No. 21-0909

IN THE

Supreme Court of the United States

IN RE PENNY LANE INDUSTRIES, LLC, 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 RESPONDENT

TEAM NUMBER 44
COUNSEL FOR RESPONDENT

JANUARY 19, 2023

QUESTIONS PRESENTED

I. Under a chapter 11 plan of reorganization, does a bankruptcy court have the authority to approve non-consensual releases of direct claims held by third parties against 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 non-dischargeable pursuant to 11 U.S.C. § 523(a)(6)?

TABLE OF CONTENTS

QUESTIONS PRESENTED i
TABLE OF CONTENTS ii
TABLE OF AUTHORITIES iv
OPINIONS BELOW vi
STATEMENT OF JURISDICTION vi
PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS vi
STATEMENT OF THE CASE 1
I. FACTUAL HISTORY 1
II. PROCEDURAL HISTORY 3
STANDARD OF REVIEW 3
SUMMARY OF THE ARGUMENT 3
ARGUMENT 6
I. THE THIRTEENTH CIRCUIT CORRECTLY HELD THAT A BANKRUPTCY COURT HAS THE AUTHORITY TO APPROVE NON-CONSENSUAL RELEASES OF DIRECT CLAIMS HELD BY THIRD PARTIES AGAINST NON-DEBTOR AFFILIATES AS PART OF A CHAPTER 11 PLAN OF REORGANIZATION 6
A. The plain language of several provisions within the Bankruptcy Code permits the inclusion of third-party non-consensual releases in a chapter 11 plan 8
1. Sections 105(a) and 1123(b)(6) grant broad authority to the court and authorize third-party releases 8
2. Neither the plain language nor the legislative history of Section 524 limits a bankruptcy court's ability to include non-consensual releases in a chapter 11 plan 12
B. The bankruptcy court has based jurisdiction over third-party disputes that affect the Debtor's estate based on constitutional and federal statutory schemes 14
1. Under 28 U.S.C. § 1334(b), the bankruptcy court has jurisdiction to hear and rule on all cases arising under and related to chapter 11 of the Bankruptcy Code and thus can grant the third-party release 14
2. The bankruptcy court has the constitutional authority under *Stern* to enter the judgment 16
C. Approval of the third-party release is vital to Debtor's chapter 11 reorganization and provides for a speedy recovery of claims for claimants 17
II. THE THIRTEENTH CIRCUIT'S DECISION SHOULD BE AFFIRMED BECAUSE THE COURT CORRECTLY RULED THAT PETITIONER'S SECTION 523(a)(6) DEBT WAS DISCHARGEABLE 19
A. The plain language of section 523(a) clearly shows that discharge exceptions apply exclusively to individual human debtors, providing a clear distinction to the parameters outlined in section 1192 20
B. Even if the courts look beyond the clear and unambiguous language of section 523(a), Congress clearly intended for the section 523(a) discharge exceptions to only apply to individual human debtors 24
C. Discharging Petitioner's additional claim ensures a fair and equitable outcome as prescribed by section 523(a) and provides an amicable resolution for all creditors 28

CONCLUSION 32
APPENDIX 33

TABLE OF AUTHORITIES

UNITED STATES SUPREME COURT CASES

Celotex Corp. v. Edwards, 514 U.S. 300 (1995) 15
Hibbs v. Winn, 542 U.S. 88 (2004) 23
Kawaauhau v. Geiger, 523 U.S. 57 (1998) 30
N.L.R.B. v. Bildisco and Bildisco, 465 U.S. 513 (1984) 17
Stern v. Marshall, 564 U.S. 462 (2011) .... passim
U.S. v. Krause, 409 U.S. 434 (1973) 31
U.S. v. Ron Pairs Enter., Inc., 489 U.S. 235 (1989) 3, 8, 22
Williams v. U.S. Fid. & Guar. Co., 236 U.S. 549 (1915) 31

FEDERAL COURT OF APPEALS CASES

In re Anderson, 884 F.3d 382 (2d Cir. 2018) 27
In re AOV Indus. Inc., 792 F.2d 1140 (D.C. Cir. 1986) 9
In re Caesar's Ent. Operating Co., Inc., 808 F.3d 1186 (7th Cir. 2015) 6, 29
In re Cleary Packaging, LLC, 36 F.4th 509 (4th Cir. 2022) 20
In re Crocker, 941 F.3d 206 (5th Cir. 2019) 26, 27
In re Delaney, 97 F.3d 800 (5th Cir. 1996) 23
In re Dow Corning Corp., 280 F.3d 648 (6th Cir. 2002) 9, 10, 13
In re Metromedia Fiber Network, Inc., 416 F.3d 136 (2d Cir. 2005) 9
In re Millennium Lab Holdings II, LLC, 945 F.3d 126 (3d Cir. 2019) 9
In re Nosek, 544 F.3d 34 (1st Cir. 2008) 11
In re Quigley Co., 676 F.3d 45 (2d Cir. 2012) 27, 28
In re Seaside Eng'g & Surveying, Inc., 780 F.3d 1070 (11th Cir. 2015) 9, 13
In re Sunterra Corp., 361 F.3d 257 (4th Cir. 2004) 26
Matter of Berryman Prod., Inc., 159 F.3d 941 (5th Cir. 1998) 3
Matter of Miller, 156 F.3d 598 (5th Cir. 1998) 23
Nat'l Heritage Found., Inc. v. Highbourne Found., 760 F.3d 244 (4th Cir. 2014) 9
SPV OSUS, Ltd. v. UBS AG, 883 F.3d 333 (2d Cir. 2018) 15

BANKRUPTCY COURT CASES

In re Blue, 630 B.R. 179 (Bankr. M.D.N.C. 2021) 25
In re Breezy Ridge Farms, Inc., No. 08-12038, 2009 WL 1514671 (Bankr. M.D. Ga. 2009) 24
In re Cleary Packaging, LLC, 630 B.R. 466 (Bankr. D. Md. 2021) 20, 21
In re Ellingsworth Residential Cmty. Ass'n, 619 B.R. 519 (Bankr. M.D. Fla. 2020) 25
In re GFS Indus., LLC, No. 22-50403, 2022 WL 16858009 (Bankr. W.D. Tex. 2022) 24
In re JRB Consol., Inc., 188 B.R. 373 (Bankr. W.D. Tex. 1995) 24
In re Margulies, 517 B.R. 441 (Bankr. S.D.N.Y 2014) 6, 31
In re Millennium Lab Holdings II, LLC, 575 B.R. 252 (Bankr. D. Del. 2017) 16, 17
In re Purdue L.P., 633 B.R. 53 (Bankr. S.D.N.Y. 2021) 13
In re Satellite Rests., Inc., 626 B.R. 871 (Bankr. D. Md. 2021) 5, 22, 23, 24
In re Voyager Digit. Holdings, Inc., No. 22-10943,

2022 WL 17343493 (Bankr. S.D.N.Y. 2022)....................20, 21, 22

STATUTES

11 U.S.C. § 105(a)....................passim
11 U.S.C. § 523(a)....................passim
11 U.S.C. § 523(a)(6)....................passim
11 U.S.C. § 524....................12, 13
11 U.S.C. § 524(e)....................4, 7, 12, 13
11 U.S.C. § 524(g)....................12
11 U.S.C. 524(h)....................13
11 U.S.C. § 1123(a)(5)....................9, 11
11 U.S.C. § 1123(b)(6)....................passim
11 U.S.C. § 1129(a)....................28
11 U.S.C. § 1191(b)....................24, 28
11 U.S.C. § 1192....................passim
11 U.S.C. § 1192(2)....................2, 20
28 U.S.C. § 157....................7
28 U.S.C. § 157(b)....................7, 14, 17
28 U.S.C. § 1334(b)....................4, 7, 14, 15

