Team Number 38
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NO. 21-0909

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

BRIEF 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 provided in subparagraphs (1) through (19) of 11 U.S.C. § 523(a).

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The Thirteenth Circuit Court of Appeals' decision is available at No. 22-0909 and reprinted at Record 3. The bankruptcy court decided in favor of Penny Lane Industries, Inc. On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed in favor of Penny Lane Industries, Inc.

STATEMENT OF JURISDICTION

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

RELEVANT STATUTORY PROVISIONS

This action requires statutory construction of certain provisions of Title 11 of the United States Code. The following sections are also restated in full in the Appendix.

The relevant portion of 11 U.S.C. § 523(a)(6) provides:

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

The relevant portion of 11 U.S.C. § 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 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.

STATEMENT OF THE CASE

This appeal arises from the Petitioner's attempt to except from discharge all claims against the Debtor and to block confirmation of the Plan contemplating non-consensual releases of third-party direct claims against the Debtor's parent company. Petitioner's appeal jeopardizes the Plan's potential to provide significant and immediate relief to creditors.

I. FACTUAL HISTORY

Penny Lane Industries, Inc. (the "Debtor") is a manufacturer and wholly owned subsidiary of Strawberry Fields Foods, Inc. ("Strawberry Fields"). R. at 4-5. Petitioner, Eleanor Rigby ("Ms. Rigby"), is a resident of the City of Blackbird, Moot, where the Debtor also operates its plastic, glass, and metal food container manufacturing facility. *Id.* at 4-5. In 2017, Ms. Rigby filed suit against the Debtor alleging that her daughter's death was a result of exposure to pollutants knowingly disposed of by the Debtor on the property of its manufacturing facility. *Id.* at 5. She contended that these pollutants made their way into the Liverpool River, which runs along the Debtor's property. *Id.* Further, Ms. Rigby asserted the co-liability of Strawberry Fields, who knew or should have known, of its subsidiary's supposed misconduct. *Id.* at 6.

Residents of Blackbird and the neighboring communities subsequently filed hundreds of additional lawsuits against the Debtor. *Id.* at 6. Many of these lawsuits named Strawberry Fields as a co-defendant and claimed damages for death or injury caused by exposure to pollutants that contaminated the communities' water supply. *Id.*

The allegations are disputed by both the Debtor and Strawberry Fields. *Id.* They assert that all waste disposal by the Debtor complied with the applicable environmental laws and regulations in existence at the time. *Id.* The source of the contamination has not been conclusively determined and there has yet to be a judicial determination in any forum regarding such claims against the Debtor and Strawberry Fields. *Id.* at 5-6.

On January 11, 2021, the Debtor filed its subchapter V chapter 11 case in the Bankruptcy Court for the District of Moot. *Id.* at 6. While the Debtor owed less than $2 million to its trade creditors, approximately 10,000 claims asserting cumulative damages of about $400 million were filed in relation to the alleged dumping of pollutants. *Id.* With no objection to date, Ms. Rigby filed an unsecured claim against the Debtor in the amount of $1 million. *Id.* at 7.

Shortly after the petition was filed, Ms. Rigby commenced an adversary proceeding against the Debtor seeking to have her $1 million claim deemed non-dischargeable pursuant to sections 1192 and 523(a) of the Bankruptcy Code (the "Code").[1] *Id.* Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7012 of the Federal Rules of Bankruptcy Procedure, the Debtor filed a motion to dismiss the complaint for failure to state a claim on which relief can be granted. *Id.* Ruling in favor of the Debtor, the bankruptcy court held that exceptions to discharge under section 523(a) of the Code are not applicable to cases where the Debtor is a corporation, including cases filed under subchapter V of chapter 11. *Id.* Accordingly, the bankruptcy court granted the Debtor's motion to dismiss the adversary proceeding. *Id.*

To facilitate the negotiation of a global settlement, the court granted the Debtor a temporary injunction staying all actions against the Debtor's "current and former owners, officers, directors, employees and associated entities," including Strawberry Fields, related to the alleged misconduct of the Debtor. *Id.* at 7-8. Several stakeholders ultimately negotiated a complex settlement framework that was incorporated into a nearly consensual plan of reorganization (the "Plan"). *Id.*

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[1] A second objection to the Plan was filed by Norwegian Wood Bank (the "Bank"). Because the Bank did not appeal the bankruptcy court's confirmation order, the court's determination with respect to the Bank's objection will not be discussed herein.

at 8. The Plan includes the establishment of a creditor trust funded by: (a) the Debtor's disposable (net) income for five years, and (b) $100 million to be paid by Strawberry Fields. *Id.* It was estimated that such trust would result in creditors receiving thirty to forty cents on the dollar. *Id.*

In exchange for the funding, the Plan expressly releases and discharges third-party claims against Strawberry Fields related to the Debtor's pre-petition conduct. *Id.* at 8-9. While the class of unsecured creditors overwhelmingly supported the Plan[2], Ms. Rigby objected, arguing that non-consensual releases of third-party direct claims against Strawberry Fields are not permissible under applicable bankruptcy and non-bankruptcy law. *Id.* at 9.

The bankruptcy court confirmed the Plan and overruled Ms. Rigby's objection, noting that the highly unusual and complex nature of the case, the significant monetary contribution being made by Strawberry Fields, and the overwhelming creditor support for the Plan constituted the requisite extraordinary circumstances to permit non-consensual releases of third-party direct claims. *Id.* at 10. In its detailed findings, the court determined that the $100 million contribution was substantially greater than any likely recovery from Strawberry Fields. *Id.* Further, "there existed no other reasonably conceivable means to achieve the results accomplished by the Plan." *Id.* Finally, opposed to complex and continued litigation, the court concluded that the Plan offered a significant and immediate benefit to creditors. *Id.*

II. PROCEDURAL HISTORY

The bankruptcy court faced two issues in this case and ruled in favor of the Debtor on both. *Id.* at 7, 10. First, the court dismissed Ms. Rigby's non-dischargeability action, concluding that exceptions to discharge in section 523(a) do not apply in a case where the debtor is a corporation, including a case filed under subchapter V of chapter 11. *Id.* at 7. The court again sided with the

[2] Over ninety-five percent of the creditors who submitted ballots voted in favor of confirmation of the Plan. R. at 9.

Debtor when it overruled Ms. Rigby's objection to the Plan, holding that it had the authority to approve the third-party releases included therein. *Id.* at 10-11. Ms. Rigby timely appealed both of the bankruptcy court's rulings. *Id.* at 11. On direct appeal, the Thirteenth Circuit likewise affirmed. *Id.* at 4.

STANDARD OF REVIEW

The parties do not dispute the facts of the case. R. at 11. As matters of statutory interpretation of the Code, the issues addressed in this appeal solely involve questions of law. Accordingly, the standard of review is *de novo*. *See Texas v. Soileau* (*In re Soileau*), 488 F.3d 302, 305 (5th Cir. 2007).

SUMMARY OF THE ARGUMENT

The Thirteenth Circuit correctly ruled in favor of the Debtor when it held first, that the bankruptcy court had the jurisdiction and authority to include third-party releases in chapter 11 plans and second, that the exceptions to discharge under section 523(a) of the Code applied only to individual debtors.

The bankruptcy court had jurisdiction to issue a final order approving the Debtor's plan containing a third-party release pursuant to all of section 1334(b)'s bases. First, Ms. Rigby's objection to the Plan arises in the chapter 11 case and is a matter of administration which could not exist absent the case. The objection to the Plan also arises under bankruptcy code sections 1192 and 523. Lastly, the objection is related to the Debtor's bankruptcy case because the Plan includes relief to third parties who possess indemnification rights against the Debtor's estate.

The statutory and constitutional authority of the bankruptcy court to issue a final order approving the Debtor's plan containing a third-party release can be derived from the classification of the matter as a core proceeding concerning the administration of the estate and confirmation of the Plan. Even if this Court were to hold that the matter does not constitute a core proceeding, Ms. Rigby consented to adjudication by the bankruptcy court because she did not specifically or timely object to its authority to issue a final order.

