No. 22-0909

IN THE

Supreme Court of the United States

IN RE PENNY LANE INDUSTRIES, INC., *DEBTOR*

Eleanor Rigby, *PETITIONER*,

v.

PENNY LANE INDUSTRIES, INC, INC. *RESPONDENT.*

On Writ of Certiorari to
the United States Court of Appeals
for the Thirteenth Circuit

BRIEF FOR RESPONDENT

TEAM NO. 42
COUNSEL FOR RESPONDENT

JANUARY 20, 2023

QUESTIONS PRESENTED

I. A component of Debtor's Reorganization Plan is a Creditor Trust largely funded by Debtor's corporate parent. To secure Debtor's corporate parent's sizeable contribution to the trust, the Plan included a nonconsensual release of third-party claims arising from Debtor's pre-bankruptcy conduct against debtor's corporate parent. While 95% of unsecured creditors approved of the plan, Petitioner did not. Given that this non-consensual release of third-party claims against a non-debtor entity was "necessary . . . to carry out" Debtor's Reorganization Plan, 11 U.S.C. 105(a), did the Bankruptcy Court have the power to approve such a non-consensual release?

II. Debtor is a corporate entity that filed for bankruptcy under Subchapter V of Chapter 11 of the Bankruptcy Code. Petitioner sought to have her unsecured claim excepted from discharge. The Bankruptcy Court declined to except Petitioner's claim from Debtor's discharge. Did the Bankruptcy Court err when it failed to except from discharge a claim against a debtor who was not an "individual?" 11 U.S.C. 523(a).

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OPINIONS BELOW

The Thirteenth Circuit Court of Appeals decision is available at No. 22-0909 and is reprinted at Record 2. The bankruptcy court decided in favor of Penny Lane Industries, Inc., the subchapter V debtor in this case. On direct appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed in favor of Penny Lane Industries.

STATEMENT OF JURISDICTION

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

RELEVANT STATUTORY PROVISIONS

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

The relevant portion of 11 U.S.C. § 105 states:

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

The relevant portions of 11 U.S.C. § 1123 state

> (a) Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall—
>
> > (5) provide adequate means for the plan's implementation[,] and,
>
> (b) Subject to subsection (a) of this section, a plan may—
>
> > (6) include any other appropriate provision not inconsistent with the applicable provisions of this title.

The relevant portion of 11 U.S.C. § 523 states:

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

The relevant portion of 11 U.S.C. § 1192 states:

> [T]he court shall grant the debtor a discharge of all debts . . . except any debt
>
> > (2) of a kind specified in section 523(a) of this title.

STATEMENT OF THE CASE

This is an exceptional case, and the Bankruptcy Code, as interpreted by most circuit courts of appeal, provides a unique set of tools to facilitate a timely and satisfactory resolution for all sides. Nevertheless, Petitioner, vis-à-vis this appeal, seeks to torpedo a Reorganization Plan that offers Petitioner and other similarly situated plaintiffs a final resolution and a substantial recovery. What's more, Petitioner, displeased with the Code's unambiguous language, asks this Court to perform a gymnastics sequence of statutory interpretation and deem her claim against a corporate entity excepted from discharge. The Bankruptcy Court and the Thirteenth Circuit rightly overruled Petitioner's objection to the Plan and dismissed Petitioner's non-dischargability action, and this Court should affirm.

I. FACTUAL HISTORY

A. Penny Lane and the Contaminated Water Supply

Penny Lane Industries, Inc. ("Penny Lane" or "Respondent") is a manufacturer of plastic, glass, and metal food containers. R. at 4. It is a wholly owned subsidiary of Strawberry Fields, which manufactures several popular brands of cereal and convenience foods. R. 4–5. Penny Lane is based in the City of Blackbird, Moot. R. at 4. It, alongside dozens of other businesses, operates out of property that abuts the Liverpool River. R. at 4, 5.

The City of Blackbird's ground water supply is contaminated. R. at 3. EPA and CDC studies show that tens of thousands of Blackbird residents were exposed water contaminated with toxins at levels 250 to 3,000 the allowed concentration levels in 2013-2017. R. at 5. Human exposure to such toxins has been linked to birth defects, sickness, and death. R. at 5.

B. Mrs. Eleanor Rigby and the Allegations Against Penny Lane

Mrs. Eleanor Rigby ("Mrs. Rigby" or "Petitioner") is a resident of the City of Blackbird. R. at 5. She faced, and continues to live with, a tragedy nigh incomprehensible to most: she lost her four-year old daughter to leukemia. R. at 5. Mrs. Rigby believes that the leukemia that took her daughter was caused by her daughter's exposure to water contaminated by pollutants dumped by Penny Lane. R. at 5.

In 2017, Mrs. Rigby sued Penny Lane and Strawberry Fields, alleging that to cut costs, Penny Lane disposed of pollutants on its property abutting the Liverpool River; that the pollutants made their way into, and contaminated, the Liverpool River; that Penny Lane's now-deceased CEO, Maxwell S. Hammer, knew that the Penny Lane disposed of pollutants into the Liverpool River and that such pollutants were harmful to humans; and that Strawberry Fields knew or should have known that Penny Lane, its wholly owned subsidiary, was improperly disposing of pollutants near the Liverpool River. R. at 5–6.

C) Penny Lane Denies Responsibility

Penny Lane and Strawberry Fields dispute Mrs. Rigby's allegations. R. at 6. They argue that Penny Lane's waste-disposal practices were lawful, that Penny Lane did not know its waste entered City of Blackbird groundwater, and that there is insufficient evidence linking Penny Lane's waste to the toxins in the Liverpool River. R. 6.

There has not been a conclusive determination of the source of the toxins contaminating the City of Blackbird's water supply. R. at 4. And no judicial determination has been made with respect to either Mrs. Rigby's or Penny Lane and Strawberry Fields's claims. R. at 6.

D) In Response to Mounting Lawsuits, Penny Lane Files for Bankruptcy.

Hundreds of other plaintiffs filed lawsuits similar to Mrs. Rigby's lawsuit against Penny Lane. R. at 6. Some of these lawsuits named Strawberry Fields as a co-defendant. R. at 6. In these lawsuits, the plaintiffs' sought damages for injuries the allegedly caused by the contaminated water supply. R. at 6.

In response to this cascade of costly litigation, Penny Lane elected to file for bankruptcy under subchapter V of chapter 11 on January 11, 2021. R. at 6. Penny Lane's trade creditors are owed less than $2 million. R. at 6. The rest of the clams against Penny Lane—totaling $400 million—are some 10,000 disputed, unliquidated tort claims related to the contaminated water supply. R. at 6.

