Team R46

No. 22-0909

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2022

IN RE PENNY LANE INDUSTRIES, INC., DEBTOR,
ELEANOR RIGBY, PETITIONER

V.

PENNY LANE INDUSTRIES, INC., RESPONDENT

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

BRIEF FOR RESPONDENT

Team 46
Counsel for Respondent

Oral Argument Requested

QUESTIONS PRESENTED

I. Whether a bankruptcy court has constitutional and statutory 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, when such a release meets the "exceptional circumstances" requirement.

II. Whether exceptions to discharge listed in § 523(a) of the Bankruptcy Code apply to the discharge of a corporate debtor proceeding under Subchapter V of the Code.

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The Bankruptcy Court for the District of Moot answered both questions presented in favor of the Respondent. Petitioner timely appealed both decisions to the United States District Court for the District of Moot. The district court affirmed both issues. On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed the Bankruptcy Court's decision in favor of Respondent.

STATEMENT OF JURISDICTION

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

STATEMENT OF CONSTITUTIONAL AND STATUTORY PROVISIONS

The constitutional and statutory provisions listed below are relevant to determine the present case, and selected statutes are reproduced in Appendix A.

U.S. Const. Art. III

11 U.S.C. §§ 105(a), 523, 524(g), 524(e), 1123(b)(6), 1123(a)(5),1141, 1191, 1192.

STATEMENT OF THE FACTS

Penny Lane Industries, Inc. (the “Debtor”/“Respondent”), a wholly-owned subsidiary of Strawberry Fields, manufactures plastic, glass, and metal food containers. R. at 4-5. Allegations against Debtor claim that it knowingly disposed of environmental pollutants on its manufacturing property in Blackbird, Moot, thereby contaminating the surrounding groundwater supply. R. at 3, 5. Importantly, however, the contamination’s source has not been linked to the Debtor or Strawberry Fields. R. at 5. From 2013 through 2017, local Blackbird residents consumed and otherwise used water contaminated with high concentrations of toxins. R. at 5.

In 2017, Blackbird resident Eleanor Rigby (“Petitioner”) sued Penny Lane Industries and Strawberry Fields for allegedly causing the pollution-induced death of her four-year-old daughter. R. at 5. Among Ms. Rigby’s allegations, she claims that the Debtor’s then Chief Executive Officer (CEO) (who retired in 2016 and passed away in 2017) was aware of the contamination of the community’s water supply as well as its potential dangers. Likewise, Ms. Rigby claimed that Strawberry Fields knew or should have known of the Debtor’s alleged misconduct. R. at 6.

The Debtor and Strawberry Fields explained that not only was the waste disposed of in accordance with applicable environmental laws and regulations, but they had no knowledge of the waste allegedly contaminating the groundwater supply. R. at 6. Lastly, the Debtor and Strawberry Fields emphasize the lack of evidence linking the water supply pollution to any waste the Debtor disposed of; moreover, dozens of other businesses with manufacturing facilities reside in the area–one or more of which could be the actual source of the pollution. R. at 6.

Due to the nearly 10,000 claims asserting an aggregate of nearly $400 million in damages against the Debtor, Penny Lane Industries filed a subchapter V case under Chapter 11 of the Bankruptcy Code. Ms. Rigby filed an unsecured claim against Penny Lane Industries for $1 million. R. at 6.

PROCEDURAL HISTORY

Ms. Rigby brought an adversary proceeding against the Debtor in an attempt to have her unsecured claim deemed non-dischargeable pursuant to 11 U.S.C. § 1192 and 523(a)(6), in an attempt to except the Debtor's debt "for willful and malicious injury by the debtor to another entity or to the property of another entity" from discharge. R. at 7.

In response, the Debtor filed a motion under 12(b)(6) of the Federal Rules of Civil Procedure (made applicable to this case by Rule 7012 of the Federal Rules of Bankruptcy Procedure) to dismiss Ms. Rigby's complaint for failure to state a claim under which relief can be granted. R, at 7. The Bankruptcy Court ruled in favor of Penny Lane Industries and granted its motion to dismiss the adversary proceeding, holding that § 523(a) exceptions to discharge do not apply to corporate debtors, even when the case is filed under subchapter V. Ms. Rigby filed a timely notice of appeal. R. at 7.

Ms. Rigby appealed both of the Bankruptcy Court's rulings, whereafter both Ms. Rigby and the Debtor requested the disputes be certified for direct appeal to the Thirteenth Circuit Court of Appeals pursuant to 28 U.S.C. § 158(d). R. at 11. On appeal, the Thirteenth Circuit affirmed the Bankruptcy Court's decision. R. at 23. This appeal follows.

STANDARD OF REVIEW

This case only presents questions of law since the facts are undisputed. R. at 11. This Court reviews *de novo* issues of law originating in bankruptcy cases. *Texas v. Soileau (In re*

Soileau), 488 F.3d 302, 305 (5th Cir. 2007). With a *de novo* standard of review, this Court must decide an issue as if the court were the original trial court in the matter. *See Razavi v. Comm'r of Internal Revenue,* 74 F.3d 125, 127 (6th Cir. 1996).

SUMMARY OF THE ARGUMENT

Bankruptcy courts possess constitutional and statutory authority to approve non-consensual third-party releases held against non-debtor affiliates as part of a chapter 11 plan of reorganization when the facts surrounding the proceeding present "exceptional circumstances." A bankruptcy court's jurisdiction is broad and extends to third-party disputes that affect the estate and impact a debtor's restructuring options. *See Celotex Corp v. Edwards,* 514 U.S. 300, 307-09 (1995). Bankruptcy courts have constitutional authority to approve such releases under *Stern v Marshall,* 564 U.S. 462 (2011), as chapter 11 confirmation plans resolve matters that are "integral" to the restructuring of the debtor-creditor relationship. *See also In re Millennium Lab Holdings II, LLC,* 9455 F.3d at 137 (3d Cir. 2019).

The Bankruptcy Code (the "Code") lays out three provisions that provide statutory authority to bankruptcy courts to issue non-consenting third-party releases, Sections 1123(b)(6), 1123(a)(5) and 105(a). Section 1123(b)(6) states that "a plan may … include any other appropriate provision not inconsistent with the applicable provisions of this title." 11 U.S.C. § 1123(b)(6). Section 1123(a)(5) further requires that a plan must "provide adequate means for the plan's implementation." 11 U.S.C. § 1123(a)(5). This section effectively requires bankruptcy courts to include provisions like a release if it determines it is an adequate means for that plan's implementation. *Id.* Further, bankruptcy courts are authorized by Section 105(a) to "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). This Section embodies the principle that Bankruptcy courts are "courts of equity, with broad authority to modify creditor-debtor relationships." *United States v. Energy Resources Co.,* 495 U.S. 545, 549, 109 L. Ed. 2d 580, 110 S. Ct. 2139 (1990). Lastly, although authorized, non-consensual third-party releases can "lend this device to abuse." *See generally Metromedia Fiber Network,* 416 F.3d 136. Thus, bankruptcy courts must engage in a holistic approach analysis surrounding the facts of the proceeding. *See In re Dow Corning Corp.,* 280 F.3d 648, 656-58 (6th Cir. 2003). When the facts present an exceptional circumstance, bankruptcy courts are within their authority to approve non-consenting third-party releases.