Ms. Rigby's appeal attempts to establish a prohibition on third-party releases of nondebtor entities to preserve the opportunity to hold Strawberry Fields accountable for its alleged misconduct related to the Debtor. Third-party releases, however, are neither prohibited by nor inconsistent with the plain language of the Code. Following the well-settled statutory construction principle that sections of the Code should be construed together, this Court can look to sections 105(a), 1123(a)(5), and 1123(b)(6) to authorize confirmation orders including third-party releases necessary to achieve a successful reorganization.

The Code does not explicitly prohibit third-party releases. Moreover, bankruptcy courts maintain broad equitable powers to approve plans with necessary and appropriate provisions so long as they are not inconsistent with the Code. Third-party releases do not violate section 524(e), which clarifies that the debtor's discharge does not by itself discharge the claims of others. This Court should also consult section 524 as a whole and its legislative history. Both suggest that sections 524(g) and 524(h) do not forbid third-party releases in non-asbestos contexts or indicate that such injunctions were not previously permissible under the statute. Section 524(g) simply supplies requirements that must be satisfied to permit asbestos-related releases. By including a rule of construction stating that sections 524(g) and 524(h) bear no influence on the authority of the court to issue third-party releases, Congress made its intent clear. Legislative history solidified that intent in the House Committee report regarding the special rule.

Although there is no express authorization for nonconsensual third-party releases other than in the asbestos context under section 524(g), the court's ability and residual authority to approve a release over the objection of a creditor can be found in sections 105(a), 1123(a)(5), and 1123(b)(6). Courts are given flexibility under those sections to determine when a release is appropriate, and the Debtor's unique circumstances satisfy the relevant criteria set forth by lower courts to warrant the inclusion of third-party releases in the Plan. Indeed, the release of Strawberry Fields from liability was critical to the Debtor's reorganization. The result achieved under the current Plan also provides a meaningful distribution to creditors. Without the parent company's substantial contribution, there would be insufficient funding to implement a plan achieving similar results. The Federal Rules of Bankruptcy Procedure provide further support for the authorization of third-party releases by requiring such injunctions to be included in a plan's disclosure statement. This Court should follow the majority of circuits below in approving the inclusion of the third-party release in the Debtor's Plan.

Contrary to the plain language of the Code, Ms. Rigby also seeks an exception to discharge under section 523(a)(6). The plain language of the statute is unambiguous, and the Court is not required to conduct any further judicial inquiry. Should the Court determine that further inquiry is appropriate, statutory context, canons of construction, and the policy goals of the Code indicate that section 523(a)'s exceptions to discharge apply only to individual debtors. This interpretation ensures the most equitable outcome for the Debtor, Strawberry Fields, Ms. Rigby, other creditors, and the Blackbird community.

Section 523(a)(6) of the Code plainly states that a discharge under section 1192 "does not discharge an individual debtor from any debt." Section 1192 grants a discharge for the debts listed in section 1141(d)(1)(A), and then excepts from discharge those debts that are "of the kind specified in section 523(a)." Following the limiting language of section 523(a)'s introductory clause, the incorporation of nondischargeable debts only applies to individual debtors.

Accordingly, as a corporate entity, the Debtor can be appropriately distinguished from an individual debtor.

Even if the Court chooses to look beyond the statute's plain meaning, statutory context and canons of construction support the same interpretation. Enabling section 523(a)'s exceptions to discharge to apply to corporate debtors would run afoul of Congressional intent. Instead, the drafters purposefully neglected to include language identifying that the exceptions to discharge apply to all debtors. Sections 1141(d)(6) and 1141(d)(2) demonstrate that Congress knows how to distinguish the applicability of discharge provisions based on the character of the debtor. The canon of construction against surplusage also requires that the exceptions to discharge solely apply to individual debtors, as the incorporation of words from section 1192 in section 523(a) would lack any meaning or effect. Finally, discharges in chapter 12 of the Code should be differentiated from those under chapter 11. Chapter 12's relationship with the statute and special treatment of specific debtors suggests that similarities in the language of section 523(a) do not require courts to impose identical exceptions to discharge in both chapters.

Lastly, this Court can rely on the policy goals and practical considerations of the Code to affirm that Ms. Rigby's debt is dischargeable. The bankruptcy process cannot function properly without debtors having the opportunity for a fresh start and a feasible method of reorganization. These policy goals should be guided by the fundamental bankruptcy principles of fairness and equity. By interpreting section 523(a)'s exceptions to discharge to encompass corporate debtors, this Court would interfere with the Debtor's ability to discharge its overwhelming debts and reorganize with a clean slate. Furthermore, chapter 11 focuses on efficient reorganization and plan finality. Both require courts to discharge substantial debts that threaten to overwhelm the successful reorganization of a corporate entity. Providing Ms. Rigby an exception from discharge under section 523(a) would place her above similarly situated tort claimants and risk the filing of thousands of other nondischargeability actions. Conversely, the corporate discharge enables the Debtor to pursue a plan that provides a significant and immediate benefit to creditors. As such, the determination that Ms. Rigby's debt is dischargeable aligns with central purposes of the Code, effectively ensuring the viability of the Debtor's entire reorganization.

This Court should affirm on both issues.

ARGUMENT

This Court should affirm the Thirteenth Circuit's decision in favor of the Debtor and hold that third-party releases are permissible in chapter 11 plans. This court should also affirm the circuit court's decision to apply exceptions to discharge under section 523(a)(6) of the Code only to individual debtors.

I. THE THIRTEENTH CIRCUIT CORRECTLY HELD THAT THIRD-PARTY RELEASES MAY BE INCLUDED IN CHAPTER 11 PLANS.

The broad jurisdiction of the bankruptcy courts enables them to issue a final order confirming a plan that grants a nonconsensual third-party release resolving claims between non-debtor entities. The objection to the confirmation of the Plan arises under sections 105(a), 1123(a)(5), 1123(b)(6), and 1129 of the Code, and the proceeding is related to the bankruptcy as it involves the indemnification rights of third parties. The bankruptcy court also had the constitutional authority to grant third-party releases. While the Plan objection should be considered a core proceeding, Ms. Rigby's failure to timely object constitutes consent to a final judgment. Finally, the statutory authority of bankruptcy courts to allow Strawberry Fields a release in exchange for its substantial contribution to the Plan can be derived from sections 105(a), 1123(a)(5), and 1123(b)(6). The support of these sections in addition to the consistency of third-party releases with section 524 and the Code as a whole indicate the permissibility of such injunctions. Following the majority of circuits, this Court should hold that third-party releases are permissible to ensure a successful reorganization for the Debtor.

A. *Under 28 U.S.C. § 1334(b), the bankruptcy court had subject matter jurisdiction to issue a final order confirming a plan that grants a nonconsensual third-party release resolving claims between non-debtor entities*.

With certain exceptions, the district courts of the United States have original but not exclusive jurisdiction of all cases arising under Title 11 or arising in or related to cases under Title 11. *See* 28 U.S.C. § 1334(b). Such proceedings may be referred by the district courts to the bankruptcy judges for that district. *See* 28 U.S.C. § 157(a). Thus, the breadth of the bankruptcy courts' jurisdiction encompasses all matters, including third-party disputes, connected with the estate and debtor's reorganization. *See, e.g., Celotex Corp. v. Edwards*, 514 U.S. 300, 307-08 (1995). Notably, the Supreme Court has acknowledged the bankruptcy court's jurisdiction to approve a third-party release and channeling injunction, holding that the court had jurisdiction to enforce its own prior order enjoining tort lawsuits against third parties. *See Travelers Indemnity Co. v. Bailey*, 557 U.S. 137, 151 (2009).

1. The dispute concerning the objection to the Plan arises under Bankruptcy Code sections 105, 1123(a)(5), 1123(b)(6), 1191, and 1129.

Proceedings arising under title 11 "invoke substantive rights created by" that title. *See In re Housecraft Industries USA, Inc.*, 310 F.3d 64, 70 (2d Cir. 2002). Section 105(a) of the Code grants a bankruptcy court the broad authority to issue "any order, process, or judgement that is necessary or appropriate to carry out the provisions" of chapter 11. *See* 11 U.S.C. § 105(a). This section provides statutory authority for the bankruptcy court to issue a final order including a release of third parties from liability shared with the debtor. Next, section 1123(a)(5) states that a plan shall provide "adequate means" for implementation. *See* 11 U.S.C. § 1123(a)(5). The third-party release constituted such adequate means. Section 1123(b)(6) states that a plan may include any other appropriate provision not inconsistent with Code. This section provides a permissible grant of authority for a third-party release. Lastly, section 1191(a) states that "the court shall confirm a plan only if all the requirements of section 1129(a)" are met. *See* 28 U.S.C. § 1191(a). Considering Ms. Rigby's objection, alleging that the third-party releases do not comply with the applicable provisions of bankruptcy law, the Debtor cannot satisfy the requirements for confirmation of the Plan. *See* 11 U.S.C. § 1129(a). The influence of sections 105(a), 1123(a)(5), and 1123(b)(6) on the permissibility of the third-party releases included in the Plan is discussed in greater detail below.

