruptcy courts have statutory authority to release third-party claims against non-debtors, bankruptcy courts lack constitutional authority to do so.

A bankruptcy court's subject matter jurisdiction is premised on the fact that is a unit of a district court. *See* 28 U.S.C. § 151. Accordingly, a district court may provide that all cases or proceedings be referred to a bankruptcy court. *See* 28 U.S.C. § 157(a). Even if a district court refers a case to a bankruptcy court, however, the bankruptcy court can only enter orders in core mattes. *See* 28 U.S.C. § 157(b)(1), (c)(1). A bankruptcy court can only enter orders in non-core matters if all the parties to the matter consent. *See* 28 U.S.C. § 157(c)(2).

A. Ms. Rigby's Tort Claim against Strawberry Fields is a non-core matter.

It is the bankruptcy court's responsibility to determine whether "each claim before it is core or non-core." *Exec. Benefits Ins. Agency v. Arkinson*, 573 U.S. 25, 33 (2014). A claim can be a core cause of action when its "stems" from the bankruptcy itself or would "necessarily be resolved in the claims allowance process." *Allied Title Lending, LLC v. Taylor*, 420 F. Supp. 3d 436, 448 (E.D. Va. 2019) (quoting *Stern v.* Marshall, 564 U.S. 462, 499 (2011) (internal quotations omitted). A claim is necessarily resolved in the allowance process when it shares

"common questions of fact and law with the creditors' claims and when it seeks to directly reduce or recoup the amount claimed. *Id.*

If a claim neither stems from nor would be necessarily resolved in the claims process, it can nonetheless become a core claim if the claim is "integral to the restructuring of the debtor-creditor relationship." *See Stern*, 546 U.S. at 497. Even when claims are referred to bankruptcy court for final adjudication, if the bankruptcy court is prohibited from proceeding in a constitutional manner, it should treat the proceeding as it would a non-core claim. *Exec. Benefits Ins. Agency*, 573 U.S. at 35-36. Meaning, the bankruptcy court must determine whether the non-core claim can be adjudicated because the claim sufficiently is related to a case under title 11. *Id.* At 36. *See also* 28 U.S.C. § 157(c)(1) (allowing bankruptcy courts to adjudicate cases that are "otherwise related to a case under title 11.")

A bankruptcy court is not absolved from its responsibility to properly identify the content of claims to ensure it has jurisdiction only because it is an enormous task. *See Patterson v. Mahwah Bergen Retail Grp., Inc.*, 626 B.R. 641, 669 (E.D. Va. 2022). In *Patterson* the court found that the Bankruptcy Court was not excused from parsing the content of the thousand claims that were to be released under the plan. *Id.* Despite the daunting task, the Court reasoned that the constitutional implications of extinguishing the claims made the Bankruptcy Court's undertaking more important. *Id.*

To properly classify claims, bankruptcy courts must focus on the content of the proceeding rather than the category of the proceeding when determining whether it has authority to adjudicate it. *Patterson* 626, B.R. at 669 (citing *Stern*, 564 U.S. at 497). Accordingly, given *Stern's* focus on the content of the claims, courts cannot bypass constitutional limitations simply

by categorizing a wide varying swath of claims as "core" and then assuming jurisdiction over them. *Id.*

That is exactly what the Bankruptcy Court did to Ms. Rigby's claims and the claims of other Blackbird victims. Rather than look at the content of each claim and decide whether each claim was core or noncore, it abstracted that all the claims were fell within the same category. According to the 13th Circuit, it is enough to overgeneralize all claims into a broad category and conclude that the release of such claims are integral to a reorganization.

Not all claims to be released under the Plan, however, are the same. Some claims named Strawberry Fields as a co-defendant to suits regarding Penny Lane's knowingly disposal of toxins. R. at 6. Ms. Rigby's claim against Strawberry Fields, on the other hand, is based, among other theories, that Strawberry Fields knew or should have known its subsidiary's alleged misconduct. *Id.* Despite this distinction, the Bankruptcy Court too hastily determined it had authority over all the claims against Strawberry Fields without properly classifying the claims.

Penny Lane would also have this Court believe that Ms. Rigby's claim against Strawberry Fields is integral to the Penny Lane's reorganization and thus a core proceeding because without Strawberry Fields contribution to the trust, the Trust will not be created, and the Plan will not be confirmed. As the 13th Circuit noted, any non-core proceeding related to the core proceeding is within the jurisdiction of the bankruptcy court. *See Celotex Corp v. Edwards*, 514 U.S. 300 (1995).

