No. 22-0909

IN THE

Supreme Court of the United States

IN RE PENNY LANE INDUSTRIES, INC., DEBTOR,

ELEANOR RIGBY, PETITIONER

v.

PENNY LANE INDUSTRIES, INC., RESPONDENT.

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

BRIEF FOR RESPONDENT

JANUARY 19, 2023

TEAM NUMBER 4
COUNSEL FOR RESPONDENT

QUESTIONS PRESENTED

I. Where a chapter 11 plan has a provision that releases direct claims against a non-debtor without creditor consent, does a bankruptcy court have the authority to approve the release?

II. Where a corporate debtor files a chapter 11 case under subchapter V, do sections 1192(2) and 523(a) create exceptions to a corporate debtor's discharge?

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The Thirteenth Circuit Court of Appeals' decision is available at No. 22-0909 and reprinted at Record 3. The bankruptcy court decided in favor of Penny Lane Industries, Inc., the debtor. On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed.

STATEMENT OF JURISDICTION

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

RELEVANT STATUTORY PROVISIONS

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

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

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

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

> **(a)** A discharge under section 727, 1141, 1192 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—
>
> **(6)** for willful and malicious injury by the debtor to another entity or to the property of another entity;

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

> **(e)** Except as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.
>
> **(g)(1)**
>
> **(A)** After notice and hearing, a court that enters an order confirming a plan of reorganization under chapter 11 may issue, in connection with such order, an injunction in accordance with this subsection to supplement the injunctive effect of a discharge under this section.

> **(B)** An injunction may be issued under subparagraph (A) to enjoin entities from taking legal action for the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery with respect to any claim or demand that, under a plan of reorganization, is to be paid in whole or in part by a trust described in paragraph (2)(B)(i), except such legal actions as are expressly allowed by the injunction, the confirmation order, or the plan of reorganization.

(h) For purposes of subsection (g)—

> **(1)** subject to paragraph (2), if an injunction of the kind described in subsection (g)(1)(B) was issued before the date of the enactment of this Act, as part of a plan of reorganization confirmed by an order entered before such date, then the injunction shall be considered to meet the requirements of subsection (g)(2)(B) for purposes of subsection (g)(2)(A), and to satisfy subsection (g)(4)(A)(ii) . . . .

The relevant portion of 11 U.S.C. § 1123 provides:

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

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

(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. § 1141 provides:

(d)

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

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

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

> **(1)** on which the last payment is due after the first 3 years of the plan, or such other time not to exceed 5 years fixed by the court; or
> **(2)** of the kind specified in section 523(a) of this title.

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

(a) Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such

debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, other than payments to holders of allowed claims provided for under section 1222(b)(5)or 1222(b)(9) of this title, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan, allowed under section 503 of this title, or disallowed under section 502 of this title, except any debt—

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

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

The relevant portion of 28 U.S.C. § 157 provides:

(b)(2) Core proceedings include, but are not limited to—

(L) confirmations of plans . . .

The relevant portion of 28 U.S.C. § 1334 provides:

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

STATEMENT OF THE CASE

I. FACTUAL HISTORY

Penny Lane Industries, Inc., (the "Debtor") is a successful small business based in the City of Blackbird, Moot. (R. 4.) The Debtor manufactures plastic, glass, and metal food containers. (*Id.*) The Debtor's manufacturing facility is located along the Liverpool River, along with dozens of other businesses and manufacturing facilities. (R. 6.) Strawberry Fields, a company that produces cereal and convenience foods, wholly owns the Debtor. (R. 4–5.)

Starting in 2017, Petitioner, Eleanor Rigby (the "Creditor") and other residents of Blackbird alleged that the Debtor knowingly disposed of industrial chemicals and pollutants at its facility, which contaminated the area's groundwater supply. (R. 5.) The Creditor further contended that the Debtor's then Chief Executive Officer, Maxwell S. Hammer, was aware that the Debtor's disposal of waste on its property had contaminated the groundwater supply. (*Id.*) Many of these lawsuits also name Strawberry Fields as a co-defendant. (R. 6.) No court has heard proof on any of these allegations against the Debtor, and no judicial determination has been made on these lawsuits. (*Id.*)

The Debtor and Strawberry Fields assert that they have complied with all applicable laws and deny having any knowledge of contamination in the groundwater supply. (*Id.*) They also highlight that there is insufficient evidence to link any contamination to the Debtor because there are dozens of other businesses with manufacturing facilities along the Liverpool River. (*Id.*)

As a small business, the Debtor could not survive under the weight of these lawsuits and was forced to file this subchapter V of chapter 11 case. (*Id.*) Subchapter V is a section of the Bankruptcy Code (the "Code") that provides a streamlined process for small businesses to reorganize their debts and restructure their operations through chapter 11 bankruptcy. (*Id.*) The

Debtor qualified for subchapter V of chapter 11 because substantially all of the claims in this case are disputed, unliquidated tort claims related to the groundwater supply's contamination. (*Id.*)

After the Debtor filed for bankruptcy, creditors filed claims seeking close to $400 million in cumulative damages from the Debtor. (*Id.*) These claims include the Creditor's unsecured claim that was filed for $1 million. (*Id.*) The Creditor also argued that her claim should not be discharged, contending that sections 1192(2) and 523(a)(6) make willful and malicious injuries non-dischargeable. (R. 7.) The Debtor maintains that section 523(a) does not apply to corporate debtors because section 523's preamble limits exceptions to discharge to individual debtors. (*Id.*)

Section 362(a) automatically stayed litigation against the Debtor, and the bankruptcy court extended the stay to Strawberry Fields and other related non-debtors. (R. 7–8.) After two months of mediation, the Debtor, Strawberry Fields, and several creditors reached a complex settlement agreement that was incorporated into a chapter 11 plan (the "Plan"). (R. 8.)

The Plan, which received overwhelming support from 95 percent of voting unsecured creditors, establishes a creditors' trust (the "Trust") to settle the creditors' claims. (R. 9.) Under the Plan, the claims resolution process will be deferred until confirmation. (R. 7.) The Plan also stipulates that the Debtor will contribute its net income for five years to the Trust, and Strawberry Fields will contribute $100 million. (R. 8.) The Trust will protect creditors with allowed claims by gifting them thirty to forty cents on the dollar without the burden of complex litigation that comes with risk, cost, and delay. (R. 10.) This distribution is more than creditors would receive if the Debtor liquidated under Chapter 7. (*Id.*) The bankruptcy court found that Strawberry Fields' $100 million contribution alone is "substantially greater" than any recovery creditors would likely receive from suing Strawberry Fields. (*Id.*) Consequently, the court concluded that no other

reasonable means to achieve the results accomplished by the Plan exist. (*Id.*) The Plan therefore provides the optimal result for creditors. (*Id.*)

In exchange for its contribution, Strawberry Fields will be released from any claims related to the Debtor. (R. 8.) Any allowed claims filed against Strawberry Fields will be channeled to and compensated by the Trust. (R. 9.) The Creditor alone objected to Strawberry Fields' release, claiming that bankruptcy law does not allow non-consensual third-party releases. (*Id.*)

II. PROCEDURAL HISTORY

The bankruptcy court addressed two issues arising from this case and ruled in the Debtor's favor on both issues. (R. 7, 11.) The court held that bankruptcy courts have the statutory authority and subject matter jurisdiction to confirm chapter 11 plans that contain non-consensual third-party releases of direct claims. (R. 11.) The court also sided with the Debtor on the issue of dischargeability, holding that the exceptions to discharge under section 523(a) do not apply to subchapter V corporate debtors. (R. 7.) The Thirteenth Circuit affirmed. (R. 11, 15.) The Creditor now appeals the Thirteenth Circuit's ruling in favor of the Debtor. (R. 11.)

STANDARD OF REVIEW

The standard of review is *de novo* because both of the issues in this case involve questions of law. *Pierce v. Underwood*, 487 U.S. 552, 558 (1988). Under a *de novo* standard of review, this Court renders a judgment as if it was the original trial court. *See id.* at 560.

SUMMARY OF THE ARGUMENT

This Court should hold that: (i) bankruptcy courts have the authority to confirm chapter 11 plans that contain non-consensual third-party releases of direct claims and (ii) section 523(a)'s exceptions to discharge do not apply to a corporate debtor proceeding under subchapter V of chapter 11.

Bankruptcy courts have statutory authority to approve non-consensual third-party releases of direct claims in chapter 11 plans under sections 105(a), 1123(a)(5), and 1123(b)(6) of the Code. Section 524(e) of the Code does not prohibit third-party releases because it merely explains that a debtor's discharge does not, by itself, release any third parties from liability. Further, Congress added section 524(g) to the Code to deal with the unprecedented volume of asbestos-related litigation. With this section, Congress did not limit releases to the asbestos context but rather added additional requirements for asbestos-related releases. The legislative history provides that section 524(g) was not meant to limit bankruptcy courts' broad authority to approve releases. Bankruptcy courts have broad equitable statutory authority to confirm plans containing non-consensual third-party releases of direct claims.

Bankruptcy courts also have subject matter jurisdiction to confirm chapter 11 plans that contain non-consensual third-party releases because plan confirmation is a core proceeding. Additionally, courts have constitutional authority to confirm plans with releases when the releases are integral to restructuring creditor-debtor relationships. The confirmation of such plans does not violate due process because the bankruptcy courts do not make rulings on the merits of the creditors' claims. Instead, courts merely approve global settlements that channel claims to the creditors' trusts.

Third-party releases may be the only way to achieve two of the fundamental aims of the Code: maximizing value for the estate and encouraging reorganization of a debtor. The negotiated settlement agreement ensures that creditors receive certain recovery and do not face the attendant risks of delay, cost, and uncertainty present in litigation.

As to the second issue, the plain text of sections 523(a) and 1192(2) limits section 523(a)'s exceptions to discharge to individual debtors in subchapter V cases. The existence of section 523's

preamble demands an interpretation that excludes corporate debtors from the exceptions to discharge. Any other reading of the sections would render section 523's preamble meaningless.

The statutory scheme of the Code reinforces that section 523(a)'s exceptions to discharge only apply to individual debtors, including sole proprietors in subchapter V cases. Corporate debtors are entitled to broad discharge in a traditional chapter 11 case. As a part of chapter 11, subchapter V extends comprehensive discharge to corporate debtors proceeding under subchapter V. This interpretation aligns with the purpose of subchapter V: to make reorganization more accessible for small businesses.

The history of subchapter V evinces Congress' intent to simplify the restructuring process for small businesses. Congress has historically expanded relief for small businesses. Congress has also consistently recognized that corporate debtors should generally be granted full discharge. The legislative history of subchapter V further supports that Congress intended to extend this full discharge to corporate debtors in a subchapter V case.

This Court should affirm on both issues.

ARGUMENT

This Court should hold that bankruptcy courts may confirm chapter 11 plans containing non-consensual third-party releases of direct[1] claims. This Court should further hold that the exceptions to discharge under section 523(a) are inapplicable to subchapter V corporate debtors.

I. BANKRUPTCY COURTS CAN APPROVE NON-CONSENSUAL THIRD-PARTY RELEASES OF DIRECT CLAIMS CONTAINED IN CHAPTER 11 PLANS.

Bankruptcy courts have statutory authority and subject matter jurisdiction to confirm chapter 11 plans that contain non-consensual third-party releases. *See SE Prop. Holdings, LLC v.*

[1] Direct claims are "particularized" claims against a non-debtor third-party for the non-debtor's independent conduct as opposed to derivative claims, which are claims against a non-debtor third-party resulting from the debtor's conduct. *In re Purdue Pharma, L.P.*, 635 B.R. 26, 75 (S.D.N.Y. 2021).

Seaside Eng'g & Surveying, Inc. (In re Seaside Eng'g & Surveying, Inc.), 780 F.3d 1070, 1081 (11th Cir. 2015). Third-party releases offer the best solution to resolve "the collective problem" that insolvent debtors and claimants face in mass tort cases. *See In re Purdue Pharma, L.P.*, 633 B.R. 53, 58 (Bankr. S.D.N.Y. 2021), *vacated*, 635 B.R. at 118; *Bank of N.Y. Trust Co. v. Off. Unsecured Creditors' Comm. (In re Pac. Lumber Co.)*, 584 F.3d 229, 252 (5th Cir. 2009) ("[N]on-debtor releases are most appropriate as a method to channel mass claims towards a pool of assets . . . ."). Third-party contributions and releases in exchange often provide the only way for distressed companies to successfully reorganize and for creditors to receive an optimal distribution. *See In re Seaside Eng'g & Surveying, Inc.*, 780 F.3d at 1081. Not only are releases sometimes necessary, but bankruptcy courts have the statutory authority and subject matter jurisdiction to approve them. *See id.* Reading section 524(e) as barring third-party releases adds words to the statute that are simply not there. *Id.* at 1078. This Court should instead hold that sections 105(a), 1123(a)(5), and 1123(b)(6) give courts authority to approve non-consensual third-party releases of direct claims within plans.

A. The Code Gives Courts Statutory Authority to Confirm Plans Containing Non-consensual Third-Party Releases.

The Code's plain language provides courts statutory authority to confirm plans with non-consensual third-party releases of direct claims. When statutory language is unambiguous, the "judicial inquiry is complete." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992) (citations omitted). Courts must enforce the language of unambiguous statutes. *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2006) (internal citations and quotations omitted) ("It is well established that when the statute's language is plain, the sole function of the courts . . . is to enforce it according to its terms.").

1. Sections 524(e) and 524(g) of the Code Do Not Preclude Courts from Approving Non-consensual Third-Party Releases.

Section 524(e) does not bar third-party releases. *See* 11 U.S.C. § 524(e). It provides 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." *Id.* In other words, a discharge, by itself, frees only the debtor from liability for debts, not third parties. *See Airadigm Comm's., Inc. v. F.C.C. (In re Airadigm Comm's., Inc.)*, 519 F.3d 640, 656 (7th Cir. 2008). The statute ensures that a creditor can still collect on a debt from a third party, such as a co-defendant or guarantor, even if the debtor receives a discharge. *See id.*; *see also Credit Alliance Corp. v. Williams*, 851 F.2d 119, 120 (4th Cir. 1988) (holding that the automatic stay only applies to the debtor and not a guarantor, allowing creditors to collect payment from the guarantor).

Section 524(e) allows courts to confirm plans with third-party releases. *See* 11 U.S.C. § 524(e). It states that a discharge "does not" affect the liability of third parties—permissive language. *See id.* If Congress intended this section to bar third-party releases, then it would have "used the mandatory terms 'shall' or 'will' rather than the definitional term 'does,'" as it did in the prior version of section 524(e). *In re Airadigm Comm's., Inc.*, 519 F.3d at 656; 11 U.S.C. § 34 (repealed Oct. 1, 1979). The prior version provided that "[t]he liability of a [non-debtor] shall not be altered by the discharge of [a debtor]." 11 U.S.C. § 34 (repealed Oct. 1, 1979). This shows that Congress knows how to use mandatory language when it aims to forbid certain actions. *See id.*; *see also* 11 U.S.C. § 105(b) ("[A] court may not appoint a receiver in a case under this title."); 11 U.S.C. § 1129(a) ("The court shall confirm a plan only if the following requirements are met . . . ."). That Congress intentionally removed mandatory language barring third-party releases demonstrates that Congress intended to permit third-party releases.

Furthermore, section 524(g) does not prohibit non-consensual third-party releases; it only sets conditions for third-party releases in asbestos cases. *See* 11 U.S.C. § 524(g). When individuals discovered asbestos' malignant effects, there was a floodgate of litigation. *See* Christopher O'Malley, *Breaking Asbestos Litigation's Chokehold on the American Judiciary*, 2008 U. Ill. L. Rev. 1101, 1102 (2008). Congress passed section 524(g) to address this unprecedented volume of litigation. H.R. Rep. No. 103–834 (1994) [hereinafter "Legislative History for Section 524"]. For example, to deal with the growing issue of asbestos disputes, section 524(g) requires "the court [to] appoint[ ] a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands . . . ." 11 U.S.C. § 524(g)(4)(B)(i). Nothing in section 524(g), though, bars third-party releases outside the asbestos context. *See* 11 U.S.C. § 524(g).

While a specific statutory provision may govern over a general provision when the provisions conflict, section 524(g) does not conflict with the bankruptcy courts' equitable powers under sections 105(a) and 1123. *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012). Debtors seeking to release non-debtors in asbestos cases must follow the requirements of section 524(g). *See* 11 U.S.C. § 524(g). A debtor in an asbestos case could not, for example, claim that a bankruptcy court has the authority to approve non-consensual third-party releases if the plan does not meet all of section 524(g)'s requirements. *See RadLAX Gateway Hotel, LLC*, 566 U.S. at 645 (holding that a debtor seeking to cram down by having a sale free and clear must give the secured creditor the ability to credit bid as required by the sale option of cramdown under section 1129(b)(2)(A)(ii)). Because section 524(g) does not apply to non-asbestos cases, it does not supersede the bankruptcy courts' equitable authority to permit releases in other contexts.

The Creditor misreads section 524(g) as limiting the bankruptcy courts' equitable powers to issue releases. *See* Legislative History for Section 524. At the same time that Congress passed

sections 524(g) and (h), Congress also passed Public Law 111, which provides a rule of construction for section 524(g). *In re Purdue Pharma, L.P.*, 635 B.R. at 93. Public Law 111 states that sections 524(g) and (h) cannot "be construed to modify, impair, or supersede any other authority the court has to issue injunctions in connection with an order confirming a plan of reorganization." Pub. L. 103–394 § 111(b) (uncodified). The legislative history for section 524(h) further explains that sections 524(g) and (h) do not "alter any authority bankruptcy courts may already have to issue injunctions in connection with a plan of reorganization." Legislative History for Section 524. This language clarifies that section 524(g) does not limit the equitable powers bankruptcy courts already had to issue releases under sections 105(a), 1123(a)(5), and 1123(b)(6). *See id.*

The legislative history of section 524(g) supports the Thirteenth Circuit's holding approving non-consensual third-party releases in plans outside the asbestos context. *See* Legislative History for Section 524. The legislative history makes clear that "section 524(e) is not a statutory impediment to the issuance or enforcement of a third-party claim release under a plan in appropriate circumstances." *In re Purdue Pharma, L.P.*, 633 B.R. at 102. The Creditor's argument that section 524(g) limits the bankruptcy courts' equitable powers departs from clear congressional language. *See* Legislative History for Section 524.

2. Sections 105 and 1123 of the Code Give Courts Statutory Authority to Confirm Plans with Non-consensual Third-Party Releases.

Bankruptcy courts have statutory authority to approve non-consensual third-party releases contained in plans under section 1123(b)(6). *See In re Airadigm Comm's., Inc.*, 519 F.3d at 657. Section 1123 identifies the provisions that can and must be included in a chapter 11 plan. 11 U.S.C. § 1123. It lists common provisions in plans and allows "any other appropriate provisions not inconsistent with the applicable provisions of this title." 11 U.S.C. § 1123(b)(6). While

appropriateness of the release is not an issue in this case, the circumstances of the case make the release appropriate. *See In re Dow Corning Corp.*, 280 F.3d 648, 658 (6th Cir. 2002) (listing seven factors courts may use to determine whether a non-consensual third-party release is appropriate). As the bankruptcy court found, this case is highly unusual and complex, Strawberry Fields made a significant monetary contribution, and the Plan received overwhelming support with 95 percent voter approval. (R. 10); *In re Dow Corning Corp.*, 280 F.3d at 658 (stating that important factors to determine release appropriateness are whether the plan received overwhelming voter approval, the non-debtor contributed substantial assets to the reorganization, and the release is essential to reorganization).

In addition to being appropriate in this case, non-consensual third-party releases of direct claims are not inconsistent with any provision of the Code. *See In re Airadigm Comm's., Inc.*, 519 F.3d at 657. As previously discussed, non-consensual third-party releases are not inconsistent with sections 524(e) and (g) because those sections merely explain the effect of a discharge and establish specific requirements for releases in asbestos cases. *See In re Seaside Eng'g & Surveying, Inc.*, 780 F.3d at 1078 (stating that "section 524(e) says nothing about the authority of the bankruptcy court to release a non-debtor from a creditor's claim."). Non-consensual third-party releases are also consistent with section 523(a), which excepts from discharge certain debts of a debtor. *See* 11 U.S.C. § 523(a). A third-party release does not equate to a discharge because a release only shields the non-debtor from liability pertaining to the released debt after the bankruptcy court conducts an extensive analysis of release appropriateness. *See MacArthur Co. v. Johns-Manville Corp.*, 837 F.2d 89, 91 (2d Cir. 1988) (explaining that third-party releases "do not offer the umbrella protection of a discharge in bankruptcy"). Regardless, section 523(a) does not

apply to corporate debtors—even those proceeding under subchapter V of chapter 11—making this alleged inconsistency irrelevant here. *See* discussion *infra* Section II.

Bankruptcy courts also have broad equitable authority to confirm plans containing non-consensual third-party releases under sections 105(a), 1123(a)(5), and 1123(b)(6). *See United States v. Energy Res. Co., Inc.*, 495 U.S. 545, 549 (1990) (explaining that sections 105(a) and 1123(b)(6) are "consistent with the traditional understanding that bankruptcy courts, as courts of equity, have broad authority to modify creditor-debtor relationships"). Section 1123(a)(5) requires that a plan "provide adequate means for the plan's implementation." 11 U.S.C. § 1123(a)(5). In many of the chapter 11 cases where debtors seek third-party releases, reorganization could not occur without the third party's contribution. *See, e.g., Cal. Dep't of Toxic Substances Control v. Exide Holdings, Inc. (In re Exide Holdings, Inc.)*, No. 20-11157-CSS, 2021 WL 3145612, at *14 (D. Del. July 26, 2021) (explaining that due to lack of funds, the debtor—who contaminated sixteen battery recycling plants in different states—would be unable to reorganize if the court prohibited non-consensual third-party releases). Here, the Debtor could not reorganize without Strawberry Fields' $100-million contribution to the Trust, meaning the Plan would not include "adequate means" for implementation without the non-debtor release. (R. 14.)

This Court has indirectly allowed non-consensual third-party releases under the equitable authority to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." *See* 11 U.S.C. § 105(a); *Energy Res. Co., Inc.*, 495 U.S. at 549. In *Energy Resources*, this Court analyzed chapter 11 plans that proposed to pay trust fund taxes before other taxes the debtors owed to the IRS. *Energy Res. Co., Inc.*, 495 U.S. at 548. No Code provision explicitly authorizes courts to confirm reorganization plans that designate tax payments. *Id.*

Nonetheless, this Court still held that bankruptcy courts have the authority to confirm such plans when "necessary to the success of a reorganization . . . ." *See id.*

The debtors' chapter 11 plan in *Energy Resources* contained, indirectly, non-consensual third-party releases, but this Court allowed confirmation of the plan. *In re Energy Res. Co., Inc.*, 59 B.R. 702, 704 (Bankr. D. Mass. 1986). The debtors included the trust fund tax designation in their plan because doing so "would forestall personal liability assessed by the IRS" against the debtors' officers in exchange for an officer's contribution of money to the estate. *Id.* Because this Court saw no problem with that, this Court should uphold its precedent and hold that the Code allows third-party releases. *Energy Res. Co., Inc.*, 495 U.S. at 548.

B. Bankruptcy Courts Have Constitutional Authority to Confirm Plans Containing Non-consensual Third-Party Releases.

1. Bankruptcy Courts Have Subject Matter Jurisdiction to Confirm Plans Containing Non-consensual Third-Party Releases.

Bankruptcy courts possess subject matter jurisdiction to release direct claims against a non-debtor third party because a confirmation order is a core proceeding. *See* 28 U.S.C. § 1334; 28 U.S.C. § 157(b)(2)(L). Section 1334 gives bankruptcy courts subject matter jurisdiction over "cases and proceedings" that "arise under" the Code, or that "arise in" or are "related to" a bankruptcy case. *Id.* Cases that "arise under" the Code or "in" a bankruptcy case are considered core proceedings for which bankruptcy courts have the authority to render a final judgment. *See Stern v. Marshall*, 564 U.S. 462, 486 (2011). If a bankruptcy court only has "related to" subject matter jurisdiction, it may not enter a final judgment absent consent from all parties. *Id.* at 480. Because section 157 of title 28 states that a confirmation order is a core proceeding, bankruptcy courts have subject matter jurisdiction over third-party releases in a plan. 28 U.S.C. § 157(b)(2)(L).

While the bankruptcy court would not have the authority to render a final judgment on the merits of the third-party claims, as the Creditor points out, confirmation of a plan does not constitute a decision on the merits. *In re Millennium Lab Holdings II, LLC*, 945 F.3d 126, 137 (3d Cir. 2019). Plans containing third-party releases derive from negotiated settlement agreements. *See id.*; (R. 8.) Therefore, bankruptcy courts do not render a judgment on the merits of third-party claims. *Lynch v. Lapidem Ltd. (In re Kirwan Offices S.A.R.L.)*, 592 B.R. 489, 504–05 (S.D.N.Y 2018) (explaining that while a third-party release "may have the effect of a ruling on the merits, it is not a ruling on the merits – and thus operates on entirely different jurisdictional footing"). Rather, courts confirm plans arising from these negotiated settlements between debtors and third parties. For this reason, even if a bankruptcy court's confirmation has a "preclusive, incidental effect on claims beyond the scope of the immediate bankruptcy proceeding," the court still has core authority to confirm the plan. *Id.*

Additionally, bankruptcy courts have constitutional authority to confirm plans containing non-consensual third-party releases when the releases are integral to restructuring. *In re Millennium Lab Holdings II, LLC*, 945 F.3d at 135–36. In *Stern*, this Court clarified that even in a "core" proceeding for which bankruptcy courts may enter a final judgment, the exercise of that authority must be constitutional. *Stern*, 564 U.S. at 497. A bankruptcy court constitutionally exercises its authority over core proceedings "when it resolves a matter that is integral to the restructuring of the debtor-creditor relationship." *In re Millennium Lab Holdings II, LLC*, 945 F.3d at 135–36. In other words, where third-party releases are integral, bankruptcy courts may constitutionally exercise subject matter jurisdiction. *See id.*

The Creditor wrongly interprets this Court's precedent regarding subject matter jurisdiction. *See id.* The Creditor claims that the proper test to determine whether a bankruptcy

court has constitutional authority to exercise subject matter jurisdiction is whether the third-party claims stem from the bankruptcy itself or are necessarily resolved in the claims allowance process. (R. 9.) But in *Langenkamp* the bankruptcy court had constitutional authority to hear a preferential avoidance action after the favored creditor filed a claim "because *then* 'the ensuing preference action by the trustee bec[ame] integral to the restructuring of the debtor-creditor relationship.'" *Stern*, 564 U.S. at 497 (quoting *Langenkamp v. Culp*, 498 U.S. 42, 44 (1990)). By saying "because *then*," this Court made clear that bankruptcy courts have constitutional authority over matters arising from the claims allowance process because those matters will always be integral to restructuring. *In re Millennium Lab Holdings II, LLC*, 945 F.3d at 136. That is just one example. *See id.* The appropriate test is whether the matter is integral to restructuring the debtor-creditor relationship—not the other way around. *See id.* at 135–36.

Claims against non-debtor third parties become integral to the restructuring of the debtor-creditor relationship in "rare" cases. *In re Kirwan Offices S.A.R.L.*, 592 B.R. at 511 (citing *Deutsche Bank A.G. v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.)*, 416 F.3d 136, 141 (2d Cir. 2005)). In *Millennium*, the court held the non-debtor releases were integral to the restructuring of the debtor-creditor relationship because, without the releases, the non-debtors would not have contributed to the estate, and the debtor would have been unable to reorganize. *Millennium Lab Holdings II, LLC*, 945 F.3d at 137. The same occurs here. (R. 10.) Therefore, the bankruptcy court had subject matter jurisdiction and constitutional authority to exercise its jurisdiction over the Plan.

2. Non-consensual Third-Party Releases Do Not Violate Due Process.

Non-consensual third-party releases do not violate due process because in approving such releases, the bankruptcy court does not render a final judgment on the merits. *Johns-Manville*

Corp., 837 F.2d at 91–92. When courts confirm chapter 11 plans containing non-consensual third-party releases, they do so based on settlement agreements that channel claims to a creditors' trust. *See id.* Because the courts do not adjudicate the merits of the claims involved, they do not violate due process by failing to provide an opportunity to be heard. *See id.* If non-consensual third-party releases violate due process, most courts that have addressed third-party releases violated due process without realizing it. *See, e.g., In re Seaside Eng'g & Surveying, Inc.*, 780 F.3d at 1076–79 (collecting cases).

In this case, the Thirteenth Circuit and bankruptcy court did not violate due process. A debtor must provide creditors with notice of the debtor's bankruptcy and releases, entitling creditors to object at confirmation. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) ("A[ ] fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."). Here, the courts below did not deny the Creditor due process because the courts did not render a final judgment on the merits of her claim, and she received the required notice and opportunity to object (which she exercised). (R. 6, 9.)

C. Equity Supports the Use of Non-consensual Third-Party Releases.

Non-consensual third-party releases help achieve the Code's fundamental policy goals. *See, e.g., NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984). One fundamental aim of the Code is to maximize the estate's value for creditors. *See Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 352, 358 (1985) (holding that a trustee of a corporation undergoing bankruptcy may waive the corporation's attorney-client privilege as to prebankruptcy communications if doing so, among other things, helps maximize the value of the estate). Another

goal of the Code is to promote reorganization. *See Bildisco & Bildisco*, 645 U.S. at 528 ("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."). Third-party releases enable bankruptcy courts to attain the Code's fundamental policy goals.

This Court supports these equitable principles despite limits it has set. *See, e.g., Law v. Siegel*, 571 U.S. 415, 422 (2014) ("[T]he Bankruptcy Court's 'surcharge' was unauthorized if it contravened a specific section of the Code. We conclude that it did."); *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 468–69 (2017) (holding that courts may not deviate from the Code-prescribed priority scheme in granting a structured dismissal, which happens at the end of the case). Unlike in *Siegel* and *Jevic*, where the bankruptcy courts' actions contradicted explicit Code provisions, no Code provision prohibits third-party releases. Even in *Jevic*, this Court held that distributions before the end of the case can alter the Code-prescribed priority scheme if doing so serves "significant Code-related objectives." *Jevic Holding Corp.*, 580 U.S. at 468. For example, this Court allows distributions that violate the priority scheme if the distributions "enable a successful reorganization and make even the disfavored creditors better off." *Id.* As discussed below, allowing the third-party release here would do just that. (R. 10.)

The Creditor's argument that equitable principles call for barring non-consensual third-party releases is unavailing. *In re Airadigm Comm's., Inc.*, 519 F.3d at 657–68. When a court approves a plan with third-party releases, non-debtors do not receive "'blanket immunity' for all times, all transgressions, and all omissions." *Id.* (citation omitted). Instead, the plan limits releases to specific conduct stated in and only for the creditors provided for in the plan. *See id.* Even then, bankruptcy courts conduct an analysis of release appropriateness in each case by considering different factors. *Id.* In the end, bankruptcy courts may still lack subject matter jurisdiction to

confirm plans with releases when the releases are not integral to restructuring the debtor-creditor relationship. *Id.* These gatekeeping measures prevent the abuse of third-party releases. *See id.*

1. Non-consensual Third-Party Releases Maximize the Value of the Estate.

Non-consensual third-party releases increase the estate's value for creditors. *See In re Metromedia Fiber Network, Inc.*, 416 F.3d at 142 (explaining that the fact that a non-debtor made a "material contribution" to the estate supported approving the non-debtor release). For instance, in *In re Mallinckrodt*, the debtors sold pharmaceutical products, such as opioids, for the treatment of rare diseases. *See, e.g., In re Mallinckrodt, PLC*, 639 B.R. 837, 850 (Bankr. D. Del. Feb. 8, 2022). The debtors faced over 3,000 lawsuits because of the debtors' opioid sales, causing the debtors to file for reorganization under chapter 11. *Id.* at 851. The reorganization plan released directors, officers, and managers who contributed to the estate. *Id.* at 864. The court allowed the releases because, among other things, the settlement "maximize[d] enterprise value to the benefit of all creditors." *Id.* The court explained that, without the non-debtor contribution and release in exchange, the debtor would have to sell its business, resulting in lower creditor distribution. *Id.*

Similarly, here, the non-consensual third-party release of Strawberry Fields maximizes the estate's value. (R. 10.) Because Strawberry Fields will contribute $100 million, creditors will receive a significant distribution of about thirty to forty cents on the dollar. (R. 8.) Further, the Creditor will collect "substantially more" money under the Plan than she otherwise would collect if she prosecuted her claim against Strawberry Fields. (R. 10.) The third-party contribution and release in this case maximize the estate's value and bring certain recovery to all creditors. *See In re Mallinckrodt, PLC*, 639 B.R. at 864 (stating that without the third-party settlement, the "[d]ebtors would be forced to litigate the opioid claims which would result in a long, drawn-out bankruptcy, during which the business would suffer").

2. Non-consensual Third-Party Releases Promote Reorganization.

Non-consensual third-party releases foster negotiation between debtors and creditors. *In re Millennium Lab Holdings II, LLC*, 945 F.3d at 131. The court explained in *Millennium* that settlement agreements containing non-consensual third-party releases take "extensive, arm's length negotiations," that ensure that the plan ultimately confirmed is as close to the best-case scenario for debtors and creditors. *Id.* at 137. This is the case here as negotiations took over two months and achieved a nearly fully consensual plan, resulting in 95 percent voter approval. (R. 8–9.)

Moreover, non-consensual third-party releases empower debtors to successfully reorganize. *In re Millennium Lab Holdings II, LLC*, 945 F.3d at 137 ("Absent [the non-debtors'] payment, the company could not have paid the government, with the result that liquidation, not reorganization, would have been [the debtor's] sole option.") For many of the cases where debtors seek non-consensual third-party releases, such as this case, reorganization would not be possible without the third-party contribution. *See id.* The debtor would be forced to liquidate and close down its business, and there would be a race to the courthouse against the non-debtor. *Id.* Third-party contributions and releases help debtors by allowing them to reorganize, thereby preserving jobs in the community and providing the best compensation for all creditors.

II. SECTION 523(A)'S EXCEPTIONS TO DISCHARGE DO NOT APPLY TO SUBCHAPTER V CORPORATE DEBTORS.

Section 523(a)'s exceptions to discharge only apply to individual debtors, not subchapter V corporate debtors. Subchapter V sits within the broader chapter 11 scheme, but it was designed to be the faster, easier, and cheaper version of chapter 11. *See* H.R. Rep. No. 116–171 at *367 (2019). Congress created subchapter V to function as an antidote to the unique challenges small businesses faced under the traditional chapter 11 framework. *Avion Funding, LLC v. GFS Indus., LLC (In re GFS Indus., LLC)*, No. 22-50403-cag, 2022 WL 16858009, at *2 (Bankr. W.D. Tex.

Nov. 10, 2022). A question that remains, and for this Court to answer, is whether subchapter V establishes new exceptions to discharge that do not exist under the traditional chapter 11 scheme. There is currently a circuit split on the issue. The Thirteenth Circuit held that section 523(a)'s exceptions to discharge do not apply to subchapter V corporate debtors. (R. 15.) The Fourth Circuit held the opposite. *Cantwell-Cleary Co., Inc. v. Cleary Packaging, LLC (In re Cleary Packaging, LLC)*, 36 F.4th 509, 511 (4th Cir. 2022). This Court should affirm the Thirteenth Circuit's holding because it is the only interpretation that follows the Code's plain text, history, and policy.

Section 1192 controls discharge for a subchapter V corporate debtor. *In re GFS Indus., LLC*, 2022 WL 16858009, at *3. