**No. 22-0909**

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 2022

IN RE PENNY LANE INDUSTRIES, INC., DEBTOR,

ELEANOR RIGBY, PETITIONER

V.

PENNY LANE INDUSTRIES, INC., RESPONDENT.

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## Brief for Petitioner

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## QUESTIONS PRESENTED

I. Whether the non-consensual release of direct claims against a third-party corporation contravenes the Bankruptcy Code and Constitution.

II. Whether debts incurred maliciously and willfully by a subchapter V debtor may be discharged when the language of section 1192 specifically makes those debts non-dischargeable.

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## OPINIONS BELOW

The Thirteenth Circuit Court of Appeals' decision is available at No. 22-0909 and reprinted starting at Record 2. Both the bankruptcy court and the bankruptcy appellate panel for the Thirteenth Circuit decided in favor of Penny Lane Industries, Inc. On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed.

## STATEMENT OF JURISDICTION

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

## PERTINENT STATUTORY PROVISIONS

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

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

> **(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;

The relevant portion of 11 U.S.C. § 524(e) provides:

> **(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.

The relevant portion of 11 U.S.C. § 524(g) provides:

> **(4)(A)(ii)** Notwithstanding the provisions of section 524(e), such an injunction may bar any action directed against a third party who is identifiable from the terms of such injunction (by name or as part of an identifiable group) and is alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor to the extent such alleged liability of such third party arises by reason of—
>
> **(B)(i)** the injunction is to be implemented in connection with a trust that, pursuant to the plan of reorganization…

**(I)** 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;

The relevant portion of 11 U.S.C. § 1141(d)(1)(A) provides:

**(d)**
**(1)** Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan—
**(A)** discharges the debtor from any debt that arose before the date of such confirmation, and any debt of a kind specified in section 502(g), 502(h), or 502(i) of this title, whether or not—

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.

The relevant portion of 11 U.S.C. § 1228(a) provides:

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

**(1)** provided for under section 1222(b)(5) or 1222(b)(9) of this title; or

**(2)** of a kind specified in section 523(a) of this title, except as provided in section 1232(c).

## STATEMENT OF THE CASE

On January 11, 2021, Penny Lane Industries ("Debtor"), a wholly owned subsidiary of Strawberry Fields, (R. 4-5), filed for bankruptcy under chapter 11, subchapter V of the Bankruptcy Code (R. 3, 6). The Debtor had less than $2 million in debt at the time of filing, (R. 6), and its petition was primarily to escape the "tsunami of litigation," (R. 3), that would have created an additional $400 million in debt (R. 6). At the time of filing, the Debtor was named in more than 10,000 lawsuits alleging wrongful death and serious injuries due to the Debtor's and Strawberry Fields' knowing disposal of environmental pollutants. (R. 3, 5-6.) These pollutants contaminated the City of Blackbird's water supply. (R. 5.) The United States Environmental Protection Agency ("EPA") and the Center for Disease Control and Prevention ("CDC") published studies that show between the years 2013 and 2017 the residents of Blackbird drank and bathed in water that had toxin concentrations at 250 to 3,000 times the legal level. (*Id.*) These highly concentrated toxins are linked to serious illnesses, birth defects, and death. (*Id.*)

Pertinent to this litigation, Ms. Rigby, the Petitioner and long-time resident of Blackbird, filed suit against the Debtor and Strawberry Fields after her four-year-old daughter's hard-fought battle with leukemia ended in her death. (*Id.*) Her untimely and tragic death followed her exposure to pollutants dumped into the Liverpool River by the Debtor. (*Id.*) Ms. Rigby alleged that the Debtor dumped the pollutants to cut costs, and the Debtor's Chief Executive Officer knew as early as 2014 that the waste-dumping contaminated Blackbird's water supply and could harm Blackbird residents. (*Id.*) Strawberry Fields, as the parent corporation, knew or should have known of the Debtor's illegal actions. (R. 6.)

The automatic stay did not apply to the parent company, so the Debtor obtained a post-petition injunction to cease litigation, (R. 7-8), and began Plan negotiations with its creditors (R.

8). The Plan eventually agreed upon by some creditors provided for a creditor's trust funded by (a) the Debtor's disposable (net) income for five years, and (b) $100 million from Strawberry Fields. (*Id.*) In exchange for Strawberry Fields' pay-out, it demanded a release from "any and all [third-party] claims" related to the Debtor's pre-petition conduct that have been or will be asserted in the future. (*Id.*) This release includes both derivative and direct claims against Strawberry Fields, and all claims would be channeled into the creditors' trust. (*Id.*) This is a non-consensual release provision because it binds anyone, regardless of whether the party participated in the bankruptcy or voted in favor of the Plan. (*Id.*)

Not all creditors approved the Plan. (R. 9.) Petitioner has a $1 million claim against the Debtor, (R. 6, 9), and objected to the Plan on the basis that the non-consensual release provision for Strawberry Fields is unconstitutional and adverse to general bankruptcy policy (R. 9). Ms. Rigby also commenced an adverse proceeding, alleging that her $1 million "willful and malicious injury" claim is non-dischargeable pursuant to sections 523(a)(6) and 1192 of the Code. (R. 7.) Section 1192 allows "debtor[s] a discharge of all debts . . . except any debt[s] of the kind specified in section 523(a)." (R. 30.) Nevertheless, the bankruptcy court confirmed the Plan, and Ms. Rigby timely filed an appeal of both rulings. (R. 11.)

## STANDARD OF REVIEW

The standard of review for issues of law, as in this case, is *de novo*. *See Fed. Hous. Fin. Agency for Fed. Nat'l Mortg. Ass'n v. Nomura Holding Am., Inc.*, 873 F.3d 85, 138 n.54 (2d Cir. 2017). *De novo* translates to "anew," meaning this Court should not defer to the lower courts. *Salve Regina College v. Russell*, 499 U.S. 225 (1991).

## SUMMARY OF THE ARGUMENT

This Court should overturn the decision of the Thirteenth Circuit Court of Appeals because the non-consensual release of all claims against third-party, Strawberry Fields, included in the Debtor's Plan is contrary to the express and implied language of the Code. These releases undercut underlying policy of bankruptcy law as a whole and contravene the well-settled constitutional principles of due process and separation of powers.

The language of sections 524 and 1141 limits the bankruptcy court's power to grant releases. While some courts presume that power through other sections of the Code, including sections 105(a) and 1123(b)(6), nothing in the Code, either expressly or impliedly, gives bankruptcy courts the authority to non-consensually release third parties. Further, the Southern District of New York's recent analyzation of a substantially similar case involving a mass tort litigation and the release of a third-party should guide this Court.

A bankruptcy court acts beyond its jurisdiction when it confirms a plan with a non-consensual third-party release. As a non-Article III court, a bankruptcy court must remain sensitive to the separation of powers when entering final orders. Though there is a circuit split about the proper test under *Stern v. Marshall*, the bankruptcy court exceeded its constitutional authority under either test.

Releasing Strawberry Fields from liability without proper determination will forever deprive the injured Blackbird residents of their day in court. Although the bankruptcy court did not make any rulings on the merits of the parties' claims, releasing the claims without consent amounts to the same result and should be afforded the same protection. Neither Congress nor the Constitution gives the bankruptcy court, or any court, the power to force claimants to abandon their claims.

With respect to the discharge of the Debtor's willfully and maliciously incurred debts, the Debtor seeks to undermine the plain language of section 1192 and receive a windfall in reorganization. In defiance of the text of section 1192, the Debtor aims to shirk its responsibilities and receive a discharge to the detriment of Ms. Rigby's ability to receive full value for her claim. The Debtor ignores the reality that subchapter V strays from the traditional reorganization framework of chapter 11 and incorrectly relies on principles of chapter 11. Subchapter V is more similar to chapter 12, and the policies and interpretation of discharge exceptions in chapter 12 should inform this Court.

Additionally, equitable considerations underlying bankruptcy must prevail. The policy goals of bankruptcy are eviscerated when a debtor receives a discharge of its willfully and maliciously incurred debts at the cost of the creditor. Not only would this detrimentally affect Ms. Rigby, but this misinterpretation of the Code also leads to absurd results that would deter consensual plans. Congress did not intend this result in its creation of the Small Business Reorganization Act ("SBRA"). In conclusion, the Code's text, context, and underlying equity support this interpretation as it balances the intent of the SBRA with the importance of maximizing value for creditors in reorganization.