Two sections—1141(d) and 1192—control debt discharges for corporate Subchapter V debtors. 11 U.S.C. §§ 1141(d), 1192. The applicable section is dictated by whether a plan is consensual or non-consensual. Section 1141(d) controls when a confirmed plan is consensual. In contrast, a non-consensual plan, like the plan in this case, is governed by § 1192. Section 1192 of the Bankruptcy Code clearly establishes that 523(a) exceptions to discharge are inapplicable to corporate debtors proceeding under Subchapter V of Chapter 11. Four primary reasons guide this conclusion. First, the relevant language and statutory construction regarding the interplay between §§ 523(a) and 1192 make clear that corporate debtors are exempt from § 523(a) exceptions from discharge. Second, the legislative history does not suggest a congressional intent that corporate debtors proceeding under Chapter V. See H.R. Rep. No. 116-171. Third, chapter 12 of the Bankruptcy Code, while sharing similar language to § 1192, cannot guide a reading of § 1192. Lastly, equitable considerations do not require § 523(a) be applied to Subchapter V corporate debtors.

As such, the Thirteenth Circuit's holdings that (1) bankruptcy courts are authorized to approve non-consensual releases of third-party direct claims against non-debtor affiliates under chapter 11 plan reorganizations and (2) that corporate debtors proceeding under Subchapter V are not barred from a complete discharge under § 523(a) should be affirmed.

ARGUMENT

This Court should AFFIRM the Thirteenth Circuit Court of Appeal's decision and hold that (1) bankruptcy courts have the authority to approve non-consensual third-party releases held against non-debtor affiliates as part of a Chapter 11 plan of reorganization and (2) exceptions to discharge listed under § 523(a) of the Bankruptcy Code do not apply to corporate debtors proceeding under Subchapter V.

I. BANKRUPTCY COURTS HAVE AUTHORITY TO APPROVE AND ENFORCE THIRD PARTY NON-CONSENSUAL RELEASES HELD AGAINST NON-DEBTOR AFFILIATES AS PART OF A CHAPTER 11 PLAN OF REORGANIZATION.

Bankruptcy courts have constitutional and statutory authority to approve non-consensual third-party releases held against non-debtor affiliates as part of a chapter 11 plan of reorganization when the facts of a proceeding present exceptional circumstances. Whether a bankruptcy court has the constitutional authority and jurisdiction to approve such releases is analyzed under the Supreme Court framework in *Stern v Marshall,* 564 U.S. 462 (2011). A bankruptcy court is within constitutional bounds when it resolves a matter that is integral to the restructuring of the debtor-creditor relationship. In other words, a court has the constitutional authority to approve a plan that includes non-consensual releases when it is exercising its "core" statutory authority and the releases are "integral" to the restructuring. *Id. See also In re Millennium Lab Holdings II, LLC,* 9455 F.3d at 137 (3d Cir. 2019). The authority of a bankruptcy court is not limited to adjudicating matters arising from the claims reconciliation and allowance process, but also applies to issues stemming from the bankruptcy itself. *Id.* Lastly, bankruptcy courts must focus on the content of the proceeding. *Stern,* 564 U.S. at 19.

The Bankruptcy Code does not expressly include statutory authority for non-consensual third-party releases outside of the asbestos context. *See* 11 U.S.C. § 524(e). However, bankruptcy courts are authorized to approve such releases from other sections, namely Sections 1123(b)(6), 1123(a)(5) and 105(a). Section 1123(b)(6) states that "a plan may … include *any* other appropriate provision not inconsistent with the applicable provisions of this title." 11 U.S.C. § 1123(b)(6) (emphasis added). Section 1123(a)(5) requires that a plan must "provide adequate means for the plan's implementation." 11 U.S.C. § 1123(a)(5). This section effectively requires bankruptcy courts to include provisions like a non-consensual third-party release if it determines, under the facts, it is an adequate means for that plan's implementation. Lastly, bankruptcy courts are authorized by Section 105(a) to "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). This section embodies the principle that bankruptcy courts are "courts of equity, with broad authority to modify creditor-debtor relationships." *United States v. Energy Resources Co.,* 495 U.S. 545, 549 (1990).

Lastly, the facts surrounding a proceeding must illustrate a situation that properly meets the "exceptional circumstances" requirement. *In re Dow Corning Corp.,* 280 F.3d 648, 656-58 (6th Cir. 2003). The governing standard applied to exceptional circumstances is split among the circuits. *Id.* In the case *Deutsche Bank A.G. v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.)*, 416 F.3d 136, 141 (2d Cir. 2005), for example, the Second Circuit permits a non-consensual third party release if it is "important" to the reorganization, and others set out the seven-factor balancing test in *In re Dow Corning Corp.* 280 F.3d at 658. While bankruptcy courts are authorized to approve such releases, they must be issued lightly, otherwise, it may "lend this device to abuse." *Metromedia Fiber Network,* 416 F.3d. Thus, the exceptional circumstances requirement must be measured through intensive fact-finding by a bankruptcy court – looking at the circumstances and/or factors holistically. *Id.*

There is a circuit split as to whether a bankruptcy court has the authority to approve non-consensual third-party releases. A majority of our Nation's circuits permit third-party releases in a chapter 11 reorganization plan under appropriate and narrow circumstances. *See, e.g., Deutsche Bank A.G. v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.)*, 416 F.3d 136, 141 (2d Cir. 2005); *In re Millennium Lab Holdings II, LLC,* 945 F.3d at 133, 40; *In re Dow Corning Corp.,* 280 F.3d 648, 656-58 (6th Cir. 2003); *SE Prop. Holdings, LLC v. Seaside Eng'g & Surveying (In re Seaside Eng'g & Surveying),* 780 F.3d 1070, 1076-79 (11th Cir. 2015). On the other hand, a minority of circuits disallow such releases, namely the Fifth, Ninth and Tenth Circuits. *See Bank of N.Y. Trust Co. v. Off Unsecured Creditors' Comm. (In re Pac. Lumber Co.*), 584 F.3d 229, 252 (5th Cir. 2009); *Resorts Int'l, Inc. v. Lowenschuss (In re Lowenschuss)*, 67 F.3d 1394, 1401-02 (9th Cir. 1995); *Landsing Diversified Props. II v. First Nat'l Bank and Trust Co. of Tulsa (In re W. Real Estate Fund, Inc.)*, 922 F.2d 592, 600 (10th Cir. 1990).

Thus, because bankruptcy courts have both constitutional and statutory authority to approve non-consensual third-party releases as part of a chapter 11 plan of reorganization under exceptional circumstances, the Respondent respectfully requests the Court join the majority of our Nation's circuit courts and AFFIRM the Thirteenth Circuit Court's holding.

