No. 22-0909

IN THE

Supreme Court of the United States

IN RE PENNY LANE, DEBTOR,

ELEANOR RIGBY, PETITIONER

V.

PENNY LANE INDUSTRIES, INC., RESPONDENT.

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

BRIEF FOR PETITIONER

TEAM NUMBER 43
COUNSEL FOR RESPONDENT

JANUARY 19, 2023

QUESTIONS PRESENTED

I. Under a Chapter 11 plan of reorganization, may a bankruptcy court approve non-consensual releases of direct claims held by third parties against the debtor's non-debtor affiliates?

II. Under 11 U.S.C. § 1192, may a corporate debtor proceeding under Subchapter V of Chapter 11 of the Bankruptcy Code discharge a type of debt specified as nondischargeable under 11 U.S.C. § 523(a)(6)?

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OPINIONS BELOW

The Thirteenth Circuit Court of Appeals' decision is available at No. 21-0803. The bankruptcy court decided in favor of Penny Lane Industries, Inc. On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed in favor of Penny Lane Industries.

STATEMENT OF JURISDICTION

The formal statement of jurisdiction in 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 relevant portion of 11 U.S.C. § 105(a) provides:

> (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.

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(a)(1) provides:

> (a) A discharge in a case under this title--
>
> (1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1192, 1128, or 1328 of this title, whether or not discharge of such debt is waived;

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)(4)(A) provides:

(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.

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

(h) Application to existing injunctions.--For purposes of subsection (g)--

(1) subject to paragraph (2), if an injunction of the kind described in subsection (g)(1)(B) was issued before the date of the enactment of this Act, as part of a plan of reorganization confirmed by an order entered before such date, then the injunction shall be considered to

meet the requirements of subsection (g)(2)(B) for purposes of subsection (g)(2)(A), and to satisfy subsection (g)(4)(A)(ii), if--

(A) the court determined at the time the plan was confirmed that the plan was fair and equitable in accordance with the requirements of section 1129(b);

(B) as part of the proceedings leading to issuance of such injunction and confirmation of such plan, the court had appointed a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands described in subsection (g)(4)(B) with respect to such plan; and

(C) such legal representative did not object to confirmation of such plan or issuance of such injunction; and

(2) for purposes of paragraph (1), if a trust described in subsection (g)(2)(B)(i) is subject to a court order on the date of the enactment of this Act staying such trust from settling or paying further claims--

(A) the requirements of subsection (g)(2)(B)(ii)(V) shall not apply with respect to such trust until such stay is lifted or dissolved; and

(B) if such trust meets such requirements on the date such stay is lifted or dissolved, such trust shall be considered to have met such requirements continuously from the date of the enactment of this Act.

The relevant portion of 11 U.S.C. § 1123(a)(5) provides:

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

(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;

The relevant portion of 11 U.S.C. § 1123(b)(6) provides:

(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. § 1128 provides:

(a) After notice, the court shall hold a hearing on confirmation of a plan.
(b) A party in interest may object to confirmation of a plan.

The relevant portion of 11 U.S.C. § 1129(a)(8) provides:

(a) The court shall confirm a plan only if all of the following requirements are met:
(8) With respect to each class of claims or interests--
(A) such class has accepted the plan; or
(B) such class is not impaired under the plan.

The relevant portion of 11 U.S.C. § 1129(b)(1)-(2)provides:

(b)(1) Notwithstanding section 510(1) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph 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.
(2) For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

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

The relevant portion of 11 U.S.C. § 1141(d)(6) provides:

> (6) Notwithstanding paragraph (1), the confirmation of a plan does not discharge a debtor that is a corporation from any debt--

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

> If the plan of the debtor is confirmed under section 1191(b) of this title, as soon as practicable after completion by the debtor of all payments due within the first 3 years of the plan, or such longer period not to exceed 5 years as the court may fix, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided in section 1141(d)(1)(A) of this title, and all other debts allowed under section 503 of this title and provided for in the plan except any debt—
>
> (1) on which the last payment is due after the first 3 years of the plan, or such other time not to exceed 5 years fixed by the court or
> (2) of the kind specified in section 523(a) of this title.

STATEMENT OF THE CASE

This appeal arises out of the Debtor's attempt to reap the benefits of bankruptcy without wholly undertaking the responsibilities and burdens of bankruptcy. The actions of the Debtor jeopardize the equitable principles embedded in the Bankruptcy Code by seeking to allow non-consensual third-party releases and by seeking to limit the application of § 523(a) discharge exceptions only to individual debtors.

I. FACTUAL HISTORY

Appellee Penny Lane Industries, Inc. (the "Debtor") is a manufacturer of plastic, glass, and metal food containers based in the City of Blackbird, Moot. R. at 4. The Debtor is a wholly owned subsidiary of Strawberry Fields, a company that produces cereal and convenience foods and is the Debtor's corporate parent. R. at 5. The Debtor's manufacturing facility sits along the Liverpool River, which contributes to Blackbird's ground water supply. R. at 6. Between the years of 2013 and 2017, Blackbird's ground water was subject to great controversy. R. at 5. Tens of thousands of Blackbird residents drank and bathed in contaminated water. *Id.* Federal and state authorities concluded that a large ground water plume exists under the community of Blackbird formed by hazardous substances being released into ground water from above the surface. *Id.* This hazardous ground water has been linked to sickness, birth defects, and even death. *Id.*

One such death caused by the toxins in the groundwater was the daughter of Ms. Eleanor Rigby, the Petitioner. *Id.* Ms. Rigby's four-year-old daughter suffered and ultimately died from leukemia caused by her exposure to the contaminated ground water. *Id.* Ms. Rigby believes that the pollutants in the groundwater, were dumped by the Debtor. *Id.* Hundreds of similar lawsuits were filed, accusing the Debtor and Strawberry Fields of knowingly disposing the Debtor's industrial chemicals and pollutants into the Blackbird water supply. R. at 6. These allegations

further stated that the Debtor's disposal subsequently contaminated the entire city's groundwater supply, harming Blackbird residents. *Id.* In her complaint, Ms. Rigby stated that the Debtor's CEO knew that the Debtor was contaminating the water supply, potentially harming Blackbird residents. R. at 5. Ms. Rigby additionally argued that Strawberry Fields was equally liable because it should have known of its subsidiary's alleged misconduct. R. at 6.

Both the Debtor and Strawberry Fields asserted that any waste disposed of by the Debtor was done so in accordance with relevant environmental laws and regulations. *Id.* Both further denied having any knowledge that their toxic waste infiltrated the Blackbird groundwater supply. *Id.* The Debtor and Strawberry Fields argued that there are several other businesses with manufacturing facilities along the Liverpool River that could have polluted the groundwater supply. *Id.* Despite these allegations, nearly 10,000 additional claims asserting cumulative damages of nearly $400 million were filed against the Debtor, all related to the injuries caused by the contaminated ground water supply. *Id.*

As a result of the nearly 10,000 claims filed against it, the Debtor filed a Subchapter V Chapter 11 case on January 11, 2021. *Id.* At the time of filing, the Debtor owed less than two million dollars to its trade creditors. *Id.* In the months following, the Debtor developed a *Plan of Reorganization*, (the "Plan") which provided a creation of a creditors' trust that would make a substantial distribution to creditors. R. at 4. The Plan was to be funded largely by a $100 million contribution by Strawberry Fields. R. at 8. The Plan also implemented non-consensual releases of all claims, including both estate and third-party claims, that have been or might be asserted against Strawberry Fields in exchange for Strawberry Fields funding the settlement. *Id*. Regardless of whether parties participated in the bankruptcy case or whether they voted in favor of the Plan, if

the Plan is confirmed, claims against Strawberry Fields concerning the Debtor's conduct will be barred and funneled into the creditor's trust. *Id.*

Ms. Rigby filed an objection of the confirmation of the Plan as did Norwegian Wood Bank. R. at 9. Norwegian Wood Bank's objection asserted that the value of its collateral was understated and therefore the plan was not "fair and equitable" as required by §§ 1191(b) and 1129(b)(2)(A). *Id.* Ms. Rigby objected to the confirmation of the Plan on the additional grounds that bankruptcy courts do not have the authority to release third-party claims against non-debtor entities. R. at 4. Ms. Rigby also filed an unsecured claim for one million dollars against the Debtor. R. at 6. Within weeks of the petition date, Ms. Rigby commenced an adversarial proceeding against the Debtor seeking to have her claim deemed non-dischargeable under §§ 523(a) and 1192, specifically arguing that the amount the Debtor owed her was non-dischargeable under § 523(a)(6). R. at 7. Therefore, she should be able to pursue her direct claims against Strawberry Fields. *Id.*

II. PROCEDURAL HISTORY

The Bankruptcy Court for the District of Moot was presented with two issues in this case and ruled in favor of the Debtor on both. R. at 4. First, the court held that non-consensual third-party releases may be used in the Debtor's Plan. *Id.* Second, the court sided with the Debtor in holding that the § 523(a) exception to discharge apply only to individual debtors and not corporate debtors. *Id.* The bankruptcy court noted that Strawberry Fields' contribution was substantially greater than any likely recovery from them. R. at 10. The bankruptcy court reluctantly approved the Plan, noting the result in the case was an "extremely hard pill to swallow." R. at 11. The court recognized that the Plan bore the risk of never truly being able to compensate Ms. Rigby and the other victims for the significant pain and suffering caused by the deaths associated with the contaminated ground water supply allegedly caused by the Debtor and Strawberry Fields. *Id.* Ms.