E) Mrs. Rigby's Non-dischargability Action

Mrs. Rigby filed an unsecured claim for $1 million, to which Penny Lane did not object. R. at 6–7. Ms. Rigby subsequently instituted an adversary proceeding against Penny Lane. R. at 7. She sought a declaration that her $1 million claim resulted from a "willful and malicious injury" by Penny Lane and was therefore excepted from discharge under 11 U.S C. §§ 523(a)(6) and 1192(2). R. at 7. Penny Lane filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), arguing that the 11 U.S.C. 523(a) exceptions to discharge do not apply to business entities. R. at. 7.

F) The Global Settlement, Creditor Trust, and Non-consensual Third-party Releases

Penny Lane and several stakeholders engaged in mediated settlement negotiations for over two months. R. at 8. The parties agreed to a global settlement framework, which was memorialized in Penny Lane's Reorganization Plan. R. at 8.

To remunerate the roughly 10,000 holders of disputed, unliquidated tort claims, the Plan aimed to establish a creditor trust. R. at 8. This trust had two funding sources: First, all of Penny Lane's disposable income for five years. And second, and much more substantial, a $100 million payment by Strawberry Fields into the trust. R. at 8. The Plan anticipates that the holders of the disputed, unliquidated tort claims will receive a distribution of 30–40 cents on the dollar. R. at 8.

The Plan also seeks to release Strawberry Fields from any and all third-party claims arising from Penny Lane's pre-petition conduct, its estate, or Penny Lane's chapter 11 case. R. at 8. This release was nonconsensual, and all affected parties, whether they approved or objected to the plan, are bound by the release. R. at 8. Strawberry Fields agreed to fund the channeling trust in exchange for the release. R. at 8.

Over 95% of Penny Lane's voting creditors voted in favor of the Plan. R. at 9. Two objections to confirmation were filed. R. at 8.

First, Mrs. Rigby argued that the bankruptcy court lacked the power to approve the non-consensual release of all third-party claims against Strawberry Fields. R. at 9.

Second, the Norwegian Wood Bank, an undersecured creditor, argued that the Plan was not "fair and equitable" under §§ 1191(b) and 1129(b)(2)(A) because the Plan undervalued its collateral.

II. Procedural History

The Bankruptcy Court held that § 523(a)'s exceptions to discharge do not apply to subchapter V debtors who are business entities and dismissed Mrs. Rigby's adversary proceeding. R. at 7. Mrs. Rigby timely appealed. R. at 7.

Thereafter, the Bankruptcy Court overruled Mrs. Rigby's and Norwegian Woods's objections and confirmed the Plan after a four-day confirmation hearing. R. at 10.

With respect to Mrs. Rigby's objection to the nonconsensual releases, the Bankruptcy Court noted that this case, like the select few in which nonconsensual third-party releases were approved, was extraordinary. Beyond its complex nature, the case featured a sizable monetary contribution by a third party—Strawberry Fields--upon which the Plan's confirmation depended. R. at 10. Moreover, the Bankruptcy Court found that the holders of disputed, unliquidated tort claims fared better under the Plan than they would have either in a chapter 7 liquidation or through independent legal actions against Penny Lane and Strawberry Fields R. at 10. The Bankruptcy Court also observed that there was no other reasonable alternative to the Plan that would resolve this case, and that the overwhelming majority of creditors approved of the plan. R. at 10. Accordingly, the Bankruptcy Court found that the global settlement, the channeling injunction, and the releases were fair and reasonable. R. at 10.

The Bankruptcy Court also held that the valuation of Norwegian Wood's complied with the relevant Bankruptcy Code provisions. R. at 10.

Mrs. Rigby timely appealed both the Plan's confirmation and the dismissal of her non-dischargability action to the Thirteenth Circuit. R. at 11. The Thirteenth Circuit affirmed. R. at 12.

STANDARD OF REVIEW

This appeal raises pure questions of law, the resolution of which necessitates statutory construction. Pure questions of law are reviewed *de novo*. *Highmark, Inc. v. Allcare Health Mgmt. Sys., Inc.*, 572 U.S. 559, 563 (2014).

SUMMARY OF THE ARGUMENT

One of the most fundamental—if not the most fundamental—tenants of bankruptcy law is then notion that similar creditors must be treated similarly. The Bankruptcy Code enshrined this concept in various provisions that furnish bankruptcy courts with the discretionary equitable authority to sculpt creative solutions to complex problems. The Code also includes provisions that enumerate exactly which types of claims are excepted from discharge if the debtor is an individual.

Nevertheless, Petitioner seeks to violate the fore-mentioned fundamental tenant of bankruptcy in two ways: first, by torpedoing Penny Lane's hard-fought Reorganization Plan; and second, by weaponizing the Code so that she (Petitioner) may get a larger distribution than the some-10,000 other similarly situated claimants.

With respect to the Plan confirmation, Petitioner wrongly asserts that bankruptcy courts lack the power to affirm reorganization plans featuring a nonconsensual third-party release. Bankruptcy courts have broad equitable discretion under §§ 105(a), 1123(a)(5) and 1123(b)(6) to fashion remedies that facilitate a quick resolution to complex cases. One such remedy, reserved for exceptional cases, is the nonconsensual third-party release. But even if §§ 105(a), 1123(a)(5) and 1123(b)(6) do not affirmatively grant bankruptcy courts the power to approve nonconsensual third-party releases, no provision of the Code either explicitly or implicitly prohibits bankruptcy courts from approving such releases. Nonconsensual third-party releases are a constitutional display of a bankruptcy court's authority because, in exceptional cases, they are vital to

reorganizing the debtor-creditor relationship. And bankruptcy courts have the jurisdiction to issue such releases, which are "related to" the debtor-creditor relationship. Such releases do not qualify as a final adjudication on the merits; moreover, because such releases are constitutional, then bankruptcy courts do not exceed their jurisdiction when they approve the releases.

And with respect to the exceptions to discharge, § 523(a) clearly and unambiguously states that its exceptions to discharge only apply to individuals. Petitioner nevertheless asks this Court to read § 1192's cross-reference to § 523(a) as abrogating the debtor-who-is-an-individual requirement and hold that subchapter V debtors who are corporations can have debts excepted from discharge. But statutes should be read in a manner that prevents conflict; therefore, sections 523(a) and 1192 should be read to limit the exceptions to discharge to subchapter V debtors who are individuals. But even if §§ 523(a) and 1192 cannot be reconciled, § 523(a), the provision that specifically deals with exceptions to § 1192 discharges, should control. Petitioner's alternative, that § 1192 controls, would lead to an absurd result: a Code provision that incentivizes creditors to syphon funds from a beleaguered debtor to the detriment of other similarly situated creditors.