This argument is a nonstarter. To determine whether Ms. Rigby's claim against Strawberry Fields is a "core" proceeding the question is whether looking at the content of Penny Lane's Plan, the Bankruptcy Court resolved a matter "integral to the restructuring of the debtor creditor relationship." *See In re Millennium Lab Holdings II, LLC*, 945 F.3d 126, 137 (3rd Cir.

2019). In *In re Millennium,* the Court held that the plan's release provisions were core proceedings because they were integral to the restructuring. *Id.*at 140. Without the releases, reorganization would have been the debtor's sole option. *Id.* At 138. In other words, "restructuring . . . was possible *only because* of [the plan's] release provisions. *Id.* (emphasis added).

The same cannot be said for Strawberry Lane's release under the Plan. There is a difference between the feasibility of a plan, and the feasibility of a plan that the bankruptcy court wants. No one argues that without Strawberry Lane's contribution, Penny Lane's only option will be to liquidate the business. Strawberry Lane's contribution is only necessary for a "meaningful distribution to creditors." What is meaningful or not will be discussed in the following section, but for now it is imperative to note that a plan could still get confirmed. Perhaps it will not be a Plan that achieves similar results, but it could be a plan all the same.

Both the 13th Circuit and the Bankruptcy Court mistook the "integral" analysis to mean that Strawberry Lane's Release was integral to the Plan they thought was appropriate. That is not the test. As shown by *In re Millennium*, restructuring must completely hinge on the release provisions. Here the only thing that hinges on the release provisions is a plan that pays creditors two cents on the dollars. There is no reason to believe that the plan could not be crammed down over their objections.

B. The Bankruptcy Court's release of claims against Strawberry Fields amounts to adjudication and is unconstitutional.

Appropriately viewed, third Party Releases become *res judicata* for subsequent parties. *Patterson*, 626, B.R. at 670 (citing *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 152 (2009). This court has now already twice held that non-consensual third-party releases are entitle to res judicata claim preclusion barring any subsequent action. *See In re Purdue Pharma, L.P.*, 2021

WL 5979108, at *41. Moreover, when a bankruptcy court releases consensual settlements of claims, the releases become final judgments on the merits for purposes of further litigation. *See Larkin, Inc. v. Wray*, 189 F.3d 729, 732 (8th Cir. 1999). Accordingly, because the Bankruptcy Court adjudicated Ms. Rigby's claims in confirming the release of her claim against Strawberry Fields, the Bankruptcy Court overstepped its constitutional authority because, as demonstrated above, Ms. Rigby's claim was a noncore proceeding.

C. If bankruptcy courts can release non-core third-party claims holders who merely contribute or plan possible, Article III protections will unravel and so will the legitimacy of Bankruptcy procedures.

If a bankruptcy court could release the claims of holders who merely appear in a plan, bankruptcy court could essentially have limitless power. *See Patterson*, 626, B.R. at 670. Under Penny Lane's proposed rule, bankruptcy courts would have limitless power to release anything that it considers "integral to the restructuring." Meaning, bankruptcy courts could approve releases simply because reorganization finance depends on them. As with the case here, bankruptcy courts can fixate on what version of the plan they want to see confirmed. The test is whether a confirmation of a plan is at all possible, not whether a plan that a judge like is possible.

Penny Lane's proposed rule unjust results, but it would usher in gamesmanship into the Bankruptcy system. Rather than litigate any mass tort claims, parents of subsidiaries would be better of pushing its subsidiaries into bankruptcy, conditioning the plan on the release of the parent's claim, and avoid accountability all together. Moreover, Penny Lane's rule would allow the bankruptcy court to release, in reality adjudicate, any claim—severely undermining Article III.

Moreover, as mentioned in the previous Section, although a bankruptcy court has broad powers it does not have unlimited powers. By releasing claims against Strawberry Field's. the

Bankruptcy Court stepped out its authorized power and substituted what the law requires with what it thought was appropriate. Perhaps the Bankruptcy Court was correct—perhaps plaintiffs like Ms. Rigby will receive less than under the approved plan. Yet because the law prohibits the adjudication of non-core proceedings, it is for Ms. Rigby to decide whether she wants to take the money or seek her day in court. Perhaps no amount of money would ever make Ms. Rigby whole after losing her four-year-old daughter, but there may be a ray of hope knowing that the entities responsible for her daughter's death were held responsible in a court of law and no just let off the hook through bankruptcy proceedings. Granting a release to Strawberry Fields means the company will be able to hide its wrongdoing. It means it can avoid having to go through the discovery process which could reveal the extent of its wrongdoing. Ms. Rigby does not want Strawberry Field's hush money, she wants accountability. Ultimately, just because a bankruptcy court finds a proposed plan expedient and beneficial, does not mean it can adjudicate non-core claims and rob individuals of their day in court.