Rigby timely appealed the ruling of the bankruptcy court, and the Thirteenth Circuit affirmed on both issues. R. at 11.

STANDARD OF REVIEW

The questions presented are based on interpretation of the Bankruptcy Code.[1] The standard of review for this appeal is *de novo*. *See e.g., Texas v. Soileau (In re Soileau)*, 488 F. 3d 302, 305 (5th Cir. 2007)

SUMMARY OF THE ARGUMENT

Beginning with the first issue, bankruptcy courts cannot confirm a plan of reorganization when it includes non-consensual releases of direct claims held by third parties against non-debtor affiliates, like Strawberry Fields. This Court should reverse the Thirteenth Circuit's ruling that bankruptcy courts can permit these releases for three reasons. First, bankruptcy courts lack the jurisdictional and constitutional authority to allow these non-consensual releases. Second, even if a bankruptcy court had the jurisdiction to adjudicate these third-party claims, no provisions within the Bankruptcy Code allow for the approval of non-consensual third-party releases. Third, permitting these releases ignores the equitable principles of the Bankruptcy Code and would infringe upon Ms. Rigby's constitutional rights.

First, a bankruptcy court does not have the jurisdiction nor constitutional authority to permit non-consensual third-party releases under a Chapter 11 plan of reorganization. Bankruptcy courts may only hear and determine core proceedings which are those that "arise in" or "arise under" title 11. However, a bankruptcy court cannot adjudicate proceedings that only "relate to" a title 11 case unless all parties consent. The third-party direct claims that would be affected by the non-consensual releases in this dispute do not "arise in" a title 11 case, "arise under" a title 11

[1] The Bankruptcy Code is set forth in 11 U.S.C. § 101 et seq. Specific sections of the Bankruptcy code are identified as "section."

case, nor are they even "related to" a title 11 case. Because of this, the bankruptcy court cannot adjudicate these direct claims against Strawberry Fields. Moreover, even if the third-party claims did "relate to" the title 11 case, a bankruptcy court does not have the constitutional authority to make a final determination on proceedings that involve state tort law claims that did not stem from the bankruptcy.

Second, even if a bankruptcy court did have the jurisdiction or constitutional authority to adjudicate these third-party claims, there are no provisions within the Bankruptcy Code that allow for non-consensual third-party releases. Section 524(a) allows for the discharge of the debts of a debtor, which extends to the debtor's personal liability on such a debt. However, this section does not extend to release any other entity from liability. This is explained by the plain language of § 524(e). Furthermore, no other provisions of the Code, such as §§ 105(a), 1123(a)(5), and 1123(b)(6), allow for the approval of non-consensual third-party releases. This is because none of these sections grant a bankruptcy court substantive rights that are otherwise inconsistent with other, more specific, provisions of the Code.

Third, permitting non-consensual third-party releases would undermine the main purpose of the Bankruptcy Code and violate Ms. Rigby's constitutional due process rights. The underlying policy goal of bankruptcy is to provide debtors a with a fresh start, but this fresh start is not extended to non-debtor affiliates of the debtors in bankruptcy, such as Strawberry Fields. A non-consensual third-party release is equivalent to a discharge in bankruptcy and permitting these releases would be extending this bankruptcy benefit to Strawberry Fields. This runs afoul of the equitable principles of the Code. Additionally, permitting these releases would prohibit Ms. Rigby from pursuing her claim against Strawberry Fields in a court of law. Ms. Rigby, and other claimants will never receive the justice they deserve for the tortious actions of Strawberry Fields.

Bankruptcy courts lack the jurisdictional, constitutional, and statutory authority to permit non-consensual third-party releases. Allowing these releases would be inconsistent with the underlying policy goals of the Bankruptcy Code and infringe upon Ms. Rigby's constitutional rights. Therefore, this Court should reverse the Thirteenth Circuit's affirmation of the bankruptcy court's confirmation of the Plan containing the non-consensual third-party releases.

Turning to the second issue, Penny Lane, as a corporate debtor proceeding under Subchapter V, may not discharge a § 523(a)(6) debt. Section 1192(2) requires the § 523(a) discharge exceptions to apply to all debtors proceeding under Subchapter V. Restricting the applicability of § 523(a) to only individual debtors would allow for a complete corporate discharge of debts that Congress specifically intended to protect. This Court should reverse the Thirteenth Circuit's decision that Ms. Rigby's § 523(a)(6) claim was eligible to be discharged by Penny Lane for three reasons. First, the plain language of both §§ 1192(2) and 523(a) together mandates an application of the discharge exceptions in § 523(a) to corporate debtors filing under Subchapter V, not just individuals. Second, the secondary canons of statutory construction support the interpretation that § 1192(2) controls the current dispute. Third, qualifying Ms. Rigby's claim as dischargeable ignores important policy considerations and the purpose of the Bankruptcy Code as a whole.

First, the plain language of both §§ 523(a) and 1192(2) support extending § 523(a)'s applicability to corporate debtors and disallowing a complete corporate discharge. When a statute's language is unambiguous, a court looks no further to determine its meaning. However, when there are two statutes, like here, that cannot be harmonized due to conflicting language, the more specific statute governs the dispute. Although both §§ 523(a) and 1192(2) seem to be unambiguous on their face, courts agree that the overlapping language leads to ambiguity. Because § 1192(2) is more

specific and has a narrower scope than § 523(a), it governs Ms. Rigby's claim. As such, the discharge exceptions listed in § 523(a) apply to corporate debtors, and Penny Lane cannot discharge its debt that is applicable to Ms. Rigby's § 523(a)(6) claim.

Second, the context and legislative history of § 1192(2), and Subchapter V as a whole, logically establish Congress's intent to forego a complete corporate discharge for Subchapter V debtors. Looking at the context of both §§ 523(a) and 1192(2) in the Code, Congress has repeatedly applied § 523(a) to corporate debtors and forbade corporate discharge of the types of debt listed within the statute in other bankruptcy proceedings, meaning it should be extended to Subchapter V. Congress intentionally chose to apply the discharge exceptions to corporate Subchapter V debtors by including distinguishing language in other statutes but not in § 1192(2). This establishes the intention of Congress to dispose of complete corporate discharge for Subchapter V debtors. The limited legislative history of Subchapter V further exemplifies Congress's intent to have § 523(a) apply to corporate debtors. Prior to its enactment, § 523(a) strictly applied to individual debtors, but Congress was silent on this issue in drafting Subchapter V. This silence shows that, while Congress knows how to distinguish between debtors, there was to be no distinction for Subchapter V discharges.

Third, qualifying Ms. Rigby's debt as nondischargeable is the most reasonable way to ensure equitable remedies remain available to creditors. While Subchapter V's recent enactment intended to give small businesses tools to streamline their reorganizations, it cannot be at the expense of creditors. To allow a complete corporate discharge would leave creditors like Ms. Rigby without any available remedies, especially in cramdown proceedings where they have little control over their claims. This inequitable result goes against the very requirements of

reorganization itself, which must be fair and equitable to the creditors. Therefore, Penny Lane was unable to discharge its debt in relation to Ms. Rigby's claim.

Because the plain language of §§ 523(a) and 1192(2), context and legislative history, and policy goals mandate the application of § 523(a) to corporate debtors, Ms. Rigby's § 523(a)(6) claim must be considered nondischargeable. This Court should reverse the Thirteenth Circuit on both issues/

ARGUMENT

I. The Thirteenth Circuit erred in ruling that a bankruptcy court may approve non-consensual releases of direct claims held by third parties against the debtor's non-debtor affiliates as a Chapter 11 plan of reorganization.