To ensure the bankruptcy system continues to both provide creative solutions to complex cases and remains fair to all creditors, this Court should reject Petitioner's arguments and affirm.

ARGUMENT

This Court should affirm the Thirteenth Circuit's holding that bankruptcy courts have the statutory, Constitutional, and jurisdictional authority to grant non-consensual releases to non-debtor third parties. Further, this Court should also affirm the Thirteenth Circuit's holding that 11 U.S.C. 523(a) exceptions to discharge are inapplicable to corporate entities filing for bankruptcy under subchapter V of chapter 11.

I. BANKRUPTCY COURTS HAVE THE POWER TO APPROVE REOGANIZATION PLANS THAT INCLUDE NONCONSENSUAL THIRD-PARTY RELEASES IN EXCEPTIONAL CIRCUMSTANCES

A) The Bankruptcy Code Authorizes Bankruptcy Courts to Grant Non-consensual Third-Party Releases

It is true that the Bankruptcy Code contains no provision that standing alone explicitly authorizes bankruptcy courts to confirm reorganization plans featuring non-asbestos, nonconsensual third-party releases. The Thirteenth Circuit joined the majority of circuits when it held that read together, 11 U.S.C §§ 105(a), 1123(a)(5), and 1123(b)(6), furnish bankruptcy courts with the statutory authority to confirm plans that feature a non-consensual third-party release. R. at 14–15. This is so despite Petitioner's misplaced reliance on provisions of the Code, namely 11 U.S.C. §§ 523(e), 524(g), and 524(h), that by their terms do not apply to non-asbestos, nonconsensual third-party releases. R. at 15.

1) Sections 105(a), 1123(a)(5) and 1123(b)(6) authorize bankruptcy courts, sitting in equity, to approve reorganization plans featuring nonconsensual third-party releases.

Bankruptcy Courts are "courts of equity and 'appl[y] the principles and rules of equity jurisprudence.'" *Young v. United States*, 535 U.S. 43, 50 (2002) (quoting *Pepper v. Litton*, 308 U.S. 295, 304 (1939)). Congress codified this principle in, among other places, 11 U.S.C. § 105(a), which authorizes bankruptcy courts to "issue any order, process, or judgment that is necessary or

appropriate to carry out the provisions of this title." Section 105(a) does not, however, grant bankruptcy courts unfettered discretion. Rather, section 105(a) conditions bankruptcy courts' discretionary equitable authority in two ways: First, the order, process or judgment must be "necessary." 11 U.S.C. 105(a). And second, such order, process or judgment must "carry out" the provisions" of the Code. *Id.*; *see also Law v. Siegal*, 571 U.S. 415, 421 (2014) (section 105(a) "is simply an application of the axiom that a statute's general permission to take actions of a certain type must yield to a specific prohibition found elsewhere.").

The Code uses language near-identical to section 105(a)'s language to grant bankruptcy courts the selfsame limited discretionary equitable authority in the context of chapter 11 plan confirmations. Section 1123(b)(6) states that a confirmable plan "may . . . include any other appropriate provision not inconsistent with the applicable provisions "of the Bankruptcy Code. 11 U.S.C. 1123(b)(6). This Court, in *United States v. Energy Res. Co., Inc.*, noted that "[t]hese statutory directives are consistent with the traditional understanding that bankruptcy courts, as courts of equity, have broad authority to modify creditor-debtor relationships." 495 U.S. 545, 549 (1990) (holding that §§ 105(a) and the statutory precursor to 1123(b)(6) authorize a bankruptcy court, when necessary, to order the IRS to offset trust fund obligations with tax payments).

The Thirteenth Circuit, *see* R. at 14, and the clear majority of its sister circuits that have ruled on the issue of nonconsensual third-party releases, *see, e.g.*, *In re Dow Corning Corp.*, 280 F.3d 648, 656–657(6th Cir. 2002), read sections 105(a) and 1123(b)(6) in a manner consistent with this Court's *Energy Res. Co*. broad interpretation of bankruptcy courts' equitable authority. Consequently, the Thirteenth and most of its sister circuts permit bankruptcy courts to approve nonconsensual third-party releases. *Id.*

Indeed, for the Thirteenth and most of its sister circuits, the question there becomes what standards determine whether the bankruptcy court abused its discretion when it approved a nonconsensual third-party release. *See In re Boy Scouts of Am. & Delaware BSA, LLC.*, 642 B.R 504, 595–620 (Bankr. D. Del. 2022) (approving broad nonconsensual third-party releases in a sexual harassment case utilizing the *Continental* hallmarks test and the *Master Mortgage* four-factor test). In essence, the circuit courts' various tests seek to ensure that the nonconsensual third-party release conforms with the language of § 105(a) ("necessary or appropriate") and § 1123(b)(6) ("appropriate").[1]

The Code does not, however, provide bankruptcy courts any discretion to prohibit the inclusion of provisions necessary to effectuate a successful reorganization. Section 1123(a)(5) states that a confirmable plan "shall . . . provide adequate means for the plan's implementation." 11 U.S.C. § 1123(a)(5). *Boy Scouts* exemplifies the practical effect of this provision. There, in exchange for nonconsensual releases of all third-party claims related to the debtors' misconduct, the debtors' insurance companies provided Settling Insurer Settlements to fund a trust to distribute funds to allowed claimants. 542 B.R. at 562. The court noted that "[w]ithout these settlements, there is no Plan." *Id.* Accordingly, because the insurers' settlements were conditioned on the provision of the nonconsensual third-party releases, § 1123(a)(5) mandated that the court approve the releases. *See id.* at 639.

[1] The *Master Mortgage* factors are (i) "there is an identity of interest between the debtor and the third party, usually an indemnity relationship, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete assets of the estate; (ii) the non-debtor has contributed substantial assets to the reorganization; (iii) the injunction is essential to reorganization such that without it, there is little likelihood of success; (iv) a substantial majority of the creditors agree to such injunction, specifically, the impacted class, or classes, has "overwhelmingly" voted to accept the proposed plan treatment and (v) the plan provides a mechanism for the payment of all, or substantially all, of the claims of the class or classes affected by the injunction." *Boy Scouts*, 542 B.R. at 597 (citing *In re Master Mortgage*, 168 B.R. 930, 937 (Bankr. W.D. Mo. 1994). The *Continental* hallmarks of an acceptable nonconsensual third-party release are "fairness and necessity to the reorganization supported by specific factual findings." *Id.* at 587 (citing *In re Continental Airlines*, 203 F.3d 203, 212 (3rd Cir. 2000)).