## ARGUMENT

This Court should reverse the Thirteenth Circuit Court's decision because third-party releases are impermissible under the Code and constitutional principles. This Court should also reverse the circuit court's decision because debts listed in section 523(a) are excepted from discharge for corporate debtors in a subchapter V cramdown.

## I. <u>The Code and Principles of Constitutionality Prohibit Non-Consensual Releases of Third-Party Claims Against Non-Debtor Entities.</u>

There is nothing in the Code that authorizes a bankruptcy court "to order the non-consensual release of third-party claims against non-debtors in connection with the confirmation of a chapter 11 bankruptcy plan." *In re Purdue Pharma, L.P.*, 635 B.R. 26, 78 (S.D.N.Y. 2021). The Code does not, in express text or silence, authorize non-consensual, third-party releases. *Id.* at 38.

### A. The Plain Language of the Code Dictates That Only the Debtor is Entitled to a Discharge.

When interpreting a statute, all "inquiries must begin[] with the language of the statute itself." *Republic of Sudan v. Harrison*, 139 S. Ct. 1048, 1056 (2019) (internal citations omitted). The inquiry must begin with section 524 because it is the only section of the Code that touches on the rights of third parties within the context of a discharge or release.

#### *i. A Plain Language Interpretation of Section 524(e) Forecloses the Possibility of Non-Consensual Third-Party Releases and the Existence of Section 524(g) Supports That Interpretation.*

Section 524(e) states, 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). Because Congress only included "the debtor" and no other entities, this section excludes all others from receiving a discharge of their liabilities in connection with a bankruptcy. *In re Lowenschuss,* 67 F.3d 1394, 1401 (9th Cir. 1995). It is erroneous to interpret Congress' use of "the debtor" as including any other entities. Throughout the Code, Congress refers to specific parties and confers specific rights to those parties to the exclusion of others. It would be erroneous to interpret the Congressional grant of a discharge to "the debtor" to extend to any other entities. The Supreme Court affirmed this approach to Code interpretation using section 506(c). *See Hartford*

*Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 9 (2000). Congress conferred the power to recover against secured property only to the trustee under section 506(c). 11 U.S.C. § 506(c) ("the *trustee* may recover . . .") (emphasis added). After an administrative claimant attempted to recover money from a secured creditor's collateral, the Supreme Court held the plain language, and thus the most natural reading, of section 506(c) dictates that only the trustee has the power to recover against secured property. *Hartford Underwriters*, 530 U.S. at 9.

The Fifth, Ninth, and Tenth Circuits agree that the most natural reading of 524(e) forecloses the possibility of third-party releases. *See Lowenschuss,* 67 F.3d at 1402; *In re Pacific Lumber Co*., 584 F.3d 229, 252 (5th Cir. 2009); *In re W. Real Est. Fund, Inc*., 922 F.2d 592, 600 (10th Cir. 1990). Section 524(e) demands that entities other than the debtor remain liable for the debts even after the debtor has received a discharge. *See Lowenschuss*, 67 F.3d at 1401 ("This court has repeatedly held, without exception, that § 524(e) precludes bankruptcy courts from discharging the liabilities of non-debtors.").

Some courts have found that because 524(e) does not expressly prohibit granting discharges to non-debtors then it must be allowed. *In re Seaside Engr. & Surveying, Inc.,* 780 F.3d 1070, 1078 (11th Cir. 2015) (holding because 524(e) "says nothing about the authority of the bankruptcy court to release a non-debtors from . . . creditor's claim" the bankruptcy court must be allowed to do so). But, the inference of statutory authority from Congressional silence is not applicable to the Code because it is a "comprehensive scheme" to combat "specific problems with specific solutions." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (citing *Varity Corp. v. Howe*, 516 U.S. 489, 519 (1996) (Thomas, J., dissenting)). As comprehensive is defined as "covering completely or broadly," reading additional elements into

the statute that do not appear in the text completely defeats the purpose of a comprehensive scheme. *Comprehensive*, MERRIAM-WEBSTER DICTIONARY (2022).

In addition to Congress' distinctive and detailed writing of the Code, consent cannot be inferred from silence in instances where Congress is not expected to speak. *Purdue Pharma*, 635 B.R. at 110. A purpose of the Code is to help troubled *debtors* who have filed for bankruptcy, not third parties who have avoided any hardship. *Green v. Welsh*, 956 F.2d 30, 33 (2d Cir. 1992). A reading of the Code to allow for third-party releases, such as the one Strawberry Fields demands, runs counter to the Code's purpose.

Further, this Court should not read into Congress' silence in section 524(e) because it specifically codified third-party releases in 524(g). *See* 11 U.S.C. § 524(g). Congress created "one and only one section of the Bankruptcy Code that expressly authorizes a bankruptcy court to enjoin third party claims against non-debtors without the consent of those third parties," and that is section 524(g). *Purdue Pharma,* 635 B.R. at 91. Section 524(g) only applies to cases where injuries arise "from the manufacture and sale of asbestos." § 524(g). Section 524(g) also sets out several requirements, which have not been satisfied here, in order to safeguard against abuse of these non-consensual third-party releases in asbestos cases. § 524(g); *Purdue Pharma, 635 B.R.* at 91-92. Finally, it is clear from the language of the statute, ". . . notwithstanding the provisions of 524(e)," that 524(g) is meant to be an exception to 524(e). *Purdue Pharma*, 635 B.R. at 94 (quoting § 524(g)(4)(A)(ii)).

Despite multiple mass tort litigations resulting in chapter 11 reorganizations, Congress has not created another exception like 524(g) since 1994. Clearly, Congress intends for the courts to "Let It Be."[1] As Congress has not seen reason to expand access to third-party releases past asbestos

[1] Notable musicians and jurists, Judge McCartney, Harrison, and Lennon, led The Beatles for more than a decade. "Let It Be" is the group's twelfth and final studio album. The Beatles, *Let It Be* (Apple 1970).

litigation in 28 years, courts should take heed of that caution. "That Congress has provided explicit authority to bankruptcy courts to issue injunctions in favor of third parties in an extremely limited class of cases reinforces the conclusion that 524(e) denies such authority in other, non-asbestos, cases." *Lowenschuss*, 67 F.3d at 1403 n.6.

Non-debtors should not be permitted to benefit from a discharge as courts already disallow third parties to benefit from other aspects of bankruptcy proceedings. For example, third parties may only benefit from the automatic stay in very unusual circumstances. *See A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 999 (4th Cir. 1986) (citing *Lynch v. Johns-Manville Sales Corp.*, 710 F.2d 1194, 1196 (6th Cir. 1983) ("[Section 362] facially stays proceedings "against the debtor" and fails to intimate, even tangentially, that the stay could be interpreted as including any defendant other than the debtor."). Section 362, states, "[A] petition filed . . . operates as a stay" as to actions against "the debtor," and "property of the estate." § 362(a)(1)-(3). As the bankruptcy court did not find even the unusual circumstances necessary to apply the Debtors automatic stay to Strawberry Fields, it would be absurd to confer the Debtor's benefit to discharge to Strawberry Fields (R. 7-8). The interpretation of "the debtor" in section 362 to exclude all others should inform this Court in the interpretation of section 524(e).

Finally, it goes against the policy of the Code and is inapposite to the way courts have repeatedly interpreted sections with similar language to find that section 524(e) leaves room for releases to apply to non-debtors. It is the intent of Congress and the policy of the Code that those who do not submit themselves to the processes of bankruptcy should not benefit from it. This sentiment is echoed throughout the Code.

*ii. The Plain Language of Section 1141 Should Be Interpreted in the Same Manner as Section 524(e) and Highlights Limitations to Discharge Under Chapter 11.*

Section 1141 follows in the same vein as section 524, as it states, "[T]he confirmation of a plan . . . discharges the debtor from any debt," and repeatedly only uses the term "debtor." 11 U.S.C. § 1141(d)(1)(A). So, the effect of a confirmation and subsequent discharge under this section, like 524, applies only to the debtor. In fact, this section excludes some forms of debtors in chapter 11 from receiving a discharge of their debts; specifically, corporations are ineligible to be discharged from certain debts. 11 U.S.C. § 1141(d)(6) ("the confirmation of a plan does not discharge a debtor that is a corporation from any debt . . ."). This indicates a congressional scheme to keep corporations from abusing discharges. The corporate Debtor's Plan, therefore, cannot include any discharges of fraud claims, yet in defiance of Congressional intent and section 1141, this Plan discharges "any and all debts" for Strawberry Fields. (R. 8.)