OTHER AUTHORITIES

8 *Collier on Bankruptcy* ¶ 1192.03 (16th ed. 2022)....................20, 24
Dorothy Coco, *Third-Party Bankruptcy Releases: An Analysis of Consent Through the Lenses of Due Process and Contract Law*, 88 Fordham L. Rev. 231 (2019)....................18
H.R. Rep. No. 91-1502 (1970)....................27
H.R. Rep. No. 103-834 (1994)....................13
H.R. Rep. No. 116-171 (2019)....................25
Lawrence R. Ahern, III, *Chapter 11 reorganization or liquidation - Small businesses*, 16 Tenn. Prac., Debtor-Creditor Law and Practice § 28:12.50 (3d ed.)....................26
Richard P. Cook, *Discharges in Subchapter V: What Has Changed? What Remains the Same? Are Elephants Hiding in Mouseholes?*, 41 Am. Bankr. Inst. J. 24 (2022)....................29

OPINIONS BELOW

The Thirteenth Circuit Court of Appeals' decisions is available at No. 22-0909 and reprinted at Record 2. The Bankruptcy Court for the District of Moot ruled in favor of Penny Lane Industries, Inc. and its affiliated debtors. On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed in favor of Penny Lane Industries, Inc.

STATEMENT OF JURISDICTION

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

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

This action requires statutory construction of certain provisions of Title 11 of the United States Code. The following sections are restated in the Appendix. 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. § 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. § 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 or malicious injury by the debtor to another entity or to the property of another entity.

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

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

The relevant portion of 11 U.S.C. § 1191(b) provides:

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

STATEMENT OF THE CASE

This appeal arises from Petitioner's attempt to invalidate the Plan confirmed by the bankruptcy court. As a result, Petitioner's appeal jeopardizes the equitable benefits of the Plan to the detriment of other creditors.

I. Factual History

Respondent, Penny Lane Industries, Inc. (the "Debtor"), is a wholly owned subsidiary of Strawberry Fields Foods, Inc. ("Strawberry Fields") based in the City of Blackbird, Moot. R. at 4. The Debtor is a manufacturer of plastic, glass, and metal food containers. R. at 4. Debtor has been accused of knowingly disposing of contaminants from its facility that negatively impacted the surrounding area's water supply. R. at 5. While no conclusive source of contamination has been determined, it is evident that the community of Blackbird has been tragically affected by the contaminants. R. at 5.

In 2017, Eleanor Rigby (the "Petitioner") filed suit against Debtor and Strawberry Fields R. at 5. Petitioner asserted that her deceased daughter suffered from the negative effects of the contaminants in the community. R. at 5. Petitioner further asserted that Debtor's Chief Executive Officer was aware of the potential harm the company's waste disposal process could contribute to the community and that Strawberry Fields should also be liable for their subsidiary's alleged actions. R. at 5.

The residents of Blackbird and other nearby communities subsequently filed lawsuits against Debtor for damages related to the contaminated local water supply. R. at 6. As a result, Debtor filed for bankruptcy under subchapter V of chapter 11 of the Bankruptcy Code on January 11, 2021. R at 6.

Following the Petition, Petitioner sought to have her $1 million claim deemed non-dischargeable under sections 523(a) and 1192(2) of the Bankruptcy Code. In response, Debtor filed a motion to dismiss Petitioner's Complaint for failure to state a claim on which relief can be granted. R. at 7. The bankruptcy court granted Debtor's motion to dismiss, which was affirmed by the Thirteenth Circuit.

After months of mediation, a settlement framework known as the Plan was proposed. R. at 8. The Plan set up a creditor's trust funded by the Debtor's disposable net income for five years, as well as $100 million coming from Strawberry Fields. R. at 8. In total, the trust is anticipated to distribute between $120 million and $160 million to its creditors. R. at 8. Strawberry Fields' contribution to the settlement came in exchange for a release from all claims. R. at 8. Notably, the Plan released and discharged Strawberry Fields from all third-party claims that were asserted or might have been asserted in the future. R. at 8. When brought to a vote amongst the creditors, the Plan received over 95% of votes in its favor. R. at 9. Despite the Plan's high approval rate amongst creditors, Petitioner objected to the Plan. R. at 9. Following a confirmation hearing, the bankruptcy court confirmed the Plan. R. at 10. The bankruptcy court rejected Petitioner's objection to the non-consensual release of the third-party claims based on extraordinary circumstances. R. at 10. The bankruptcy court noted Strawberry Fields' significant contribution resulting in meaningful distributions and substantial support from creditors as reasons for confirming the Plan. R. at 10. Furthermore, the bankruptcy court believed that the Plan was fair and reasonable and that no other reasonably conceivable means to reach the same result as the Plan existed. R. at 10. Lastly, the bankruptcy court confirmed the Plan because the failure to approve would lead to costly and lengthy litigation. R. at 10.

II. Procedural History

The Bankruptcy Court for the District of Moot ruled in favor of Debtor on both issues. First, the bankruptcy court held that non-consensual third-party releases were permissible under applicable bankruptcy and non-bankruptcy law. R. at 9. Second, the bankruptcy court held that Petitioner's debt was dischargeable because exceptions to discharge in section 523(a) do not apply to corporations. R. at 7. On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed the bankruptcy court's decisions. R. at 23.

STANDARD OF REVIEW

The questions presented are purely issues of law and involve statutory interpretations of the Bankruptcy Code. In reviewing cases originating in bankruptcy, issues of law are reviewed *de novo*. *Matter of Berryman Prod., Inc.*, 159 F.3d 941, 943 (5th Cir. 1998).

SUMMARY OF ARGUMENT

The Thirteenth Circuit properly ruled for Debtor when it held that a bankruptcy court has the authority to approve non-consensual releases of direct claims held by third parties against non-debtor affiliates under a chapter 11 plan of reorganization. First, the bankruptcy court is granted broad authority to implement confirmation plans of reorganization by the plain language of 11 U.S.C. § 105(a) and 11 U.S.C. § 1123(b)(6). Secondly, *Stern v. Marshall* held that bankruptcy courts have constitutional jurisdiction to rule on disputes arising from "core" issues in bankruptcy cases. 564 U.S. 462, at 474 (2011). Finally, the use of third-party releases promotes the effective and speedy implementation of chapter 11 reorganization plans.

If a statute's plain language is unambiguous, the interpretation inquiry stops there. *U.S. v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989). The unambiguous, plain language of sections

105(a) and 1123(b)(6) grant the bankruptcy courts authority to authorize third-party releases. Specifically, several circuit courts have held that section 105(a) grants broad authority to carry out orders when "necessary or appropriate" within the Bankruptcy Code. Furthermore, these circuits have also held that section 1123(b)(6) grants authority to allow non-consensual third-party releases.

Petitioner relies on 11 U.S.C. § 524(e) to state that non-consensual third-party releases are prohibited. However, neither the plain language nor the legislative history of section 524(e) limits a bankruptcy court's ability to include non-consensual releases in a chapter 11 plan. The plain language applies to the simple discharge of a debtor and fails to address injunction provisions in reorganization plans.

The bankruptcy court has broad jurisdiction over third-party disputes that affect the Debtor's estate based on constitutional and federal statutory schemes. 28 U.S.C. § 1334(b) grants the bankruptcy court jurisdiction to hear and rule on all cases that may arise under or relate to chapter 11 of the Bankruptcy Code. Furthermore, *Stern v. Marshall* held that if an action stems from a bankruptcy itself, then it is considered a core proceeding, and the bankruptcy courts may hear it.