Consequently, the Code authorizes bankruptcy courts to approve reorganization plans featuring nonconsensual third-party releases; and where such releases are constituting "adequate means for the plan's implementation," bankruptcy courts must approve plans featuring such releases.

2) No provision of the Bankruptcy Code forbids nonconsensual third-party releases.

No reasonable construction of § 524(e), § 524(g), nor 524(h), read together or separately, supports Petitioner's assertion that the Bankruptcy Code prohibits nonconsensual third-party releases.

11 U.S.C § 524(e) states that a "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" unless the Code provides otherwise. Section 524(e) does not mention third-party releases, and the plain meaning of the provision indicates that § 524(e) has nothing to do with third-party releases. *See In re Airadigm Commc'ns, Inc.*, 519 F.3d 640, 656 (7th Cir. 2008) ("[t]he natural reading of this provision does not foreclose a third-party release from a creditor's claims"); *see also In re Seaside Eng'g & Surveying, Inc.*, 780 F.3d 1070, 1078 (11th Cir. 2015) ("§ 524(e) says nothing about the authority of the bankruptcy court to release a non-debtor from creditor claims").

Moreover, the law presumes that repeated words and phrases in a statute share the same meaning unless applied to "distinct statutory objects" that require "different implementation strategies." *See Utility Air Regulatory Grp. v. E.P.A.*, 573 U.S. 302, 320 (2014). In the context of chapter 11, a confirmed reorganization plan "discharge[s] the debtor from any debt that arose" before the confirmation of the plan. 11 U.S.C. § 1114(d)(1)(A). A discharge enjoins creditors from collecting on any discharged debt. *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1800 (2019); *see also* 11 U.S.C. 524(a). Because the discharge relieves the debtor of *personal* liability, *see* 11 U.S.C. 524(a),

524(e)'s use of the word "discharge" should, absent a statutory context giving rise to different implementations, implicate the personal nature of a discharge. Accordingly, 524(e), in the words of the Seventh Circuit,[2] is a "savings clause" which preserves the rights of creditors to, for example, institute collection actions against a co-liable third-party for a debt discharged as to the debtor who filed for bankruptcy. *In re Airadigm Commc'ns*, 519 F.3d at 656. Section 524(e) does not, however, affirmatively foreclose bankruptcy courts from approving third-party releases. *Id.* Consequently, this Court should reject's Petitioner's claim that § 524(e) prohibits bankruptcy courts from approving third-party releases.

Petitioner and dissenting Circuit Judge McCartney further argue that the Code's provisions authorizing nonconsensual releases in asbestos bankruptcies contain language that "suggests" that Congress intended the asbestos provisions to be exceptions to 524(e). R. at 25; *see also In re Purdue Pharma, L.P.* 635 B.R. 26, 92 (Bankr. S.D.N.Y. 2021) ("The language of [§ 524(g)] plainly indicates that Congress believed that Section 524(g) created an exception to what would otherwise be an applicable rule of law."); *In re Lowenschuss*, 67 F.3d 1394, 1402 n.6 (9th Cir. 1995) (That Congress provided explicit authority to bankruptcy courts to issue injunctions in favor of the third

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[2] The Seventh Circuit also persuasively discussed the mandatory/permissive canon in its discussion of 11 U.S.C. 524(e):

> In any event, § 524(e) does not purport to limit the bankruptcy court's powers to release a non-debtor from a creditor's claims. If Congress meant to include such a limit, it would have used the mandatory terms "shall" or "will" rather than the definitional term "does." And it would have omitted the prepositional phrase "on, or ... for, such debt," ensuring that the "discharge of a debt of the debtor *shall* not affect the liability of another entity"—whether related to a debt or not. *See* 11 U.S.C. § 34 (repealed Oct. 1, 1979) ("The liability of a person who is a co-debtor with, or guarantor or in any manner a surety for, a bankrupt shall not be altered by the discharge of such bankrupt.") (prior version of § 524(e)). Also, where Congress has limited the powers of the bankruptcy court, it has done so clearly—for example, by expressly limiting the court's power, *see* 11 U.S.C. § 105(b)("[A] court may not appoint a receiver in a case under this title"), or by creating requirements for plan confirmation, *see, e.g.*, 11 U.S.C. 1129(a) ("The court shall confirm a plan only if the following requirements are met...."). As a result, for the reasons set out in *Specialty Equipment,* § 524(e) does not bar a non-consensual third-party release from liability.

In re Airadigm Commc'ns, Inc., 519 F.3d at 657 (citations and footnotes omitted).

parties in an extremely limited class of cases reinforces the conclusion that § 524(e) denies such authority in other, non-asbestos, cases."). The language in question is contained in 11 U.S.C. § 524(g)(4)(A)(ii): "Notwithstanding the provisions of section 524(e), such an injunction may bar any action directed against a third party [.]" *See In re Purdue Pharma*, 635 B.R. at 92 (concluding that Congress's use of the phrase "[n]otwithstanding the provisions of 524(e)" indicates that Congress viewed nonconsensual third-party releases as forbidden under § 524(e) absent a specific statutory grant of authority).

This Court recently interpreted the word "notwithstanding" as included within a provision of the Bankruptcy Code. *See Merit Mgmt. Grp., L.P. v. FTI Consulting, Inc.*, 138 S. Ct. 883, 893 (2018). In *Merit Mgmt.*, the provision at issue was 11 U.S.C. § 546(e), which opens with the following phrase: "Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) of this title[.]" Section 546(e) prohibits the trustee from avoiding certain transfers "notwithstanding" the Code's many provisions granting the trustee broad avoidance powers. *See* 11 U.S.C. § 546(e). Writing for a unanimous Court, Justice Sotomayor noted that the phrase beginning with "notwithstanding" indicated that § 546(e) "operates as an exception to the avoiding powers afforded to the trustee" under § 544, 545, 547, 548(a)(1)(B), and 548(b). *Merit Mgmt.*, 138 S. Ct. at 893 (citing and applying SCALIA & GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 126 (2012).