**B. This Court Should Adopt the Detailed Reasoning of Judge McMahon's Decision in Purdue Pharma.**

The Southern District of New York recently contended with a case with parallel facts and the well-reasoned opinion should be persuasive to this Court. In 2019, Purdue Pharma ("Purdue") filed for chapter 11 bankruptcy after aggressively marketing its highly addictive medication, OxyContin, to the public despite a plea deal with the United States in which Purdue admitted that "it had falsely marketed OxyContin as non-addictive and had submitted false claims to the federal government." *Purdue Pharma*, 635 B.R. at 34-35. At the time of filing, Purdue faced thousands of lawsuits brought either by persons addicted to OxyContin or by the estates of those persons whose addictions caused them to overdose as a result of taking OxyContin. *Id.* at 34.

After filing, the automatic stay halted any civil litigation against Purdue and the court ordered a stay of litigation against certain non-debtors affiliated with Purdue, including members

of the Sackler family (the "Sacklers") which owned Purdue. *Id.* A plan of reorganization was voted on and confirmed by the bankruptcy judge, even though there was a minority of creditors who voted no, including 2,683 individual personal injury claimants. *Id.* at 35-36. All claimants opposed for the same reason: "the Plan provides broad releases, not just of derivative, but of particularized or direct claims—including claims predicated on fraud, misrepresentation, and willful misconduct under various state consumer protection statutes—to the members of the Sackler family (none of whom is a debtor in the bankruptcy case) and to their affiliated and related entities." *Id.* at 36. The reorganization plan crushes any civil claims against the Sacklers that relate *in any way* to the operations of Purdue, including claims where Sackler family members would be held personally liable—claims that could not be released if the Sacklers were debtors. *Id.* at 36.

The court held that the Code does not, in express text or silence, authorize non-consensual, non-debtor releases, and, as such, vacated the bankruptcy court's orders. *Id.* at 38. There is nothing in the Code that authorizes a bankruptcy court "to order the non-consensual release of third-party claims against non-debtors in connection with the confirmation of a chapter 11 bankruptcy plan." *Id.* at 78. This Court should look to the reasoning of the *Purdue Pharma* court because of the incredibly similar facts to the case here. Strawberry Fields requests a release from *all pending and future* litigation for their alleged participation in egregious and unconscionable actions against the residents of Blackbird, Moot. (R. 5, 8.) Similar to the overdoses on OxyContin caused by Purdue Pharma and the Sacklers, the deaths and horrific injuries inflicted on the people of Blackbird will continue to affect this community for decades. Strawberry Fields should not be released from its liability, especially where this release violates fundamental constitutional pillars and runs counter to the Code and principles of bankruptcy.

An underlying intent of the Code is "to free the debtor of his personal obligations while ensuring that no one else reaps a similar benefit." *Green*, 956 F.2d at 33. When filing a petition for bankruptcy, the debtor is subjected to a series of invasive and often difficult procedures. A non-debtor third-party such as Strawberry Fields, however, does not endure such hardship. If the releases are upheld despite the clearly contradictory textual analysis, Strawberry Fields will reap the benefits of bankruptcy without ever having filed. Congress did not intend for Strawberry Fields to benefit so greatly from the bankruptcy process without submitting to the it. *W. Real Est. Fund, Inc.*, 922 F.2d at 600 ("Obviously, it is the debtor, who has invoked and submitted to the bankruptcy process, that is entitled to its protections; Congress did not intend to extend such benefits to third-party bystanders."). If this Court allows for that to happen, this will set an erroneous precedent for all future third parties and does nothing but incentivize improper conduct from major corporations.

**C. There is No Section in the Code That Gives Bankruptcy Courts the Power to Release Third-Party Claims Against Non-Debtor Entities.**

The plain language of section 524(e) is unambiguous, and *Purdue Pharma* is instructive on interpretation, so the statutory inquiry should go no further. *See United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 240-41 (1989) ("Rather, as long as the statutory scheme is coherent and consistent, there generally is no need for a court to inquire beyond the plain language of the statute.") However, even when the surrounding provisions of the Code are analyzed, there is nothing that gives bankruptcy courts the power to release these non-consensual third-party claims. *Springfield Hospital, Inc. v. Guzman*, 28 F.4th 403 (2d Cir. 2022) ("In looking at a statute's plain meaning, we also must consider the context in which the statutory terms are used, as "'[w]e do not . . . construe statutory phrases in isolation; we read statutes as a whole.'").

*i. Section 105(a) Cannot Be Used to Expand the Bankruptcy Court's Power to Release Third-Party Claims Nonconsensually.*

Section 105(a) of the Code states that

> The [bankruptcy] 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. § 105(a).

The circuits are also split on whether section 105(a), either alone or read with other provisions of the Code, confers authority on bankruptcy courts "to release and enjoin the prosecution of third-party claims against non-debtors." *Purdue Pharma*, 635 B.R. at 104. Second Circuit precedent indicates that "[s]ection 105(a), standing alone, does not confer such authority on the bankruptcy court outside the asbestos context," *id.*, while the Fifth, Ninth, and Tenth Circuits completely reject the idea that a court can release third-party claims against non-debtors outside of the asbestos context. *See Pacific Lumber*, 584 F.3d at 252-53 ("Instead, the essential function of the exculpation clause proposed here is to absolve the released parties from any negligent conduct that occurred during the course of the bankruptcy. The fresh start § 524(e) provides to debtors is not intended to serve this purpose."); *Lowenschuss*, 67 F.3d at 1401-02 ("[W]e explicitly rejected the argument . . . that the general equitable powers bestowed upon the bankruptcy court by 11 U.S.C. § 105(a) permit the bankruptcy court to discharge the liabilities of non-debtors. Noting that 'section 105 does not authorize relief inconsistent with more specific law,' we concluded 'the specific provisions of section 524 displace the court's equitable powers under section 105 to order the permanent relief [against a non-debtor] sought by [the debtor].'"); *W. Real Est. Fund, Inc.*, 922 F.2d at 601 ("Accordingly, we follow the Ninth Circuit's lead in [*In*

*re American Hardwoods*] and hold that while a temporary stay prohibiting a creditor's suit against a non-debtor . . . during the bankruptcy proceeding may be permissible to facilitate the reorganization process in accord with the broad approach to non-debtor stays under section 105(a) outlined above, the stay may not be extended post-confirmation in the form of a permanent injunction that effectively relieves the non-debtor from its own liability to the creditor.").

The Third Circuit "has not identified any section of the Bankruptcy Code that authorizes such non-debtor releases," and the times that the court has addressed statutory authority, it overturned bankruptcy orders granting non-debtor releases. *Purdue Pharma*, 635 B.R. at 104; *see also In re Millennium Lab Holdings II, LLC*, 945 F.3d 126 (3d Cir. 2019); *In re Continental Airlines*, 203 F.3d 203 (3d Cir. 2000). The Sixth and Seventh Circuits decided that section 105(a), when read with section 1123(b)(6), codifies a bankruptcy court's "residual authority," and that authority allows non-consensual third-party releases. *See In re Ingersoll, Inc.*, 562 F.3d 856, 864 (7th Cir. 2009) ("[Sections 105(a) and 1123(b)(6)—and the 'residual authority' to which they speak—'permit[] the bankruptcy court to release third parties from liability to participating creditors if the release is "appropriate" and not inconsistent with any provision of the bankruptcy code.'"); *see also In re Dow Corning Corp.*, 280 F.3d 648, 656 (6th Cir. 2002).

Finally, the Fourth and Eleventh Circuits are the only circuit courts to conclude that section 105(a), standing alone, authorizes non-consensual releases of third-party claims against non-debtors. *Purdue Pharma*, 635 B.R. at 105; *see Nat'l Heritage Found., Inc. v. Highbourne Found., Inc.*, 760 F.3d 344, 350 (4th Cir. 2014) ("But the power to authorize non-debtor releases is rooted in a bankruptcy court's equitable authority."); *see also Seaside*, 780 F.3d at 1076 ("We held that 11 U.S.C. § 105(a) gives bankruptcy courts authority to issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code, including the bar

order in that case. We upheld the non-debtor release because the settling defendant 'would not have entered into the settlement agreement' without the bar order and because the bar order was 'integral to settlement in an adversary proceeding.'").