A. Bankruptcy courts have constitutional authority to approve a plan that includes non-consensual third-party releases when the provisions are integral to restructuring the debtor-creditor relationship.

Jurisdiction for federal bankruptcy is broad and extends to third-party disputes that affect the estate and impact a debtor's restructuring options. *See Celotex Corp v. Edwards,* 514 U.S. 300, 307-09 (1995). Further, bankruptcy courts have the constitutional authority to issue a final order confirming a plan with a non-consensual third-party release because such a confirmation order is not only a core matter, but is also a fundamental central aspect of a chapter 11 case of bankruptcy. *Stern v Marshall,* 564 U.S. 462(2011). In *Stern*, the Supreme Court outlined a framework to determine when certain bankruptcy matters pass constitutional muster. *Id.* at 19. The main issue before the Supreme Court was whether the bankruptcy court had the authority to adjudicate a counterclaim. *Id.* The Court held that bankruptcy courts may hear and enter final judgments in what the Bankruptcy Code frames as "core proceedings." *Id.*

First, the *Stern* Court cautioned that bankruptcy courts may still violate Article III even when acting within their statutory authority in "core" matters. *Id.* Second, a bankruptcy court is within constitutional bounds when it resolves a matter that is "integral to the restructuring of the debtor-creditor relationship." *Id*. at 497. The Court further ruled that "the question [governing the extent to which a bankruptcy court may constitutionally exercise power] is whether the action at issue stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process." *Id.* at 499. Lastly, *Stern* held that courts need to focus not on the category of the "core" proceeding, but rather on the *content of the proceeding. Id.* at 497 (emphasis added). *See also Allied Title Lending, LLC v. Taylor,* 420 F. Supp. 3d 436, 448 (E.D. Va. 2019) (quoting *Stern,* 564 U.S. at 499).

Following *Stern*, the Third Circuit in *In re Millennium Lab Holdings II, LLC*, held that when a bankruptcy court concludes that non-consensual third party releases are "integral" to the restructuring (in a well-reasoned and well-supported manner by the record), non-consensual third party releases may be approved. 945 F.3d at 133-40. The Third Circuit noted that one of the key takeaways from the *Stern* decision was that "a bankruptcy court is within constitutional bounds when it resolves a matter that is integral to the restructuring of the debtor-creditor relationship." *Id*. The court was not persuaded by the argument that a bankruptcy court's jurisdiction after *Stern* depends on some nexus to the claims allowance process, specifically, that:

> The argument fails primarily because it is not faithful to what *Stern* actually says. Had the *Stern* Court meant its 'integral to the restructuring' language to be limited to the claims-allowance process, it would not have said that a bankruptcy court may decide a matter when 'a creditor has filed a claim, because *then*' – adding its own emphasis to that word – 'the ensuing preference action by the trustee becomes integral to the restructuring of the debtor-creditor relationship. That phrasing makes clear that the reason bankruptcy courts may adjudicate matters arising in the claims-allowance process is because those matters are integral to the restructuring of the debtor-creditor relations, not the other way around.

Id. (*citing Stern,* 564 U.S. at 497). Notably, the *Millennium Lab Holdings* court addressed a "floodgate" argument raised by the non-consenting third party. Specifically, the argument that if bankruptcy courts are allowed to approve releases merely because they appear in a plan, bankruptcy courts' powers would be limitless, and that an "integral to the restructuring" rule would mean that bankruptcy courts approve releases simply because reorganization financers demand them. *Id.* The court reasoned that this argument is "not without force." *Id.* Thus, while non-consensual third-party releases are permitted under a well-reasoned and well-supported record, bankruptcy courts must nonetheless exercise the utmost caution and diligence when authorizing them. *Id.* at 25.

Applying the principles of *Stern* to the present case illustrates that the Bankruptcy Court had constitutional authority to confirm the Plan containing the release provisions. First, the final confirmation order by the Bankruptcy Court is not only a core matter, but a key aspect of this chapter 11 case's adjustment of the debtor creditor relationship. *See In re Millennium Lab Holdings II, LLC,* 9455 F.3d at 137. In other words, the approval of non-consensual third-party releases stems directly from Penny Lane Industries' chapter 11 bankruptcy itself. Absent the $100 million to be paid by Strawberry Fields, Penny Lane Industries no chapter 11 plan would have been feasible. As a result, because the bankruptcy court resolved a matter that is integral to the restructuring of the parties' debtor-creditor relationship, and the content of the proceeding supports it, the bankruptcy court is authorized by the *Stern* court to approve the non-consensual third-party release. Lastly, the Petitioner's constitutional due process challenges rest on her incorrect claim that the bankruptcy court adjudicated her claim against Strawberry Fields. However, the Bankruptcy Court made no ruling on the merits of her claim, and instead merely approved the global settlement that channeled the claims and funds to a creditors' trust. *See generally MacArthur Co. v. Johns-Maville Corp.,* 837 F.2d 89, 91-92 (2d Cir. 1988).

B. Bankruptcy Code Sections 1123(b)(6), 1123(a)(5), and 105(a) provide the statutory authority to approve non-consensual third-party releases.

In addition to constitutional authority, bankruptcy courts have statutory authority under the Bankruptcy Code. The only explicit authorization in the Code for non-debtor releases is in 11 U.S.C. § 524(g), which authorizes releases in asbestos cases when specified conditions are satisfied, including the creation of a trust to satisfy future claims. *See generally Gillman v. Continental Airlines (In re Continental Airlines)*, 203 F.3d 203 (3d Cir. 2000). However, statutory authority is provided in three additional sections. First, Section 1123(b)(6) states that "a plan may include any other appropriate provision not inconsistent with the applicable provisions of this title." 11 U.S.C. § 1123(b)(6). Thus, a plan may include any other appropriate provision, however, it must not be inconsistent with other Bankruptcy Code provisions. Bankruptcy courts, as a forum for resolving large and complex mass litigations, have substantial power to reorder creditor-debtor relations needed to achieve a successful reorganization. *In re Dow Corning Corp.,* 280 F.3d 648, 653. Similarly, when a plan provides for the full payment of all claims, enjoining claims against a non-debtor so as to not defeat reorganization is consistent with the bankruptcy court's primary function. *Id.* Thus, such a non-consensual third-party release is "not inconsistent" with the Code, and is authorized by section 1123(b)(6). *Id.*

Additional authority comes from section 1123(a)(5). This section is a requirement that a plan must "provide adequate means for the plan's implementation." 11 U.S.C. § 1123(a)(5). This provision not only authorizes, but further requires the inclusion of provisions such as a non-consensual third-party release or channeling injunctions when deemed necessary to secure the implementation of a plan. The third section is Section 105(a), which authorizes bankruptcy courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The Bankruptcy Code does not expressly prohibit or authorize a bankruptcy court to enjoin a non-consenting creditor's claims against a non-debtor to facilitate a reorganization plan. *In re Continental Airlines*, 203 F.3d 203, 211 (3d Cir. 2000). However, bankruptcy courts are "courts of equity, have broad authority to modify creditor-debtor relationships." *United States v. Energy Resources Co.,* 495 U.S. 545, 549 (1990). Consistent with this principle, Section 105(a) of the Bankruptcy Code grants bankruptcy courts this broad authority. *Id.; See generally Airadigm*, 519 F.3d 640, 656 (7th Cir. 2008) ("A bankruptcy court applies the principles of and rules of equity jurisprudence, and its equitable powers are traditionally broad. Section 105(a) codifies this understanding, and a bankruptcy court is able to exercise these broad equitable powers within the plans of organizations themselves.") Further, the provision has been construed liberally to enjoin suits that might impede the reorganization process. *See Mansville Corp. v. Equity Security Holders Committee (In re Johns-Maville Corp.)* 801 F.2d 60, 64 (2d Cir. 1986).