II. The Thirteenth Circuit incorrectly held that 11 U.S.C. § 1192(2) incorporates no discharge exceptions for a corporate debtor in Subchapter V proceedings with a non-consensual plan.

Even if the bankruptcy court can approve non-consensual releases of Ms. Rigby's third-party direct claim against Strawberry Fields, her claim is still non-dischargeable under section 523(a)(6). The parties agree that section 523(a) — a general list of debts that a debtor could not discharge — only apply to individual debtors in traditional chapter 11 cases, as section 1141(d)(2) qualifies section 523(a)'s application. 11 U.S.C. § 1141(d)(2). In any event, this individual debtor restriction does not apply in Subchapter V proceedings with a non-consensual plan because Congress established special rules for discharge governing such cases in section 1192. *See* 11 U.S.C. § 1181(c). section 1192(2) incorporates the discharge exceptions from

section 523(a) without any restrictions. 11 U.S.C. § 1192(2). Thus, by affirming the bankruptcy court's dismissal of Ms. Rigby's non-discharge ability action, the Thirteenth Circuit incorrectly decided that section 1192's reference to section 523(a) does not affect claims against corporate debtors.

A. The plain language of section 1192(2) is unambiguous and does not support the Thirteenth Circuit's interpretation.

The analysis of a statutory interpretation question begins with the statute's plain language. Further, "when the statute's language is plain, the sole function of the courts ... is to enforce it according to its terms." *Lamie v. United States Tr.*, 540 U.S. 526, 534 (2004). Here, section 1192(2)'s plain language supports applying section 523(a) discharge exceptions to corporate debtors in Subchapter V non-consensual confirmations. Section 1192 provides:

> 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 …, the court shall grant the debtor a discharge of all debts provided in section 1141(d)(1)(A) of this title … *except any debt—*
>
> (1) ...
> (2) *of the kind specified in section 523(a) of this title*.

11 U.S.C. § 1192(2) (emphasis added). A facial reading of section 1192(2) shows that it incorporates section 523(a)'s discharge exceptions list into Subchapter V cramdown proceedings. Unlike section 1141(d), section 1192(2) does not qualify its discharge exceptions to individual debtors. Considering that Congress adopted section 1192 to supersede section 1141(d) only in Subchapter V cramdown cases, it would have ensured that the section limits the discharge exceptions if it intended to restrict the section's scope. Therefore, section 1192(2)'s plain language suggests that debtors, both corporate and individual, may not discharge certain types of debt in a Subchapter V proceeding if they cannot obtain a consensual confirmation. Accordingly, the plain language of section 1192 does not support the Thirteen Circuit's view that Congress restricted the section's discharge exceptions to individual debtors only.

B. The context of the statute within the Bankruptcy Code and canons of construction show that the unrestricted interpretation of section 1192 discharge exceptions is the more appropriate reading of the statute.

Even if the Court finds the cross-reference between section 523(a) and section 1192(2) ambiguous, Ms. Rigby's unrestricted interpretation of section 1192(2) should still prevail. As the Court often observed, "statutory construction is a holistic endeavor." *Koons Buick Pontiac GMC, Inc. v. Nigh*, 543 U.S. 50, 60 (2004). Thus, when statutory languages are unclear, the Court should assess the provision by examining it through the lens of several interpretative tools. While parsing statutes, "words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989). Moreover, although interpretative canons are not mandatory rules, they can help courts identify legislative intent and resolve contradictory interpretations. *See, e.g., Lena v. Pena*, 518 U.S. 187, 211 (1996) (Steven, J., dissenting) (noting that canons of statutory construction can be appropriate tools for courts when Congress' intent is not entirely clear). These factors warrant adopting the unrestricted interpretation of section 1192(2).