In an effort to promote a speedy recovery of claims for claimants, the approval of the third-party release is essential. The purpose of Debtor filing for chapter 11 bankruptcy was to reorganize their business without having to liquidate assets and shut down their factory. Petitioner's objection to the Plan is preventing other claimants from receiving their "significant and immediate benefit." The Plan is projected to pay out creditors significantly more than what the creditors would receive by pursuing individual suits. The litigation has been ongoing for six

years, and "there existed no other reasonably conceivable means to achieve the result accomplished by the Plan." R. at. 10. Therefore, this Honorable Court should affirm the Thirteenth Circuit's decision in ruling for Debtor.

The Thirteenth Circuit properly ruled for Debtor when it held that Petitioner's debt was dischargeable under 11 U.S.C. § 523(a)(6). First, the plain language of section 523(a) shows that discharge exceptions apply exclusively to individual human debtors. Secondly, even if the courts choose to look beyond the unambiguous language of section 523(a), it is evident that Congress intended for section 523(a) to only apply to individual human debtors. Finally, discharging Petitioner's claim will ensure a fair and equitable outcome as prescribed by section 523(a).

When a statute's language is plain, the court's sole function is to enforce it according to its terms so long as the text is not absurd. *In re Satellite Rests., Inc.*, 626 B.R. 871, 875-76 (Bankr. D. Md. 2021). The plain language of section 523(a) reads, "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." The term "individual" must refer to individual human beings, as there would be no need for Congress to implement the word "individual" if referring to a single debtor or corporation.

Even if the courts choose to look past the clear and unambiguous language of section 523(a), it is evident that Congress intended for section 523(a) to only apply to individual human debtors. The lack of legislative history implies Congress intended the statute to read as is. If Congress intended for the exception to apply to corporate debtors, it would have been explicitly stated.

Bankruptcy courts are granted extensive equitable powers in order to perform their statutory duties. *In re Caesar's Ent. Operating Co., Inc.,* 808 F.3d 1186, 1188 (7th Cir. 2015). Section 523(a) is one of many sections designed to give the courts opportunities to exercise these equitable powers. Confirmation of the Plan would properly display a bankruptcy court's use of its equitable powers. Furthermore, even if the plain language of 523(a) does apply to corporate debtors, Debtor would not fall under an exception. Section 523(a)(6) applies to willful and malicious injury by the debtor. However, willful injury in the context of a dischargeability exception indicates a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury. *In re Margulies*, 517 B.R. 441, 451 (Bankr. S.D.N.Y 2014). Therefore, this Honorable Court should affirm the decisions of the Thirteenth Circuit.

ARGUMENT

This Court should affirm the Thirteenth Circuit's decision that a bankruptcy court has the authority to approve non-consensual releases of claims held by third parties under a chapter 11 plan of reorganization. This Court should also affirm the Circuit Court's decision that Petitioner's debt was dischargeable under 11 U.S.C. § 523(a)(6).

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

The Thirteenth Circuit correctly held that a bankruptcy court has the authority to grant non-consensual third-party release against non-debtors. Under 11 U.S.C. § 105(a), the court has broad authority to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." This issue arises directly from a plan of reorganization under

subchapter V of chapter 11 of the Bankruptcy Code, and therefore a bankruptcy court has authority to hear and enter judgments on those proceedings.

Furthermore, a bankruptcy court in a chapter 11 reorganization plan may "include any other appropriate provision not inconsistent with the applicable provisions of this title." 11 U.S.C. § 1123(b)(6). Appropriateness is not being contested, but Petitioner contests the bankruptcy court's statutory authority to grant such a release. Petitioner argues that section 524(e) prohibits third-party releases outside the asbestos context. This is contrary to the plain language of section 524(e) and the legislative history of the statute. Since section 524(e) is not applicable in this case, the court has the statutory authority to grant the release.

The Thirteenth Circuit correctly held that a bankruptcy court has the jurisdictional authority to enter a judgment on the confirmation of plans. Petitioner argues that the bankruptcy court was outside its statutory and constitutional jurisdiction. However, 28 U.S.C. § 1334(b) and 28 U.S.C. §157(b) grant the court authority to hear and enter orders on all cases under title 11. Further, the Supreme Court in *Stern v. Marshall* held that a bankruptcy court may hear those issues that are "core" under section 157 and directly arise from a bankruptcy case. *Stern*, 564 U.S. at 474.

The purpose of third-party releases is to provide for speedy bankruptcy proceedings in cases where reorganization is complex and "unusual circumstances" require that such releases are necessary for the implementation of the plan. Without this vital tool of the court, there would be a major delay in the distribution of creditors' claims. The Court should adopt the majority approach and allow the nonconsensual release of third-party claims in chapter 11 reorganization plans. First, the plain language of sections 105(a) and 1123(b)(6) grant broad authority to the

bankruptcy court to implement confirmation plans of reorganization. Second, the bankruptcy court has constitutional jurisdiction under *Stern* to rule on disputes arising from "core" issues in bankruptcy cases. *Id*. Finally, the use of third-party releases allows for the effective and speedy implementation of chapter 11 reorganization plans.

A. The plain language of several provisions within the Bankruptcy Code permits the inclusion of third-party non-consensual releases in a chapter 11 plan.

Under sections 105(a) and 1123(b)(6) of the Bankruptcy Code, bankruptcy courts are given broad authority and may enter judgments on matters relating to chapter 11 plans of reorganization. The majority of bankruptcy courts exercise this power when necessary or appropriate and have held that it is not in contradiction with other provisions of the Code.

1. Sections 105(a) and 1123(b)(6) grant broad authority to the court and authorize third-party releases.

Sections 105(a) and 1123(b)(6) authorize a bankruptcy court to grant non-consensual third-party releases. The beginning of any statutory interpretation starts with the plain language of the statute. If the language is unambiguous, then the inquiry stops there. *U.S. v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989). Section 105(a) gives a court the authority to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Based on plain language, a bankruptcy court is given broad authority in issues under or related to title 11. However, its authority is not without some constraints. The statute limits that authority by stating that the court may only issue orders that are "necessary" or "appropriate" to carry out provisions in title 11.

Under chapter 11 reorganization, a bankruptcy court must approve a plan for reorganization and "provide adequate means for the plan's implementation." 11 U.S.C. § 1123(a)(5). In implementing the plan, a court may "include any other appropriate provision not inconsistent with the applicable provisions of this title." Based on the statutory scheme provided, a bankruptcy court has the authority to grant non-consensual third-party releases when they are necessary or appropriate. The majority of circuits have held that such statutory authority is given to the bankruptcy courts. *In re Metromedia Fiber Network, Inc*., 416 F.3d 136 (2d Cir. 2005); *Nat'l Heritage Found., Inc. v. Highbourne Found.*, 760 F.3d 344 (4th Cir. 2014*); In re Dow Corning Corp*., 280 F.3d 648 (6th Cir. 2002*); In re Airadigm Commun., Inc.,* 519 F.3d 640 (7th Cir. 2008); *In re Seaside Eng'g & Surveying, Inc.*, 780 F.3d 1070 (11th Cir. 2015); *In re AOV Indus., Inc.*, 792 F.2d 1140 (D.C. Cir. 1986).