Notably, the *Merit Mgmt.* Court limited the exception contained in § 546(e) to the "substantive avoiding power under the provisions *expressly* listed in the 'notwithstanding' clause[.]" *Merit Mgmt.*, 138 S. Ct. at 893. (emphasis added). Justice Sotomayor did not expand upon the provisions expressly listed in the "notwithstanding" clause, nor did she impute additional

substantive content into those provisions. *See id.* at 893–894 (directly quoting the Code provisions listed in the "notwithstanding" clause of § 546(e)).

Like § 546(e), § 523(g) similarly features a "notwithstanding" phrase that expressly lists a Code provision, § 523(e), which cautions that a *discharge* is personal in nature and cannot be applied to third parties. As discussed above, § 523(e) says nothing about third-party releases. Moreover, under *Merit Mgmt.*, the mere inclusion of a 523(e) in a "notwithstanding" phrase does not implicitly insert third-party releases into § 523(e)'s plain text. Rather, § 523(g) says what it means and means what it says: asbestos-related, nonconsensual third-party releases do not violate the Code's prohibition on the debtor's discharge applying to third parties.

Additionally, the reading of §§ 524(g) and 524(h) that Petitioner would have this Court adopt runs counter to an enacted statute, the Bankruptcy Reform Act of 1994. Public Law 103–394 § 111(b), 108 Stat. 4106, 4117. There, Congress expressly and unambiguously told courts that §§ 524(g) and 524(h) shall not "be construed to modify, impair, or supersede *any* other authority the court has to issue injunctions in connection with an order confirming a plan of reorganization. *Id.* (emphasis added). Such interpretation clauses "are to be carefully followed." SCALIA & GARNER, at 225. The interpretation clause is clear: it is impermissible to interpret §§ 524(g) and 525(h) as prohibitions on courts' power to issue injunctions to facilitate the confirmation of a plan of reorganization. Nonconsensual third-party release are injunctions. *See, e.g.*, *In re Lower Bucks Hosp.*, 471 B.R. 419, 462 (Bankr. E.D. Pa. 2012) (using "injunction" and "release" interchangeably). Accordingly, this Court should reject Petitioner's claim that the asbestos provisions, 11 U.S.C §§ 524(g) and 524(h), prohibit courts from approving nonconsensual third-party releases.

Thus, this Court should hold that third-party nonconsensual releases do not conflict with any provision of the Bankruptcy Code

B) Bankruptcy Courts Do Not Violate the Constitution When They Approve Non-Consensual Releases Integral to The Confirmation of a Plan in Exceptional Cases.

Petitioner further claims that bankruptcy courts lack the constitutional authority to approve nonconsensual third-party releases in all circumstances.

In *Stern v. Marshall*, this Court held that the Constitution forbids bankruptcy courts from entering "a final judgment on a state law counterclaim that is not resolved in the process of ruling on a creditor's proof of claim." 564 U.S. 462, 503 (2011). Alongside so holding, the Court nevertheless recognized that within "the process of ruling on a creditor's proof of claim," bankruptcy courts *can* enter final judgments. *Id.* at 471 (explaining that "bankruptcy courts may hear and enter final judgments in 'core proceedings' in a bankruptcy case."). The question there becomes, when does a nonconsensual third-party release implicate a bankruptcy court's core-proceedings power?

In exceptional circumstances. *In re Millennium Lab Holdings, II, LLC.* 945 F.3d 126, 137 (3rd Cir. 2019). In *In re Millennium Lab Holdings*, the debtor provided laboratory diagnostic services. *Id.* 130. It filed for bankruptcy under chapter 11 because it lacked the liquidity to both meet its obligations to its lenders and pay a settlement it made with the federal government for alleged fraudulent billing practices. *Id.* at 130. The debtor and its lenders, after "intensive negotiations," agreed to a restructuring agreement whereby the debtor's equity holders transferred 100% of their equity interests to the lenders. *Id.* at 131. In exchange for this equity transfer, the parties agreed to fully release the debtor's equity holders from any claims arising from the debtor-lender relationship. *Id.* "On the specific, exceptional facts" presented in *Millennium* case, the Third

Circuit held that the nonconsensual release "was integral to restructuring the debtor-creditor relationship," and the bankruptcy court had the power to approve the release. *Id.* at 129 (quoting *Stern*, 564 U.S. at 497).

Similarly, the Second Circuit observed that "[n]o case has tolerated non-debtor releases absent the finding of circumstances that may be characterized as unique." *In re Metromedia Fiber Network, Inc*., 416 F.3d 136 (2nd Cir. 2005). The other circuits who approve of nonconsensual third-party releases similarly require something more than a garden-variety chapter 11 filing. *See In re Seaside Eng'g*, 780 F.3d at 1078 (requiring "unusual cases"); *see also Nat'l Heritage Found., Inc. v. Highbourne Found.*, 760 F.3d 344, 351 (4th Cir. 2014) (requiring "exceptional circumstances"); *In re Airadigm Commc'ns, Inc.*, 519 F.3d at 657 (requiring "fact intensive" inquiry into "the nature of the reorganization"); *In re Dow Corning*, 280 F.3d at 658 (nonconsensual third-party releases are "dramatic measure[s] to be used cautiously"). In fact, even circuits that forbid such releases appreciate that the circuits that do permit nonconsensual third-party releases do so with circumspection. *See Matter of Zale Corp.*, 62 F.3d 746, 761 (5th Cir. 1995) (nonconsensual third-party releases "may be proper in unusual circumstances.").

Accordingly, in cases presenting exceptional facts, "dramatic measures," like nonconsensual third-party releases, fall within the panoply of measures available to bankruptcy courts to fashion a plan that "restructures debtor-creditor relationships." As one court declared, a satisfactory resolution of these exceptional cases depends on the releases: "Without these releases, there is no Plan." *Boy* Scouts, 542 B.R. at 562. Consequently, in an exceptional case which can only be resolved through a plan that features nonconsensual third-party releases, a bankruptcy court does not violate the constitutional standard announced in *Stern* by approving the releases.

C) Bankruptcy Courts have Jurisdiction to Address Third-party Releases.

In dissent, Judge McCartney asserts that bankruptcy courts lack the jurisdiction to release direct claims against non-debtor third parties because they lack the jurisdiction to hear such claims. R. at 27.

Federal district courts have exclusive jurisdiction over bankruptcy cases, 11 U.S.C. § 1334(a), and exclusive jurisdiction over "all the property" of the debtor. 11 U.S.C. § 1334(e). Bankruptcy courts' jurisdiction derives from the district courts' jurisdiction; under 28 U.S.C. 157(a), the federal district courts may refer all cases and proceedings "arising under" the Bankruptcy Code to bankruptcy courts. Such a reference additionally provides bankruptcy courts with jurisdiction over civil proceedings "arising in" bankruptcy cases or that are "related to" bankruptcy cases. 11 U.S.C. § 1334(b).