Bankruptcy courts cannot confirm plans of reorganizations containing non-consensual third-party releases because these courts do not have the jurisdiction nor constitutional authority to permit such releases. *In re Purdue Pharma, L.P.*, 635 B.R. 26, 80 (S.D.N.Y. 2021). Their jurisdiction is limited to adjudicating proceedings "arising under" and "arising in" title 11. *Id.*; 28 U.S.C. § 157(a). Additionally, a bankruptcy cannot adjudicate claims which are only "related to" a title 11 case unless all parties consent. *In re Purdue*, 635 B.R. at 80. The third-party claims in this dispute do not arise in or arise under title 11 nor are related to a title 11 case. As such, bankruptcy courts do not have the jurisdictional nor constitutional authority to make a final decision on third-party claims, like Ms. Rigby's.

Further, even if the bankruptcy court had the jurisdiction to make a determination on the third-party claims at issue, no provision in the Bankruptcy Code allows for non-consensual releases of third-party direct claims against non-debtor affiliates, like Strawberry Fields. Section 524(a) allows for the discharge of personal liability for the debt of *a debtor*, but this discharge of liability does not extend to liable non-debtors. 11 U.S.C. §§ 524(a), (e); *In re Lowenschuss*, 67

F.3d 1394, 1401 (9th Cir. 1995). No other provisions in the Code grant bankruptcy courts the power to permit these releases because it would be inconsistent with the language of § 524.

Finally, permitting these releases does not adhere to the main purpose of the Bankruptcy Code, which is to provide a fresh start strictly to debtors. Permitting the nonconsensual releases would extend this "fresh start" policy to Strawberry Fields, who is not the debtor, since the releases are essentially a bankruptcy discharge. The blanket immunity provided for by the releases would also infringe upon Ms. Rigby's, and other claimant's, constitutional due process rights. Because of these reasons, this Court should reverse the Thirteenth Circuit's ruling affirming the bankruptcy court's confirmation of the Plan containing the non-consensual third-party releases.

A. Bankruptcy courts do not have the jurisdiction nor constitutional authority to permit non-consensual third-party releases.

Bankruptcy courts cannot confirm plans of reorganization containing non-consensual third-party releases because they lack both the jurisdiction and constitutional authority to do so. Bankruptcy proceedings are divided into three types: those that "arise under" title 11; those that "arise in" title 11; and those that are "related to" a title 11 case. *In re Purdue,* 635 B.R. at 79-80 (citing 28 U.S.C. §§ 157(a), (b)). Every bankruptcy proceeding is either "core" or "non-core." *Id.* Those that "arise under" and "arise in" are core proceedings, while those that are only "related to" are non-core proceedings. *Id.* This distinction is important because a bankruptcy court "may hear and determine … all core proceedings arising under title 11 … or arising in a case under title 11." 28 U.S.C. § 157(a). However, a bankruptcy court does not have the authority to make a final determination in a proceeding that is only "related to" a title 11 case when all parties do not consent to the plan of reorganization. *In re Purdue,* 635 B.R. at 80.

The non-consensual third-party releases in this dispute are non-core proceedings for several reasons. First, a proceeding arises under title 11 if the claims "invoke substantive rights created by

[title 11].” *Id.* at 83. The third-party claims in this case arise under state tort law. R. 3, 6. Specifically, the claims “[assert] damages related to death or injury caused by exposure to pollutants that had contaminated the local water supply.” R. at 6. Moreover, Ms. Rigby filed her lawsuit against the Debtor and Strawberry Fields in 2017, almost four years before the Debtor filed bankruptcy. R. at 5. This clearly indicates that the third-party claims, including Ms. Rigby’s, arise under state tort law, existing entirely separate from, and have no bearing on, the bankruptcy.

Second, the third-party claims also do not arise in title 11. Proceedings arise in title 11 if, “for example, parties, by their conduct, submit themselves to the bankruptcy court’s jurisdiction by litigating proofs of claim without contesting personal jurisdiction.” *In re Purdue*, 635 B.R. at 80. The Respondent may argue that Ms. Rigby submitted herself to the bankruptcy court’s jurisdiction when she filed her proof of claim against the Debtor. R. at 6-7. However, Ms. Rigby was required to file a proof of claim under Bankruptcy Rule 3003(c)(2) in order to reserve her rights and ensure that she would receive compensation. Fed. R. Bankr. P. 3003(c)(2); *see also In re Coho Res., Inc.*, 345 F.3d 338, 342 (5th Cir. 2003). Failure to do so would have resulted in Ms. Rigby forfeiting her claim. *Id.* Ms. Rigby did not, and was not required to, file a proof of claim against Strawberry Fields, the non-debtor. R. at 6-7. Because she did not file a proof of claim in regard to her claim against Strawberry Fields, only the Debtor, she did not grant the bankruptcy court jurisdiction to hear or finally adjudicate this claim. Thus, the claims at issue also do not arise in title 11 and cannot be heard by the bankruptcy court.

Third, the claims are not related to a title 11 case. A proceeding is “related to a title 11 [case] if its ‘outcome might have any conceivable effect on the bankruptcy estate.’” *In re Purdue*, 635 B.R. at 83. It has also been held that a matter is related to the bankruptcy “if the outcome could alter the debtor’s rights, liabilities, options, or freedom of action … and which in any way impacts

upon the handling and administration of the bankrupt estate." *Id.* at 84 (quoting *Celotex Corp. v. Edwards*, 514 U.S. 300, 307-8 (1995)). The third-party claims that would be released under the plan are based on the tortious behavior of the Debtor and Strawberry Fields which lead to deaths and injuries caused by the contaminated groundwater. R. at 6. Moreover, the third-party claims that would be affected by the releases are against a non-debtor, Strawberry Fields. R. at 8. The pursuit of these claims would not affect the bankruptcy estate or the administration of the bankruptcy proceeding, as they are not against the Debtor. *Patterson v. Mahwah Bergen Retail Group, Inc.* 636 B.R. 641, 670 (2022). Because of this, these claims are not related to a title 11 case and the bankruptcy court lacks the authority to act on them. *Id.*

Even if the bankruptcy court had this "related to" subject matter jurisdiction, the court "lacks the constitutional authority to enter a final judgment in a proceeding [with such jurisdiction] unless all parties consent." *In re Purdue,* 635 B.R. at 80. The Supreme Court of the United States has held, more specifically, that when there is no consent, bankruptcy courts do not have constitutional authority to render a final decision in a dispute that involves a state law tort claim that did not stem from the bankruptcy. *Stern v. Marshall,* 564 U.S. 462, 471-72 (2011). A non-consensual third-party release is essentially a final judgment against the claimant in favor of the non-debtor entered without any hearing on the merits. *In re Purdue*, 635 B.R. at 82. If the Plan is confirmed with the inclusion of the third-party releases, the claimants in this dispute would be prohibited from raising claims against Strawberry Fields. R. at 5-6, 8-9.

Even though the confirmation of a plan is a core proceeding, the underlying tort claims affected by the non-consensual releases within a plan are not. Section 157 of the Bankruptcy Code lays out a non-exhaustive list of "core proceedings," including confirmations of plans. 28 U.S.C. § 157(b)(2). In this case, even though the non-consensual releases are a part of a confirmation of

plan, this does not mean that the bankruptcy court has the authority to adjudicate it. A debtor and its affiliates cannot create constitutional authority to resolve a non-core claim simply by the "artifice" of including a release of that non-core claim in a plan of reorganization. *In re Purdue*, 635 B.R. at 81.

The bankruptcy court did not have jurisdictional nor constitutional authority to approve the non-consensual releases because the third-party claims do not arise in or under title 11, nor are they related to a title 11 case. If these claims were related, the bankruptcy court still lacks the constitutional authority to permit the non-consensual third-party releases because a bankruptcy court cannot adjudicate claims upon which the court only has "related to" jurisdiction.

B. Even if a bankruptcy court has jurisdiction, there are no provisions within the Bankruptcy Code that allow the approval of non-consensual third-party releases.

Regardless of a bankruptcy court's jurisdiction, there are no provisions within the Bankruptcy Code that would allow a court to approve non-consensual third-party releases. The statutory text of the Bankruptcy Code strictly allows for discharge of a debtor's debt, including any personal liability for such debt. 11 U.S.C. § 524(a). However, this debt discharge does not extend to any other potentially liable non-debtor parties. 11 U.S.C. § 524(e). Other provisions of the Code also do not allow for these releases because any power granted to bankruptcy courts through other provisions would be inconsistent with more specific applicable provisions, such as § 524.