The Seventh Circuit held that sections 105(a) and 1123(b)(6) grant a bankruptcy court the authority to allow third-party releases without the consent of the creditor. In the case of *In re Airadigm Communications, Inc.*, Airadigm was a cellular service provider that entered into a contract with the Federal Communications Commission (FCC) to receive licenses to use the electromagnetic spectrum, opting to pay off the licenses under an installment plan. 519 F.3d at 644. Airadigm later was unable to meet its financial obligation to the FCC, and filed for a petition of reorganization under subchapter V chapter 11 so that it could pay its creditors. *Id*. at 645. The plan was mostly funded by a third-party Telephone and Data Systems (TDS), and in exchange for the funding, TDS wanted a release from all third-party claims. *Id*. at 646. Petitioner objected to the plan, arguing that the release was against the Bankruptcy Code. *Id.*

The court began its analysis by stating that a bankruptcy court is a court of equity and that its powers were "traditionally broad." *Id*. at 657. The court then laid out the statutory

framework that grants the court authority to allow the release. It began with section 105(a) for its general broad authority to carry out any "necessary or appropriate" order within the Bankruptcy Code. *Id.* The court then identified that the broad authority given by section 105(a) allowed a bankruptcy court "to exercise these broad equitable powers within the plans of reorganization themselves." *Id*. The court emphasized that 1123(b)(6) granted them the authority to implement the third-party release so that the plan could be carried out. *Id*.

The financing of the plan hinged on TDS's contribution. *Id.* at 645. If the release were not granted, then Airadigm's plan would have fallen through, and they would not be able to continue with a chapter 11 plan. Since the court found that it was appropriate and necessary, the court granted the release. *Id.* at 657.

Similarly, the Sixth Circuit held that a bankruptcy court has the authority to grant non-consensual third-party releases under sections 105(a) and 1123(b)(6). In *In re Dow Corning Corp.*, Dow was a silicone gel breast implant producer, accounting for more than fifty percent of the market. 280 F.3d 648, 653. The company filed for chapter 11 bankruptcy after tens of thousands of lawsuits were brought against them after many of their consumers claimed to have been injured by autoimmune reactions to the silicone. *Id.* Under the reorganization plan, Dow created a creditor's trust of $2.35 billion. *Id*. at 654. The trust was funded by Dow's products liability insurers, their shareholders, and operating cash reserves. *Id.* at 655. In exchange for the funding, the insurers and shareholders wanted a release of any claims that could be brought against them. *Id*. at 655. Certain claimants objected to the plan. *Id.* at 654.

Like *Airadigm*, the Sixth Circuit began with the court's broad authority given to it by 105(a), stating that the court has "the power to take appropriate equitable measures needed to

implement other sections of the [Bankruptcy] Code." *Id.* at 656. Further, the court said the Code "allows bankruptcy courts considerable discretion to approve plans of reorganization." *Id.* The court looked to 1123(b)(6), which granted them the authority to allow non-consensual third-party releases, concluding that the court "has substantial power to reorder creditor-debtor relations needed to achieve a successful reorganization." *Id*.

Although there is no express statute granting non-consensual third-party release, the use of broad authority under section 105(a) to create an equitable remedy is not a novel concept to bankruptcy courts. In the First Circuit, the court in *In re Nosek* used section 105(a) to allow a party in a chapter 13 case to bring a right of action against the petitioner. 544 F.3d 34, 37 (1st Cir. 2008). The court concluded that the court may invoke 105(a) "if the equitable remedy utilized is demonstrably necessary to preserve a right elsewhere provided in the Code. *Id*. at 44. This is not an excuse for the court to have roving equity, but it may use its equity powers only when it is necessary and proper.

In this case, the lower court based its ruling in line with the other circuits. Section 105(a) grants the court broad authority to enter judgments and orders that are necessary and proper to apply the relevant provisions of the Code.

The provisions the court is trying to implement are those pertaining to the Plan. In this case, Strawberry Fields is seeking to fund over 80% of the Debtor's plan in exchange for the release of any third-party claims that may be brought against it. R. at 8. This provision is permitted under 1123(a)(5) because the settlement is being funded by Strawberry Fields, which will allow the full implementation of the Plan.

As the Sixth, Seventh, and other Circuits have established, this release is permitted under the previous statutory scheme when appropriate. The court should thus join the majority of circuits that recognize the statutory authority given to them and grant the non-consensual third-party release.

2. Neither the plain language nor the legislative history of section 524 limits a bankruptcy court's ability to include non-consensual releases in a chapter 11 plan.

There is no provision that explicitly prohibits a bankruptcy court from granting the nonconsensual third-party release. The only provision Petitioner cites are those found in section 524, which is backed by a minority of circuits. However, the interpretation Petitioner and the minor circuits offers are inconsistent with the plain language of the statute and the legislative history.

Again, we begin with the plain language of the statute to determine its meaning. *U.S. v. Pair cite*. Section 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." A minority of circuits rely upon this provision prohibiting non-consensual third-party releases. But looking at the plain language of this statute, there is no part of the language that limits the powers of the court. This statute pertains only to the debt of the debtor and if it is discharged. It is not addressing whether the court may or may not enter injunctions in confirmation of plans under chapter 11.

The minority view's interpretation of 524(e) is also inconsistent with the other sections under 524. Specifically, 524(g) provides for third-party release within the asbestos context. This

would seem to limit a bankruptcy court's authority in granting third-party release outside the asbestos context, but it does not when read with 524(h)(1) that states, "if an injunction described in subsection (g)(1)(B) was issued before the date of the enactment of this act […] then the injunction shall be considered to meet the requirements of subsection (g)(2)(B)." What this language shows is that before this rule was enacted, the courts had the authority to enter an injunction barring third-party claims and that they were not voided due to this statute. *In re Purdue Pharma L.P.*, 633 B.R. 53, 102 (Bankr. S.D.N.Y. 2021)[1].

The legislative history shows that 524 was not meant to hinder the bankruptcy court's authority. Congress stated, "[S]ection [524(h)] contains a rule of construction to make clear that the special rule being devised for the asbestos claim trust/injunction mechanism is not intended to alter any authority bankruptcy courts may already have to issue injunctions in connection with a plan of reorganization." (H.R. Rep. 103-834, 103d Cong., 2nd Sess. 12; 140 Cong. Rec. H10765 (Oct. 4, 1994). It is clear that this special rule was made to address claims related to asbestos cases, and Congress was clear that this was not meant to take away any authority bankruptcy courts already have.

Even though the minority of circuits also use 524(e) to prohibit third-party release, circuits in the majority agree that 524(e) says nothing about the authority of a bankruptcy court to release non-debtor third parties. *Seaside Eng'g*, 780 F.3d 1070 (11th Cir. 2015); *In re Airadigm Communications, Inc.*, 519 F.3d 640 (7th Cir. 2008); *In re Dow Corning, Corp.*, 280 F.3d 648, 658 (6th Cir. 2002). The majority also agreed that if Congress wanted to do so, they could have when they introduced the amendments to the Bankruptcy Code, which - as can be

[1] We note that, as of this writing, this issue is again before the Second Circuit pending appeal.

seen from the legislative history - they did not. The court has the authority to grant the release because they have statutory authority, and it is not inconsistent with any provision of the Bankruptcy Code.

B. The bankruptcy court has broad jurisdiction over third-party disputes that affect the Debtor's estate based on constitutional and federal statutory schemes.

Under the Constitution, 28 U.S.C. § 1334(b), and 28 U.S.C. § 157(b), the bankruptcy court is given broad jurisdiction to address disputes that affect the debtor's estates. In this case, Petitioner objects to the provision of the Plan that would release third-party claims against Strawberry Fields. Under 28 U.S.C. § 1334(b), the bankruptcy court has jurisdiction to hear and rule on all cases that may arise under or related to chapter 11 of the Bankruptcy Code. Since section 1334(b) grants such jurisdiction, the court is able to enter orders and judgments that affect a debtor's estate, including allowing the release of third-party claims in confirmation plans.