This Court should adopt the reasoning of the Third, Fifth, Ninth, and Tenth Circuits because those courts analyze other sections of the Code in relation to section 524. Other sections of the Code, including 105(a), must be read in connection with section 524 because of its prohibition on the bankruptcy court's ability to release third parties from direct claims. *W. Real Est. Fund, Inc.*, 922 F.2d at 601 ("All of the principles discussed above are pertinent to the availability of special injunctive relief pursuant to section 105(a), since a bankruptcy court's supplementary equitable powers thereunder may not be exercised in a manner that is inconsistent with the other, more specific provisions of the Code.").

The other circuit courts improperly use section 105(a) as a "catch-all" provision to bolster the bankruptcy courts' authority. Section 105(a) does not, however, give bankruptcy courts unfettered power to act contrary to the Code. *Law v. Siegel*, 571 U.S. 415, 421 (2014) ("A bankruptcy court has statutory authority to 'issue any order, process, or judgment that is necessary or appropriate to carry out the provision of' the Bankruptcy Code . . . But in exercising those statutory and inherent powers, a bankruptcy court may not contravene specific statutory provisions."). "Section 105(a) confers authority to 'carry out' the provisions of the Code, but it is quite impossible to do that by taking action that the Code prohibits." *Id.* As the Code was "intended to be a *comprehensive* statement of the rights and procedures applicable in bankruptcy," and there is a lack of express language which gives the power to release third-party claims against non-debtors, Congress did not intend for the "inherent power" in § 105(a) to create this exception. *Id.* at 424 ("The Code's meticulous—not to say mind-numbingly detailed—enumeration of

exceptions and exceptions to those exemptions confirms that courts are not authorized to create additional exceptions.").

Even though the Thirteenth Circuit asserts that this is a unique or rare case, (R. 13), that does not give the bankruptcy court the authority to supersede the Bankruptcy Code. *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 471 (2017) ("Congress did not authorize a 'rare case' exception. We cannot 'alter the balance struck by the statute,' [*Law v. Siegel*, 571 U.S. at 427] not even in 'rare cases.' *Cf.* [*Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 207, (1988)] (explaining that courts cannot deviate from the procedures 'specified by the Code,' even when they sincerely 'believ[e] that … creditors would be better off.'")).

*ii. Section 1123(b)(6) Does Not Confer Power on Bankruptcy Courts to Release Direct Claims Against Third Parties.*

Section 1123 cannot be combined with section 105(a) to confer power onto the bankruptcy court that is prohibited in other sections of the Code. Section 1123, entitled "Contents of Plan," details what a plan of reorganization must contain in order to be confirmed, and section 1123(b)(6) provides that a plan may "include any other appropriate provision not inconsistent with the applicable provisions of this title." 11 U.S.C. § 1123(b)(6). The text of section 1123(b)(6) mirrors the language of section 105(a), which authorizes "any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." § 105(a). As previously discussed, section 105(a) does not give bankruptcy courts any substantive authority to release third-party claims against non-debtor entities, and, as such, there is nothing unique in section 1123(b)(6) to confer that power. *Purdue Pharma*, 635 B.R. at 106.

**D. The Non-Consensual Broad Release of Third-Party Direct Claims Violates Fundamental Constitutional Principles.**

*i. As an Article I Court, the Bankruptcy Court Did Not Have the Authority to Enter a Final Order on These Third-Party Claims.*

Although it might be within a bankruptcy court's jurisdiction under section 1123 to confirm plans, approving the Plan that contained non-consensual third-party releases was outside of the bankruptcy court's jurisdiction and violated the separation of powers. To balance power between the legislative and judicial branches, non-Article III courts, such as the bankruptcy courts, do not have the authority to enter final judgments on those issues that would have been "tried by the courts at Westminster." *Stern v. Marshall*, 564 U.S. 462, 484 (2011). Bankruptcy courts "may hear and enter final judgments in . . . 'core proceedings,'" *Millennium Lab,* 945 F.3d at 134 (quoting *Stern,* 564 U.S. at 134), and may adjudicate those non-core matters if the action "stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process." *Id.* However, bankruptcy courts may not adjudicate claims "simply because a proceeding may have some bearing on a bankruptcy case." *Stern*, 564 U.S. at 459.

While it is not disputed that the bankruptcy court was exercising core statutory authority when it confirmed the Plan of the Debtor, it nevertheless violated the Constitution by approving the non-consensual third-party release within the Plan. *Millennium Lab*, 945 F.3d at 135 ("[B]ankruptcy courts may violate Article III even while acting within their statutory authority in 'core' matters."). The Third Circuit characterized the pertinent constitutional inquiry is "whether, looking to the content of the plan, the Bankruptcy Court was resolving a matter integral to the restructuring of the debtor-creditor relationship." *Id.* Even though resolving a claim might ensure the plan's success and "'augment the bankruptcy estate . . .' it [does] not create a sufficient nexus to the resolution of the bankruptcy proceeding," and therefore is not integral to the restructuring

of the debtor-creditor relationship. *In re BP RE, L.P.*, 735 F.3d 279, 286 (5th Cir. 2013) (quoting *Stern*, 564 U.S. at 499).

The Third Circuit found that a third-party release provision was integral to the restructuring of the debtor-creditor relationship, however the extreme circumstances of that case are not present here. *Millennium Lab*, 945 F.3d at 136. The *Millennium Lab* court held that the third-party releases in the debtor's plan were "integral to the restructuring," but urged extreme caution with issues of this nature in the future. *Id*. at 137. Specifically, the court agreed with the appellants' concern that allowing third-party releases merely because the lender demanded it would encourage gamesmanship and explained its holding was not "broadly sanctioning the permissibility of nonconsensual third-party releases in bankruptcy reorganization plans." *Id*. at 139. The *Millennium Lab* court's holding was "specific and limited" to the facts of that case. *Id.*

The facts of *Millennium Lab* are notably different from this case. In *Millennium Lab*, the debtor was forced to restructure to pay a $256 million dollar settlement agreement with the Department of Justice ("DOJ"). *Id.* at 130. Additionally, the DOJ set a time limit for the plan's confirmation and mandated that the agreement be supported by the "pre-petition lenders and the Equity Holders." *Id*. However, equity holders demanded a broad release for their liability in some prepetition conduct before they agreed to the plan, which included payment of over $500 million upfront and relinquishment of their equity interests in the debtor. *Id*. at 131. In this case, the Debtor is not being pressured by a government agency to quickly resolve their litigation, and Strawberry Fields is only offering less than 20% of what the lenders in *Millennium Lab* were contributing. (R. 8.) The unique and extreme facts in *Millennium Lab* do not exist here, so the decision by the Third Circuit should not guide this Court.

Other courts have disagreed with *Millennium Lab*'s characterization of the constitutional question presented by *Stern. Purdue Pharma*, 635 B.R. at 81. The *Purdue Pharma* court held that *Stern* does not allow bankruptcy courts to enter a final order on a claim simply because it could be "integral to the debtor-creditor relationship" because if that were true the claim at issue in *Stern* would have been allowed, and it was not. *Id*. Rather, the question is "whether the third-party claims released and enjoined by the Bankruptcy Court either stem from the bankruptcy itself or would necessarily be resolved in the claims allowance process." *Id*. The direct claims being released against Strawberry Fields do not stem from the bankruptcy itself and would not be resolved in the claims allowance process, as they are not against the Debtor. Therefore, under either the lower threshold of *Millennium Lab* or the threshold explained by *Purdue Pharma*, the bankruptcy court acted outside of its constitutional restrictions when it allowed for non-consensual third-party releases in the Plan.

*ii. Non-Consensual Releases of Direct Third-Party Claims is a Violation of Fundamental Principles of Due Process.*

The Thirteenth Circuit held that there is not a due process issue since the "court [made] no ruling on the merits of her claim" and therefore did not adjudicate these claims. (R. 13.) There can be "no doubt that an entry of an order releasing a claim has former adjudication effects." *Purdue Pharma*, 635 B.R. at 82. Releasing the claims by sending them into a channeling injunction is the same as adjudicating them because the claimant will be barred from pursuing their claim after the order is entered on the basis of *res judicata*. *See Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 152 (2009) (holding that subjects of a bankruptcy court order could not resist or continue to challenge that order because once the order was finalized it became *res judicata* for further actions. "Once a plan is confirmed, it is binding on all parties and all questions that have been raised pertaining to

the plan are entitled to the res judicata effect." *Trulis v. Barton*, 107 F.3d 685, 691 (9th Cir. 1995) (citing § 1141(a)).

In the simplest terms, Black's Law defines judgment as "a court's final determination of the rights and obligations of the parties in the case." *Judgment*, BLACK'S LAW DICTIONARY (11th ed. 2019). It defines adjudication as "the legal process of resolving a dispute; the process of judicially deciding a case." *Adjudication*, BLACK'S LAW DICTIONARY (11th ed. 2019). By disallowing these claims outside of bankruptcy, and therefore judicially resolving these claims, the bankruptcy court has adjudicated them. By holding that Ms. Rigby does not have the right to pursue her claims against Strawberry Fields after the confirmation of the Plan, the court resolved the dispute between the two parties and adjudicated the claims.

Since the bankruptcy court adjudicated Ms. Rigby's claim, she was entitled to due process. No court has the ability to release a third-party claim without the consent of that claimant, and to do so is a violation of the claimant's right to due process. The Due Process clause mandates that "No person shall . . . be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. When releasing claims, due process requires the party give consent or be provided with adequate notice and adequate compensation. "Exactly what constitutes . . . due process in a bankruptcy case is a fact-specific analysis." *In re RailWorks Corp.*, 621 B.R. 635, 650 (Bankr. D. Md. 2020).

The bankruptcy court violated Ms. Rigby's right to due process by extinguishing her claims against the third-party, Strawberry Fields, without her consent. This is not saved by the fact that the court technically "approved a global settlement that channeled the claims." (R. 13.) A court does not have the power to coerce settlements either. *See Colon-Cabrera v. Esso Standard Oil Co.* (Puerto Rico), 723 F.3d 82, 88 (1st Cir. 2013) ("[The choice to settle] must be left to the individual

litigant's judgment"), *Kothe v. Smith*, 771 F.2d 667, 669 (2d Cir. 1985) (while "the law favors the [] settlement of civil suits, it does not sanction efforts by trial judges to effect settlements through coercion."). It is the right of every citizen to have their day in court. Without due process, that right has been unfairly stripped from the residents of Blackbird.

## II. **Section 1192 Dictates That Debts Specified in Section 523(a) are Excepted from Discharge for Corporate Debtors Filing in Subchapter V.**

Debtors' inability to discharge section 523 debts in a subchapter V cramdown is supported by the specific language of the newly incorporated text, the provisions surrounding section 1192, and the equitable nature of bankruptcy. In addition to violating important bankruptcy principles, affirmation of the Thirteenth Circuit's decision leads to absurd results in non-consensual reorganization plans.

Subchapter V was enacted in 2019 as part of the SBRA to streamline the chapter 11 process and to reduce the overall cost of reorganization for qualifying small business debtors. Small Business Reorganization Act of 2019, Pub. L. No. 116–54, 133 Stat. 1079. Congress enacted the SBRA, in part, to address aspects of chapter 11 that do not work well for small businesses and individuals who meet the definition of "debtor" set forth in section 1182(1)(A) ("[A] person engaged in commercial or business activities."). *See In re Lapeer Aviation, Inc.*, No. 21-31500-JDA, 2022 WL 1110072, at *1 (Bankr. E.D. Mich. Apr. 13, 2022). These changes in the chapter 11 process greatly benefit small business debtors.

While subchapter V is advantageous for debtors, creditors are still afforded protection. Section 1192 protects creditors from an unfair discharge of debts under 523(a) by eliminating section 1141(d) in a cramdown. *See* 11 U.S.C. § 1192 (Debtors may not discharge "*debts of the kind* specified in section 523(a)" of the Code) (emphasis added).

**A. The Language of Section 1192 States That Debts of the Kind Specified in Section 523(a) are Non-Dischargeable for Both Individual and Corporate Debtors.**

*i. Section 1192 Plainly Provides That Debts Listed in Section 523(a) Are Subject to Discharge.*

The language of section 1192 states that in a non-consensual plan of reorganization for subchapter V debtors, "debts of the kind specified in section 523" are not dischargeable. § 1192. When the language of a statute is plain, judicial inquiry ends, and the court should apply the words as written. *See Ron Pair*, 489 U.S. at 241. The Fourth Circuit analyzed the language of section 1192 in a case with nearly the same facts and found the text to be plain and controlling. *In re Cleary Packaging*, 36 F.4th 509, 514 (4th Cir. 2022) (holding that the debtors covered by the discharge language of 1192(2)—i.e., both individual and corporate debtors—remain subject to the *21 kinds of debts* listed in section 523(a)). If Congress had intended to limit the language in section 1192 to individual debtors, it would have done so. *See U.S. R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 179 (1980) (holding that when "[t]he language of the statute is clear . . . we have historically assumed that Congress intended what it enacted."). However, Congress intentionally used the term "debtor." § 1192.

As Congress explicitly limited dischargeable debts in section 1141(d), it follows that Congress also explicitly limited the availability of discharge in section 1192. In a traditional chapter 11, section 1141(d) governs discharge. Except for subsection (d)(5), the entirety of section 1141 applies in a subchapter V reorganization where the court authorizes a consensual plan under section 1191(a). *See* 11 U.S.C. § 1181(a). When a subchapter V plan is approved by all creditor classes, section 1141(d)(2) controls and makes clear a small business debtor may not except from discharge any debt of the type set forth in section 523. *See* 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."). Whereas in a non-consensual plan, the Code clearly indicates that section 1141(d) does not govern discharges. Section 1181(c) establishes a "Special Rule for Discharge" in these cases and mandates that section 1192 governs subchapter V discharges. 11 U.S.C. § 1181(c) The pertinent portion of section 1192 provides:

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

§ 1192 (emphasis added).

The text of section 1192 specifically grants debtors a discharge of all debts subject to certain limitations. *Cleary Packaging*, 36 F.4th at 514. The Code defines a subchapter V debtor as "a *person* engaged in commercial or business activities" that has debt of not more than $7.5 million. 11 U.S.C. § 1182(1) (emphasis added). In the Code, a "person" includes an individual or corporation, *see* 11 U.S.C. § 101(41), and "corporation[s]" include limited liability companies. 11 U.S.C. § 101(9)(A). Section 1192 makes no distinction between individual and corporate debtors and does not allow a debt from section 523(a) to be discharged. In a non-consensual plan, like the reorganization of Penny Lane Industries, (R. 4), the limitations to discharge under section 523(a) apply in subchapter V.

*ii. Where Tension Exists Between Specific and General Provisions, the Specific Governs.*

The canon of statutory construction *generalia specialibus non derogant* applies to sections 1192 and 523(a). *See In re Breezy Ridge Farms, Inc.*, No. 09-1011, 2009 WL 1514671, at *2 (Bankr. M.D. Ga. May 29, 2009). This well-established canon of statutory interpretation guides when at the crossroads of specific and general provisions. *RadLAX*, 566 U.S. at 645 (citing *Morales*

*v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992) ("[I]t is a commonplace of statutory construction that the specific governs the general."). Section 523(a) implies that corporate debtors are not excepted from discharge by using the language "individual debtor," 11 U.S.C. § 523(a) ("A discharge under . . . 1192 . . . does not discharge an individual debtor from any debt—"); however, section 1192 applies specifically to subchapter V discharges and refers to "debtors," § 1192 ("[T]he court shall grant the *debtor* a discharge") (emphasis added). To the extent that two provisions conflict, the more specific prevails over the general.

Section 1192, as the section governing discharges in a subchapter V plan of reorganization, excepts from discharge "any debt . . . of the kind specified in section 523(a)." § 1192. The *Cleary Packaging* court found the term "individual debtor" to be insignificant in section 523(a) and instead held that the use of the term "debt" proves section 1192 excepts from discharge the debts listed in section 523(a). 36 F.4th at 513. While other courts have reasoned that the danger of this interpretation may render the introductory section of 523(a) superfluous, it is important to understand that Congress made several fundamental changes to assist small businesses in its reorganization. *See In re Satellite Restaurants Inc. Crabcake Factory USA*, 626 B.R. 871, 879 (Bankr. D. Md. 2021).

While Congress drafted the SBRA to empower the small business debtor to pursue a successful plan of reorganization, the plain language of the text clearly indicates that section 1192(2)—the specific—should govern over the general section of 523(a). *See Lapeer Aviation*, 2022 WL 1110072, at *1. The Thirteenth Circuit incorrectly applied the general provision over the specific on the issue of non-dischargeable debts. Therefore, creditors subjected to a subchapter V cramdown should not also be subject to discharge of debts that are otherwise non-dischargeable under section 523(a)(6).

**B. The Surrounding Provisions of the Code Support That Debts by Corporate Debtors Are Non-Dischargeable Under Section 523(a).**

Subchapter V departs from the traditional chapter 11 approach to corporate reorganizations and more closely aligns with the approach of chapter 12. In enacting subchapter V, Congress intended to remove some of the obstacles that plagued small-business debtors in reorganization. *Cleary Packaging*, 36 F.4th at 518. Borrowing greatly from chapter 12 family farms and fisheries, Congress wrote subchapter V and adopted much of the same language. *See id.* ("Yet more telling is Congress's importation of language into subchapter V from the conceptually similar [c]hapter 12 proceedings."). Chapter 12 should be more influential than chapter 11 in the interpretation of subchapter V because of the similarities in the end goal of reorganization. *See In re Trepetin*, 617 B.R. 841, 848 (Bankr. D. Md. 2020) (recognizing that "[s]everal aspects of [s]ubchapter V are premised on the provisions of chapter 12 of the Code for family farmers and fishermen.").

*i. Subchapter V's Departure from Traditional Reorganization Mandates a Different Outcome for Corporate Debtors.*

Subchapter V's substantial departure from chapter 11 indicates that subchapter V should not be interpreted in the same manner. For example, the absence of the absolute priority rule in subchapter V is a fundamental difference from chapter 11 because it streamlines the reorganization plan in favor of small business shareholders. *Cleary Packaging*, 36 F.4th at 514. Additionally, subchapter V continues to ease the burdens of reorganization for these small business entities by only allowing a debtor to file a plan and removing the ability of creditors to introduce their own plans. Consequently, the powers of a creditor in reorganization are undercut in favor of the debtor.

The abrogation of the absolute priority rule is a major departure from the reorganization process that benefits the equity owners of these small businesses. *In re Sullivan*, 626 B.R. 326, 330 (Bankr. D. Colo. 2021) ("Subchapter V of chapter 11 offers many advantages to small business

debtors . . . [and eliminates] satisfaction of the absolute priority rule."). Prior to the SBRA, small business owners filing for chapter 11 were required to pay creditors in full to retain their equity interests, or at a minimum subject their equity interests to bidding. *See In re Situation Mgmt. Sys., Inc.*, 252 B.R. 859, 864 (Bankr. D. Mass. 2000). Congress deemed the absolute priority rule too burdensome of a requirement for small business debtors and turned its back on a "bedrock principle of bankruptcy." *See In re LATAM Airlines Grp.*, 620 B.R. 722, 796 (Bankr. S.D.N.Y. 2020). The absolute priority rule is replaced with the requirement that the debtor pay all their disposable income into the plan for a period of three to five years if there are any dissenting classes. 11 U.S.C. § 1191(b),(c)(2). This is a foreign concept in a chapter 11 reorganization but a fixture in chapter 12.

Retreating further from the chapter 11 framework, only the debtor may propose a plan in subchapter V. 11 U.S.C. § 1189(a). Under section 1191(b), a subchapter V debtor can confirm a plan without a single creditor voting in favor of the plan. 11 U.S.C. § 1191(b) (allowing confirmation of plan without satisfaction of sections 1129(a)(8) and (10) affirmative vote requirements). This differs from a traditional chapter 11 plan, where the debtor has a 120-day exclusivity period to formulate a plan and at the end of the exclusivity the creditors may propose their own competing plans that are subject to a vote by all parties. *See* 11 U.S.C. § 1121(c),(e). Subchapter V, borrowing from chapter 12, excludes creditors from introducing their own plans and allows debtors to confirm a plan without a single vote from any creditors. *See* 11 U.S.C. § 1221. This ensures a successful reorganization by allowing the original owners to retain control of the business entity, a core aim of the SBRA. *See Cleary Packaging*, 36 F.4th at 517.

*ii. The Language of Chapter 12 Should Guide This Court in Its Interpretation of Section 1192.*

When addressing the scope of discharge, the language of chapter 12 is virtually the same as the language of section 1192. This Court should be persuaded by the similarities of sections 1192 and 1228(a) and interpret these sections in the same manner. Chapter 12 states, "[T]he court shall grant the debtor a discharge of all debts provided for by the plan . . . except any debt . . . *of a kind specified in section 523(a)* of this title." 11 U.S.C. § 1228(a) (emphasis added). The language of section 1192 mirrors section 1228(a)'s reference to section 523(a). Courts have interpreted this cross reference between sections 1228(a) and 523(a) to apply to individual and corporate debtors alike. *See, e.g.*, *Breezy Ridge Farms*, 2009 WL 1514671, at *1–2; *In re JRB Consol., Inc.*, 188 B.R. 373, 375 (Bankr. W.D. Tex. 1995). Chapter 12 is available to corporations or partnerships, so a corporate debtor in a chapter 12 reorganization can be excepted from discharge for debts that fall under section 523(a). *See* 11 U.S.C. § 101(18)(b).

For example, the court in *JRB* found that the specific language of section 1228 was consistent with the text of section 523 and that corporate debtors in chapter 12 are excepted from discharge. *Id.* at 374. Congress created chapter 12 to benefit these types of debtors, so the specific section of 1228 controls the general provision of section 523. *Id.* ("It is a specific chapter, limited to special types of debtors and therefore, it would not be unexpected that Congress may provide for some different treatment of these debtors.").

The *Trepetin* court found that when chapter 12 language is used in subchapter V, the interpretation of chapter 12 should govern. *See* 617 B.R. at 848. The substantial similarities between the two sections support consistent interpretation between them. *See id.* The court acknowledged "Subchapter V and chapter 12 are not identical[,] and invoking chapter 12 standards may not be warranted in every case[.]" *Id.* Yet the court still applied a similar standard in the

context of a 90-day filing deadline because it complied with the court's understanding of subchapter V and the plain meaning of the relevant sections. *See id.* at 849.

**C. Policy Reinforces the Interpretation That Debts Listed in Section 523(a) Are Excepted from Discharge in Subchapter V Cramdowns.**

*i. Reorganization Does Not Provide Debtors With a "Fresh Start" from Maliciously and Willfully Incurred Debts.*

Reversing the Thirteenth Circuit is the most equitable course as it results in creditors receiving a full claim for their debt incurred willfully and maliciously by a debtor. The Code's goal of providing a "fresh start" to debtors does not entitle them to a fresh start from the type of debts listed in section 523(a). *See Cohen v. de la Cruz*, 523 U.S. 213, 217 (1998) ("The Bankruptcy Code has long prohibited debtors from discharging liabilities incurred on account of their fraud, embodying a basic policy animating the Code of affording relief only to an 'honest but unfortunate debtor.'"). Providing a "fresh start" is a core principle of bankruptcy, but allowing a debtor to skirt any willful and malicious debts under the guise of the fresh start principle awards bad faith debtors at the cost of suffering creditors. *See id.* This unfair outcome is not supported by either the language or policy of the Code.

The Debtor's incorrect interpretation of the Code only provides pennies on the dollar for other similarly situated creditors' claims. This interpretation incentivizes small business entities to file for a non-consensual plan under subchapter V. If accepted by this Court, this incorrect interpretation would destroy subchapter V's aim to support and encourage the confirmation of a consensual plan. *See In re 218 Jackson LLC*, 631 B.R. 937, 946 (Bankr. M.D. Fla. 2021) ("[S]ubchapter V encourages the confirmation of a consensual plan[.]"). While the current Plan calls for Ms. Rigby to receive 30 to 40 percent of her claim amount, (R. 8), it pales in comparison to the amount she would receive if her entire claim were treated as non-dischargeable pursuant to

section 523(a)(6). The interpretation of the lower court gifts the Debtor a windfall at the expense of Ms. Rigby.