1. Section 524 only releases debtors from personal liability for any debts, not non-debtor affiliates like Strawberry Fields.

A bankruptcy court does not have the power to confirm plans of reorganization that do not comply with applicable provisions of the Bankruptcy Code. *In re Lowenschuss*, 67 F.3d at 1401 (citing 11 U.S.C. § 1129(a)). The analysis of whether any applicable provisions of the Bankruptcy

Code allow for the approval of non-consensual third-party releases begins with the plain language of the Code. *U.S. v. Ron Pair Enters., Inc.,* 489 U.S. 235, 241. When the language of a statute is plain, "the sole function of the courts … is to enforce it according to its terms." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.,* 530 U.S. 1, 6 (2000).

No Bankruptcy Code provisions permit the non-consensual third-party releases that are the subject of the current dispute. Section 524(a) provides that

> discharge in a case under this title voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1192, 1228, or 1328 of this title, whether or not discharge of such debt is waived.

11 U.S.C. § 524(a)(1). A Chapter 11 discharge under this section releases the *debtor* from personal liability for any of its debts. *In re Lowenchuss*, 67 F.3d at 1401. Nowhere in this section does it provide for the release of third-party affiliates, like Strawberry Fields, from liability. *Id.*

Moreover, § 524(e) specifically states that "discharge of the debt of a 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). Non-consensual third-party releases of direct claims against non-debtors are not permitted by the plain language of this section. *In re Lowenschuss*, 67 F.3d at 1401 The Fifth Circuit has opined that § 524(e) "only releases a debtor from personal liability, not co-liable third parties." *In re Pac. Lumber Co.*, 584 F.3d 229, 252 (5th Cir. 2009). Moreover, the discharged debt itself is not extinguished; it still exists and can be collected from any other entity that may be liable. *In re W. Real Estate Fund, Inc.*, 922 F.2d 592, 600 (10th Cir. 1990). In this case, the "other entity" is Strawberry Fields, who is a non-debtor that is co-liable for the injuries and deaths in this dispute. R. at 6 n. 4. Therefore, the Debtor's debt discharge in this dispute does not affect the liability of Strawberry Fields on such debt.

Furthermore, the statutory exception to § 524(e), which is found in § 524(g), only applies to asbestos cases and further evidences the assertion in 524(e) that non-debtor affiliates of a debtor are not released from the debt in a debtor's bankruptcy. Section 524(g) permits releases and injunctions protecting third parties who have a particular relationship to the debtor "[n]otwithstanding the provisions of section 524(e)." 11 U.S.C.A. § 524(g); *In re Purdue*, 635 B.R. at 92. The presence of the word "notwithstanding" in § 524(g) suggests that these injunctions that Congress was authorizing in this section would otherwise be barred by § 524(e) if not for subsection (g). *In re Purdue*, 635 B.R. at 92.

The legislative history of § 524(g) also supports the assertion that it is an exception to § 524(e). Section 524(g) was passed after the Second Circuit affirmed an injunction in conjunction with the bankruptcy of "the nation's leading manufacturer of asbestos." *Id.* House Report 103-835 notes that § 524(g) was added to § 524 "in order to strengthen the Manville and UNR trust/injunction mechanisms and to offer similar certitude to other *asbestos* trust/injunction mechanisms that meet the same kind of high standard with respect to regard for the rights of claimants, present and future." *Id.* (quoting H.R. Rep. No. 103-835, at 41 (1994) (emphasis added). The existence of § 524(g) reveals that these types of inunctions are only permitted in the context of asbestos cases. This notion is also exhibited by Congress' passing of § 524(h). This section provides that "injunctions that had previously been entered *in asbestos cases*—not in any other kind of case—would automatically be deemed statutorily compliant." *In re Purdue*, 635 B.R. at 93; *see also* 11 U.S.C. § 524(h). The passage of this section further supports the assertion that injunctions of this type are only statutorily compliant when they are concerning asbestos claims. *In re Purdue*, 635 B.R. at 93.

If the Plan is confirmed with the inclusion of the non-consensual releases, then it would extinguish the liability of Strawberry Fields for the injuries and deaths caused by the polluted groundwater. R. at 8. This is not permitted §§ 524(a) and (e) because discharge of debt does not affect the liability of any other entity besides the debtor itself. *In re Lowenchuss,* 67 F.3d at 1401. Because non-consensual third-party releases are not allowed under applicable provisions of the Bankruptcy Code, the bankruptcy court cannot approve such releases.

2. Sections 105(a), 1123(a)(5), and 1123(b)(6) do not authorize non-consensual third-party releases.

Sections 105(a), 1123(a)(5), and 1123(b)(6) also do not grant a bankruptcy court authority to confirm plans of reorganization that contain non-consensual third-party releases like the one in this dispute. Any powers given to a bankruptcy court under § 105(a) cannot be inconsistent with other, more specific, provisions of the bankruptcy code. *In re Lowenchuss,* 67 F.3d at 1402. The same could be said of §§ 1123(a)(5) and (b)(6). *In re Purdue,* 635 B.R. at 106.

First, § 105(a) does not authorize bankruptcy courts to grant substantive rights which are not otherwise available under other applicable law. Section 105(a) provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The Ninth Circuit has explicitly rejected the argument that the general equitable powers bestowed upon the bankruptcy court by § 105(a) permit the bankruptcy court to discharge the liabilities of non-debtors. *In re Lowenchuss,* 67 F.3d at 1402. The court stated that § 105 does not permit relief inconsistent with more specific law, and that the specific provisions of § 524 "displace the court's equitable powers under section 105 to order the permanent relief [against a non-debtor] sought by [the debtor]." *Id. (*quoting *In re Am. Hardwoods, Inc.,* 885 F.2d 621, 625-26 (9th Cir. 1989) (brackets in original). Examples of instances where § 105 did not grant a bankruptcy court power to authorize certain acts which were displaced by other

applicable law are the ability "to award attorney's fees absent specific statutory authority," the power "to order a trustee to recover expenses in a manner not specifically provided for in 11 U.S.C. § 506(c)," and the ability to enjoin the assessment or collection of taxes, which is prohibited by the Anti-Injunction Act, 26 U.S.C. 7421(a). *In re Lowenchuss*, 67 F.3d at 1402 (quoting *In re Am. Hardwoods*, 855 F.2d at 625).

Second, §§ 1123(a)(5) and (b)(6) also do not create any substantive rights or confer any special powers to a bankruptcy court. Section 1123(b)(6) provides that "a plan may include any other appropriate provisions not inconsistent with the applicable provisions of this title." 11 U.S.C.A. § 1123(b)(6). The notion that this section permits non-consensual third-party releases can be dispensed by the fact that this section is analogous to § 105(a), which states that "[t]he court may issue any order, process, or judgement that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a); *In re Purdue*, 635 B.R. at 106. As discussed above, § 105(a) does not grant substantive rights to a bankruptcy court, specifically the power to discharge the debts of liable third parties. *In re Purdue*, 635 B.R. at 106. Because § 105(a) does not grant authority to allow these releases, neither does § 1123(b)(6). *Id.*

Third, the Thirteenth Circuit erred when it opined that § 1123(a)(5) grants bankruptcy courts the authority to permit these releases. R. at 14. Section 1123(a)(5) provides that "[n]otwithstanding any otherwise applicable non-bankruptcy law, a plan shall provide adequate means for the plan's implementation." 11 U.S.C. § 1123(a)(5). The Thirteenth Circuit majority argued that § 1123(a)(5) required the inclusion of the release because it was essential in securing Strawberry Fields' contribution to the Plan. R. at 14. However, Strawberry Fields' essentialness to the Plan's implementation does not mean that it should be afforded certain protections under the Bankruptcy Code that are only meant to be afforded to debtors. The bargain struck between the

Debtor and Strawberry Fields should not be given more value than the statutory authority of the Bankruptcy Code.

It is also important to note that the "rare circumstances" approach taken by the majority of circuits in this dispute cannot override the statutory authority of the Bankruptcy Code. The Thirteenth Circuit argues that non-consensual third-party releases have been approved by a majority of circuits in "narrow circumstances." R. at 13. Although true, the Supreme Court of the United States has held that there is no "rare case" rule in bankruptcy that allows a court to trump the Bankruptcy Code. *Czyzewski v. Jevic Holding Corp*., 580 U.S. 451, 469 (2017). The Supreme Court explained that courts that follow this "rare circumstances" approach must find "sufficient reasons" to disregard priority and permit these releases. *Id.* But it is "difficult to give precise content to the concept of 'sufficient reasons.'" *Id.* This leads to uncertainty and threatens the very concept of "rare cases," turning it into more of a general rule. *Id.* More and more courts will claim that "sufficient reasons" exist, and there will be no more rare cases. *Id.* Because of this, there are no rare or exceptional cases, "either statutory authority exists, or it does not." *In re Purdue,* 635 B.R. at 37. Because statutory authority does not exist to allow non-consensual third-party releases, they cannot be permitted in the current dispute

C. Permitting the non-consensual third-party release in this case flies in the face of the equitable principles of the Bankruptcy Code and infringes upon Ms. Rigby's constitutional rights.