2. The dispute concerning the objection to the Plan is related to the bankruptcy.

An action is "related to" bankruptcy if "the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." *See Pacor Inc., v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984). More specifically, a proceeding is "related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt's estate." *See id.* Because the outcome of the objection to the inclusion of third-party releases in the Plan could potentially impact the estate's administration in bankruptcy, the bankruptcy court had "related to" jurisdiction. *See id.* The impact on the estate results from the Plan's inclusion of relief to third parties who have indemnification rights from the Debtor's estate. *See SPV OSUS, Ltd. v. UBS AG*, 882 F.3d 333, 340 (2d Cir. 2018).

B. *Under 28 U.S.C. § 157, the bankruptcy judge had constitutional authority to enter a final order confirming the plan including third-party releases*.

1. As a core proceeding, the bankruptcy judge had constitutional authority to enter a final order confirming the Plan including third-party releases.

The manner in which a bankruptcy judge may act depends on the nature of the proceeding. *See* Bankruptcy Amendments and Federal Judgeship Act of 1984, 28 U.S.C. § 151 (1984); *Stern v. Marshall*, 564 U.S. 462, 473 (2011). Bankruptcy judges may hear and enter final judgements "in all core proceedings arising under title 11 or arising in a case under title 11. *See* 28 U.S.C. § 157(b)(1). Regardless of the bankruptcy court's statutory authority to resolve other claims, it only has the constitutional authority to adjudicate core claims. *See Stern*, 564 U.S. at 475. Section 157 sets forth a non-exhaustive list of examples of core proceedings. *See* 28 U.S.C. § 157(b)(2). To determine whether a matter is a core proceeding, "the question is whether the action at issue stems from the bankruptcy itself. *See Stern*, 564 U.S. at 499. As a matter concerning the administration of the estate and confirmation of a plan of reorganization, the Plan dispute constitutes a core proceeding. *See* 28 U.S.C. §§ 157(c)(2)(A), (L); *see also In re Millennium Lab Holdings II, LLC*, 945 F.3d 126 (3d Cir. 2019); *Patterson v. Mahwah Bergen Retail Group Inc.*, 636 B.R. 641 (E.D. Va. 2022).

2. Even if the matter is deemed a non-core proceeding, the parties consented to adjudication by the bankruptcy court.

Following *Stern*, the Supreme Court affirmatively answered whether parties may consent to the bankruptcy court's authority to enter a final judgment for a non-core claim. *See Wellness Int'l Network, Ltd., et al., v. Sharif*, 575 U.S. 665, 683-84 (2015). To reach its decision, the Court first concluded that "allowing bankruptcy litigants to waive the right to Article III adjudication of *Stern* claims does not usurp the constitutional prerogatives of Article III courts." *See id.* The Court subsequently held that valid consent to adjudication by the bankruptcy court need not be express. *See id.* at 683. Instead, consent can be implied, and courts should consider whether the parties were aware of the need for consent and the right to refuse it and still voluntarily appeared to try the case before the non-Article III judge. *See id.* at 685. Courts have held that a bankruptcy litigant impliedly consented to the bankruptcy court's jurisdiction when there was a failure to timely object. See *Daniels–Head & Assocs. v. William M. Mercer, Inc. (In re Daniels–Head & Assocs.)*, 819 F.2d 914, 918 (9th Cir. 1987). Beyond the lack of a timely objection, courts can look to the litigant's actions. *See In re Bellingham Ins. Agency Inc.*, 702 F.3d 553, 567-69 (9th Cir. 2012).

If it is determined that the nature of the proceeding was such that the bankruptcy judge lacked the constitutional authority to enter a final order, the argument that the court lacked constitutional authority to enter a final order under *Stern* was not raised and is therefore waived. *See id.* at 683-84. Ms. Rigby's objection to confirmation of the Plan asserted that the bankruptcy court did not have the authority to release third-party claims against nondebtor entities. R. at 4. The objection did not allege, however, that the bankruptcy court did not have the authority to issue a final order. *Id.* Because Ms. Rigby failed to object in the time she had to file two appeals regarding the Plan's inclusion of third-party releases, this Court can look to both timing and actions to determine that she impliedly consented to the bankruptcy court's constitutional authority to enter a final order.

C. *The bankruptcy court had statutory authority to grant a third-party release in the confirmation of the Plan*.

Affirming the court below acknowledges the statutory and residual authority of the bankruptcy courts to grant third-party releases. Although the Code does not explicitly prohibit or authorize such releases, necessary and appropriate provisions can be included in a plan if they are consistent with other sections. Third-party releases are consistent with section 524(e), which states that the "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." 11 U.S.C. § 524(e). The absence of mandatory language suggests that Congress did not intend to implement any limitation that would impact the inclusion of third-party releases in a plan of reorganization. Under section 524(g), Congress made it clear that the express authorization for injunctions in the asbestos context does not mean they are prohibited in other circumstances. Further, sections 105(a), 1125(a)(5), and 1123(b)(6), as cited by the majority of circuit courts, provide broad authority to the bankruptcy courts to pursue equitable measures that are necessary and appropriate in a plan of reorganization. Here, releasing Strawberry Fields from liability benefits all parties and results in the most equitable course.

1. The Bankruptcy Code does not expressly prohibit third-party releases.

To address questions of statutory interpretation, courts must first analyze whether the statutory language is plain and unambiguous. *See Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992). The plain language of the Code does not categorically prohibit or authorize third-party releases of nondebtor entities. *See Class Five Nevada Claimants v. Dow Corning Corp. (In re Dow Corning Corp.)*, 280 F.3d 648, 656 (6th Cir. 2002); *In re Continental Airlines*, 203 F.3d 203, 211 (3d Cir. 2000). Silence, however, "does not necessarily connote ambiguity." *See Arangure v.Whitaker*, 911 F.3d 333, 338 (6th Cir. 2018). Consequently, courts have recognized that such releases are permissible under limited and appropriate circumstances. *See In re FirstEnergy Solutions Corp.*, 606 B.R. 720, 733-34 (Bankr. N.D. Ohio 2019). Several courts have held that third-party releases should only be imposed in "rare" or "extraordinary" cases where the release is integral to the success of the reorganization. *See In re Metromedia Fiber Network, Inc.*, 416 F.3d at 141-42; *In re Aegean Marine Petroleum Network, Inc.*, 599 B.R. 717, 726 (Bankr. S.D.N.Y. 2019). For that reason, "third-party releases are permissible but should be granted cautiously, infrequently, and only when they are supported by specific factual findings." *Behrmann v. Nat. Heritage Foundation*, 663 F.3d 704, 712 (4th Cir. 2011). Other courts have considered certain relevant factors to determine the type of circumstances that render third-party releases critical to the success of the plan. *See In re Master Mortg. Inv Fund, Inc.*, 168 B.R. 930, 934 (Bankr. W.D. Mo. 1994); *In re Metromedia Fiber Network, Inc.*, 416 F.3d at 142-43; *In re Dow Corning Corp.*, 280 F.3d at 658. A central focus of reorganization in cases approving third-party releases "was the global settlement of massive liabilities against the debtors and co-liable parties." *See In re Continental Airlines*, 203 F.3d at 212–13. Here, the Debtor's Plan attempts to resolve that exact issue. The bankruptcy court specifically found that the settlement constituted the only reasonably conceivable means to achieve the results of the Plan, providing the unique circumstances required to permit third-party releases. With the magnitude of claims against the estate, the release of Strawberry Fields from liability allows the Debtor to reach a global settlement that maximizes the recovery of creditors, retain ownership of the corporation, and preserve jobs occupied by those in the Blackbird community.