The bankruptcy court's jurisdiction is also granted under the Constitution. Petitioner objects that the issue is "non-core" and a bankruptcy court does not have the Constitutional authority to enter orders on "non-core" issues. However, Congress listed under 28 U.S.C. 157(b) what issues are "core" and can be ruled on by a bankruptcy court. The Supreme Court further held under *Stern v. Marshall* that a bankruptcy court may hear those issues that are "core" under section 157(b). 564 U.S. at 475.

1. Under 28 U.S.C. § 1334(b), the bankruptcy court has jurisdiction to hear and rule on all cases arising under and related to chapter 11 of the Bankruptcy Code and thus can grant the third-party release.

Under section 1334(b) "the district courts shall have original jurisdiction but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). This statute blatantly gives a district court broad jurisdiction pertaining to matters under title 11, and the district courts may, at their discretion, refer cases and proceedings to bankruptcy courts. The bankruptcy courts, however, are given the same authority granted to the district courts under 1334(b). The Supreme Court affirmed the jurisdiction of the bankruptcy courts stating, "Congress intended to grant comprehensive jurisdiction to the bankruptcy court so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate." *Celotex Corp. v. Edwards*, 514 U.S. 300, 307-08 (1995). Further, the Second Circuit held in *SPV OSUS, Ltd. v. UBS AG* that "a civil proceeding is related to a title 11 case if the action's outcome might have *any* conceivable effect on the bankruptcy estate." 882 F.3d 333, 340 (2d Cir. 2018) (emphasis added).

In this case, the civil proceeding involves the objection of Petitioner to a confirmation plan of Debtor, which contains a provision permitting the non-consensual third-party release of non-debtors. This proceeding is related to title 11 because this deals directly with the confirmation of plans which have *more* than a conceivable effect on the bankruptcy estate. If the Plan does not include the third-party release, then Strawberry Fields will not contribute the funds needed for the Plan to work. If the Plan fails, then Debtor will possibly have to file under chapter 7 for liquidation, which greatly affects the estate of the debtor and the benefits conferred on the creditors.

Since these proceedings greatly affect the Debtor's bankruptcy estate, it is also related to title 11. This gives the bankruptcy court proper jurisdiction to hear and rule on the case.

2. The bankruptcy court has the constitutional authority under *Stern* to enter the judgment.

A bankruptcy court has the constitutional authority to enter the judgment because the issue is a core one. The Petitioner argues that the bankruptcy court is "resolving" their state law claim against Strawberry Fields, which is a non-core issue. The court, however, is not resolving her claim because her claim is not at issue, but the confirmation of the plan is.

In *Stern v. Marshall*, the Court created a test to determine what matters were "core" and could be heard and ruled upon by the bankruptcy court. The "Disjunctive Test" simply asked, "whether the action at issue stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process." 564 U.S. 462, 499. If the actions at issue come from the bankruptcy itself, then the court may rule on it. If not, then the court may not.

The bankruptcy court in the Third Circuit had to address the question of what are "core" issues a bankruptcy court could hear and rule on in the aftermath of *Stern*. In *In re Millennium Lab Holdings II*, Millennium Lab had filed for chapter 11 bankruptcy and had created a plan for reorganization that included a provision releasing claims against third-party non-debtors. 575 B.R. 252, 255 (Bankr. D. Del 2017). The petitioner, Voya, objected to this provision and asserted that under *Stern*, the bankruptcy court was outside its constitutional jurisdiction. *Id.*

The court distinguished *Stern* by asserting that in *Stern* the issue was whether they could issue an order for a counterclaim arising under state law, which they ruled the bankruptcy court

could not. The issue before the *Millennium* court, however, was arising under a federal standard. *Id.* at 271. The court cited that the core issues a bankruptcy court could hear and enter orders on were enumerated under 28 U.S.C. 157(b). Not an exhaustive list, the court pointed out 157(b) allows for the court to hear and rule on matters including confirmation of plans and that *Stern* was not applicable in such cases. *Id.*

In this case, the court has the constitutional jurisdiction to enter a judgment on the confirmation of the Plan because it is explicitly enumerated in the statute. The dispute that Petitioner raises is an objection to the Plan. Because what is at issue in this case is the confirmation of claims and not a state law claim, the court is allowed to enter the judgment on the Plan. The only limitation the court has on ruling on the confirmation of the plan is that the plan must be in compliance with the rest of the Bankruptcy Code, which, as we addressed earlier, it does. Therefore, the Court should affirm the Thirteenth Circuits ruling confirming the plan and allowing the third-party release.

C. Approval of the third-party release is vital to Debtor's chapter 11 reorganization and provides for a speedy recovery of claims for claimants.

The purpose of Debtor filing for chapter 11 bankruptcy was so that they could reorganize their business without having to liquidate assets and shut down yet another factory in Blackbird. In fact, the Supreme Court pointed out that the "fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources." *N.L.R.B. v. Bildisco and Bildisco*, 465 U.S. 513, 528 (1984).

This plan was meant to benefit everyone involved, including Petitioner, who is the only one holding up the confirmation of the Plan. The objection raised is to the release of non-debtors

from third-party claims. The non-debtor, Strawberry Fields, has denied any and all liability yet has contributed over 80% to the creditor's trust. All they ask is that they are released and enjoined from all third-party claims related to this matter.

The use of third-party releases is an essential tool for complex reorganization plans. In fact, the use of these releases "facilitates speedy bankruptcies," allows creditors to be paid, and for businesses like Debtor to stay in operation. Dorothy Coco, *Third-Party Bankruptcy Releases: An Analysis of Consent Through the Lenses of Due Process and Contract Law*, 88 Fordham L. Rev. 231, 264 (2019). The majority of the circuits know the importance of this tool, yet the Petitioner would seek to have this tool extinguished in the Thirteenth Circuit.

If the court's decision is not affirmed, it would further hinder litigation that has already been going on for six years. The trust is organized, ready to be funded, and over 95% of creditors have approved of the Plan, which offers a "significant and immediate benefit to creditors." R. at 9. Among those creditors is the Petitioner herself. The Plan is projected to pay out to creditors $.30-.40 on the dollar of what they are owed, which is substantially more than what they would get from pursuing individual suits against the Debtor. R. at 8. For Petitioner specifically, she would get a sum between $300k-$400K. R. at 8.

In complex cases such as this, the implementation of the release provision is the only way in which this plan can be properly funded and executed, which is within the intent of Congress and the Bankruptcy regime. For there to be equity and a speedy recovery of claims, the court must affirm the non-consensual third-party release.

II: The Thirteenth Circuit's decision should be affirmed because the court correctly ruled that Petitioner's section 523(a)(6) debt was dischargeable.

Under 11 U.S.C. § 1192, a corporate debtor proceeding under subchapter V of chapter 11 of the Bankruptcy Code may discharge a type of debt specified as non-dischargeable under 11 U.S.C. § 523(a)(6). Subchapter V has three main purposes: 1) to ensure the debtor retains control over the plan and confirmation; 2) to promote quick and cost-effective proceedings to keep the debtor in business; and 3) to provide for a consensual plan, when practicable. Generally speaking, section 1192 provides how debts are to be discharged once a plan is confirmed, and section 523(a) specifies the means by which discharge occurs and distinguishes individual debtors from corporations.