The Court should start by examining section 1192's purpose within the Code. Enacted as part of the Small Business Reorganization Act of 2019, Congress adopted section 1192 as a provision governing discharge in certain Subchapter V cases. While Subchapter V proceedings are still Chapter 11 reorganizations, many governing rules for traditional Chapter 11 cases do not apply to Subchapter V proceedings. *See* 11 U.S.C. § 1181. By disabling those provisions, Congress created a narrow statutory regime that deviates from other Chapter 11 cases for small business debtors. For example, one significant modification of Chapter 11's structure in Subchapter V cases is the abrogation of section 1129(b) — the absolute priority rule. *See* 11 U.S.C. § 1181(a) ("sections ... 1129(b) ... [does] not apply in a case under this subchapter."). In traditional Chapter 11 cases, the absolute priority rule is a "bedrock principle [that ensured

creditors receive payments] ahead of shareholders in the distribution of corporate assets." *In re LATAM Airlines Grp.*, 620 B.R. 722, 796 (Bankr. S.D.N.Y. 2020). Since the rule's removal allows the debtor's shareholders to keep their equity in the bankrupt entity without paying creditors in full, the significance of such a change cannot be overstated. On that note, because Subchapter V made substantial modifications to the traditional Chapter 11 framework, reading Subchapter V-specific provisions in a broader Chapter 11 light may be unreasonable. Therefore, the Court should view section 1192 against its Subchapter V backdrop, and not the traditional Chapter 11 context.

i. The Thirteenth Circuit's emphasis on section 523(a)'s cross-reference to section 1192 was misplaced.

Here, no one contests section 1192's role within the new Subchapter V framework. Instead, the issue is how broad should the scope of the section's discharge exceptions be. To answer this question, the Court should first the relationship between section 1192(2) and Section 523(a), as the former incorporates the latter's list of discharge exceptions. Indeed, the link between these sections is also where the Thirteenth Circuit directed its arguments. In its majority opinion, the Circuit notes that the reference to section 1192 in section 523(a) makes section 1192(2) ambiguous. R. at 17. Specifically, the Circuit pointed to section 523(a)'s introductory paragraph: "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..." 11 U.S.C. § 523(a). By focusing on the reference to section 1192 and the term "individual debtor," the Circuit infers that section 1192(2) 's exceptions cannot apply to corporate debtors, thus rejecting Ms. Rigby's interpretation. R. at 18-19.

However, the Thirteenth Circuit's argument is problematic. First, as Circuit Judge McCartney mentions in the dissent, the Circuit's reading here creates an unnecessary conflict.

See R. at 31-32. In cases involving tensions between two statutory provisions, this Court emphasizes that more specific provisions govern over more general ones. *See e.g., RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) ("It is a commonplace of statutory construction that the specific governs the general.") (citing *Morton v. Mancari*, 417 U.S. 535, 550–551 (1974)). Here, because section 1192 contains specific provisions governing discharge in non-consensual Subchapter V proceedings, it should trump section 523(a) — the more general provision listing discharge exceptions. Had the Circuit followed this constructive canon when interpreting section 1192, section 1192(2) would be the controlling authority here, and not the cross-reference from section 523(a).

Nonetheless, the Thirteenth Circuit insists that section 523(a)'s cross-reference is significant. To defend their position, the Circuit argues the unrestricted interpretation of section 1192(2) because it contradicts the rule against surplusage — the interpretative canon that courts should "give effect, if possible, to every word Congress used." *Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 138 S. Ct. 617, 632 (2018) (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979)). Applying this rule, the Circuit reasoned that accepting section 1192(2)'s precedence over section 523(a) would render the latter section's cross-reference meaningless, while their reading would give "meaning to every term of both sections." R. at 19. However, this argument does not carry much weight, as this Court has held that the rule against surplusage is not absolute and applying this canon does not always provide a fair construction of the statute. *See King v. Burwell*, 576 U.S. 473, 491 (2015) ("Our preference for avoiding surplusage construction is not absolute.").

Moreover, the Circuit's surplusage argument overlooks that its reading of section 523(a)'s cross-reference also raises a surplusage issue. By holding the "individual debtor" language in section 523(a)'s introductory paragraph as evidence supporting their position, the

Circuit renders the term "of the kind" in section 1192(2) meaningless. After all, if Congress intended to incorporate the entire section 523(a) into Subchapter V — including the individual debtor language — it could have better achieved that objective by taking out "of the kind" and making section 1192(2) refer to "any debt ... specified in Section 523(a)." Applying the same logic, the Circuit's reading of section 523(a)'s cross-reference is also undesirable because it creates surplusage within the Code. Therefore, the Circuit's reliance on this surplusage argument is misplaced.

ii. The Thirteenth Circuit's evaluation of the term "of the kind" in section 1192(2) was flawed.