2. Third-party releases do not violate section 524(e) of the Bankruptcy Code.

Bankruptcy courts have the authority to approve reorganization plans with necessary and appropriate provisions so long as they are not inconsistent with the Code. *See In re Energy Resources Co*, 495 U.S. 545, 549 (1990). This principal is rooted in the notion that bankruptcy courts, as courts of equity, have broad authority to modify creditor-debtor relationships. *See id.* at 549; *In re Continental Airlines*, 280 F.3d at 656; *Pepper v. Litton*, 308 U.S. 295, 303-04 (1939); *United States Nat'l Bank v. Chase Nat'l Bank*, 331 U.S. 28, 36 (1947); *Katchen v. Landy*, 382 U.S. 323, 327 (1966). Provided such authority, releases of third parties from shared liability with the debtor do not violate section 524(e) and are not inconsistent with the Code. *See In re Specialty Equip., Cos.*, 3 F.3d 1043, 1047 (7th Cir. 1993); *In re Airadigm Communs. Inc.*, 519 F.3d 640, 656 (7th Cir. 2008); *In re A.H. Robins Co.*, 880 F. 2d 694, 702 (4th Cir. 1989). Ms. Rigby does not to cite to any other provisions of the Code indicating otherwise. Under section 524(e), the "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." *See* 11 U.S.C. § 524(e). As the Thirteenth Circuit noted, section 524(e) is a savings clause, and the language of the provision indicates that the bankruptcy discharge of a debtor does not similarly relieve nondebtors of their liabilities. *See id.*; *In re Specialty Equip., Cos.*, 3 F.3d at 1047; *In re Airadigm Communs. Inc.*, 519 F.3d at 656. While retention of liability is the default position, it does not limit the court's authority to approve a third-party release in a plan where appropriate. *See In re A.H. Robins Co.*, 880 F.2d at 702. Further, section 524(e) does not statutorily impede on the bankruptcy court's authority to release a nondebtor from creditor claims. *See In re Specialty Equip., Cos.*, 3 F.3d at 1047; *In re Airadigm Communs. Inc.*, 519 F.3d at 656. When Congress intends to limit the power of the bankruptcy court, it has done so clearly by expressly limiting the court's power. *See* 11 U.S.C. § 105(b) ("[A] court may not appoint a receiver in a case under this title"); 11 U.S.C. § 1129(a) ("The court shall confirm a plan only if the following requirements are met . . . "). If Congress intended to create a limit, it would have incorporated mandatory terms such as "shall" or "will" instead of the word "does" into the statute. *See In re Airadigm Communs. Inc.*, 519 F.3d at 656. Additionally, the prepositional phrase, "on, or . . . for, such debt," would have been omitted to establish that the discharge of the debtor would not affect the liability of another. *See id.* Absent any prohibition or limitation from the Code, the inclusion of third-party releases aligns with the authority of the bankruptcy court to approve the Plan.

3. Section 524(g) does not prohibit the granting of third-party releases in non-asbestos contexts.

Courts should read statutes as a whole, interpreting individual subsections in a way that is consistent with other Code provisions. *See King*, 502 U.S. *v. St. Vincent's Hosp.*, 502 U.S. 215, 221 (1991). Relying on section 524(e) to preclude the allowance of third-party releases in non-asbestos contexts would be inconsistent with section 524 as a whole. *See In re Purdue Pharma, L.P.*, 633 B.R. 53, 102 (Bankr. S.D.N.Y. 2021), *vacated*, 635 B.R. 26 (S.D.N.Y. 2021). Section 524(g) explicitly "provides a special form of supplemental injunctive relief for an insolvent debtor facing the unique problems and liabilities associated with asbestos liability." *See In re Combustion Engineering, Inc.*, 391 F.3d 190, 234 (3d Cir. 2004). The section allows debtors to efficiently address all asbestos claims, including those against third parties alleged to share liability with the debtor. *See* H.R. Rep. No. 114-352 (1991). In exchange for a permanent channeling injunction, debtors fund a trust under a confirmed plan of reorganization. *See id.* Rather than an exception to section 524(e), the special rules set forth by section 524(g) provide additional requirements for asbestos-related releases. *See In re Combustion Engineering, Inc.*, 391 F.3d at 234. As such, the permissibility of third-party releases under section 524(g) does not function to prohibit the allowance of similar injunctions in other circumstances. *See In re Boy Scouts of Am. and Del. BSA*, 642 B.R. 504, 594-95 (Bankr. D. Del. 2022). Section 524(h), which applies to already confirmed asbestos plans, also exhibits that third-party injunctions are indeed permissible under the Code. *See* 11 U.S.C. § 524(h).

The interpretation that section 524(g) does not prohibit third-party releases from being granted in non-asbestos contexts additionally complies with Congressional intent and legislative history. Upon the section's enactment, Congress included a rule of construction, stating "[n]othing in subsection (a)", which would be codified as § 524(g) and (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." *See* Bankruptcy Reform Act of 1994, Pub. L. 103-394 § 111(b) (1994). In addition to the plain language and statutory context, legislative history supports the interpretation that the bankruptcy court had the jurisdiction and authority to approve a channeling injunction and its corollary, the third-party release, in a chapter 11 plan of reorganization. *See* H.R. Rep. 103-834 (1994). Legislative history calls attention to the rule of construction, confirming that the special rule does not alter the authority of the bankruptcy court to issue third-party releases in connection with a plan of reorganization. *See id.* In its report, the House Committee stated that

> Section 111(b) ... make[s] clear that the special rule being devised for the asbestos claim trust/injunction mechanism is not intended to alter any authority bankruptcy courts may already have to issue injunctions in connection with a plan [of] reorganization. Indeed, [asbestos suppliers] Johns–Manville and UNR firmly believe that the court in their cases had full authority to approve the trust/injunction mechanism. And other debtors in other industries are reportedly beginning to experiment with similar mechanisms. The Committee expresses no opinion as to how much authority a bankruptcy court may generally have under its traditional equitable powers to issue an enforceable injunction of this kind.

See id. The existence of section 524(g) instead suggests that the bankruptcy court can employ its already existent equitable powers under other Code sections to find the authority to incorporate a third-party release into a chapter 11 plan of reorganization. *See id.* Thus, legislative history endorses the perception that other circumstances may require the court to use its equitable powers to enforce such injunctions. *See id.*

4. Sections 105, 1123(a)(5), and 1123(b)(6) of the Bankruptcy Code provide the bankruptcy court statutory and residual authority to approve third-party releases.

The flexibility and equity built into chapter 11 of the Code enables debtors to employ a wide range of restructuring mechanisms to address concerns relevant to their business. *See NLRB v. Bildisco & Bildisco,* 465 U.S. 513, 525 (1984). Without express authorization, sections of the Code should be construed together to allow confirmation orders approving third-party releases that are necessary to achieve a successful reorganization. *See In re Energy Resources Co,* 495 U.S. at 549; *In re Airadigm Communs. Inc.,* 519 F.3d at 657; *see also Kelly v. Robinson,* 479 U.S. 36, 43

(1986) (holding that statutory interpretation must be guided by looking to provisions of the whole law). Together, sections 105(a), 1123(a)(5), and 1123(b)(6) statutorily and residually authorize the bankruptcy court to approve a plan including third-party releases. Section 105(a) grants the bankruptcy court the broad authority to issue "any order, process, or judgment that is necessary or appropriate," to carry out the provisions of the Code. *See* 11 U.S.C. § 105(a). This section essentially affords the bankruptcy court the authority to adopt equitable measures critical to the implementation of other sections of the Code. *See In re Granger Garage, Inc*., 921 F.2d 74, 77 (6th Cir. 1990). Consistent with section 105(a)'s broad grant of authority, bankruptcy courts maintain significant discretion in approving of reorganization. *See Energy Resources Co.,* 495 U.S. at 549. The section "has been construed liberally to enjoin suits that might impede the reorganization process." *See In re Johns Manville Corp.*, 837 F.2d 89, 93 (2d Cir. 1988). Therefore, the bankruptcy court can use its equitable powers to approve the confirmation of a plan containing third-party releases that promote the efficient reorganization of a debtor and benefit the affected creditors.