Section 523 governs the non-dischargeability of particular kinds of debt. Section 523(a) specifies which debts are nondischargeable to an individual debtor: 1) certain unpaid taxes; 2) obligations incurred by false pretenses or fraud; 3) unlisted claims; 4) fraud or defalcation, embezzlement, or larceny; 5) domestic support obligations; and 6) willful and malicious injury, among others. Section 523(a)(6) holds that a discharge under sections 727, 1141, 1192(1), 1228(a), 1228(b), or 1328(b) do not discharge an individual debtor from any debt-for willful and malicious injury by the debtor to another entity or to the property of another entity. In essence, section 523(a)(6) reflects the overarching goal of section 523(a) to specify further how relief shall be granted to an honest debtor.

A. The plain language of section 523(a) clearly shows that discharge exceptions apply exclusively to individual human debtors, providing a clear distinction to the parameters outlined in section 1192.

There is no provision in subchapter V comparable to those in chapter 11 cases which involve debtors who are individuals, and in cases involving debtors in chapters 12 and 13 that provide for a "hardship" or "early" discharge before plan payments are completed. 8 *Collier on Bankruptcy* ¶ 1192.03 (16th ed. 2022). Two cases have brought this absence into the spotlight. *Id.* The United States Court of Appeals for the Fourth Circuit in *Cantwell-Cleary Co. v. Cleary Packaging, LLC* held that section 1192 provides for the discharge of debts to all subchapter V debtors and all exceptions from discharge, whether individual or corporate. *Id*. (citing *In re Cleary Packaging, LLC*, 36 F.4th 509 (4th Cir. 2022)). The court in *Cleary* stated, "to the extent that one might find tension between the language of section 523 addressing individual debtors and the language of section 1192(2) addressing both individual and corporate debtors–that the more specific provision should govern over the more general." *Id.* (quoting *In re Cleary Packaging, LLC*, 630 B.R. 466 (Bankr. D. Md. 2021)).

The term "individual" cannot be construed as anything more than a reference to an individual human being; doing so would create significant confusion and inhibit the efficient resolution of bankruptcy proceedings. In context, the reference to an individual debtor was clearly a limitation on the reach of section 523. *In re Voyager Digit. Holdings, Inc.*, No. 22-10943, 2022 WL 17343493, at *2 (Bankr. S.D.N.Y. 2022). The term is a reference to a debtor who is a human being, as opposed to a debtor who is a corporate entity, and numerous decisions reflect this interpretation. *Id.*

In *Voyager*, the plaintiff argued that the word "individual" in the context of 523(a) should be construed to mean a single debtor, whether an individual or a corporation. *Id*. at *1. The plaintiff also made reference to the decision in *In re Cleary* as support for their interpretation. *Id.* The court immediately noted that if the statute had been intended to be construed as the plaintiff argued, the word "individual" would not have been needed at all. *Id*. If section 523(a) were meant to apply to both individual and corporate debtors, Congress simply would have been able to use the word "debtor," denoting a far more general application. *Id*. The court also noted the *Cleary* decision was readily distinguishable from the facts of *Voyager* because of clearly discernable issues: the *Cleary* decision pertained to the determination of whether the debtor was classified as a small business debtor within the structure of section 1192. *Id*. at *2. The issue in the *Voyager* cases was whether a bankruptcy plan could be confirmed and certain debts excepted because the debtors were corporate entities. *Id*. Consequently, the court ruled that the plaintiff's contentions did not even fall within the same scope as the *Cleary* decision and that the plain language of section 523(a) was perfectly sufficient to address any issues related to the dischargeability of certain corporate debts. *Id*. at *3. The plaintiff's efforts to apply the section 523 discharge exceptions to the *Voyager* defendants were contrary to the plain language of the relevant portions of the Bankruptcy Code, and the defendants were entitled to exclude certain debts as corporate debtors. *Id*.

In the case of Petitioner, her claim applies to subchapter V debtors. However, Petitioner cannot escape the limited interpretation of section 523(a) required for its applicability. Whether a subchapter V case or not, the plain language of 523(a) within the context of the Small Business Reorganization Act (SBRA) requires that section 523 be viewed exclusively within the

parameters as explained by the *Voyager* court. Similar to *Voyager*, the reference to the term individual must be construed as meaning a single human being rather than just a single debtor.

Furthermore, nothing in Petitioner's case arises to a level of absurdity requiring the court to do anything more than enforce the statute as written. *In re Satellite Rests., Inc.*, 626 B.R. 871, 875-76 (Bankr. D. Md. 2021). When a statute's language is plain, the sole function of the courts, at least where the disposition required by the text is not absurd, is to enforce it according to its terms. *Id*. Plainly, discharge exceptions in section 523(a) apply only to individual subchapter V debtors. *Id*.

In *Satellite*, former employees of the restaurant group filed a complaint seeking a determination that the debts owed to them by the debtor were non-dischargeable under section 523 because the debts arose from false pretenses, false representations, or actual fraud as prohibited by section 523(a). *Id.* at 873. The debtor filed a motion to dismiss, arguing that section 523(a) dischargeability provisions did not apply to non-individual debtors. *Id*. The court started by looking at the plain language of the statute, citing the United State Supreme Court dictate that "[t]he task of resolving the dispute over [the interpretation of the statute] begins where all such inquiries must begin: with the language of the statute itself." *Id*. (quoting *U.S. v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989)). In reviewing the plain language, the court found that the language was clear and unambiguous in that it applied exclusively to individual debtors. *Id.* The court also found that the only reasonable explanation behind the section 1192 reference added to section 523(a) by the SBRA was that Congress intended to continue to limit the application of section 523(a) exceptions in subchapter V cases to individuals. *Id*. As the court also noted, "a statute should be construed so that effect is given to all its provisions so that no

part will be inoperative or superfluous, void or insignificant." *Id*. (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)).

The facts of Petitioner's case mirror those in *Satellite*. The limited application of 523(a) prevents Petitioner's non-dischargeability claim from proceeding because the provision to which she attempts to incorporate cannot be utilized against a corporate debtor. As the *Satellite* court indicates, the effect of applying section 523(a) provisions must be within the specific parameters as prescribed by the letter of its construction.

Section 523(a) requires discharge exceptions to be narrowly construed in favor of the debtor, inasmuch as the aim of the Bankruptcy Code is to give the debtor a fresh start. *Matter of Miller*, 156 F.3d 598, 602 (5th Cir. 1998). In *Miller*, following the filing of a chapter 7 bankruptcy petition, the plaintiff instigated an adversary proceeding to obtain a determination that a state court judgment was non-dischargeable under section 523(a)(6). *Id.* at 601. The court addressed the section 523(a)(6) matter with a review of the specific language of the statute and other Fifth Circuit decisions that, in order to find a clear violation of the section 523(a)(6) provision, the debtor must have actually intended the injury that resulted and not just performed an intentional act that resulted in injury. *Id.* at 603 (quoting *In re Delaney*, 97 F.3d 800 (5th Cir. 1996)).

The *Miller* decision reflects the widely accepted constructs of the strict language interpretation of section 523(a) outside of the Second Circuit. The overarching goal–as the *Miller* decision reflects–is to promote uniformity of interpretation. The Petitioner suggests that 523(a)(6) must be viewed by narrowly construing the applicability of discharge exceptions. The debtor is more likely to be placed in a position where the business will be able to continue and costly, prolonged litigation is minimized.