The American Bankruptcy Institute's ("ABI") recommendation on chapter 11 reform balances the interests of debtors and creditors. *See* AM. BANKR. INST., *ABI Commission to Study the Reform of Chapter 11: 2012-2014 Final Report and Recommendations*, 23 AM. BANKR. INST. L. REV. 1, 18 (2015) ("[These proposed reforms] better balance[s] the goals of effectuating the effective reorganization of business debtors . . . and the maximization and realization of asset values for all creditors . . ."). Allowing debtors to discharge 523(a) debts contravenes the purpose of the ABI Commission Report. However, balance between debtors and creditors is furthered when debts listed under section 523(a) are non-dischargeable in a subchapter V cramdown.

*ii. The Thirteenth Circuit's Holding Creates Absurd Results in Non-Consensual Plans.*

Allowing a subchapter V debtor to discharge any type of debt is an absurd result because there are limitations on discharge in every other form of reorganization or liquidation. In a consensual subchapter V plan, section 1141(d) governs and prevents corporate debtors from discharging debts in relation to the False Claims Act or for fraud or willful evasion of taxes. § 1141(d)(6). In non-consensual plans, section 1141(d)(6) is specifically excluded, and section 1192 governs. A debtor with a False Claims Act debt or tax fraud debt will be able to discharge that type of debt in a non-consensual plan. Judge McCartney expressed concern for this exact result and stated, "[U]nder the majority's interpretation, none of the discharge exceptions apply to corporations." (R. 32.)

This absurd result incentivizes subchapter V corporate debtors to seek non-consensual plans of reorganization because it precludes fraudulently obtained debts from discharge. It cannot be the intention of Congress to allow debtors to discharge all debts incurred fraudulently, under

the False Claims Act and through willful tax evasion. Congress, in allowing more favorable terms to the reorganization process for debtors, understandably placed limitations on the scope of discharge. The codification of section 1192 and the exception of certain debts from discharge through section 523(a) limit discharge and balance the scales for creditors. *See Cleary Packaging*, 36 F.4th at 517.

## CONCLUSION

This Court should reverse the decision of the Thirteenth Circuit Court of Appeals and hold that (1) non-consensual third-party releases are prohibited by the Code, bankruptcy policy, and fundamental constitutional principles, and (2) debts specified in section 523(a) may be excepted from discharge in subchapter V cramdowns because of the plain language of section 1192, the context of the Code, and the equitable principles underlying the Code.

## APPENDIX A

**11 U.S.C § 101. Definitions.**

**(9)** The term "corporation"—

**(A)** includes—

**(i)** association having a power or privilege that a private corporation, but not an individual or a partnership, possesses;

**(ii)** partnership association organized under a law that makes only the capital subscribed responsible for the debts of such association;

**(iii)** joint-stock company;

**(iv)** unincorporated company or association; or

**(v)** business trust; but

**(B)** does not include limited partnership.

**(18)** The term "family farmer" means—

**(A)** individual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed $10,000,000 1 and not less than 50 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual's or such individual and spouse's gross income for—

**(i)** the taxable year preceding; or

**(ii)** each of the 2d and 3d taxable years preceding;

the taxable year in which the case concerning such individual or such individual and spouse was filed; or

**(B)** corporation or partnership in which more than 50 percent of the outstanding stock or equity is held by one family, or by one family and the relatives of the members of such family, and such family or such relatives conduct the farming operation, and

**(i)** more than 80 percent of the value of its assets consists of assets related to the farming operation;

**(ii)** its aggregate debts do not exceed $10,000,000 1 and not less than 50 percent of its aggregate noncontingent, liquidated debts (excluding a debt for one dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a farming operation), on the date the case is filed, arise out of the farming operation owned or operated by such corporation or such partnership; and

**(iii)** if such corporation issues stock, such stock is not publicly traded.

**(41)** The term "person" includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that—

**(A)** acquires an asset from a person—

**(i)** as a result of the operation of a loan guarantee agreement; or
**(ii)** as receiver or liquidating agent of a person;
**(B)** is a guarantor of a pension benefit payable by or on behalf of the debtor or an affiliate of the debtor; or
**(C)** is the legal or beneficial owner of an asset of—
**(i)** an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986; or
**(ii)** an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986; shall be considered, for purposes of section 1102 of this title, to be a person with respect to such asset or such benefit.

**11 U.S.C § 105. Power of Court.**

**(a)** The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

**11 U.S.C § 506. Determination of Secured Status.**

**(c)** The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim, including the payment of all ad valorem property taxes with respect to the property.

**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.

**11 U.S.C § 524. Effect of Discharge.**

**(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;
**(II)** is to be funded in whole or in part by the securities of 1 or more debtors involved in such plan and by the obligation of such debtor or debtors to make future payments, including dividends;
**(III)** is to own, or by the exercise of rights granted under such plan would be entitled to own if specified contingencies occur, a majority of the voting shares of—
**(aa)** each such debtor;
**(bb)** the parent corporation of each such debtor; or
**(cc)** a subsidiary of each such debtor that is also a debtor; and
**(IV)** is to use its assets or income to pay claims and demands; and
**(IV)** is to use its assets or income to pay claims and demands; and is to use its assets or income to pay claims and demands; and
**(ii)** subject to subsection (h), the court determines that—
**(I)** the debtor is likely to be subject to substantial future demands for payment arising out of the same or

similar conduct or events that gave rise to the claims that are addressed by the injunction;

**(II)** the actual amounts, numbers, and timing of such future demands cannot be determined;

**(III)** pursuit of such demands outside the procedures prescribed by such plan is likely to threaten the plan's purpose to deal equitably with claims and future demands;

**(IV)** as part of the process of seeking confirmation of such plan—

**(aa)** the terms of the injunction proposed to be issued under paragraph (1)(A), including any provisions barring actions against third parties pursuant to paragraph (4)(A), are set out in such plan and in any disclosure statement supporting the plan; and

**(bb)** a separate class or classes of the claimants whose claims are to be addressed by a trust described in clause (i) is established and votes, by at least 75 percent of those voting, in favor of the plan; and

**(V)** subject to subsection (h), pursuant to court orders or otherwise, the trust will operate through mechanisms such as structured, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of present claims and future demands, or other comparable mechanisms, that provide reasonable assurance that the trust will value, and be in a financial position to pay, present claims and future demands that involve similar claims in substantially the same manner.

**(3)**

**(A)** If the requirements of paragraph (2)(B) are met and the order confirming the plan of reorganization was issued or affirmed by the district court that has jurisdiction over the reorganization case, then after the time for appeal of the order that issues or affirms the plan—

**(i)** the injunction shall be valid and enforceable and may not be revoked or modified by any court except through appeal in accordance with paragraph (6);

**(ii)** no entity that pursuant to such plan or thereafter becomes a direct or indirect transferee of, or successor to any assets of, a debtor or trust that is the subject of the injunction shall be liable with respect to any claim or demand made against such entity by reason of its becoming such a transferee or successor; and

**(iii)** no entity that pursuant to such plan or thereafter makes a loan to such a debtor or trust or to such a successor or transferee shall, by reason of making the loan, be liable with respect to any claim or demand made against such entity, nor shall any pledge of assets made in connection with such a loan be upset or impaired for that reason;

**(B)** Subparagraph (A) shall not be construed to—

**(i)** imply that an entity described in subparagraph (A)(ii) or (iii) would, if this paragraph were not applicable, necessarily be liable to any entity by reason of any of the acts described in subparagraph (A);

**(ii)** relieve any such entity of the duty to comply with, or of liability under, any Federal or State law regarding the making of a fraudulent conveyance in a transaction described in subparagraph (A)(ii) or (iii); or

**(iii)** relieve a debtor of the debtor's obligation to comply with the terms of the plan of reorganization, or affect the power of the court to exercise its authority under sections 1141 and 1142 to compel the debtor to do so.

**(4)**

**(A)**

**(i)** Subject to subparagraph (B), an injunction described in paragraph (1) shall be valid and enforceable against all entities that it addresses.