Non-consensual releases, especially those that provide blanket immunity for non-debtor affiliates against third-party direct claims, are inconsistent with the underlying purpose of the Bankruptcy Code, which is to provide a fresh start for debtors. This fresh start is not meant to extend to non-debtors, especially those that remain liable for tortious conduct, such as Strawberry Fields. Moreover, permitting these releases would prohibit Ms. Rigby, and any other claimant,

from pursuing their claims against Strawberry Fields in a court of law. This is an infringement of their constitutional due process rights and should not be allowed.

1. Equitable principles of the Bankruptcy Code only give the debtor a fresh start, not liable non-debtors such as Strawberry Fields.

The main purpose of the Bankruptcy Code is to give the *debtor* a fresh start, and the Code contains broad provisions for the discharge of debts. *Grogan v. Garner*, 498 U.S. 279, 283 (1991). It is the policy of the Bankruptcy Code to discharge the debtor, but not to release from liability those that are liable with that debtor. *In re W. Real Estate Fund, Inc.*, 922 F.2d at 600 (quoting *In re Bracy*, 449 F. Supp. 70, 71 (D. Mont. 1978)). Non-consensual third-party releases are the equivalent of debtor discharge in bankruptcy. *In re Purdue,* 635 B.R. at 100. Strawberry Fields is taking advantage of this benefit of bankruptcy without ever filing for bankruptcy. R. at 6, n. 4.

Further, non-consensual third-party releases lend themselves to abuse. *In re Purdue,* 635 B.R. at 100. These releases operate as a bankruptcy discharge without filing and without the safeguards of the Bankruptcy Code. *Id.* When these releases afford blanket immunity, the potential for abuse is heightened. *Id.* The non-consensual release in this dispute is a broad release from *all* claims, including both estate and third-party direct claims. R. at 8. Specifically, it releases "any and all claims that third parties have asserted or might assert in the future against Strawberry Fields to the extent that such claims are based on the Debtor's prepetition conduct, its estate or [the] chapter 11 case." *Id.* This release is especially broad. It covers all claims, no matter the area of law, that could be asserted against Strawberry Fields. Strawberry Fields is a non-debtor that cannot be afforded this blanket protection through the bankruptcy court without being in bankruptcy itself.

Permitting non-consensual releases will also lead to forum shopping and inconsistent results in the application of these releases. Although the majority of circuits permit these releases in a Chapter 11 plan, they vary in when and how they will be permitted and are usually only

permitted in narrow circumstances after applying a variety of differing factors. The Sixth Circuit created a seven-factor analysis to determine whether or not to enjoin a non-consenting creditor's claim. *In re Dow Corning Corp*., 280 F.3d 648, 658 (6th Cir. 2002). The Eleventh and Fourth Circuits also applied the factors from *Dow* but noted that bankruptcy courts should have discretion to determine which factors will be relevant to each case and that the releases should be cautiously and infrequently permitted. *SE Prop. Holdings, LLC v. Seaside Eng'g & Surveying (In re Seaside Eng'g & Surveying)*, 780 F.3d 1070, 1076-79 (11th Cir. 2015); *Behrmann v. National Heritage Foundation,* 663 F.3d 704, 712 (4th Cir. 2001). This discrepancy between circuits will lead corporate debtors to forum shop in jurisdictions that more frequently and easily permit these releases.

2. Approving the non-consensual third-party release raises due process concerns for Ms. Rigby and future claimants.

The Due Process Clause of the United States Constitution provides that, no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. By allowing the non-consensual third-party release in this dispute, Ms. Rigby, and many others, will never have their day in court to pursue their claims against Strawberry Fields. R. 8-9. The Plan essentially takes away that property right, without affording them due process. Even though the claimants will receive compensation through the Creditor's Trust, there is still the issue of the lack of opportunity to pursue justice in a court of law. R. 9. If the Plan is confirmed with the inclusion of the release, Ms. Rigby's claim will never be decided on the merits, and she will never receive justice for the death of her four-year-old daughter. R. at 5.

There is also the issue of justice for future claimants who have not yet had the chance to file a claim against Strawberry Fields. The release provides for blanket immunity for any claims already asserted or that may be asserted in the future against Strawberry Fields. R. at 8. Although

the current third-party claimants will be allocated money through the Creditor's Trust, the future claimants will have no possible recovery. The exposure to the polluted groundwater has already been linked to sickness, birth defects, and death, but we do not know the full extent of potential illnesses or long-term effects that the groundwater could cause to future claimants. R. at 5.

Approving the Plan with the non-consensual third-party release flies in the face of equitable principles of the Bankruptcy Code and infringes upon Ms. Rigby's, and the other claimants, constitutional rights. The bankruptcy process allows for a fresh start for the Debtor, but not Strawberry Fields, the liable non-debtor affiliate. Allowing Strawberry Fields to benefit from the Debtor's bankruptcy will preclude the true victims of this dire circumstance from receiving the justice they deserve.

II. The Thirteenth Circuit erred in qualifying Ms. Rigby's § 523(a)(6) claim as dischargeable because 11 U.S.C. § 1192 requires the § 523(a) discharge exceptions to apply to both individual and corporate debtors.

Subchapter V of Chapter 11 of the Bankruptcy Code was enacted in 2019 as one of the measures to "fast track" Chapter 11 proceedings for small business debtors. 16 Tenn. Prac., Debtor-Creditor L. & Prac. 3d § 28:12.50. The Small Business Reorganization Act of 2019 ("SBRA") provided a mechanism for easier reorganizations of smaller businesses under Chapter 11 after it was added to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). *Id.* To utilize this easier reorganization process, small business debtors must elect to be governed by Subchapter V rather than the traditional Chapter 11 reorganization provisions. *Id.*; 11 U.S.C. § 103(i). While the purpose behind the SBRA is to make it easier and less costly for small businesses to reorganize, it does not completely eliminate the relief available to creditors. *Id.* Bankruptcy is rooted in equity and fairness, and creditors like Ms. Rigby are entitled to some form of relief, regardless of the advantages owed to debtors.

Section 523(a) is the general Chapter 11 statute specifying how the discharge of a debt occurs. 11 U.S.C. § 523(a). It governs the non-dischargeability of particular kinds of debt, including obligations incurred by false pretenses or fraud, domestic support obligations, and willful and malicious injury, among others. *Id.* Section 1192 specifically governs debt discharges under Subchapter V once a confirmation plan is executed, whether that plan be consensual or non-consensual among creditors. 11 U.S.C. § 1192. While § 523(a) distinguishes between individual and corporate debtors, particularly with non-dischargeability, § 1192(2) implicates the specific exceptions within § 523(a) for corporate and individual debtors alike. The plain language of § 1192(2), its context in the Bankruptcy Code and legislative history, and applicable public policy clearly support § 523(a)'s application to both corporate and individual debtors proceeding under Subchapter V. Thus, Ms. Rigby's claim is non-dischargeable, and the Thirteenth Circuit's decision should be reversed.

A. **The plain language of § 1192(2) clearly establishes that the types of debt excepted from discharge within § 523(a) apply to all Subchapter V proceedings, regardless of the type of debtor.**

When interpreting statutes, courts must follow the canons of statutory interpretation. 1 Norton Bankr. L. & Prac. 3d § 2:22. The first canon requires courts to look at the plain language of the controlling statute. *Id.* The purpose of looking to the plain language, along with the other canons of statutory interpretation, is to determine and comport with the congressional intent. *See, e.g, Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004); *In re Mr. Gatti's, Inc.*, 164 B.R. 929, 931 (Bankr. W.D. Tex. 1994). When there is no ambiguity found, the language of the statute itself is where the inquiry begins and ends because the clear language expresses the congressional intent. *Ron Pair Enters.,* 489 U.S. at 241. "Courts must presume that a legislature says in a statute what it means and means in a statute what it says," but "[t]he first step is to determine whether the statute at issue

has a plain and unambiguous meaning with regard to the particular dispute." *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 450, (citing *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997)). This Court must determine which statute governs Ms. Rigby's claim against Strawberry Fields and look to that statute's plain language as controlling its decision.

The plain language of §§ 523(a) and 1192(2) seem unambiguous on their face, but this dispute requires a consideration of how the two statutes intersect. Section 523(a) is a general Chapter 11 statute that lists the types of debts that are specifically excepted from discharge for *individual* debtors. 11 U.S.C. § 523(a). The language at issue states: "(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…" 11 U.S.C. § 523(a)(6) (emphasis added). Section 523(a) limits its applicability to individual debtors and applies to Chapters 7, 11, 12, and 13 proceedings. 11 U.S.C. §§ 103, 523(a). Its plain language does not apply the non-dischargeability exceptions to corporate debtors, meaning that the Debtor would generally be able to discharge a § 523(a)(6) debt.

However, § 1192 specifically applies to Subchapter V proceedings and addresses how courts are to grant debtors' discharges. 11 U.S.C. § 1192. The specific language at issue within this statute is: "If the plan of the debtor is confirmed … the court shall grant the debtor a discharge of all debts … except any debt … (2) *of the kind specified in section 523(a)* of this title." 11 U.S.C. § 1192(2) (emphasis added). This statutory language makes no reference to the particular types of debtors, just to the types of debt that are eligible and ineligible for discharge. This lack of distinction makes it apparent that § 1192 governs individual and corporate debtors alike who elect to proceed under Subchapter V. Standing alone, § 1192(2) requires application of § 523(a) to both corporate and individual debtors because § 1192(2) only references the kinds of debt listed as non-

dischargeable, not § 523(a) in its entirety. Under this language Ms. Rigby's § 523(a)(6)'s claim is non-dischargeable because the Debtor is unable to discharge that debt.

Despite the clear language within each individual statute, both the Thirteenth Circuit majority and dissent imply and agree that the intersection of the language of §§ 1192(2) and 523(a) leads to ambiguity. R. at 18, 21, 30-31. When comparing the language within § 1192(2) to the introductory phrase of § 523(a), it is evident that the language conflicts. R. at 18. This conflicting language has led to a split among the courts as to what is the proper application of dischargeability. *Id.* The differing opinions depend on whether the focus is on "individual debtor" within § 523(a) or "types of debt" within § 1192(2). *Id.* While the majority highlights those bankruptcy courts that have focused on § 523(a)'s language, the only court of appeals to hear this issue ruled in favor of Ms. Rigby's interpretation by focusing on § 1192(2) as the governing statute. *Id.*; *See In re Cleary Packaging, LLC*, 36 F. 4th 509 (4th Cir. 2022). Despite acknowledging the controversial overlap between the sections, the Fourth Circuit overruled the bankruptcy court that had similar reasoning to the Thirteenth Circuit and ultimately decided § 1192(2) governs Subchapter V proceedings. *In re Cleary Packaging, LLC*, 36 F. 4th at 517-518. Thus, Ms. Rigby's claim is non-dischargeable.

When two statutes have conflicting language as present in this dispute, the more specific statute governs the claim rather than the generalized statute. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992); *In re Breezy Ridge Farms*, 2009 WL 1514671, at 3 (Bankr. M.D. Ga. May 29, 2009). Provisions within a statute are read to be consistent whenever possible, but, if the provisions may not be harmonized, the more specific provision controls. *In re Bateman*, 331 F.3d 821, 825 (11th Cir. 2003). This is particularly important with questions of statutory interpretation and evaluations of the Bankruptcy Code because of the overlapping statutes and intricate proceedings. *Id.* at 825-26.

Section 1192 specifically governs claims like Ms. Rigby's because its only application is to Subchapter V proceedings and discharges. *In re Cleary Packaging, LLC*, 36 F.4th at 514. It was enacted as part of the SBRA to be the governing discharge statute when small business debtors elect to proceed under Subchapter V. *Id.* at 517. In contrast, § 523(a) refers to and governs discharges under various sections, not just a particular proceeding. *Id.* at 515. It has a more general application to several types of proceedings. Of the two statutes, § 1192(2) has a narrower scope and is more specifically tailored to only Subchapter V proceedings. Thus, § 1192(2) should govern Ms. Rigby's dispute, and her claim is non-dischargeable. This is further supported by the Thirteenth Circuit majority's acknowledgement that Ms. Rigby's interpretation focusing on § 1192(2) is just as reasonable under the plain language approach. R. at 18.

B. Utilizing § 523(a)'s language to govern the current dispute cannot be reconciled with the context of both §§ 523(a) and 1192(2) within the Bankruptcy Code or the applicable legislative history.

If a court must go further than the plain language of a statute, the next canons of statutory interpretation require courts to look at the context of the statute and the legislative history. If ambiguity is found, "the intention of the drafters, rather than the strict language controls." *Ron Pair Enters., Inc.* 489 U.S. at 235. Courts will then rely heavily on the legislative intent and context of the surrounding statutes. *Newman v. McCrory Corp.*, 210 B.R. 934, 937-38. (S.D.N.Y. 1997). While the allegedly conflicting language of §§ 523(a) and 1192(2) could require this Court to look at the context of the two statutes within the Bankruptcy Code, a comparison to several other bankruptcy provisions highlights the intent to have § 1192(2)'s language control. Further, the limited legislative history available for Subchapter V establishes the intent to have § 1192(2) extend the applicability of § 523(a)'s discharge exceptions to corporations and not just to individuals. Thus, courts must construe §§ 523(a) and 1192(2) according to their plain language

and purpose, and the only way to achieve this result is by applying § 523(a)'s exceptions to all Subchapter V debtors, including the Debtor in this case.

1. **When looking at the Bankruptcy Code as a whole, it is evident that the § 523(a) types of non-dischargeable debt are intended to apply to all Subchapter V debtors.**

A fundamental canon of statutory construction is to read the words of a statute (or statutes) in context with their placement in the overall statutory scheme. *See In re Handy Andy Home Improvement Ctrs., Inc.*, 144 F.3d 1125, 1128 (7th Cir. 2003). This means bankruptcy statutes are read in context to the entire Bankruptcy Code. *Id.* The Thirteenth Circuit argued that looking to other discharge provisions and differing distinctions between kinds of debtors throughout the Code favors a broad corporate discharge. However, the majority acknowledges that these same discharge distinctions support Ms. Rigby's reasonable interpretation of corporate non-dischargeability. Context more so supports Ms. Rigby's interpretation as proper.

Section 523(a) does not define the breadth of a discharge applicable to all bankruptcy chapters. *In re Breezy Ridge Farms, Inc.*, 2009 WL 1514671, at 1. Instead, "it limits the initial discharge parameters set forth" in the sections listed within the statute. *Id.* The sections themselves define the discharge parameters specifically for their chapters. *Id.* Ms. Rigby's position is that this Court should follow the same succinct logic and analysis as *In re Cleary Packaging* to find her claim non-dischargeable under § 1192(2). The *In re Cleary Packaging* court noted that Congress conscientiously defined and distinguished the kinds of debtors covered by several provisions throughout the Bankruptcy Code. *In re Cleary Packaging, LLC*, 36 F. 4th at 515-16.

Both Chapters 7 and 13 specifically make discharges unavailable to corporations through their relevant governing statutes. *Id.* at 516; *In re Breezy Ridge Farms, Inc.*, 2009 WL 1514671, at 1. In contrast, Chapter 11 sets forth separate rules for corporations and individuals regarding

discharges. *In re Breezy Ridge Farms, Inc.*, 2009 WL 1514671, at 2. The traditional Chapter 11 discharge statute, § 1141(d), has language to distinguish between its applicability to individual and corporate debtors. *In re Cleary Packaging, LLC*, 36 F.4th at 516. Section 523(a) is one of the separate discharge rules only applicable to individuals. *In re Breezy Ridge Farms, Inc.*, 2009 WL 1514671, at 1. These statutes evidence that Congress knows how to distinguish between the types of debtors when implementing statutes, yet it chose to address both individual and corporate debtors when defining the right of discharge specifically for Subchapter V proceedings. *In re Cleary Packaging, LLC*, 36 F. 4th at 516. The lack of distinguishing language within § 1192(2) indicates that there is to be no differential treatment for debtors when it comes to discharges under Subchapter V proceedings.

Juxtaposing Subchapter V to traditional Chapter 11 provisions further highlights the deliberate alterations intended by Congress for Subchapter V. *Id.* at 517. These alterations allow for the simplification of Chapter 11 reorganizations for small businesses and reducing administrative costs. *Id.* For example, Congress eliminated the absolute priority rule and limited the applicability of § 1141(d) to Subchapter V proceedings when it enacted the SBRA. *Id.* Section 1141(d) lays out the eligible debts for discharge in traditional Chapter 11 proceedings while distinguishing between corporate and individual debtors. *Id.*, (citing 11 U.S.C. § 1141(d)). In contrast, § 1192 provides benefits to Subchapter V debtors regardless of the type of debtor. *Id.*, (citing 11 U.S.C. § 1192). Subchapter V's enactment was never intended to differentiate between debtors solely based on language. This lack of distinction between corporate and individual debtors makes clear Congress's intent to not treat individuals and corporations differently when both can choose to proceed under Subchapter V.

Further, if this Court were to affirm the Thirteenth Circuit and have § 523(a)'s language control, there could be no reconciliation with § 1141(d)(6). *Id.* at 516. Despite its exclusionary language, Congress has applied specific portions of § 523(a) to corporate debtors. *In re Breezy Ridge Farms, Inc.*, 2009 WL 1514671, at 1-2. Congress uses the varying definitions and rules throughout the separate chapters to alter the applicability of § 523(a). *In re Cleary Packaging, LLC*, 36 F. 4th at 516. If the majority's interpretation is followed, the list of non-dischargeable debts would only apply to individual debtors, regardless of the language within the statutes listed in § 523(a)'s introductory language. *Id.* Section 523(a) includes § 1141 in its introductory list alongside § 1192. 11 U.S.C. § 523(a). However, § 1141(d)(6)(A) incorporates specific debts listed within § 523(a) and applies them to corporate debtors. *In re Cleary Packaging, LLC*, 36 F.4th at 516. If this subsection can be interpreted to apply § 523(a) exceptions to corporate debtors, the same should occur with the interpretation of § 1192(2) as needed for this dispute. *Id.*

Section 1141 further shows Congress's ability to specify the subsection of other statutes that it wants to incorporate when applicable. If Congress wanted to include only specific discharge exceptions in § 523(a), then it would have specified them in § 1192 like it did in § 1141. It stands to reason that Congress's word choice intended to include all of subsections of § 523(a) because it used no other clarifiers than the types of debt listed in § 523(a). The language "any debt of the kind specified" shows that Congress did not intend to include the introductory phrase that limits types of debtors. The lower court cannot cherry-pick which sections do and do not apply to both types of debtors when there is similar language, and past interpretations have widespread application. Allowing such would preclude claimants like Ms. Rigby from relief.

The overlapping language between §§ 523(a) and 1192(2) mirrors the overlap found within Chapter 12, further establishing Congress's intent to have their interpretations be similar. *Id.* at

516-17. Congress is presumed to know and understand existing law when enacting new legislation. *In re Hendrickson*, 274 B.R. 138, 151 (Bankr. W.D. Pa. 2002). "This presumption is particularly appropriate when the new legislation invokes and builds off an existing statutory framework." *Internal Revenue Serv. V. Murphy*, 892 F.3d 29, 35 (1st Cir. 2018). Chapter 12 was in effect prior to Subchapter V's recent enactment, so it is presumed that Congress was aware of its provisions and the cases interpreting them.

Section 1228(a) is the particular statute that governs Chapter 12 discharge and provides that debtors are eligible to discharge debts "except any debt … of a kind specified in section 523(a)." 11 U.S.C. § 1228(a). This is virtually identical language to that found within § 1192(2). *In re Cleary Packaging, LLC*, 36 F. 4th at 516-517. "Identical word[ing] and phrases within the same [code] should normally be given the same meaning" and, thus, the same application. *Hall v. United States*, 566 U.S. 506, 519 (2012) (quoting *Powerex Corp. v. Reliant Energy Services, Inc.*, 551 U.S. 224, 232 (2007)). Subchapter V provisions are based on those found in Chapter 12, meaning the interpretations and applications of Subchapter V statutes are similar. *In re Trepetin*, 617 B.R. 841, 848 (Bankr. D. Md. 2020). If this Court were to give different interpretations to the same language in these statutes, it "would ignore the rationality of using the same language in describing a different proceeding of the Bankruptcy Code, as was done with the adoption of Subchapter V." *In re Cleary Packaging, LLC*, 36 F. 4th at 517. The § 523(a) exceptions are applicable to § 1228 discharges of a corporation and there are similar references among the statutes with similar language. *Id.* at 516-17. If the exceptions are applicable to one type of corporate debtor, it would follow that those exceptions are applicable to Subchapter V corporate debtors like Penny Lane.

Another similarity between §§ 523(a) and 1192(2) is that § 523(a) lists both §§ 1228(a) and 1192(2) in its introductory phrase. *Id.* at 516. Courts interpreting Chapter 12 have concluded that the discharge exceptions within § 1228 that incorporate the exceptions listed within § 523(a) blanketly apply to both individual and corporate debtors. *See, e.g., In re Breezy Ridge Farms, Inc.*, 2009 WL 1514671; *In re JRB Consol., Inc.*, 188 B.R. 373 (Bankr. W.D. Tex. 1995). While these cases do not analyze § 1192 specifically, they are helpful when interpreting the sparse legislative history of § 1192(2) and § 523(a), especially to exemplify how the discharge exceptions have previously been extended to apply to corporate debtors. The proper approach to be taken is that identical language has the same interpretation and application, meaning § 523(a) would apply to corporate Subchapter V debtors. The terms within both Chapter 12 and Subchapter V are plain. *In re JRB Consol Inc.,* 188 B.R. 373, 374. Both statutes expressly state "types of debt" not "types of debtors," which incorporates the subparagraphs of § 523(a) only, not its limiting language. *Id.* The language of these statutes does not naturally lend itself to incorporate the limitation of the types of debtors within § 523(a), just the subsections that describe the types of debt. *Id.*

Congress used the reference to § 523(a) within § 1192(2) as a shorthand to define the scope of discharge for corporations as well as individuals. *In re Breezy Ridge Farms, Inc.*, 2009 WL 1514671, at 2. Although § 523(a) applies solely to individuals, Congress has used "§ 523(a)" to define the scope of Chapter 12 discharges for all debtors. *Id.* This is exactly what Congress did with Subchapter V – they used "§ 523(a)" as a shorthand to have all the exceptions within the subsections apply to all debtors, regardless of the type. Nothing in the language of Chapter 12 nor Subchapter V provides a broader discharge for corporations than for individuals. *Id.* "[T]he exclusion of § 523(a) type debts applies equally to corporations and to individuals." *Id.* Thus, Ms.

Rigby's claim was incorrectly dismissed because the Debtor's debt was non-dischargeable pursuant to § 523(a)(6).

2. The limited legislative history of Subchapter V and prior congressional actions establish Congress's intent to have complete application of § 523(a) to all Subchapter V debtors.

The SBRA was meant to draw distinctions between sections of the Bankruptcy Code to further specify how discharges should be handled. H.R. Rep. No. 116-171, at 8 (2019). Prior to the enactment of the SBRA, § 523(a) exclusively applied to individual debtors. *In re Satellite Restaurants Inc. Crabcake Factory USA*, 626 B.R. 871, 876 (Bankr. D. Md. 2021). While Respondent might argue that the SBRA and Subchapter V were not intended to heighten the burden for discharge or expand the discharge exceptions past § 523(a)'s application, the few commentators who have analyzed this new legislation conclude that §§ 523(a) and 1192(2) apply to both corporate and individual debtors.

Looking at the types of exceptions listed in § 523(a), particularly those rooted in tort law, the clear intent of Congress is that the nature of these debts forgoes their dischargeability. 36 Emory Bankr. Dev. J. 383, 386. The particular debts listed in § 523(a) are intentional torts, which are the exact types of intentional torts Congress intended to limit bankruptcy relief for. *Id.* Ms. Rigby's claim is a prime example. She has a one-million-dollar state tort law claim for willful and malicious injury against the Debtor for their tortious actions that led to the contamination of the groundwater. She is seeking reparations for the death of her four-year-old daughter after she contracted leukemia from the pollutants the Debtor dumped into the Liverpool River. If this Court were to affirm the Thirteenth Circuit, it would be discharging Ms. Rigby's relief solely because the Debtor is a corporation. A corporation whose CEO and other executives were aware of the contamination that led to serious injuries and death. Surely, this was not Congress's intent.

Another commentator noted that the "major difference regarding a corporate debtor's discharge" when analyzing Subchapter V is that the non-dischargeability exceptions under § 523(a) apply. 2019 No. 10 Norton Bankr. L. Adviser NL 2. He identified that, in a cramdown plan specifically as is present here, the non-dischargeability provisions under § 523(a) should apply to corporate debtors. *Id.* It was Congress's intent to have this "significant departure from typical Chapter 11 cases" that only have § 523(a) applying to individual debtors. *Id.* This distinction makes sense because specifically incorporating § 523(a) into a cramdown proceeding "is necessary to ensure that equity does not obtain a windfall at the expense of creditors with claims that Congress has deemed should be excepted from discharge." *Id.* Congress's intent might have been to give small business debtors an advantage, but it was clearly not at the expense of creditors like Ms. Rigby nor to leave them without relief for such heinous injuries.

Respondent is likely to point out Congress's silence in this scarce legislative history implies no intent to expand § 523(a)'s application to corporate debtors. Generally, "repeals by implication are not favored," and "the intention of the legislature to repeal must be clear and manifest." *In re Maharaj*, 681 F.3d 558, 570-71 (4th Cir. 2012) (quoting *TVA v. Hill*, 437 U.S. 153, 189 (1978)). This idea is particularly strong in bankruptcy because courts will not read the Bankruptcy Code to erode past practices absent a clear indication Congress intended the departure. *Id.* But, Congress's silence regarding Subchapter V is telling. It shows the lack of implication to have § 523(a) apply only to individual debtors, not the lack of intent to have it apply to corporations. *In re GFS Indus., LLC*, 2022 WL 16858009, at 4-5 (Bankr. W.D. Tex. Nov. 10, 2022). Congress knew how to distinguish between the discharges of certain types of debtors based on past legislation, but it chose not to do so in § 1192(2) when discussing small business reorganization attempts. *Id.*

A clear indication of Congress's intent to depart from the prior bankruptcy practice of limiting § 523(a)'s applicability to only individual debtors is established through a comparison of Subchapter V's legislative history to that of the BAPCA. *In re Maharaj*, 681 F.3d at 570-73. The BAPCPA has a similar sparse legislative history with an almost complete lack of congressional discussion, particularly regarding the absolute priority rule and its alleged abrogation. *Id.* at 572. The Supreme Court, however, determined that, especially in the bankruptcy context, implied repeal is strongly disfavored. *Id.* at 570. Nothing in the BAPCPA legislative history suggested that the absolute priority rule would be repealed, meaning that Congress's silence did not equal intent to change practices. *Id.* at 572. The Supreme Court found that, if Congress desired to have such a drastic change in the established rules, it would do so in a less convoluted manner. *Id.* at 573. Such a manner is evidenced in § 1192(2), where the language is clear and encompasses a blanket change in the application of § 523(a)'s discharge exceptions for Subchapter V when the only language integrated into § 1192(2) is regarding the subsections.

Congress's silence for Subchapter V shows that Congress intended a change in the discharge practices. *Id.* As discussed above, once a court recognizes that § 1192(2) governs, Congress's intent to have § 523(a)'s discharge exceptions apply to Subchapter V becomes clear. When comparing Subchapter V's legislative history to the BAPCPA's legislative history, it is apparent that there was discussion regarding changes to longstanding practices. *Id.* When Congress does so for one rule, it follows that it would do so for others. *Id.* If it does not, the legislative history lends itself to being explicit that there is no repeal. *Id.* For Subchapter V, there was the intention for a change in practices.

Further, the interplay of the two statutes exemplifies how Congress intended corporate debtors to be exempt from discharge. *In re GFS Indus., LLC*, 2022 WL 16858009; *In re JRB*

Consol Inc., 188 B.R. 373. While special treatment was the goal of Subchapter V, this purpose does not negate the necessary interpretation of the plain language to determine Congress's intent was to have no differential treatment for debtors. *Id.* The language of § 1192(2) is not inconsistent with that of § 523(a) because individual debtors are still subject to those § 523(a) exceptions. *Id.* Section 1192 simply gives a broader application to those debtors seeking reorganization under Subchapter V, while not allowing corporate debtors to completely discharge the types of debt listed in § 523(a). *Id.* Congress's silence paired with the clear language of both §§ 1192(2) and 523(a) establishes the intent for more inclusive language while following the policy of special treatment for debtors. *Id.* Thus, § 1192(2) requires the § 523(a) exceptions to apply to all Subchapter V debtors, corporate and individual. As such, Ms. Rigby's claim stands.

C. Qualifying Ms. Rigby's claim as dischargeable would lead to absurd results and overcome the purpose behind Subchapter V's enactment.

Many courts have recognized that one of the purposes behind the Bankruptcy Code is to provide and ensure fair payment to creditors. *See, e.g., Copley v. United States*, 959 F.3d 118, 125 (4th Cir. 2020); *In re Kunz*, 489 F.3d 1072, 1074-1075 (10th Cir. 2007), *Howard Delivery Serv., Inc. v. Zurich Am. Ins. Co.*, 547 U.S. 651, 655 (2006). To achieve this goal, bankruptcy courts are essentially courts of equity that apply "the principles and rules of equity jurisprudence." *McCrory Corp.*, 210 B.R. 934, 940. The Thirteenth Circuit classifying Ms. Rigby's claim as dischargeable completely ignores these principles and rules of equity.

One purpose behind Subchapter V's enactment was to "streamline the bankruptcy process," by giving small business debtors an advantage they were not receiving under general Chapter 11 reorganization. *See, e.g., In re Cleary Packaging, LLC,* 36 F.4th 509; *In re Satellite Restaurants Inc. Crabcake Factory USA,* 626 B.R. 871. However, this did not come at the expense of creditors' remedies. If the Court looks at §§ 523(a) and 1192(2) together and chooses to allow

complete corporate discharge, there would be no available remedies for creditors like Ms. Rigby when bringing any of the tortious claims listed within § 523(a). George P. Angelich & Adam J. Ruttenberg, *Fourth Circuit Rules that Corporate Small Business Debtors under Subchapter V May Not be Able to Discharge All Debts*, The National Law Review (Jan. 17, 2023). A debtor makes the decision of filing under Subchapter V, so, therefore, the debtor is entitled to its advantages. However, among the considerations to be balanced when deciding which chapter to file under, the dischargeability of debts, efficiency of the process, and boon given to creditors. *Id.* Creditors are given a mechanism to block consensual plans and still maintain their claims by having § 1192 apply to all debtors rather than only to individual debtors. *Id.* Rather than have their claims completely discharged with little to no say, especially if victim to a cramdown like Ms. Rigby, creditors maintain some control under Subchapter V. *Id.*

Creditors with the kinds of claims described in § 523(a) have much less control over how their claims are handled and treated in cramdown plans under Chapter 12 and Subchapter V. 8 Collier on Bankruptcy ¶ 1192.03 (2020). This lack of control is what led Congress to realize it could not leave creditors without any remedies. *Id.* "To make a distinction between individuals and corporations for how Subchapter V is applied would not only undermine that balance but would make no sense and indeed would create perverse incentives. But, most importantly, it would violate the text of § 1192(2)." *Id.*

The overlap between §§ 523(a) and 1192(2) regarding cramdown proceedings with non-consensual plans leads to certain equity concerns for creditors. *In re Cleary Packaging, LLC*, 36 F. 4th 509, 517. A cramdown proceeding is when a non-consensual plan is confirmed by a court. *Id.* They allow a plan to be confirmed without the consent from all creditors, and debtors are still able to bring their reorganization proceedings. 10 Norton Bankr. L. Adviser NL 2. A cramdown

reorganization plan need not meet § 1129(a)(8)'s requirements if the plan does not discriminate unfairly and is fair and equitable to the dissenting creditors. *In re Mahraj*, 681 F.3d 558, 562 (4th Cir. 2012).

Despite the advantage to debtors a cramdown can cause, Congress still required fairness and equity for creditors be considered. *Id.* Section 1129(b)(2) lists specific requirements for the plan to qualify as fair and equitable. While the list does not include specific policy arguments, leaving creditors with even less say over their remedies simply because a corporation was the one who committed the tortious actions would not meet the equitable standard. Allowing the Debtor a complete corporate discharge for its actions would in no way be considered equitable. Refusing Ms. Rigby compensation for the death of her daughter solely because the Debtor in this situation is a corporation rather than an individual would set a dangerous precedent that goes against all principles of equity and fairness. Ultimately, the Fourth Circuit's interpretation of these statutes "serves fairness and equity" by not allowing small corporate debtors to "especially benefit from the discharge of debts incurred" by "violations of public policy reflected in § 523(a)." *Id.*

CONCLUSION

For the aforementioned reasons, the judgement of the United States Court of Appeals for the Thirteenth Circuit should be REVERSED.

Respectfully submitted,

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