The narrow construction and interpretation requirements of section 523(a) originated well before the passage of the SBRA in 2019. Historical precedence and a review of other relevant sections, specifically chapter 12, are key to this understanding. Chapter 12 carries its own dischargeability provisions for certain kinds of debt. In chapter 12, although the non-dischargeability provision refers to an individual debtor, the provision governing the chapter 12 discharge upon making plan payments excluded debts of the kind specified in the non-dischargeability provision without distinguishing between individuals and corporations. *In re Breezy Ridge Farms, Inc.*, No. 08-12038, 2009 WL 1514671, at *1-3 (Bankr. M.D. Ga. 2009). Furthermore, because chapter 12 is only available to a small and specific subset of debtors, chapter 12 cases involve unique considerations that are not present in a chapter 11 case. *In re GFS Indus., LLC*, No. 22-50403, 2022 WL 16858009, at *7 (Bankr. W.D. Tex. 2022).

Specific language in section 1228(a) provides in relevant part that "as soon as practicable after completion by the debtor of all payments under the plan … the court shall grant the debtor a discharge of all debts, provided for by the plan … except any debt of the kind specified in § 523(a) of this title." *In re JRB Consol., Inc.*, 188 B.R. 373, 374 (Bankr. W.D. Tex. 1995).

B. Even if the courts look beyond the clear and unambiguous language of section 523(a), Congress clearly intended for the section 523(a) discharge exceptions to only apply to individual human debtors.

There is no legislative history addressing whether the section 523(a) limitations apply to corporate subchapter V debtors with plans confirmed under section 1191(b). 8 *Collier on Bankruptcy* ¶ 1192.03 (16th ed. 2022). The court in *In re Satellite Holdings* found that the lack of legislative history indicated that the 523(a) exceptions do not apply to corporate chapter 11

debtors not in subchapter V. *Cite* at 2. The court further held that if Congress had intended to make the exceptions apply to corporate debtors, it would have clearly said so in its report. *Id*.

The Small Business Reorganization Act of 2019 (SBRA) was meant to draw distinctions between sections of the Bankruptcy Code to specify further how discharges should be handled. H.R. Rep. No 116-171, at 8 (2019). The effect of the SBRA, together with subchapter V of chapter 11 of the Bankruptcy Code, is to increase the opportunities for relief available to small businesses, considering the unique needs of small businesses and streamlining the existing reorganization processes. *In re Blue*, 630 B.R. 179, 186 (Bankr. M.D.N.C. 2021). In *Blue*, the debtor was a sole proprietor of a consulting firm, which classified her firm as a small business. *Id*. During her chapter 11 bankruptcy proceeding, a dispute arose over whether the debtor was personally obligated for repayment because she had signed as the president of her indebted firm. *Id*. at 185. The court then engaged in an analysis of the debtor's classification, finding that she did not meet the classification as a small business debtor for purposes of subchapter V. *Id*. at 186.

Though the debtor met the definition of "a person" within the context of subchapter V, the court had difficulty in defining her "commercial or business activities." *Id*. at 188. Because there was neither a statutory definition nor sufficient legislative history to provide a fully-comprehensive definition of "commercial or business activities," the court turned to the plain language of the statute, noting that "the task of statutory disputes begins with the plain language itself. *Id*. (quoting *In re Ellingsworth Residential Cmty. Ass'n*, 619 B.R. 519, 521 (Bankr. M.D. Fla. 2020)). Furthermore, the court noted that when Congress does not define a term, the court relies on the word or phrase's plain meaning or common understanding because it is well settled

that unless the language is ambiguous, the "court's analysis must end with the statute's plain language." *Id*. (quoting *In re Sunterra Corp.*, 361 F.3d 257, 265 (4th Cir. 2004)).

As Petitioner's case illustrates, the simple task in front of the court is to look explicitly to the plain language of section 523(a)(6) because Congress did not intend for the statute to require additional interpretive measures. Though Petitioner contends that Congress intended for the language of 523(a) to be read as including both individual and corporate debtors, the language in the statute must be construed only to encompass the plain meaning of the terms as written. The court cannot go beyond this step because to do so would be unnecessary.

The SBRA did not replace the small business regime established under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). Lawrence R. Ahern, III, *Chapter 11 reorganization or liquidation - Small businesses*, 16 Tenn. Prac., Debtor-Creditor Law and Practice § 28:12.50 (3d ed.). In enacting SBRA, Congress appeared to have two objectives: 1) to force the identification of "bad" cases early in the reorganization process; and 2) to allow small businesses to be appropriately reorganized in an expedited confirmation process. Above all, Congress did not intend to heighten the burden for discharge or to expand the exceptions to discharge under the SBRA.

If Congress includes particular language in one section of a statute but omits it in another, courts presume that Congress intended a different meaning. *In re Crocker*, 941 F.3d 206, 219 (5th Cir. 2019). In *Crocker*, the debtors attempted to certify a nationwide class of education-loan debt claims as dischargeable, debt for which the lender-plaintiff continued to demand payment. The court began its analysis by reviewing the plain language pertaining to discharges under section 523(a). *Id.* at 208. In assessing the appropriate enforcement methods, the court reviewed a 1970 House Report which expounded on the issues relating to discharge, particularly in the

harassment of debtors by stating, "The present discharge provisions of the Bankruptcy Act authorize the bankruptcy court to determine the right to a discharge, but do not give the bankruptcy court express jurisdiction to determine the effect of the discharge." *Id.* at 212 (quoting H.R. Rep. No. 91-1502, at 3 (1970)). The court concluded that the 1970 provision was the most direct support for allowing one bankruptcy court to enforce another's discharge injunction. *Id*. at 214. Furthermore, the court looked to the precedent established by the Second Circuit, noting the limited enforcement allowed for discharge injunctions: "the bankruptcy court retains a unique expertise in interpreting its own injunctions and determining when they have been violated. *Id.* at 216 (quoting *In re Anderson*, 884 F.3d 382, 390-91 (2d Cir. 2018)).

The *Crocker* analysis demonstrates a fundamental aspect of the interpretive process the court undertakes in assessing the meaning and intent behind components of the Bankruptcy Code. As previously discussed, the plain meaning of a section in the Bankruptcy Code is the first–and should ultimately be the last–stop in a court's analysis. When plain meaning is not readily apparent to reach the appropriate conclusion—-and to ensure uniformity in application–the court must often look beyond the opinions of individual circuits. The meticulous task undertaken by the *Crocker* court demonstrates the general process by which the court may distinguish the Congressional intent behind a piece of the Bankruptcy Code. However, this process can be accomplished in an expeditious manner by seeking rational explanations for Congress's choice of language.

Where issues of statutory interpretation do exist, the court must seek rational explanations for any discrepancies. *In re Quigley Co.*, 676 F.3d 45, 51 (2d Cir. 2012). In *Quigley*, a maelstrom of insurance claims involving asbestos-related illness and death led to chapter 11 proceedings by the debtor. During the proceedings, the debtor was granted a

preliminary injunction, enjoining all parties from taking action in any and all pending or future claims. *Id*. at 48. During subsequent clarification proceedings, questions arose as to the derivative liability for the debtor's parent company. *Id*. at 57. The court noted that the potential effect of such liability would be to disrupt the bankruptcy estate. *Id.* at 58. The court further noted the discrepancies between the applicable subchapter V statutory and regulatory provisions. *Id.* However, the court resolved these discrepancies by looking at the plain language of the statute. *Id*. at 60. In doing so, the court noted similar language contained within specific sections must be construed as having a rational definition. *Id.* at 61.

A last resort interpretive method of interpretation is hardly favorable. However, any purported issue with effectively interpreting the plain meaning of section 523(a) can be resolved by looking at the plain language of the statute. As the *Quigley* court demonstrates, a full review of subchapter V and any relevant provisions like the SBRA is not necessary. As demonstrated, the purpose of SBRA provisions was to provide greater specificity to subchapter V provisions to allow the honest debtor to resolve bankruptcy proceedings more easily. Understanding this intention, the plain meaning of Section 523(a)(6) is readily discernible.

C. Discharging Petitioner's additional claim ensures a fair and equitable outcome as prescribed by section 523(a) and provides an amicable resolution for all creditors.

Section 1191(b) Cramdown Process provides strict provisions for ensuring confirmation of a plan. The plain language of section 1191(b) states that if all of the applicable requirements of section 1129(a) are met, the court must confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan. As discussed, these general principles of the Bankruptcy Code outline the overarching goal of

providing the honest debtor with a fresh start. The purpose is not to require the debtor to repay every conceivable debt owed to a creditor.

The entire purpose of the current regime is to provide for the efficient and expeditious distribution of funds to creditors and the continuation of business for the debtor. Richard P. Cook, *Discharges in Subchapter V: What Has Changed? What Remains the Same? Are Elephants Hiding in Mouseholes?*, 41 Am. Bankr. Inst. J. 24 (2022). Creditors taking control of the confirmation process works against the core statutory benefits of subchapter V. *Id.*

Though the section of the Bankruptcy Code authorizing the court to issue any order necessary or appropriate to carry out the provisions of title 11 does not give the bankruptcy court *carte blanche*, as the court cannot take an action prohibited by another provision of the Code, the section grants the extensive equitable powers that bankruptcy courts need in order to perform their statutory duties. *In re Caesar's Ent. Operating Co., Inc.,* 808 F.3d 1186, 1188 (7th Cir. 2015).

In *Caesar's*, the court explained that the usual purpose of bankruptcy is to allocate the distribution of the bankrupt's assets among creditors. *Id*. at 1190. In the present case, that allocation is exactly what the proposed plan is trying to accomplish. Petitioner's exemption argument directly impedes the court's ability to ensure the effective implementation of the proposed plan.

Section 523(a) is one of many sections in the SBRA designed specifically to give the court the opportunity to appropriately exercise these equitable powers. They also provide clear rules for handling exceptions for every scenario and how to apply them or not apply them. For example, debts arising from recklessly or negligently inflicted injuries do not fall within the

compass of the willful and malicious injury exception to discharge. *Kawaauhau v. Geiger*, 523 U.S. 57, 62 (1998).

In *Kawaauhau*, the court held because a debt arising from a medical malpractice judgment attributable to negligent or reckless conduct did not fall within the Section 523(a)(6) exception, the debt was dischargeable in bankruptcy. *Id*. The court found a close reading of the section's words strongly supported the conclusion that only acts done with the actual intent to cause injury fall within the exception's scope. *Id.* at 57. Specifically, the word "willful" modifies the word "injury," which indicates non-dischargeability takes a deliberate or intentional injury and not merely a deliberate or intentional act that leads to injury. *Id.* The court further stated if Congress had intended to exempt debts resulting from unintentionally inflicted injuries, it might have used language such as "willful acts that cause injury." *Id.* at 58. According to the court, this distinction originated in intentional torts, which generally require that the actor minted the consequences of the act to occur, not just the act itself. *Id.*

In the present case, willful and malicious injury has not been proven, making a discharge exception under 523(a)(6) completely untenable. To hold otherwise would result in fault being unilaterally assigned to Debtor without first establishing willful or malicious conduct would be totally prejudicial. Furthermore, as the *Kawaauhau* court noted, the entire basis of determining willful and deliberate conduct requires an understanding of the intentional tort foundation giving rise to the terms. If the consequences of the debtor's actions have not been determined to have been deliberate and willful, then a discharge exception cannot be sustained under Section 523(a)(6).

Within the specific language of section 523(a)(6), there is further justification for the broad discretion to allow the discharge of debts by corporate debtors, particularly in the context

of defining specific injury to a party. "Willful" injury, within the meaning of a dischargeability exception, indicates a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury. *In re Margulies*, 517 B.R. at 451. In *Margulies*, the court adopted a subjective standard for determining willful and deliberate injury. *Id*. The court adopted this standard for two reasons: first, to better comply with the United States Supreme Court's directive that requires deliberate or intentional injury to constitute grounds for non-dischargeability; then, to comply with the Bankruptcy Code's focus on intentional conduct by the debtor. *Id.* at 453.

The matter at hand is a perfect illustration of why the specificity of language is so critical. As it stands, the Debtor has not been determined to have acted willfully or maliciously within the meaning of Section 523(a)(6). [Insert piece/cite from record]. In order to comply with the Supreme Court's directive and to maintain the spirit and purpose of the Bankruptcy Code's directive, the subjective standard of interpretation must be maintained. In maintaining a subjective standard, a clear distinction between "willful and deliberate" and "circumstantial" can be drawn. Because no determination has been made that the debtor acted willfully and deliberately, there cannot be an exception to discharge under Section 523(a)(6).

As a general matter, there is nothing guaranteeing the right to creditors receiving payment or compensation via a bankruptcy plan. *See U.S. v. Krause*, 409 U.S. 434 (1973). For well over a century, courts have held that the lack of a constitutionally-protected right to repayment through a bankruptcy plan leaves courts with wide discretion to determine the propriety of repayment. *Williams v. U.S. Fid. & Guar. Co.,* 236 U.S. 549, 550 (1915). The purpose of a bankruptcy plan is to convert the assets of the bankrupt into cash for distribution among creditors and then to relieve the honest debtor from the weight of oppressive indebtedness. This permits

him to start fresh, free from the obligations and responsibilities consequent upon business complications. *Id.* at 555.

The means by which creditors are able to receive payment and a debtor is able to continue business is through a provision of the Bankruptcy Code. These provisions have been meticulously constructed and regularly adapted to make the process more accessible and more efficient. The provisions laid out in the SBRA give small business debtors the opportunity to continue to build their businesses, even after an otherwise major setback. When the provisions are applied correctly, the parties to a small business bankruptcy proceeding are awarded an equitable outcome. For an equitable outcome to be ensured, the provisions must be correctly applied. Section 523(a)(6) exclusion must be strictly enforced to maintain equity and that honest, non-malicious debtors are not wrongfully burdened by additional debt payments.

CONCLUSION

The Bankruptcy Code is designed to achieve equitable distribution among creditors, which Petitioner is preventing by objecting to the chapter 11 reorganization plan. In order to obtain a fair and reasonable distribution of benefits to creditors and prevent unnecessary litigation, this Honorable Court should affirm the decisions of the Bankruptcy Court for the District of Moot and the Thirteenth Circuit Court of Appeals on both issues.

Respectfully Submitted, this the 19th day of January, 2023.

/s/ Penny Lane Industries , Inc.

Penny Lane Industries, Inc., Respondent

APPENDIX

11 U.S.C. § 105(a). 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(b)(6). Contents of plan

(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.

11 U.S.C. § 523(a)(6). Exceptions to discharge

(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 or malicious injury by the debtor to another entity or to the property of another entity.

11 U.S.C. § 1191(b). Confirmation of Plan

(b) Exception.-- Notwithstanding section 510(a) of this title, if all the applicable requirements of section 1129(a) of this title, other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confrim the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair and

equitable, with respect to ech class of claims or interests that is impaired under and has not accepted, the plan.

11 U.S.C. § 1192. Discharge

If the plan of the debtor is confirmed under section 1191(b) of this title, as soon as practicable after completion by the debtor of all payments due within the first 3 years of the plan, or such longer period not to exceed 5 years as the court may fix, unlesws the court approves a written waiver of discharge exectued by the debtor after the order for relief under this chapter, the court shall grant the debtor a discahrge 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, r such other time not to exceed 5 years fixed by the court; or

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