After finding section 523(a)'s introductory clause restricts section 1192(2), the Circuit further rejected the unrestricted interpretation of section 1192(2) by refuting Ms. Rigby's emphasis on the term "of the kind" within that section. Their reasoning here is also flawed. The Circuit started their analysis with the dictionary definition of "kind"— a group united by common traits. *Kind*, MERRIAM-WEBSTER DICTIONARY (online ed.) Then, the Circuit provided an example for applying this definition to categories within the Bankruptcy Code: they noted consumer debts, as a kind of debt, share the traits of having individual debtors and non-commercial purposes. R. at 18. Next, drawing parallels from this example, the Circuit found two common traits for the kind of debt specified in section 523(a): (1) its debtor must be an individual, and (2) the debt's obligation must be specified in one of section 523(a) subsections. R. at 19. Inferring from this reading of the list of debts' common traits, the Circuit concluded that section 1192(2) also incorporates the "individual debtor" language from section 523(a)'s introductory clause.

The problem with the analysis here is the Circuit's reliance on drawing parallels from the consumer debt example. Unlike consumer debts, the kind of debts from section 523(a) do not

share the same well-defined characters. By reasoning that the section's introductory clause binds the list of debts and establishes a common individual debtor requirement, the Circuit presumed what they wanted to prove. In other words, the Circuit's reasonings here overlooked that their approach to identifying the common traits of consumer debts may not be the universal rule that applies to similar concepts throughout the Code. For instance, an alternative approach to grouping section 523(a)'s listed debts focus on their abuse potentials — Congress excepted these debts from discharge because allowing debtors to evade these debt obligations contradicts public interests. Accordingly, applying the definition of "kind" does not support the Thirteenth Circuit's view on section 523(a) debts' common traits as the only logical reading of the statute.

Because no relevant chapter 11 case law interpreting this issue exists, to break the tie between these two possible readings of the type of debt section 1192(2) incorporates, the Court should consider references to debts "of the kind specified in Section 523(a)" elsewhere in the Code. Indeed, section 1228 — the discharge provision governing chapter 12 proceedings — employs the identical language in subsection (a)(2). *See* 11 U.S.C. § 1228(a)(2). In case law interpreting section 1228(a)(2), bankruptcy courts recognized that a discharge under chapter 12 does not include those debts listed in section 523(a), "regardless of whether the debtor is an individual or a corporation." *In re Breezy Ridge Farms, Inc.*, No. 09-1011, 2009 WL 1514671 at *3 (Bankr. M.D. Ga. May 29, 2009). These courts also supported their interpretation by noting that "it would be a stretch to try to fit the § 523(a) language into § 1228," because "the wording in § 1228(a)(2) describing 'debts of the kind' specified in § 523(a) *does not naturally lend itself to also incorporate* the meaning 'for debtors of the kind' referenced in § 523(a)." *In re JRB Consol., Inc.*, 188 B.R. 373, 374 (Bankr. W.D. Tex. 1995) (emphasis added).

Considering the chapter 12 case law interpreting "of the kind," Ms. Rigby's view that section 1192(2)⬇ incorporates section 523(a)'s list of exceptions without its introductory clause, seems more consistent with the natural reading of statute than the Thirteenth Circuit's view. As for the Circuit's argument that using chapter 12 case law to interpret chapter 11 provisions is inappropriate, the Court should again consider the context of section 1192 . The Circuit's concern here stems from the differences between traditional chapter 11 and chapter 12 debtors, and the individual debtor origin of section 1228(a)(2) 's "of the kind" language. While these observations are valid, the Circuit overlooked that subchapter V does not follow the traditional chapter 11 framework. Because subchapter V removed some fundamental rules protecting creditors' interests, the subchapter's confirmation process shares some similarities with its chapter 12 and chapter 13 counterparts. Thus, in subchapter V, the corporate and individual debtor distinction emphasized by the Circuit is less relevant and should not warrant them to disregard chapter 12 case law.

Additionally, the Circuit's argument to distinguish the same term in these chapters 11 and 12 goes against the presumption of consistent usage canon, which notes "a term generally means the same thing each time it is used." *United States v. Castleman*, 572 U.S. 157, 174 (2014). Since Congress does not distinguish "of the kind" in sections 1192(2) and 1228(a)(2) , the terms should have a consistent meaning because they are within the same Code. Therefore, the Court should reject the Thirteenth Circuit's analysis of the term "of the kind."

iv. The Thirteenth Circuit's restricted interpretation of section 1192(2)⬇ leads to absurd results.