This Court, in *Celotex Corp. v. Edwards*, noted that bankruptcy courts' "related to" jurisdiction has "some breadth." 514 U.S. 300, 308 (1995). Indeed, bankruptcy courts' "related to" jurisdiction is most broad in chapter 11 cases. *Id.* at 310. Such "related to" jurisdiction must, at minimum, be broad enough to empower bankruptcy courts to "deal efficiently and comprehensively with *all* matters connected with the bankruptcy estate." *Id.* at 308 (quotations and citations omitted) (emphasis added). Applying the foregoing principles, this Court held that a bankruptcy court had the power to enjoin a debtor's creditors from instituting collection actions against the debtor's surety on a supersedeas bond "occasioned by a judgment that had become final." *Id.* at 301.

Significantly, to support its broad reading of bankruptcy courts' "related to" jurisdiction, this Court cited, among other cases, *MacArthur Co. v. Johns-Manville* Corp., 837 F.2d 89 (2d. Cir. 1988). *Id.* at 312. *Johns-Manville* was an asbestos-related chapter 11 bankruptcy. *See Johns-*

Manville, 837 F.2d at 90. There, the Second Circuit held that the bankruptcy court had the power in *that* exceptional circumstance to approve a nonconsensual third-party release. *Id.* at 94. Six years after *Johns-Manville*, Congress codified 11 U.S.C. §§ 524(g) and 524(h), the above-discussed asbestos-related nonconsensual third-party release provisions. *See* Sander L. Esserman & David J. Parsons, *The Case for Broad Access to 11 U.S.C. § 524(g) in Light of the Third Circuit's Ongoing Business Requirement Dicta in* Combustion Enginee*ring*, 62 NYU ANNUAL SURVEY OF AM. L. 187, 189–192 (2006) (recounting the history and passage of 11 U.S.C. § 524(g)).

Therefore, this Court, before Congress codified asbestos-related nonconsensual third-party releases, recognized that in some bankruptcies, a nonconsensual third-party release falls under bankruptcy courts' "related to" jurisdiction. While it is true that this Court's citation created no law, most courts agree with this proposition. *See, e.g.*, *Purdue Pharma*, 635 B.R. at 80 (concluding that the bankruptcy court had "related to" jurisdiction to approve a nonconsensual third-party release).

Bankruptcy courts, absent consent from all the parties, are forbidden from entering final judgments pursuant their "related to" jurisdiction. *See id.* However, this distinction is irrelevant if the bankruptcy court's actions meet the *Stern* constitutional standard. *See In re Millennium Lab Holdings*, 945 F.3d at 140 n.15 ("Our conclusion that the Bankruptcy Court's actions were constitutionally permissible assume *Stern*'s application. Accordingly, it ultimately is irrelevant to our decision whether or not the Bankruptcy Court issued a "final judgment[.]"); *see also In re Mallinckrodt Plc.*, 639 B.R. 837, 868 n.70 (Bankr. D. Del. 2022) (concluding that the statutory and constitutional authority to approve nonconsensual third-party releases implicitly disposes of the jurisdictional question).

Consequently, if the bankruptcy court has the constitutional authority to approve a nonconsensual third-party release, it has "related to" jurisdiction to approve the release.

Here, the facts are not in dispute and the bankruptcy court held that the releases were permissible under the above-cited majority view. R. at 10. Given that the bankruptcy court had the statutory, constitutional, and jurisdictional authority to make this determination, this Court should affirm.

II. THE BANKRUPTCY CODE'S EXCEPTIONS TO DISCHARGE ARE INAPPLICABLE TO CORPORATE SUBCHAPTER V DEBTORS.

Petitioner further argues that, as a subchapter V corporate debtor, Respondent is subject to the exception-to-discharge provisions of 11 U.S.C. 523(a). R. at 7. Specifically, Petitioner asserts that because her claim was a "willful and malicious injury by" Respondent, it is excepted from discharge under 11 U.S.C. 523(a)(6). *Id.*

A) Absent Specific Language Dictating Otherwise, The Code's Provisions Dealing with Discharge Apply to Corporations

Whether a corporation can receive a discharge in bankruptcy is chapter specific. *Compare* 11 U.S.C. 727(a)(1) (in chapter 7 liquidations, "[t]he court shall grant the debtor a discharge unless . . . the debtor is not an individual) *with* 11 U.S.C. 1141(d)(1)(A) (confirmation of a plan of reorganization "discharges the debtor from any debt that arose before" the reorganization plan's confirmation date).

In this case, Respondent's confirmation plan was crammed down because one creditor, Norwegian Wood Bank, objected to the plan's confirmation. R. at 9. Section 1192 governs subchapter V reorganizations featuring cramdowns. 11 U.S.C. 1181(c) ("If a plan is confirmed under [the cramdown provision] of this title, section 1141(d) of this title shall not apply, except as provided in section 1192 of this title."). Section 1192 states that if the debtor meets its cramdown

requirements, "the court shall grant the debtor a discharge" subject to a few conditions discussed below. 11 U.S.C. § 1192.

Unlike § 727(a)(1), § 1192 does not explicitly use the word "individual" when delineating the range of actors that may receive a discharge. Accordingly, because § 1192 does not expressly limit its discharge to individuals, a corporation filing for bankruptcy under subchapter V may receive a discharge. *See In re GFS Indus., LLC*, No. 22-50403-CAG, 2022 WL 16858009, at *4 (Bankr. W.D. Tex. Nov. 10, 2022) ("Because § 1192 does not contain any provision that would preclude non-individual debtors from obtaining a discharge, the Court holds that the plain language of § 1992 grants a corporate Subchapter V debtor a discharge of debts provided the debtor meets the statutory requirements.").

By contrast, § 1141 expressly delineates the types of exceptions to discharge to which corporations and individuals are subject, respectively. Under § 1141(d)(2), a chapter 11 discharge does not discharge "a debtor who is an *individual* from any debt excepted from discharge under section 523 of this title." (Emphasis added.) Section 1141(d)(6)(A), meanwhile, states that a chapter 11 discharge does not discharge "a debtor who is a *corporation* from any debt" listed in §§ 523(a)(2)((A) and 523(a)(2)(B) owed to a "domestic governmental unit." (Emphasis added.)