Next, section 1123(a)(5) states that a plan "shall . . . provide adequate means for the plan's implementation," and lists several transactions that may constitute such "adequate means." *See* 11 U.S.C. § 1123(a)(5). The examples provided by the statute are illustrative and not exclusive, enabling "adequate means" to encompass other transactions such as the release of third parties from shared liability with the debtor. *See In re Federal-Mogul Global Inc.,* 684 F.3d 355, 368 (3d Cir. 2012) (finding "'adequate means'" broad enough to encompass the anti-assignment provisions of insurance policies purported to bar transfer to post-confirmation trust"). Beyond the authorization of the global settlement agreement, the language of section 1123(a)(5) requires the Plan to include releases that impact the ability to acquire the substantial contribution from

Strawberry Fields that is essential to the success of the reorganization. The intentional use of the word "shall" mandates that the Plan to include adequate means for implementation, which is satisfied by the incorporation of the release of Strawberry Fields from liability in exchange for the substantial contribution to the Debtor's reorganization.

Finally, bankruptcy courts may exercise broad discretion within plans of reorganization. *See In re Airadigm Communs. Inc.*, 519 F.3d at 657. The authority of a chapter 11 plan to include global settlement provisions like those proposed by the Debtor is within the Code's section dedicated to what must and may be included in such plan. *See* 11 U.S.C. § 1123(b)(6). Section 1123(b)(6) enables the court to "include any other appropriate provision not inconsistent" with the Code. *See* 11 U.S.C. § 1123(b)(6). This "residual authority" allows for the release of third parties from liability granted the release is "appropriate" and not inconsistent with the Code. *See In re Airadigm Communs. Inc.*, 519 F.3d at 657. Despite Ms. Rigby's contentions, she cites no provisions suggesting that third-party releases are prohibited by or inconsistent with the Code. Indeed, Strawberry Fields, who has never filed for bankruptcy, will reap the benefits of a discharge without having to subject itself to the process. Ms. Rigby will not have her day in court, but the release still comes at a cost to Strawberry Fields: $100 million to be exact. Thus, this Court can rely on the Code sections and equitable concerns to affirm that the bankruptcy had the authority to approve the Plan including third-party releases.

Additional authorization can be found in the Federal Rules of Bankruptcy Procedure, which govern procedures for bankruptcy proceedings under title 11. *See* Fed. R. Bankr. § 1001. Notably, the rules authorize the grant of third-party releases. Under Fed. R. Bankr. § 3016(c), if a plan contains an injunction that is not specifically authorized in the Code, it must be conspicuously identified in the plan and disclosure statement. This rule, approved by this Court and Congress, provides authority for the grant of third-party release injunctions. *See In re American Media, Inc.*, No. 10–16140 (MG), 2010 WL 5483463, at *6 (Bankr. S.D.N.Y. Dec. 20, 2010).

Dependent on their statutory and residual authority, courts utilize their flexibility and consider several factors under sections 105(a), 1123(a)(5), and 1123(b)(6) of the Code to determine whether a release is appropriate. The determination of whether a release is appropriate is "fact intensive and depends on the nature of the reorganization." *See In re Airadigm Communs. Inc.*, 519 F.3d at 657. Some courts have recognized that a court may enjoin creditors from suing third parties if the injunction is important to the debtor's reorganization plan. *See In re Metromedia Fiber Network, Inc.*, 416 F. 3d 136, 141 (2d Cir. 2005); *SEC v. Drexel Burnham Lambert Group, Inc. (In re Drexel Burnham Lambert Group, Inc.)*, 960 F.2d 285, 293 (2d Cir.1992). Other courts look to certain relevant factors. In *In re Master Mortgage Investment Fund, Inc.*, the bankruptcy court outlined a five-factor test that many courts have also adopted to consider whether non-consensual third-party releases are appropriate in chapter 11 plans of reorganization. *See* 168 B.R. at 935. These factors consider whether:

> (1) There is an identity of interest between the debtor and the third party, usually an indemnity relationship, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete assets of the estate; (2) The non-debtor has contributed substantial assets to the reorganization; (3) The injunction is essential to reorganization. Without the it, there is little likelihood of success; (4) A substantial majority of the creditors agree to such injunction, specifically, the impacted class, or classes, has "overwhelmingly" voted to accept the proposed plan treatment; and (5) The plan provides a mechanism for the payment of all, or substantially all, of the claims of the class or classes affected by the injunction.

Id. Based on the bankruptcy court's findings of fact and conclusions of law, the Plan complied with the above factors. First, Strawberry Fields would likely have contribution and indemnification rights against the Debtor for the alleged conduct. R. at 12. Next, Strawberry Fields has contributed $100 million to the reorganization. R. at 8. The injunction is also essential to the reorganization, as the bankruptcy court properly noted it was the only reasonably conceivable means to attain the results accomplished by the Plan. *Id.* at 10. Further, the class of unsecured creditors overwhelmingly supported the plan. *Id.* at 9. Lastly, the Plan provides for the establishment of a creditor trust that will enable creditors with allowed claims to receive a substantial distribution. *Id.* at 8. Beyond necessary, the factors adopted by courts in *Master Mortgage* illustrate that the third-party releases included in the Debtor's Plan were appropriate.

5. The circuit split demonstrates that the majority of courts support the inclusion of third-party releases in chapter 11 plans.

In accordance with the Thirteenth Circuit's holding, the majority of circuit courts permit third-party releases in a chapter 11 plan. *See, e.g.*, *In re Metromedia Fiber Network, Inc.*, 416 F.3d at 141*; In re Millennium Lab Holdings II, LLC*, 945 F.3d at 133-40; *In re Dow Corning Corp.*, 280 F.3d at 656-58; *SE Prop. Holdings, LLC v. Seaside Eng'g & Surveying (In re Seaside Eng'g & Surveying)*, 780 F.3d 1070, 1076-79 (11th Cir. 2015). The Fourth Circuit held that a bankruptcy court has the authority to release a nondebtor from liability under the provisions of a chapter 11 plan with creditor consent. *See In re A.H. Robins Company, Inc.*, 880 F.2d at 694; *see also Stuart, LLC v. First Mount Vernon Industrial Loan Association (In re Peramco International, Inc.)*, 3 Fed. Appx. 38, 42 (4th Cir. 2001). The circuit also cited to the factors adopted in *In re Dow Corning Corp.*, 280 F.3d at 658. *See First Energy Sols. Corp.*, 606 B.R. 720 (Bankr. N.D. Ohio 2019). Similarly, the Second and Seventh Circuits approve of the inclusion of non-consensual third-party releases in chapter 11 plans in rare and exceptional circumstances. *See In re Airadigm Communications, Inc.*, 519 F.3d at 640; *In re Metromedia Fiber Network, Inc.*, 416 F.3d at 136; *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d at 285.[3] While declining to create a categorical rule regarding the conditions under which third-party releases are appropriate, the

[3] It should be noted that the issue is again before the Second Circuit in the pending appeal from the order confirming a plan that included a third-party release. *See In re Purdue Pharma, L.P.*, No. 22-110-bk *et al*. (2d Cir. *appeal docketed* Jan. 18, 2022).

Third Circuit may be willing to allow for such releases. *See In re Continental Airlines*, 203 F.3d at 214.

The dissent correctly notes that the Fifth, Ninth, and Tenth Circuits have held that third-party releases operating to excuse the liability of nondebtors are outside the authority of the bankruptcy courts. *See Bank of N.Y. Trust Co. v. Off. Unsecured Creditors' Comm. (In re Pac. Lumber Co.)*, 584 F.3d 229, 252 (5th Cir. 2009); *Resorts Int'l, Inc. v. Lowenschuss (In re Lowenschuss)*, 67 F.3d 1394, 1401-02 (9th Cir. 1995*); Landsing Diversified Props. II v. First Nat'l Bank and Trust Co. of Tulsa (In re W. Real Estate Fund, Inc.)*, 922 F.2d 592, 600 (10th Cir. 1990). Acknowledging the split of authority, however, the American Bankruptcy Institute ("ABI") has endorsed the allowance of third-party releases and application of the factors in *In re Master Mortgage Investment Fund, Inc.* to evaluate the appropriateness of such releases. *See Final Report of the ABI Commission to Study the Reform of Chapter 11* at 255 (American Bankruptcy Institute, 2012-2014). The ABI determined in its Final Report and Recommendations that a blanket prohibition on third-party releases was inadvisable but also recognized that they may not always be appropriate. When considering what circumstances warrant the inclusion of third-party releases in chapter 11 plans, the ABI favored the *In re Master Mortgage Investment Fund, Inc*. five-factor test. *See id.* at 256. More specifically, the ABI emphasized the importance of the final factor and declined to incorporate an additional requirement of rare or unusual circumstances. *See id.*

By holding that it is both permissible and appropriate for the Debtor to incorporate release of third-party claims against Strawberry Fields in its chapter 11 Plan, this Court will ensure that creditors, including Ms. Rigby, receive an immediate and substantial benefit. Further, such a holding will enable an efficient reorganization that eliminates the complex and prolonged litigation that would ensue by trying to resolve the multitude of claims against the Debtor and Strawberry

Fields. *See Katchen*, 382 U.S. at 328 ("The chief purpose of the bankruptcy laws is to 'secure a prompt and effectual administration and settlement of the estate all bankrupts within a limited period'" (citing Ex Parte Christy, 44 U.S. 292, 293 (1845)). Finally, the confirmation of the Plan will allow the Debtor to continue its manufacturing business, protecting the jobs of many in the local community. *See NLRB*, 465 U.S. at 528 ("The fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources.").