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

**(I)** the third party's ownership of a financial interest in the debtor, a past or present affiliate of the debtor, or a predecessor in interest of the debtor;

**(II)** the third party's involvement in the management of the debtor or a predecessor in interest of the debtor, or service as an officer, director or employee of the debtor or a related party;

**(III)** the third party's provision of insurance to the debtor or a related party; or

**(IV)** the third party's involvement in a transaction changing the corporate structure, or in a loan or other financial transaction affecting the financial condition, of the debtor or a related party, including but not limited to—

**(aa)** involvement in providing financing (debt or equity), or advice to an entity involved in such a transaction; or

**(bb)** acquiring or selling a financial interest in an entity as part of such a transaction.

**(iii)** As used in this subparagraph, the term "related party" means—

**(I)** a past or present affiliate of the debtor;

**(II)** a predecessor in interest of the debtor; or

**(III)** any entity that owned a financial interest in—

**(aa)** the debtor;

**(bb)** a past or present affiliate of the debtor; or

**(cc)** a predecessor in interest of the debtor.

**(B)** Subject to subsection (h), if, under a plan of reorganization, a kind of demand described in such plan is to be paid in whole or in part by a trust described in paragraph (2)(B)(i) in connection with which an injunction described in paragraph (1) is to be implemented, then such injunction shall be valid and enforceable with respect to a demand of such kind made, after such plan is confirmed, against the debtor or debtors involved, or against a third party described in subparagraph (A)(ii), if—

**(i)** as part of the proceedings leading to issuance of such injunction, the court appoints a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands of such kind, and

**(ii)** the court determines, before entering the order confirming such plan, that identifying such debtor or debtors, or such third party (by name or as part of an identifiable group), in such injunction with respect to such demands for purposes of this subparagraph is fair and equitable with respect to the persons that might subsequently assert such demands, in light of the benefits provided, or to be provided, to such trust on behalf of such debtor or debtors or such third party.

**(5)** In this subsection, the term "demand" means a demand for payment, present or future, that—**(5)** In this subsection, the term "demand" means a demand for payment, present or future, that—**(5)** In this subsection, the term "demand" means a demand for payment, present or future, that—

**(A)** was not a claim during the proceedings leading to the confirmation of a plan of reorganization;

**(B)** arises out of the same or similar conduct or events that gave rise to the claims addressed by the injunction issued under paragraph (1); and

**(C)** pursuant to the plan, is to be paid by a trust described in paragraph (2)(B)(i).

**(6)** Paragraph (3)(A)(i) does not bar an action taken by or at the direction of an appellate court on appeal of an injunction issued under paragraph (1) or of the order of confirmation that relates to the injunction.

**(7)** This subsection does not affect the operation of section 1144 or the power of the district court to refer a proceeding under section 157 of title 28 or any reference of a proceeding made prior to the date of the enactment of this subsection.

**11 U.S.C. § 1121. Who may file a Plan.**

**(c)** Any party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may file a plan if and only if—

**(1)** a trustee has been appointed under this chapter;

**(2)** the debtor has not filed a plan before 120 days after the date of the order for relief under this chapter; or
**(3)** the debtor has not filed a plan that has been accepted, before 180 days after the date of the order for relief under this chapter, by each class of claims or interests that is impaired under the plan.

**(e)** In a small business case—
**(1)** only the debtor may file a plan until after 180 days after the date of the order for relief, unless that period is—
**(A)** extended as provided by this subsection, after notice and a hearing; or
**(B)** the court, for cause, orders otherwise;
**(2)** the plan and a disclosure statement (if any) shall be filed not later than 300 days after the date of the order for relief; and
**(3)** the time periods specified in paragraphs (1) and (2), and the time fixed in section 1129(e) within which the plan shall be confirmed, may be extended only if—
**(A)** the debtor, after providing notice to parties in interest (including the United States trustee), demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time;
**(B)** a new deadline is imposed at the time the extension is granted; and
**(C)** the order extending time is signed before the existing deadline has expired.

**11 U.S.C. § 1123. Contents of Plan.**

**(b)** Subject to subsection (a) of this section, a plan may—
**(1)** impair or leave unimpaired any class of claims, secured or unsecured, or of interests;
**(2)** subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;
**(3)** provide for—
**(A)** the settlement or adjustment of any claim or interest belonging to the debtor or to the estate; or
**(B)** the retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose, of any such claim or interest;

**11 U.S.C. § 1141. Effect of Confirmation.**
**(d)**
**(1)** Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan—
**(A)** discharges the debtor from any debt that arose before the date of such confirmation, and any debt of a kind specified in section 502(g), 502(h), or 502(i) of this title, whether or not—

**(i)** a proof of the claim based on such debt is filed or deemed filed under section 501 of this title;
**(ii)** such claim is allowed under section 502 of this title; or
**(iii)** the holder of such claim has accepted the plan; and
**(B)** terminates all rights and interests of equity security holders and general partners provided for by the plan.

**(2)** A discharge under this chapter does not discharge a debtor who is an individual from any debt excepted from discharge under section 523 of this title.

**(3)** The confirmation of a plan does not discharge a debtor if—
**(A)** the plan provides for the liquidation of all or substantially all of the property of the estate;
**(B)** the debtor does not engage in business after consummation of the plan; and
**(C)** the debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title.

**(4)** The court may approve a written waiver of discharge executed by the debtor after the order for relief under this chapter.

**(5)** In a case in which the debtor is an individual—
**(A)** unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;
**(B)** at any time after the confirmation of the plan, and after notice and a hearing, the court may grant a discharge to the debtor who has not completed payments under the plan if—
**(i)** the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on such date;
**(ii)** modification of the plan under section 1127 is not practicable; and
**(iii)** subparagraph (C) permits the court to grant a discharge; and
**(C)** the court may grant a discharge if, after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that—
**(i)** section 522(q)(1) may be applicable to the debtor; and
**(ii)** there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B);
and if the requirements of subparagraph (A) or (B) are met.

**(6)** Notwithstanding paragraph (1), the confirmation of a plan does not discharge a debtor that is a corporation from any debt—
**(A)** of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit, or owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar State statute; or
**(B)** for a tax or customs duty with respect to which the debtor—
**(i)** made a fraudulent return; or
**(ii)** willfully attempted in any manner to evade or to defeat such tax or such customs duty.

**11 U.S.C § 1181. Inapplicability of Other Sections.**

**(a)** In General.—

Sections 105(d), 1101(1), 1104, 1105, 1106, 1107, 1108, 1115, 1116, 1121, 1123(a)(8), 1123(c), 1127, 1129(a)(15), 1129(b), 1129(c), 1129(e), and 1141(d)(5) of this title do not apply in a case under this subchapter

**11 U.S.C. § 1182. Definitions.**

In this subchapter:

**(1)** Debtor.—The term "debtor"—

**(A)** subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning single asset real estate) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than $7,500,000 (excluding debts owed to 1 or more affiliates or insiders) not less than 50 percent of which arose from the commercial or business activities of the debtor; and

**(B)** does not include—

**(i)** any member of a group of affiliated debtors under this title that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than $7,500,000 (excluding debt owed to 1 or more affiliates or insiders);

**(ii)** any debtor that is a corporation subject to the reporting requirements under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)); or

**(iii)** any debtor that is an affiliate of a corporation described in clause (ii).

**11 U.S.C. § 1189. Filing of the Plan.**

**(a)** Who May File a Plan.—

Only the debtor may file a plan under this subchapter.

**11 U.S.C. § 1191. Confirmation of Plan.**

**(b)** Exception.—

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

**(c)** Rule of Construction.—For purposes of this section, the condition that a plan be fair and equitable with respect to each class of claims or interests includes the following requirements:

**(1)** With respect to a class of secured claims, the plan meets the requirements of section 1129(b)(2)(A) of this title.

**(2)** As of the effective date of the plan—

**(A)** the plan provides that all of the projected disposable income of the debtor to be received in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; or

**(B)** the value of the property to be distributed under the plan in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date on which the first distribution is due under the plan is not less than the projected disposable income of the debtor.

**(3)**

**(A)** The debtor will be able to make all payments under the plan; or

**(B)**

**(i)** there is a reasonable likelihood that the debtor will be able to make all payments under the plan; and

**(ii)** the plan provides appropriate remedies, which may include the liquidation of nonexempt assets, to protect the holders of claims or interests in the event that the payments are not made.

**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.

**11 U.S.C. § 1221. Filing of Plan.**

The debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend such period if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable.

**11 U.S.C. § 1228. Discharge.**

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

**(1)** provided for under section 1222(b)(5) or 1222(b)(9) of this title; or

**(2)** of a kind specified in section 523(a) of this title, except as provided in section 1232(c).