Accordingly, Congress knows how to draft debtor-specific discharge provisions. *see In re GFS Indus.*, No. 22-50403-CAG, 2022 WL 16858009, at *4 (observing that Congress "knew how" to draft a provision that places additional limits of only one type of debtor). Concomitantly, absent express language specifying to which debtor a provision applies, a discharge provision applies to all debtors. *See* 11 U.S.C. § 1192; *see also See In re Cleary Packaging, LLC*, 36 F.4th 509, 514 (4th Cir. 2022) (concluding an § 1192 discharge applies to both corporations and individuals).

B) Section 523(a)'s Exceptions to Discharge Do Not Apply to Corporations

Section 523(a) plainly and unambiguously states that exceptions to discharge do not apply to a debtor who is a corporation. Further, this Court should interpret §§ 523(a) and 1192 to limit exceptions to discharge to subchapter V debtors who are individuals to avoid creating a conflict within the Code. Even if such a conflict does arise, however, § 523(a) should control because it is the provision specifically dealing with exceptions to discharge. Moreover, Petitioner's interpretation of §§ 523(a) and 1192 would create an absurd result whereby the Code provisions encourage creditors to poach one another's distributions under the plan.

1) Section 523 Exceptions only Apply to Persons

"The preeminent canon of statutory interpretation requires us to presume that the legislature says in a statute what it means and means in a statute what it says there." *BedRoc Ltd. v. United States,* 541 U.S. 176, 183 (2004). Accordingly, if a statute's language is unambiguous, then the inquiry into the statute's meaning begins and ends with its language. *See id.* Unless application of an unambiguous statute leads to a result "demonstrably at odds with" Congress's intent, fidelity to the plain, unambiguous text is not optional. *United States v. Ron Pair Enter.*, 489 U.S. 235, 242 (1989).

Section 523(a) of the Bankruptcy Code states that a "discharge *under* section[s] . . . 1141 [and] . . . 1192 . . . of this title does not discharge an *individual* debtor" of various types of enumerated debts. 11 U.S.C. 523(a) (emphases added). The word "under" is a "chameleon," and its meaning depends on the context in which it is used. *Pereira v. Sessions*, 138 S. Ct. 2105, 2118 (2018) (quotations and citations omitted). Here, "under" precedes a list of statutory provisions—including § 1192—and follows the word "discharge." The context here leads to only one reasonable interpretation: §§ 1141 and 1192 discharges are subject to the exceptions to discharge

listed in § 523. *See In re Cleary*, 36 F.4th at 516 (recognizing that § 523(a) exceptions to discharge apply to §§ 1141 and 1192 discharges).

The word "individual" is not defined in the Bankruptcy Code. However, the definition of the term "insider" indicates that in bankruptcy, an "individual" is a human being. *See* 11 U.S.C. § 101(31). Under the Code, insiders of an "individual" debtor include, among others, corporations for which the debtor is a "*person* in control." *Id.* (emphasis added).

Accordingly, § 523(a)'s exceptions to discharge apply to discharges under §§ 1141 and 1192 only if the debtor is a person. And while the law sometimes treats corporations as "people," *see generally Citizens United v. FEC*, 558 U.S. 310 (2010) (First Amendment protects corporations' political speech), the Bankruptcy Code provides an extensive definition of "corporations" that neither explicitly nor implicitly includes persons. *See* 11 U.S.C. 101(9).

Thus, based on the plain meaning of § 523(a)'s text, the exceptions to discharge only apply to individuals. Respondent is a corporate business entity. Therefore, § 523's exceptions to discharge do not apply to Respondent.

2) Section 1192 and § 523(a) do not conflict; even if they did, § 523 controls with respect to the applicability of exceptions to discharge.

Petitioner and the Dissent argue that despite the clear meaning of § 523, § 1192's language should control because § 1192 specifically deals with subchapter V bankruptcies. R. at 31–32.

Two statutes, or two provisions of the same statute, should be interpreted in a manner that avoids conflict. *See J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred Int'l, Inc.*, 534 U.S. 124, 143–44 (2001). *If* the statutes cannot be reconciled, then the more specific statute controls over a more general statute. *See Morton v. Mancari*, 417 U.S. 535, 550–51 (1974).

With respect to the Bankruptcy Code, a more specific provision is one that directly applies to the substantive issue in dispute. For example, in *In re Fonke*, the debtor initially filed under

chapter 13 and properly filed a list of their exempt property, to which the trustee did not object. 321 B.R. 199, 201 (Bankr. S.D. Tex. 2001). Thereafter, the debtor's case was converted to a chapter 7 liquidation, and the trustee sought to compel to debtor to refile a list of exemptions. *Id.* The debtor argued that such a duplicitous request was untimely. *Id.* The court was faced with two provisions of the Code that could not be reconciled: § 522 and § 348. *Id.* at 207. Section 348 addresses what types of property constitute property of the estate when a case is converted, 11 U.S.C. § 348; § 522 addresses exemptions. 11 U.S.C. § 522. Because the dispute centered around the exemptions and their effect,[3] the court held that § 522 controlled. *Id.* at 207.

Section 1192 deals with subchapter V discharges. 11 U.S.C. 1192 (entitled "Discharge"). Relevant here, § 1192 states that a subchapter V debtor can discharge "all debts . . . except any debt of the kind specified in section 523(a) of this title." Contrary to Petitioner's view, this provision and § 523(a) can, and should, be harmonized: Section 1192 merely states that debtors filing under subchapter V are subject to § 523's exceptions to discharge. And § 523—the provision that specifically addresses exceptions to discharge—states that only individual debtors are subject to § 523's exceptions to discharge. This interpretation gives effect to both statutory provisions while avoiding "conflict," *J.E.M. Ag. Supply*, 534 U.S. 143–44, and this Court should adopt it.

But even if conflict were found, § 523(a), not § 1192, controls. The only reported appellate decision addressing this question held, as Petitioner and the Dissent below argue, that § 1192 should control over § 523(a) because § 1192 specifically addresses subchapter V discharges. *In re Cleary*, 36 F.4th at 515. The Fourth Circuit is right, § 1192 does specifically deal with subchapter V discharges; were this a dispute centering around the subchapter V discharge, as such, § 1192

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[3] "Accordingly, in determining the issue of liability of exempt property for prepetition debts, § 522(c) is the more specific statute. Therefore, § 522(c) trumps § 348 as to whether previously exempted property may be liable for prepetition debts by being recaptured by the estate." *In re Fonke*, 321 B.R. at 207.

would control. However, the substantive issue in dispute here centers around the question whether a subchapter V debtor who is a corporation is subject to the *exceptions to discharge*. R. at 29 ("[Petitioner] asserts that her claim is non-dischargeable pursuant to section 523(a)(6), which excepts from discharge, any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity."].