II. THE THIRTEENTH CIRCUIT CORRECTLY HELD THAT THE SECTION 523(A) EXCEPTIONS TO DISCHARGE APPLY ONLY TO INDIVIDUAL DEBTORS.

This Court should affirm the Thirteen Circuit's decision in this case and decline to apply section 523(a) of the bankruptcy code to the corporate Debtor. Because of their fundamental differences, individual and corporate debtors are distinguished throughout the Code. Congress was careful in its decision to allow corporate debtors a complete discharge under chapter 11, and the realities of reorganization require that exceptions only be used when expressly reflected in the Code. Section 523(a) is unambiguous. Thus, the plain meaning of the statute supports the interpretation that the section's exceptions to discharge apply only to individual debtors. If this Court is inclined to look beyond the plain language, statutory context and the policy goals of bankruptcy support the understanding that corporate debtors, like the one in this case, should not be subject to the exceptions to discharge listed in section 523(a).

A. *Section 523(a) of the Bankruptcy Code is unambiguous, and the plain language of the statute clearly states that the exceptions to discharge apply only to individual debtors.*

To properly interpret section 523(a), the well-settled starting point is the text, and the statutory interpretation inquiry is complete when the words are unambiguous. *See United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989). Further, an undefined statutory term is interpreted "in accordance with [its] ordinary meaning." *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 553 (2014). While the cross-references in the recently adopted section 1192 and 523(a) may be ungrammatical, awkward, or poorly drafted, the statute should not be rendered ambiguous. *See Lamie v. United States Trustee*, 540 U.S. 526, 527 (2004). The "sole function of the court, at least where result is not absurd, is to enforce the statute according to its terms.'" *Caminetti v. United States*, 242 U.S. 470, 485 (1917); *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000).

Section 523(a)'s plain language provides that the exceptions to discharge apply only to individual debtors. *See In re GFS Industries, LLC,* NO. 22-50403-cag, 2022 WL 16858009, at *4 (Bankr. W.D. Tex. Nov. 10, 2022). The lower courts have overwhelmingly agreed with this interpretation. *See id.*; *Jennings v. Lapeer Aviation, Inc. (In re Lapeer Aviation, Inc.)*, 2022 WL 1110072 (Bankr. E.D. Mich. April 13, 2022); *Catt v. RTECH Fabrications, LLC (In re RTECH Fabrications, LLC)*, 635 B.R. 559 (Bankr. D. Idaho 2021); *Cantwell-Cleary Co., Inc. v. Cleary Packaging, LLC (In re Cleary Packaging LLC)*, 630 B.R. 466 (Bankr. D. Md. 2021), *rev'd* 36 F.4th 509 (4th Cir. 2022); *Gaske v. Satellite Restaurants, Inc. Crabcake Factory USA (In re Satellite Restaurants, Inc. Crabcake Factory USA)*, 626 B.R. 871 (Bankr. D. Md. 2021). The prefatory language of section 523(a) states that "a discharge under section . . . 1192 . . . of this title does not discharge an individual debtor from any debt." *See* 11 U.S.C. § 523(a). Under section 1192, "the court shall grant a debtor a discharge of all debts provided in section 1141(d)(1)(A)," and then excepts from discharge those debts that are "of the kind specified in section 523(a)." *See* 11 U.S.C. § 1192(2). While section 1192 seeks to incorporate the nondischargeable debts listed in 523(a), the limiting language of 523(a)'s introductory clause clearly indicates that the exceptions do not apply to corporate debtors. *See In re GFS Industries, LLC,* 2022 WL 16858009 at *4.

Additionally, section 1192(2)'s reference does not intend to expand the statute to impact debts not already excepted under 523(a). *See In re GFS Industries, LLC*, 2022 WL 16858009, at *4. Thus, "because [section] 523(a) unequivocally applies to individuals, the language of [section] 1192(2) does not empower [section] 523(a) to cast a wider net than the text of [section] 523(a) permits." *Id.*

Ms. Rigby improperly asserts that her claim is nondischargeable pursuant to section 523(a)(6), which excepts from discharge any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." *See* 11 U.S.C. § 523(a)(6). To support this contention, she argues that the language in section 1192(2) stating "any debt . . . of a kind specified in section 523(a)" incorporates the statute's 21 subsections but entirely ignores the introductory language. This is based off the belief that the word "kind" refers to a kind of debt rather than a kind of debtor. The word "kind", however, is defined as a "group united by common traits." *Kind*, MERRIAM-WEBSTER DICTIONARY (online ed. 2023). Under section 523(a), the debt shares the traits of requiring the debtor to be an individual and the obligation to stem from the circumstances listed in the subsection. Thus, the text plainly communicates that section 523(a)'s exceptions to discharge apply only to individual debtors, and Ms. Rigby may not invoke one of the statutory exceptions against the corporate Debtor.

B. *Even though the plain meaning of section 523(a) clearly states that exceptions to discharge apply only to individual debtors, statutory context and canons of construction require the same.*

When the language of a statute is plain, judicial inquiry ends. *See Ron Pair Enters., Inc.*, 489 U.S. at 241. However, the Court has also recognized that the "meaning of statutory language, plain or not, depends on context." *See King*, 502 U.S. at 221. Applying section 523(a) to only individual debtors is supported by both the provision's plain meaning and the statutory scheme under which sections 523, 1192, and 1141 were enacted.

1. The imposition of section 523(a)'s exceptions to discharge on corporate debtors would be contrary to Congressional intent.

To resolve any tension between sections 1192 and 523(a), this Court can look to canons of statutory construction for guidance. *See Lena v. Pena*, 518 U.S. 187, 211 (1996). These canons of construction dictate that courts must presume the legislature "says in a statute what it means and means in a statute what it says." *See Conn. Nat. Bank v. Germain*, 402 U.S. at 253-54; *Ron Pair Enters., Inc.*, 489 U.S. at 241–42. When Congress amends statutory language, it "presumably connotes a change in meaning." *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 256 (2012). As the Thirteenth Circuit highlighted, the language of section 523(a) indicates that the exceptions to discharge apply only to individual debtors. Congress carefully considered whether to allow corporations a complete discharge in chapter 11 when enacting the Code. *See* Ralph Brubaker, *Taking Exception to the New Corporate Discharge Exceptions*, 13 AM. BANKR. INST. L. REV. 757, 764–66 (2005). Because substantial exceptions to discharge would affect a corporation's ability to effectively reorganize, Congress made the conscientious decision to reject prior law and enable a complete corporate discharge of debt. *See id.* The only prior abandonment of the corporate discharge required eight years of consideration. *See* 11 U.S.C. § 1141(a)(6). Such a substantial change in the chapter 11 discharge scheme would not be made "without public input, hearings, or at the very least, some indication in the legislative history." *See* Richard P. Cook, *Discharges in Subchapter V*, 41-JUN AM. BANKR. INST. J. 24 (2022). The legislative history, however, is void of any indication of such intent. *See id.*

Congress had the ability to insert language expressly stating that the exceptions listed in section 523(a) apply to all debtors in Subchapter V. *See In re GFS Industries, LLC*, 2022 WL

16858009, at *4. Notably, the drafters evidenced their capacity to do so in section 1141(d). Section 1141(d)(6) states that "the confirmation of a plan does not discharge *a debtor that is a corporation* from any debt (A) of the kind specified in paragraph 2(a) or 2(B) of section 523(a) that is owed to a governmental unit . . ." (emphasis added). *See* 11 U.S.C. § 1141(d)(6). Section 1141(d)(2) also states that "[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." (emphasis added). *See* 11 U.S.C. § 1141(d)(2). Both sections provide evidence that Congress knows how to distinguish dischargeability based on the character of the debtor. *See In re GFS Industries, LLC,* 2022 WL 16858009, at *4. Ms. Rigby's interpretation attempts to circumvent the introductory language of section 523 to invoke an exception to discharge against the Debtor under section 1192(2). However, no language points to the existence of the same distinction Congress intentionally inserted in section 1141(d)(6). *See* 11 U.S.C. § 1192(2). As such, it is necessary to examine the language of section 523(a) to determine that such exceptions only apply to individual debtors. *See In re GFS Industries, LLC,* 2022 WL 16858009, at *4. The plain language of section 523(a) and the statutory context clearly dictate that the exceptions to discharge apply only to individual debtors.