In addition, the Court should not adopt the Thirteenth Circuit's restricted interpretation of section 1192(2) would lead to absurd results. Even though section 1141(d)(2) generally turns off the section 523(a) discharge exceptions for corporate debtors in most chapter 11 cases, such a

ban is not absolute. Specifically, section 1141(d)(6) excepts corporate debtors from discharging any debt specified in sections 523(a)(2)(A) & (B). Congress enacted this provision to prevent chapter 11 corporate debtors from discharging debts arising from fraud or false misrepresentation. Thus, in traditional chapter 11 and consensual subchapter V proceedings, section 1141(d)(6) places some discharge exceptions on corporate debtors.

However, applying the Circuit's restricted interpretation of section 1192(2), corporate debtors can ignore these restrictions if they file a non-consensual plan. Since section 1141(d) does not apply in a subchapter V cramdown, and section 1192(2)'s incorporated exceptions do not apply to corporate debtors, a non-consensual plan would allow them to discharge debts they otherwise could not in a consensual confirmation. Because Congress could not have intended to give debtors an incentive to file non-consensual plans, this would be an absurd result. On that note, because the Thirteenth Circuit's interpretation of Section 1192(2) would go against a substantive interpretive canon — the rule against absurdity — the Court should reject such an interpretation.

C. The unrestricted interpretation of *section* 1192(2) serves the public policy goals of the Bankruptcy Code.

At last, the unrestricted interpretation of section 1192(2) is proper because it is more consistent with the Bankruptcy Code's policy goals than the Thirteenth Circuit's narrow reading of the statute. Congress's primary objective in adopting subchapter V is to streamline the process by which small business debtors obtain a fresh start. However, in interpreting subchapter V provisions, courts should not overlook the Code's other interests, such as the interest in achieving fundamental fairness and justice. *See In re Am. Cap. Equip.*, 688 F.3d 145, 157 (3rd Cir. 2012) ("the Bankruptcy Code's objectives include ... achieving fundamental fairness and

justice."). To that end, the proper interpretation of section 1192(2) should harmonize the Code's various policy goals.

Circuit Judge McCartney noted in his dissent that the discharge in bankruptcy "exists to help troubled debtors," but "[the debtors] ... must subject themselves to a rigorous and transparent process dictated by the Bankruptcy Code." R. at 25. The addition of subchapter V procedures does not change this principle. However, no one contests that the new subchapter V provisions brought a great benefit: small business debtors can reorganize under an expedited process. As mentioned, Congress achieved this task by removing chapter 11 procedures safeguarding creditors' interests: With the abrogation of the absolute priority rule, the debtor's shareholders could keep their equity without paying the creditors; and with the removal of the competing plan provisions, creditors could not propose a plan when they disagree with the debtor's proposal.

Yet, it would be an untenable end if the subchapter V framework only benefits debtors at the creditors' expense. To maintain the fundamental fairness and justice of the bankruptcy system, Congress must balance the parties' conflicting interests. Further, because debtors can obtain confirmation of their plan over dissenting creditors, the need for equitable considerations is even greater in cramdowns. The unrestricted interpretation of section 1192(2) addresses this policy concern. By incorporating section 523(a)'s discharge exceptions, section 1192(2) would provide additional safeguards for the creditors. Indeed, these are the policy considerations the Fourth Circuit relied on when adopting the unrestricted interpretation of section 1192(2). *See In re Cleary Packaging, LLC*, 36 F.4th 509 (4th Cir. 2022) (holding that [the unrestricted interpretation of section 1192(2)] serves fairness and equity). Just as the Fourth Circuit points

out: "a distinction between individuals and corporations for how Subchapter V is applied would ... make no sense," *Id.* at 517, as it is the creditor's interest that Congress must balance. Thus, the Court should adopt the unrestricted interpretation of section 1192(2) because it furthers the Bankruptcy Code's various interests.

CONCLUSION

Not only did the Bankruptcy Court overstep its statutory authority to grant the release of Ms. Rigby's claim against Strawberry Fields, but it also lacked constitutional authority to do the same. As demonstrated above, the text does not mention third-party releases in the bankruptcy code. Moreover, even if the statute authorizes third-party releases, here, the Bankruptcy Court overstep the Constitution because Ms. Rigby's claim is a non-core claim. Finally, to the extent that a bankruptcy court can authorize the release of third-party claims, section 523(a)(6) prohibits the discharge of Ms. Rigby's claim. For the above reasons, the Court should reverse the Thirteenth Circuit's judgment.