Thus, even if this Court finds that §§ 523(a) and 1192 irreconcilably conflict, this Court should reject Petitioner's misapplication of the specific/general canon and hold that § 523 controls. And because under § 523(a), exceptions to discharge—including a subchapter V discharge under § 1192—do not apply to corporations, the Court should hold that Petitioner's claim against Respondent, a corporation, cannot be excepted from discharge.

C) Petitioner's Asks this Court to Sanction an Absurd Result

Petitioner asks this Court to hold that only corporations receiving a § 1192 subchapter V discharge via a cramdown can have certain claims excepted from discharge pursuant § 523(a).

Not all subchapter V debtors confirm their reorganization plans via a cramdown. *In re Double H Transp., LLC*, No. EP-21-CV-121-KC, 2022 WL 1916686, at *4 (W.D. Tex. May 16, 2022) (noting that only subchapter V debtors who cannot confirm a consensual plan can utilize the cramdown). Discharge in these consensual situations is governed by 11 U.S.C. § 1141. Unlike § 1192, § 1141 contains a specific provision incorporating portions of § 523 to except specific kinds of debts (owed to a governmental unit) when the debtor is a corporation. 11 U.S.C. § 1141(d)(6)(A).

Above all, statutes should be interpreted to avoid "injustice, oppression, or *an absurd consequence*." *See United States v. Kirby*, 74 U.S. 482, 487 (1868) (emphasis added). To be sure, that bar is high: this Court requires "absurdity . . . so gross as to shock . . . common sense" before

it will ignore the plain meaning of a statute on absurdity grounds. *Crooks v. Harrelson*, 282 U.S. 55, 60 (1930).

Precedent establishes, however, that an absurdity shocks common sense if it treats two similarly situated parties in a manner that substantially hinders one of the parties' exercise of a shared legal right. For example, in *Green v. Bock Laundry Machine Co.*, this Court interpreted then-Federal Rule of Evidence 609(a) in a manner divergent from its plain textual meaning to avoid an absurd result. 490 U.S. 504 (1989). As then-written, 609(a) granted civil defendants the right to impeach witnesses with their prior crimes but placed a substantial, sometimes insurmountable, burden on similar impeachments by civil plaintiffs. *Id.* at 510. This Court found such a blatant disparity in treatment "unfathomable," and adopted a fairer interpretation. *Id.*

Petitioner requests this Court do the opposite of what it did in *Brock Laundry*; namely, to interpret § 1192 and § 523(a) in a manner than produces an "unfathomable" disparity of treatment. Under Petitioner's argument, only creditors in subchapter V cases featuring a cramdown could except their claims from discharge under any of § 523(a)'s enumerated exceptions. Under this absurd interpretation, cramdown creditors fare better than creditors in consensual cases. In cramdowns, creditors could utilize all of § 523(a)'s exceptions to discharge and reduce the distribribution available to other creditors with dischargeable claims; in consensual cases, because most of the exceptions do discharge do not apply, similarly situated creditors are likely foreclosed from excepting the exact same claims from discharge.

Moreover, under Petitioner's interpretation, any creditor with a colorable argument that their debt could qualify under one of the § 523(a) exceptions to discharge has an incentive to object to the plan. In cases such as this case, where many claims are similar, if enough creditors except

their claims from discharge, the reorganization will likely fail. *See* R. at 22 ("All chapter 11 plans must be feasible. 11 U.S.C. § 1129(a)(11).).

Because the Code "aims, in the main, to secure equal distribution among creditors," *Howard Delivers Serv., Inc. v. Zurich Am. Ins. Co*., 547 U.S. 651, 655 (2006), Petitioner's chosen harmonization of §§ 1192 and 523(a) would lead to an arguably "unfathomable" result: a Code provision, § 1192, that pushes creditors to thwart confirmable plans. Such a result would counteract many of chapter 11's provisions; certainly, it would counteract chapter 11's overarching goal, the continuation of a business and a restructuring of its debt. R. at 16.

Accordingly, this Court should reject Petitioner's argument and hold that § 523's exceptions to discharge do not apply to subchapter V debtors that are corporations.

CONCLUSION

Through this subchapter V case, some 10,000 tort claimants received substantial recoveries while avoiding costly and uncertain litigation, and a business was saved. Absent bankruptcy, such a result would have been unthinkable. Affirming the decisions below would ensure that in complicated cases like the one here, bankruptcy courts have the power to provide fair solutions to seemingly insolvable problems. For the foregoing reasons, this Court should AFFIRM.

APPENDIX

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. § 1123 – Contents of plan

(a) Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall--

(1) designate, subject to section 1122 of this title, classes of claims, other than claims of a kind specified in 507(a)(2), 507(a)(3), or 507(a)(8) of this title, and classes of interests;

(2) specify any class of claims or interests that is not impaired under the plan;

(3) specify the treatment of any class of claims or interests that is impaired under the plan;

(4) provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest;

(5) provide adequate means for the plan's implementation, such as--

(A) retention by the debtor of all or any part of the property of the estate;

(B) transfer of all or any part of the property of the estate to one or more entities, whether organized before or after the confirmation of such plan;

(C) merger or consolidation of the debtor with one or more persons;

(D) sale of all or any part of the property of the estate, either subject to or free of any lien, or the distribution of all or any part of the property of the estate among those having an interest in such property of the estate;

(E) satisfaction or modification of any lien;

(F) cancellation or modification of any indenture or similar instrument;

(G) curing or waiving of any default;

(H) extension of a maturity date or a change in an interest rate or other term of outstanding securities;

(I) amendment of the debtor's charter; or

(J) issuance of securities of the debtor, or of any entity referred to in subparagraph (B) or (C) of this paragraph, for cash, for property, for existing securities, or in exchange for claims or interests, or for any other appropriate purpose;

(6) provide for the inclusion in the charter of the debtor, if the debtor is a corporation, or of any corporation referred to in paragraph (5)(B) or (5)(C) of this subsection, of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends;

(7) contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee; and

(8) in a case in which the debtor is an individual, provide for the payment to creditors under the plan of all or such portion of earnings from personal services performed by the debtor after the commencement of the case or other future income of the debtor as is necessary for the execution of the 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;

(4) provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests;

(5) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims; and

(6) include any other appropriate provision not inconsistent with the applicable provisions of this title.

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—

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

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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.