2. The incorporation of section 1192 in section 523(a) would be rendered superfluous if the exceptions to discharge similarly applied to corporate debtors.

Courts "generally avoid construing one provision in a statute so as to suspend or supersede another provision. *See Rake v. Wade*, 508 U.S. 464, 471 (1993). This canon of statutory construction against surplusage mandates that sections of the Code must be construed together so that every word of a statute is given meaning. *Id.* When Subchapter V was passed, Congress amended section 523(a) to incorporate section 1192 in the scope of statute's exceptions to discharge. *See* 11 U.S.C. § 523(a). As written, section 1192(2) makes no reference to the appropriate type of debtor when applying section 523(a) exceptions to discharge. *See* 11 U.S.C. § 1192(2). If Congress intended section 523(a) exceptions to apply to corporate debtors, it would be unnecessary to add section 1192 to a statute that solely involves individual debtors. *See In re GFS Industries, LLC*, 2022 WL 16858009, at *4. Ms. Rigby's interpretation that section 523(a) excepts corporate debtors in Subchapter V from discharge "would ignore the import of [section] 1192 into [section] 523(a)" and render the reference meaningless. *See id.* at *5. Thus, the conclusion that the section 523(a) discharge exceptions only apply to section 1192(2) discharges of individual debtors properly construes the provisions together to treats every word as operative.

3. Discharge exceptions in chapter 12 of the Bankruptcy Code should be distinguished from those under chapter 11.

While words are presumed to have the same meaning when repeated throughout a statute, Congress is believed to be "aware of the longstanding judicial interpretation of the phrase" and intend to "retain its established meaning. *See Cohen v. de la Cruz*, 523 U.S. 213, 220 (1998); *Lamar, Archer & Cofrin, LLP v. Appling*, 138 S.Ct. 1752, 1762 (2018). Relying on two chapter 12 cases, the dissent points to the interpretation of section 523(a)'s similar language in section 1228(a)(2). *See Southwest Ga. Farm Credit, ACA v. Breezy Ridge Farms, Inc. (In re Breezy Ridge Farms, Inc.)*, 2009 WL 1514671 (Bankr. M.D. Ga. 2009); *New Venture P'ship v. JRB Consol. (In re JRB Consol., Inc.)*, 188 B.R. 373 (Bankr. W.D. Tex. 1995). Two cases at the trial court level, however, do not rise to the requisite level of judicial interpretation to validate the presumption that Congress intends words to maintain a similar meaning when used in different chapters of the Code. *See Lamar, Archer & Cofrin, LLP v. Appling*, 138 S.Ct. at 1762; *see also Dewsnup v. Timm*, 502

U.S. 410, 417 (1992) (declining to adopt the same meaning for the same words in the same section).

Further, section 523(a)'s relationship with chapter 12 should be distinguished from its role in chapter 11. Chapter 12's incorporation of section 523(a) is broader. *See In re GFS Industries, LLC*, 2022 WL 16858009, at *6; *In re JRB Consolidated Inc.*, 188 B.R. 373, 374 (Bankr. W.D. Tex. 1995). Absent any distinction between corporate and individual debtors, section 1228(a)(2) states that "the court shall grant the debtor a discharge of all debts . . . except any debt— (2) of the kind specified in section 523(a) of this title." *See* 11 U.S.C. § 1228(a)(2). The lack of such distinction suggests that there is no inconsistency between the broad application of section 1228(a)(2) and the narrow application of section 523(a) as individual debtors are still subject to the chapter 12 exceptions. *See In re JRB Consolidated Inc.*, 188 B.R. at 374. Moreover, the similar language located in section 1228(a)(2) was borrowed from chapter 13 which does not apply to corporations. *See* 11 U.S.C. §§ 109(e), 1328. Like the Thirteenth Circuit observed, if Congress intended section 523(a)'s exceptions to discharge to apply to corporate debtors in chapter 11, it would have included the language to do so.

Notwithstanding the similar language, the provisions of chapter 11 discharges and chapter 12 discharges also vary. *See id.* The limited exceptions to discharge under chapter 11 clarify that corporate debtors are not bound by section 523(a). *See id.* Because Subchapter V is a subchapter of chapter 11, the chapter 11 analysis remains relevant. *See In re GFS Industries, LLC,* 2022 WL 16858009, at *6. The unique nature of chapter 12 also supports a broad reading of section 1228(a) that is consistent with Congressional intent "to provide special treatment for certain kinds of debtors." *See In re JRB Consolidated Inc.*, 188 B.R. at 374. Chapter 11 lacks the special considerations afforded to the limited subset of debtors in chapter 12, and courts are not required to impose section 523(a)'s exceptions to discharge on Subchapter V corporate debtors. *See In re GFS Industries, LLC*, 2022 WL 16858009, at *7.

C. *The interpretation that section 523(a) exceptions to discharge apply only to individual debtors is consistent with the policy goals and the practical considerations of the Bankruptcy Code.*

Even if section 523(a) is ambiguous, applying the statute's exceptions to discharge exclusively to individual debtors aligns with policy considerations and the principles of fairness and equity. The policy goals of providing a fresh start and meaningful reorganization imply that such exceptions should not be enforced if they affect a debtor's ability to avoid liquidation. Further, fairness and equity are paramount principles in bankruptcy. Shielding the corporate Debtor from exceptions to discharge under section 523(a) is the course that honors those considerations.

1. The Bankruptcy Code's goal of providing a fresh start and chapter 11's focus on successful reorganization are best served by a strong presumption against exceptions to discharge.

Although the plain language of section 523(a) dictates that the exceptions to discharge only apply to individual debtors, courts may look to the "object and policy" of a statute to discern its meaning. *See Kelly*, 479 U.S. at 43. One of the main purposes of the bankruptcy system is to provide a fresh start to debtors. *See Stellwagen v. Clum*, 245 U.S. 605, 617 (1918). To achieve this goal, the Code contains provisions for the discharge of debts, subject to exceptions. *See Lamar, Archer & Cofrin, LLP,* 138 S.Ct. at 1758. Such exceptions, however, "should be confined to those plainly expressed." *Gleason v. Thaw*, 236 U.S. 558, 562 (1915). A broad interpretation of section 523(a) to include corporate debtors would be incompatible with the overarching policy's intention. *See Kawaauhau v. Geiger*, 523 U.S. 57, 62 (1998). Conversely, the strict construction of the statute effectuates the rehabilitation of the Debtor in its effort to successfully reorganize and comports with the policy goals of the Code.

Alternative to a fresh start, chapter 11 specifically focuses on reorganization and plan finality. *See* Ralph Brubaker, *Taking Exception to the New Corporate Discharge Exceptions*, 13 AM. BANKR. INST. L. REV. 757, 761. (2005). The function of the chapter 11 corporate discharge "rests on grounds entirely different from those underlying an individual debtor's discharge." *See id.* Compared to human debtors, corporations are already shielded from liability for actions lacking good faith. *See id.* at 760. Chapter 11 is available to individual debtors, but the considerations and scope of discharge do not change. *See* 11 U.S.C. § 1141(d)(2). Rather, the realities of reorganization justify allowing corporations a complete discharge. *See* Brubaker, *supra*, at 761. Applying section 523(a)'s exceptions to discharge to corporate debtors would effectively: "(1) provid[e] a *de facto* priority to the excepted debts, and (2) prevent[] a restructuring of the excepted debts, which is extreme cases, could prevent reorganization and necessitate liquidation of the corporate debtor." *See id.* If Ms. Rigby is allowed an exception under section 523(a)(6), her claim improperly receives priority over the other similarly situated tort claimants. Further, the exception would open the door for all other creditors to receive an exception and jeopardize the confirmation of the Plan. While the proposed distribution to creditors may not truly compensate victims for the significant pain and suffering associated with the alleged conduct of the Debtor and Strawberry Fields, deeming Ms. Rigby's claim as nondischargeable would contravene the policy goals of bankruptcy in general and chapter 11 specifically.

2. The principles of fairness and equity require application of section 523(a) exceptions to discharge to apply only to individual debtors to balance distributions among creditors and allow for the efficient reorganization of the Debtor.

To simplify chapter 11 reorganizations and reduce administration costs for small businesses, Congress enacted Subchapter V as part of the Small Business Reorganization Act of 2019. *See In re Cleary Packaging, LLC*, 36 F.4th 509, 517 (4th Cir. 2022). In turn, Subchapter V eliminated the absolute priority rule as an impediment to efficient reorganization. *See id.* The absolute priority rule, which is applied to determine whether a chapter 11 plan is fair and equitable, requires that creditors receive payment in full or vote to accept the plan before the debtor is permitted to retain ownership under the plan. *See* 11 U.S.C. § 1129(b)(2). Subchapter V replaced the absolute priority rule and instead requires the debtor to pay all of its "disposable income" into a plan for a set period should any class of creditors reject the plan. *See* 11 U.S.C. §§ 1191(b), (c)(2). Now, under a non-consensual subchapter V corporate debtor's plan, individuals can retain their ownership interests without having to overcome the obstacle of paying objecting creditors in full.

In *Cleary*, the court incorrectly concluded that Congress intended section 523(a) to apply to all debtors in Subchapter V to balance of fairness and equity concerns of creditors. *See In re GFS Industries, LLC*, 2022 WL 16858009, at *10. The supposed balance is defeated by Subchapter V's class voting scheme that does not allow one creditor's claim to control whether a plan is consensual. *See* 11 U.S.C. § 1126. Rather, creditors holding nondischargeable claims can outvote creditors in the same class that hold otherwise nondischargeable claims. *See* 11 U.S.C. § 1126. Alternatively, regardless of Ms. Rigby's actions, her debt may be deemed nondischargeable due to the rejection of the Plan by creditors in other classes such as the Bank.

The *Cleary* court's fairness argument is further weakened by considering the corporate non-consensual Subchapter V context. One of the central aims of the Code is to secure equal distribution among similarly situated creditors. *See Howard Delivers Serv., Inc. v. Zurich Am. Ins. Co.*, 547 U.S. 651, 655 (2006). At the same time, a plan must be feasible. *See* 11 U.S.C. § 1191(c)(3)(A). If Ms. Rigby's debt is deemed nondischargeable, the Debtor will be required to pay it in full. As a result, she will receive a higher distribution than the 10,000 other tort claimants that filed claims against the Debtor. Reducing payments to identical tort claimants would contravene the fundamental fairness principles of the Code. Further, other creditors may follow suit, massing substantial non-dischargeable claims that threaten the feasibility, and therefore confirmability, of the Plan. The bankruptcy court applied this exact reasoning in finding that "the failure to approve the settlement would likely result in complex and protracted litigation, with attendant risk, cost, and delay." R. at 8. The bankruptcy process was not so carefully designed as to produce such a result.

The inference in *Cleary* that "Congress applied limitations on the discharge of debts to provide an additional layer of fairness and equity to creditors," also neglects to address the benefits already afforded to creditors in deeming certain debts nondischargeable. *See In re GFS Industries, LLC*, 2022 WL 16858009, at *10 (quoting *In re Cleary Packaging, LLC*, 36 F.4th at 517). Creditors rights have not been significantly harmed to necessitate frustration of chapter 11's statutory scheme under which Subchapter V was adopted. *See id.* On the contrary, the existence of overwhelming nondischargeable debts may lead a debtor to opt for a chapter 7 liquidation, where unsecured creditors would be forced to compete for funds distributed between those with dischargeable and nondischargeable debts. *See id.* The result leaves creditors with dischargeable debts receiving less. *See id.* Again, courts would be swamped with actions from creditors seeking to have their debts deemed nondischargeable, defeating bankruptcy's objective to achieve an efficient administration of the estate. *See id.* In this case, excepting the debts of over 10,000 claims from discharge could reasonably lead the Debtor to consider chapter 7 liquidation. Further, the bankruptcy court specifically found that "the proposed distribution under the Plan is substantially greater than what creditors would receive if the Debtor was liquidated under chapter

7." R. at 10. These circumstances negate the inference in *Cleary* that imposing increased limitations on discharge would allow creditors to receive a more fair equitable and result.

The principles of fairness and feasibility instead support the conclusion that section 523(a)'s exceptions to discharge apply only to individual debtors and align with Congressional intent to provide for a complete corporate discharge in chapter 11. Accordingly, this Court may rely on the plain meaning of the text, statutory context, and policy goals of the Code to reach the conclusion that exceptions to discharge under section 523(a) solely apply to individual debtors.

CONCLUSION

The Bankruptcy Code enables corporate debtors to efficiently reorganize by providing the authority for a plan's inclusion of third-party releases of nondebtor entities and discharging substantial debts. Affirming the court below ensures that restructuring efforts, which maximize results for both the debtor and creditors, are honored in a plan. For the foregoing reasons, we ask that the Court AFFIRM.

APPENDIX

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

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

(1) for a tax or a customs duty—

(A) of the kind and for the periods specified in section 507(a)(3) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;

(B) with respect to which a return, or equivalent report or notice, if required—

(i) was not filed or given; or

(ii) was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or

(C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

(B) use of a statement in writing—

(i) that is materially false;
(ii) respecting the debtor's or an insider's financial condition;

(iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and
(iv) that the debtor caused to be made or published with intent to deceive; or

(C)

(i) for purposes of subparagraph (A)—

(I) consumer debts owed to a single creditor and aggregating more than $500 [2] for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and
(II) cash advances aggregating more than $750 2 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and

(ii) for purposes of this subparagraph—

(I) the terms "consumer", "credit", and "open end credit plan" have the same meanings as in section 103 of the Truth in Lending Act; and

(II) the term “luxury goods or services” does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor;

(3) neither listed nor scheduled under section 521(a)(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—

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

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

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

(5) for a domestic support obligation;

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

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

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

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

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

(A)

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

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

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

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

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

(11) provided in any final judgment, unreviewable order, or consent order or decree entered in any court of the United States or of any State, issued by a Federal depository institutions regulatory agency, or contained in any settlement agreement entered into by

the debtor, arising from any act of fraud or defalcation while acting in a fiduciary capacity committed with respect to any depository institution or insured credit union;
(12) for malicious or reckless failure to fulfill any commitment by the debtor to a Federal depository institutions regulatory agency to maintain the capital of an insured depository institution, except that this paragraph shall not extend any such commitment which would otherwise be terminated due to any act of such agency;

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

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

(14B) incurred to pay fines or penalties imposed under Federal election law;

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

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

(19) that—

(A) is for—

(i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or
(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

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

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

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

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

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

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

(1) Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), or (6) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section.
(2) Paragraph (1) shall not apply in the case of a Federal depository institutions regulatory agency seeking, in its capacity as conservator, receiver, or liquidating agent for an insured depository institution, to recover a debt described in subsection (a)(2), (a)(4), (a)(6), or (a)(11) owed to such institution by an institution-affiliated party unless the receiver, conservator, or liquidating agent was appointed in time to reasonably comply, or for a Federal depository institutions regulatory agency acting in its corporate capacity as a successor to such receiver, conservator, or liquidating agent to reasonably comply, with subsection (a)(3)(B) as a creditor of such institution-affiliated party with respect to such debt.

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

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

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11 U.S.C. § 1192. Discharge.

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

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

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