1. Section 524(e) of the Bankruptcy Code does not bar bankruptcy courts from releasing non-debtors from liability to a creditor without the creditor's consent.

Section 524(e) provides that the "discharge of a debt of the debtor does not affect the liability of another entity on, or the property of any other entity for, such debt." 11 U.S.C. § 524(e). The minority of circuits that prohibit non-consensual third-party releases use this Section to bar them. However, the natural reading of this provision does not foreclose a third-party release from a creditor's claims. *In re Specialty Equipment, Co.,* 3 F.3d 1043, 1047 (7th Cir. 1993). Section 524(e) is a savings clause; it limits the operation of other parts of the bankruptcy code and preserves rights that might otherwise be construed as lost after the reorganization. *Id.* Thus, for example, because of § 524, a creditor can still seek to collect a debt from a co-debtor who did not participate in the reorganization – even if that debt was discharged as to the debtor in the plan. *Compare* 11 U.S.C. § 524(a)(2); *with* 11 U.S.C. § 524(e).

In any event, Section 524(e) does not purport to limit the bankruptcy court's powers to release a non-debtor from a creditor's claims. If Congress meant to include such a limit, it would have used the mandatory terms "shall" or "will" rather than the definitional term "does." And it would have omitted the prepositional phrase "on, or . . . for such debt," ensuring that the "discharge of a debt of the debtor *shall* not affect the liability of another entity" – whether related to a debt or not. Additionally, where Congress has limited the powers of the bankruptcy court, it has done so clearly. For the reasons set out in *Specialty Equipment,* Section 524(e) does not bar a non-consensual third-party release. *Id.* Section 524(e)'s legislative history further supports this interpretation. The House Report specifically states, "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. No. 103-834 (1994).

Statutory authority to approve non-consensual third-party releases is provided by the Bankruptcy Code to bankruptcy courts in Sections 1123(b)(6), 1123(a)(5), and 105(a). Chapter 11 was designed to apply to a spectrum of businesses, and address vast business and financial issues an organization might face. It does not "shoehorn" debtors into a single rigid restructuring model, and instead leaves the plan design up to the debtor and its creditors. This principle is illustrated by the Code in Sections 1123(b)(6)(, 1123(a)(5), and 105(a). The Petitioner did not cite a provision in the code expressly prohibiting non-consensual third party releases. Section 524(e) is a savings clause clarifying that the debtor's discharge does not by itself discharge the claims of *others*, and it nonetheless does not prohibit a bankruptcy court's authority to issue injunctions in connection with a plan. This much was clarified by the House Report. H.R. Rep. No. 103-834. In light of these provisions, the "residual authority" of bankruptcy courts provides authority to release third parties from liability to participating creditors if the release is "appropriate" and not "inconsistent" with any provision of the Code.

C. Bankruptcy courts have the authority to approve non-consensual third-party releases when the facts surrounding the reorganization plan present "exceptional circumstances."

The circuits have cautioned that despite constitutional and statutory authority, there must truly be "unusual" or "rare" circumstances surrounding a case. *In re Dow Corning Corp,* 280 F.3d at 658. The governing standard applied to exceptional circumstances is split among the circuits. *Id.* In the case *Deutsche Bank*, for example, the circuit authorizes non-consensual third-party releases if it is "important" to the reorganization, and others have utilized the in *In Re Downing* seven-factor test to determine when exceptional circumstances exist:

> (1) There is an identity of interest between the debtor and the third party, usually an indemnity relationship, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete the assets of the estate; (2) The non-debtor has contributed substantial assets to the reorganization; (3) The injunction is essential to the reorganization, namely, the reorganization hinges on the debtor being free from indirect suits against parties who would have indemnity or contribution claim against the debtor; (4) The impacted class, or classes, has overwhelmingly voted to accept the plan; (5) The plan provides a mechanism to pay for all, or substantially all of the class or classes affected by the injunction; (6) The plan provides an opportunity for those claimants who choose not to settle to recover in full and; (7) The bankruptcy court made a record of specific factual findings that support its conclusions.

In re Dow Corning Corp, 280 F.3d at 658. The *In re Dow Corning* have been adopted in the Fourth, Sixth and Eleventh Circuits. *See In re Seaside,* 780 F.3d 1070 (11th Cir. 2015)*;* *Behrmann v. Nat'l Heritage Found., Inc.,* 663 F.3d 704 (4th Cir. 2011).

In the case *In re Seaside*, the court cautioned that, although such bar orders are permissible, they must not be issued lightly. *In re Seaside,* 780 F.3d 1070; *see also Deutsche Bank AG,* 416 F.3d at 142 ("No case has tolerated non-debtor releases absent the finding of circumstances that may be characterized as unique."); *Dow Corning,* 280 F.3d at 657-58 ("[S]uch an injunction is a dramatic measure to be used cautiously.") *In re Seaside* noted that such releases should be reserved for those unusual cases in which such releases are necessary to the success of the reorganizations. *Id.* A non-consensual third-party release must further be fair and equitable under all of the facts. *Id.* at 1079. Thus, the *Seaside* court held that to determine whether a release is fair and equitable, the factors in *In re Dow Corning* should be applied flexibly, and that bankruptcy courts should have the discretion to decide which of the factors are relevant in each case. *Id.* Similarly, in *Behrmann,* the Fourth Circuit found the *Dow Corning* factors instructive and so commended them to bankruptcy courts. *Id.* at 704. However, the court also cautioned that a determination that a particular release satisfies the *In re Dow Corning* factors is meaningless in the absence of specific factual findings. *Id.* Lastly, in *In re Metromedia*

Fiber Network Inc., 416 F.3d 136 (2d. Cir. 2006), the court noted that "permitting the contribution itself to justify the release would lend this device to abuse." Thus, the factors must be considered holistically, but contribution alone is not enough for a bankruptcy court to grant a non-consensual third-party release. *Id.*

1. The facts and circumstances surrounding Penny Lane Industries' Chapter 11 restructuring plan meets the "exceptional circumstances" requirement.

Applying *Dow Corning's* seven-factor test illustrates that the facts surrounding Penny Lane Industries' chapter 11 bankruptcy proceeding are truly exceptional. First, there must be "an identity of interest between the debtor and the third party, usually an indemnity relationship, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete the assets of the estate." *In re Dow Corning*, 280 F.3d at 658. Such a relationship exists here. Strawberry Fields is the corporate parent of Penny Lane Industries. A suit against Strawberry Fields would be, in essence, a suit against Penny Lane Industries because Strawberry Fields is providing a significant amount of money ($100 million) to satisfy the claims arising out of the litigation. Penny Lane Industries and Strawberry Fields would likely deplete its assets continuing to defend against the voluminous litigation from the environmental disaster. Thus, this factor favors inclusion of the non-consensual third-party release in the plan. Second, the non-debtor must have contributed substantial assets. *In re Dow Corning*, 280 F.3d at 658. Strawberry Fields made a contribution of $100 million, which was substantially greater than any likely recovery from Strawberry Fields. Further, the Bankruptcy Court for the District of Moot found that this distribution under the plan is substantially greater than what the creditors would receive if the Debtor was liquidated under chapter 7. *Id.* Thus, the Strawberry Fields $100 million contribution satisfies this factor and is favorable to a grant of the non-consensual third-party release.

Third, the injunction must be essential to the reorganization, namely, the reorganization hinges on the debtor being free from indirect suits against parties who would have indemnity or contribution claims against the debtor. *In re Dow Corning*, 280 F.3d at 658. The bankruptcy court found that the release was essential to this chapter 11 reorganization plan because of the highly unusual and complex nature of this case. Without the confirmation order, it would be doubtful that Penny Lane Industries would be able to defend against the "variable tsunami of litigation" related to the ground water supply contamination. It is because of this chapter 11 proceeding and plan, specifically the releases therein, that Penny Lane Industries is able to satisfy claims and continue operations. Without such provisions, it would likely result in another closed-down factory in the already economically challenged Blackbird community. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984) ("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").

Fourth, the impacted class or classes must overwhelmingly vote to accept the plan. *In re Dow Corning*, 280 F.3d at 658. 95 percent of the creditors voted in favor of the Plan's confirmation and this factor weighs heavily in favor of the releases. Fifth, the plan must provide a mechanism to pay for all or substantially all of the class(es) affected by the injunction. No objection has been filed to the Petitioner's claim of $1 million by the Respondent. The second objector, Norwegian Wood Bank (the "Bank") is owed approximately $3.5 million. The Plan provides the Bank with a claim of $1.5 million, and the other $2 million will be paid in full over a period of five years. Thus, the Plan provides a mechanism to pay for classes affected by the injunction. Sixth, the plan must provide an opportunity for those claimants who choose not to settle to recover in full. 280 F.3d at 658. The Bankruptcy Court for the District of Moot did not analyze this factor. However, and as noted by the previous factor, the Plan allows a mechanism for both the Petitioner and the Bank to recover their claims; Thus, recovering in full.

Seventh, the record must have made specific factual findings that support its conclusions. *In re Dow Corning*, 280 F.3d at 658. The Bankruptcy Court found that this case presents extraordinary circumstances due to its specific factual findings. Specifically, it analyzed the (1) highly unusual and complex nature of this case, (2) the significant monetary contribution being made by Strawberry Fields which resulted in a meaningful distribution to creditors, and (3) the overwhelming 95 percent creditor support for the Plan. The Court found that "there existed no other reasonably conceivable means to achieve the result accomplished by the Plan," and therefore, the settlements (including the releases) were fair and reasonable.

Bankruptcy courts may face a situation, such as this one, where complex mass tort litigation is resolved more efficiently having a tool like the non-consensual third-party release and injunction, without the risk, delay and expense of pursuing litigation among multiple defendants. The Petitioner and all other tort claimants are receiving more under the Plan than they would otherwise be able to recover by prosecuting their claims against the Debtor and Strawberry Fields to conclusion. Non-consensual third-party releases, under extraordinary circumstances such as the one before the Court, can be useful vehicles for efficient chapter 11 resolution and preservation of economic entities in local communities like Blackbird.

In sum, bankruptcy courts have constitutional and statutory 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. Whether a bankruptcy court has constitutional authority rests on the standard articulated in *Stern v Marshall.* 564 U.S. 462 (2011). Bankruptcy courts approving non-consensual third-party releases meet the *Stern* standard because in doing so, it resolves a matter that is integral to the restructuring of the debtor-creditor relationship. *Id.* Additionally, bankruptcy courts possess statutory authority under Sections 1123(b)(6), 1123(a)(5) and 105(a) of the Bankruptcy Code which, together, grant broad authority to approve such releases in a chapter 11 plan of reorganization. Lastly, although permissible, bankruptcy courts must exercise caution and approve non-consensual third-party releases under exceptional circumstances.

II. SECTION 523(a) EXCEPTIONS TO DISCHARGE DO NOT APPLY TO CORPORATE DEBTORS PROCEEDING UNDER SUBCHAPTER V OF BANKRUPTCY CODE CHAPTER 11.

Corporate debtors proceeding under Subchapter V of Chapter 11 of the Bankruptcy Code can receive a complete discharge under a non-consensual plan. Section 1192 of the Bankruptcy Code establishes that section 523(a) exceptions to discharge do not apply to corporate debtors, like Respondent. Individual debtors and entity debtors, like corporations, proceeding under Subchapter V are distinct from one another; in the context of debt discharge, the treatment of individuals differs from the treatment of corporations. As such § 523 provisions only apply to individual debtors and not entities (such as corporate debtors) even when filed under Subchapter V of Chapter 11. Moreover, allowing debt discharge of a corporate debtor proceeding under Subchapter V is consistent with the Code's relevant language, history, intent, and rationale. Furthermore, Chapter 12 of the Code does not guide a reading of § 1192, and equitable concerns do not prevent Subchapter V corporate debtors from receiving complete debt discharges. In sum, corporate debtors proceeding under Subchapter V of Chapter 11 of the Bankruptcy Code cannot be made defendants in § 523 dischargeability actions. As such, Respondent respectfully requests the Court affirm the Thirteenth Circuit's decision and hold that § 523 exceptions to debt discharge do not apply to Respondent and, therefore, entitling Respondent to a complete discharge.

A. The Bankruptcy Code's Language Make Clear that Corporate Debtors Like Respondent May Receive a Total Discharge Under Subchapter V of Chapter 11.

Where a statute's language is plain, "the sole function of the courts is to enforce it according to its terms." *B.P. America Production Co. v. Burton*, 549 U.S. 84, 91 (2006). The relevant statutory language and broader Chapter 11 scheme establish that corporate debtors proceeding under Subchapter V cannot be made defendants in § 523 dischargeability actions. The interplay between §§ 523(a) and 1192, and the statutes' respective language clearly establish that § 523(a) discharge exceptions are inapplicable to corporate debtors opting to reorganize under Subchapter V.

Section 1192(2) states: "[i]f a *debtor* is confirmed under § 1191(b) . . . the court shall grant a *debtor* a discharge of all debts provided in § 1141(d)(1)(A) and all other debts allowed under § 503 and provided in the plan except any debt . . . (2) *of the kind* specified in section 523(a) of this title." (emphasis added). "Debtor" is defined in the Code as a "*person* or municipality concerning which a case under [the Bankruptcy Code] is commenced." 11 U.S.C. § 101(13) (emphasis added). Relatedly, "person" is defined in the Code as including "individual[s], partnership[s], and corporation[s]." 11 U.S.C.§ 101(14). As such, the term "debtor" includes corporations and, therefore, § 1192 can grant debt discharges to Subchapter V corporate debtors.

Furthermore, § 523(a), which excludes certain debts from discharge, does not purport to apply to entity debtors like Respondent. In fact, § 523(a) exceptions to discharge are wholly inapplicable to Subchapter V debtors. § 523(a)'s preamble is clear and unambiguous: "[a] discharge under section . . . 1192 . . . of this title does not discharge an *individual* debtor from any debt [outlined in § 523(a)(1)-(19)]." 11 U.S.C. § 523(a). In this regard, § 523(a)'s explicit reference to § 1192 in tandem with its use of the term "individual" demonstrates § 523(a)'s specific applicability to individuals in subchapter V reorganizations. As used in the Code, "individual debtor" cannot refer to a single (read: individual) corporation; rather, "individual" regards a *natural* person (i.e., a human being) as distinct from a corporation. 11 U.S.C. § 101(14) (defining a "person" to include "individual[s] . . . *and* corporation[s]." (emphasis added)); see also *Maritime Asbestosis Legal Clinic v. LTV Steel Co., Inc. (In re Chateaugay Corp.*), 920 F.2d 183, 184-85 (2d Cir. 1990) ("Congress used the word 'individual' [in Chapter 11] rathern than "person" to mean natural person," thereby excluding corporations from the term "individual."). Additionally, if "individual" could be used to refer to an "individual corporate debtor," then the statute's use of "individual" would be unnecessary—instead, § 523 would only need to say that discharge does not relieve "a debtor" from obligations set forth in § 523. *See Fantigrossi v. Am. Eagle Airlines, Inc.*, No. 13 CIV. 2248, 2017 U.S. Dist. LEXIS 28229 (W.D.N.Y. Feb. 28, 2017). A "cardinal principle" of statutory construction requires the courts "give effect, if possible, to every clause and word of a statute," *Williams v. Taylor,* 529 U.S. 362, 404 (2000), and courts do not adopt interpretations that render a particular word or phrasing superfluous. *Loughrin v. United States*, 573 U.S. 351, 358 (2014). As such, the use of the phrase "an individual" was a limitation on § 523's reach—that reach being in application to human, but not corporate, debtors.

Section 1192, likewise, lacks any provision establishing § 523(a)'s applicability to non-individual debtors. Although § 1192(2) incorporates "any debt . . . (2) of the *kind* specified in section 523(a)," this incorporation necessarily accounts for both the type of debts listed in §§ 523(a)(1)-(19) *and* the character of the debtor. 11 U.S.C. § 1192 (emphasis added). The type of debt and the character of the debtor are necessarily inseparable in the context of §§ 523(a) and 1192. In addition, "kind" is defined as "a group *united by common traits* or interests." Merriam-Webster Dictionary (online ed.); not only can those common traits include the type of entity owing the debt but, insofar as "kind" regards unity through common traits, §§ 523(a)(1)-(19) share the common trait of being debts possessed by an individual. In other words, the "kind" of debt refers to "the kind of debt *possessed by an individual*."

The Supreme Court established that Congress does not make such a fundamental change in settled law without clearly signaling that intention and, thus, "will not read the Bankruptcy Code to erode past . . . practice absent a *clear indication* that Congress intended such a departure." *Penn Pub Welfare Dep't. v. Davenport*, 495 U.S. 552, 563 (1990); *see also Whitman v. Am. Trucking Ass'ns, Inc.*, 531 U.S. 457, 468 (2001) ("Congress . . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions–it does not . . . hide elephants in mouseholds."). If § 1192(2)'s language is not considered clear, then it is, at best, ambiguous. Even if that is the case, and § 1192(2) is contradicted by its cross-reference to § 523(a), that is insufficient to rebut the canons of construction outlined by *Davenport* and *Whitman*.

Further supporting the inseparability of debt type and debtor character is that multiple § 523(a) provisions can only apply to humans. See, e.g., § 523(a)(5). For example, § 523(a)(5) regards a debtor's domestic support obligation(s), and § 523(a)(15) regards a debtor's marital property settlements. If § 1192 is to be understood to extend § 523(a) exceptions to corporate debtors, then § 1192 will be read as extending provisions that are logically applicable solely to humans to artificial entities like corporations. Such applicability is impossible–an entity debtor like Respondent cannot have a spouse, let alone experience marital divorce.

In order to give § 523(a)'s reference to § 1192 and its reference to "individual" debtors effect, the statute must be understood as saying that the exceptions listed, including discharges under § 1192, only apply to individual debtors. *See Catt v. RTECH Fabrications, LLC (In re*

RTECH Fabrications, LLC) 635, B.R. 559, 565 (Bankr. D. Idaho 2021). An interpretation of § 1192 extending § 523(a) discharge exceptions to corporate debtors expands the list of § 523(a) debts beyond what its text permits. Section 1192(2)'s language does not exempt any debts from discharge that § 523(a) does not already exempt–523(a) exceptions apply to individual debtors but are inapplicable to corporate debtors, like Respondent. See, also, *Avion Funding, LLC. v. GFS Indus., LLC (In re GFS Indus., LLC)*, 2022 WL 16858009 (Bankr. W.D. Tex. Nov. 10, 2022) (explaining that the interplay between §§ 1192(2) and 523(a) establishes that only individuals can be subject to § 523(a) in the Subchapter V context). Congress elected not to include language in § 1192(2) clarifying § 523(a)'s application as extending to both individual and corporate debtors under Subchapter V. Section 1192(2) could have easily done so by refining § 1192(2)'s reference to state something along the lines of "523(a)(1)-(19)" or "523(a)(1)-(3), (4)" (to reflect the specific subsections of 523 applicable to corporate debtors). *See In re RTECH Fabrications, LLC*, 635 B.R. 559, 564-65 ("[I]f Congress wanted to specifically reference the types of debts described in each subsection of § 523(a), Congress could have easily done so by further refining the reference found in 1192(2) to "523(a)(1)-(19)."); *see also Gaske v. Satellite Restaurants, Inc. Crabcake Factory USA (In re Satellite Restaurants Inc. Crabcake Factory)*, 626 B.R. 871, 878 (Bankr. D. Md. 2021) ("If the drafters of the Small Business Reorganization Act of 2019 (SBRA) had intended to expand Section 523(a) to non-individual debtors, which would have been a dramatic change in existing chapter 11 law, [then] the House Report most certainly would have addressed it.")). However, no legislative history supports such a Congressional intent to extend § 523(a) to corporate debtors. In fact, the SBRA suggests no changes of the sort were intended. H.R. Rep. No. 116-171, at p. 8 (2019).

Notably, Congress has deviated from complete corporate discharge in chapter 11 before. *See* 11 U.S.C. § 1141(d)(6). Under § 1141(d)(6) of the code, "the confirmation of a plan does not discharge *a debtor that is a corporation* from any debt (A) *of the kind* specified in paragraph 2(A) or 2(B) of section 523(a) that is owed to a governmental unit . . ." (emphasis added). This language clarifies that, under § 1141(d)(6), §§ 523(a)(2)(A), (B) do extend to corporate debtors. This is demonstrative of Congress's knowing how to distinguish dischargeability based on the type of debtor. However, this distinction was absent from § 1192(2), therefore indicating a Congressional intent *not* to expand § 523(a) to Subchapter V corporate debtors. Section 1141(d)(6) took eight years to be enacted due to the level of controversy it garnered. *Cantwell-Cleary Co., Inc. v. Cleary Packaging* (*In re Cleary Packaging, LLC*), 630 B.R. 466 (Bankr. D. Md. 2021), *rev'd* 36, F.4th 509 (4th Cir. 2022) at 474. "[T]he suggestion that Congress incorporated 19 new exceptions to discharge for small corporations in a bill that was introduced in April 2019, and signed into law by the President in August 2019, seems not only improbable, but also contradicts years of bankruptcy law and policy." *Id*. at 475. As such, § 523(a)'s language is dispositive as to which debtors § 1192(2) exempts from discharge: individual debtors *only*.

B. The Code's History and Congressional Intent Point to Section 523(a)'s Inapplicability to Subchapter V Corporate Debtors.

A holding that corporate debtors availing themselves of the reorganization standards and provisions available to small businesses under subchapter V are not subject to § 523(a) discharge exceptions is consistent with the history and intent behind chapter 11 reorganizations. Congress chose to grant corporate debtors a complete discharge under chapter 11 when it established the Bankruptcy Code. In doing so, Congress rejected prior law because viable corporations cannot restructure when significant non-dischargeable debts remain after confirmation (at which point the corporation would emerge from bankruptcy only to immediately face financial onslaught, thereby giving the debtor no opportunity to recover). *Howard Delivers Serv., Inc. v. Zurich Am. Ins. Co.*, 547 U.S. 651, 655 (2006). The Code's goal of providing debtors with a "fresh start" gives rise to a strong presumption against exceptions to discharge; thus, discharge exceptions must be strictly construed to give the maximum effect to the Code's rehabilitative policy. *See Kawaauhau v. Geiger*, 523 U.S. 57 62 (1998). Notably, most filers under Ch. 11 are entity debtors; thus explaining why Congress restricted § 523(a) to individual debtors. "In so doing, chapter 11 continues to promote relief to financially unfortunate, but honest, debtors."

Similarly, nothing in the legislative history of the Bankruptcy Code, chapter 11, or subchapter V implies a Congressional intent that discharge provisions for corporate subchapter V debtors differ from the discharge provisions applicable in the traditional chapter 11 "reorganization." The SBRA was passed to provide recourse for small business owners and individual debtors without the traditional costs and restraints, *In re GFS Indus., LLC*, 2022 Bankr. LEXIS 3199 at 7, and to "streamline the bankruptcy process by which small business debtors reorganize and rehabilitate their financial affairs" by establishing a quick and inexpensive process allowing debtors to confirm plans in a short period. H.R. Rep. No. 116-171 at p.1. "A corporate debtor's discharge in a chapter 11 case is generally all encompassing," and "[e]xceptions to discharge are *limited*." *Mallinckrodt PLC v. City of Rockford (In re Mallinckrodt PLC)*, Nos. 20-12522, 21-50428 (JTD), 2021 Bankr. LEXIS 1601, at *11 (Bankr. D. Del. June 16, 2021) (emphasis added); see 11 U.S.C. § 1141(d). Congress's only intended function in adding § 1192 to § 523(a)'s qualifying language was to clarify that § 523(a) exceptions to discharge extend to individual debtors *in Subchapter V case*s as well as traditional chapter 11 cases. Traditional chapter 11 cases often provide inadequate restructuring accommodations for small businesses and can be both costly and lengthy. H.R. Rep. No. 116-

171 at p.1. For these reasons, corporate debtors like Respondent will opt to proceed under subchapter V. As such, creditors should not be permitted to undermine subchapter V by using dischargeability to delay and, therefore, increase the costs of reorganization for a corporate debtor.

C. Chapter 12 of the Bankruptcy Code does Not Guide a Reading of § 1192.

Chapter 12 of the Code has unique considerations that are absent in chapter 11 cases and, therefore, is not directive of 1192's application to corporate debtors proceeding under Subchapter V. Section 523(a) exceptions to discharge in chapter 12 should not extend to Subchapter V. Although the language of §§ 1192(2) and § 1228(a)(2) are similar, there is a significant difference between how chapter 11 and chapter 12 corporate discharges work. *Cf.* § 1192(2) ("of the kind specified in section 523(a) of this title")) to § 1228(a)(2) ("of a kind specified in section 523(a) of this title, except as provided in section 1232(c)).

For one, compared to chapter 12, chapter 11's exceptions to discharge are more limited. Chapter 11 states that "a discharge under *this chapter* does not discharge a debtor *who is an individual* from any debt accepted from discharge under section 523 of this title," 11 U.S.C. § 1141(d)(2) (emphasis added), whereas c12 states that "the court shall grant *the debtor* a discharge of all debts . . . except any debt–(2) of a kind specified in section 523(a) of this title." 11 U.S.C. § 1228(a)(2) (emphasis added). Unlike chapter 11, chapter 12's incorporation of § 523 broadly discharges debtors, without distinguishing between corporate and individual debtors. In the chapter 12 context, it was appropriate to use § 523(a) to determine whether a corporate debtor's debt was subject to discharge since Congress used it as shorthand to define the scope of a chapter 12 discharge for *both* corporations and individuals. *Southwest Ga. Farm Credit, ACA v. Breezy Ridge Farms, Inc. (In re Breezy Ridge Farms, Inc.)*, 2009 WL 1514671, at *2 (Bankr.

M.D. Ga. 2009). Additionally, while its language is similar to § 1192(2), § 1228(a)(2)'s language was borrowed from chapter 13, see 11 U.S.C. § 1328, which does not apply to corporations. 11 U.S.C. §109(e); *see, e.g., NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 524 (1984) ("Congress is presumed to be aware of judicial interpretations of a statute."); *see also Dewsnup v. Timm*, 502 U.S. 410 (1992) (explaining that similar terms do not necessarily have identical meanings in different chapters of the Bankruptcy Code.). It is this broader application outlined in chapter 12's language and the derivative imputation of chapter 13 language that accounts for why 1228(a) does not incorprate the "individual" debtor limitation in § 523(a)'s preamble. See § 1141(d)(2) (individual debtors under chapter 11 who have debts mentioned in § 523(a) are excepted from discharge); see also § 1141(d)(3) (corporate debtors are excepted from discharge if their debts would be denied a discharge under 11 U.S.C. § 727(a)).

Moreover, chapter 12's coverage regarding corporations is narrowly limited to a specific subset of debtors–a class of family-owned farming corporations, 11 U.S.C. § 101(18), such that the practical distinction between family owner and corporation is slight. Because of this minimal distinction, both individuals and corporations addressed under chapter 12 are subject to the same discharge rules. *United States v. Hawker Beechcraft, Inc. (In re Hawker Beechcraft, Inc.)*, 515 B.R. 416, 430-31 (S.D.N.Y. 2014). In contrast, chapter 11 requires no such connection between the entity and specific individuals (or family members) as in the chapter 12 context. 11 U.S.C. §§ 101(18), (19A). *Cantwell-Cleary Co. v. Cleary Packaging, LLC (In re Cleary Packaging, LLC*), 36 F.4th 509, 517 (4th Cir. 2022). As such, chapter 12 regards specific considerations that chapter 11 cases cannot. Given these restrictions on exceptions to chapter 11 discharges, "it seems clear from that language that corporate debtors in chapter 11 are not subject to a complaint to determine dischargeability of debt under § 523(a)." *New Venture P'ship v. JRB Consol. (In re*

JRB Consol., Inc.), 188 B.R. 373, 374 (Bankr. W.D. Tex. 1995). In short, chapter 12's subjecting of corporate debtors to § 523 exceptions to discharge need not extend to Subchapter V. Despite proceeding differently than traditional Chapter 11 cases, Subchapter V cases remain under Chapter 11; thus, where corporate debtors under Chapter 11 are not subject to § 523(a) exceptions from discharge, the same can be said for corporate debtors proceeding under Subchapter V–a subsection of the broader Chapter 11.

D. Equitable Considerations Do Not Require § 523(a)'s Application to Subchapter V Corporate Debtors

Equitable considerations do not warrant extending § 523(a) discharge exceptions to corporate debtors. Firstly, equitable considerations cannot override clear statutory language. "To allow the bankruptcy court, through principles of equity, to grant any more or less than what the clear language of [a given statute] mandates would be tantamount to judicial legislation and is something that should be left to Congress, not the Courts." *Alderete v. Educational Credit Mgmt Corp. (In re Alderete)*, 412 F.3d 1200, 1207 (10th Cir. 2005).

Even absent clear statutory language, extending § 523(a)'s reach to Subchapter V corporate debtors does not promote fairness in a non-consensual Subchapter V context; rather, it does the opposite. Such an extension significantly undermines a corporate debtor's efforts to reorganize and is contrary to Subchapter V's purpose. One primary goal of the Bankruptcy Code is to "secure equal distribution among creditors." If Ms. Rigby's debt is not discharged, she will receive a higher distribution than other similarly-situated creditors. As a result, Ms. Rigby's debt would need to be paid in full by Respondent as soon as it emerged from bankruptcy–this would ultimately reduce Respondent's available funds and ability to pay any remaining creditors. *See Howard Delivers Serv. v. Zurich Am. Ins. Co.*, 547 U.S. 651, 655 (2006) ("The Bankruptcy Code aims, in the main, to secure equal distribution among creditors.").

Concerns that non-consensual plan confirmations confer a broader discharge to debtors compared to consensual plan confirmations–and that, in doing so, corporate debtors will be incentivized to pursue non-consensual plans–are misplaced. For one, a plan's designation as consensual or non-consensual turns on class voting, rather than a specific creditor's actions. 11 U.S.C. § 1126. Under § 1126, class voting renders these concerns illusory because creditors with otherwise non-dischargeable claims risk losing those claims if they are outvoted by fellow creditors who do not have non-dischargeable claims; as is the case here, a debt may also become non-dischargeable due to an unrelated class's rejection of the plan. In short, under Subchapter V, every creditor has the incentive to either enter into a consensual agreement, thus receiving something, or not consenting, and having what would otherwise be a non-dischargeable claim discharged.

CONCLUSION

For the reasons set forth above, Respondent respectfully requests the Supreme Court affirm the Thirteenth Circuit's decision.

Respectfully submitted,
Team R46
Counsel for Respondent
DATED: January 19, 2023

APPENDIX A: Selected Sections from Title 11 of the U.S. Code

11 U.S.C. § 105(a)

(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. § 523

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

(1) for a tax or a customs duty—

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

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

(i) was not filed or given; or

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

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

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

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

(B) use of a statement in writing—

(i) that is materially false;

(ii) respecting the debtor's or an insider's financial condition;

(iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

(iv) that the debtor caused to be made or published with intent to deceive; or

(C)

(i) for purposes of subparagraph (A)—

(I) consumer debts owed to a single creditor and aggregating more than $500 [2] for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and

(II) cash advances aggregating more than $750 2 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and

(ii) for purposes of this subparagraph—

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

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

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

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

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

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

(5) for a domestic support obligation;

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

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

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

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

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

(A)

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

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

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

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

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

(11) provided in any final judgment, unreviewable order, or consent order or decree entered in any court of the United States or of any State, issued by a Federal depository institutions regulatory agency, or contained in any settlement agreement entered into by the debtor, arising from any act of fraud or defalcation while acting in a fiduciary capacity committed with respect to any depository institution or insured credit union;

(12) for malicious or reckless failure to fulfill any commitment by the debtor to a Federal depository institutions regulatory agency to maintain the capital of an insured depository institution, except that this paragraph shall not extend any such commitment which would otherwise be terminated due to any act of such agency;

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

(14) incurred to pay a tax to the United States that would be nondischargeable pursuant to paragraph (1);

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

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

(15) to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit;

(16) for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case;

(17) for a fee imposed on a prisoner by any court for the filing of a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the debtor under subsection (b) or (f)(2) of section 1915 of title 28 (or a similar non-Federal law), or the debtor's status as a prisoner, as defined in section 1915(h) of title 28 (or a similar non-Federal law);

(18) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, under—

(A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974, or subject to section 72(p) of the Internal Revenue Code of 1986; or

(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title; or

(19) that—

(A) is for—

(i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or

(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

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

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

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

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

11 U.S.C. § 524(e)

(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.

11 U.S.C. § 1123(a)(5)

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

(5) provide adequate means for the plan's implementation

11 U.S.C. § 1123(b)(6)

(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. § 1141(d)(2)

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

11 U.S.C. § 1141(d)(6)

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

(A) of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit, or owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar State statute; or

(B) for a tax or customs duty with respect to which the debtor—
   (i) made a fraudulent return; or
   (ii) willfully attempted in any manner to evade or to defeat such tax or such customs duty.

11 U.S.C. § 1192

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.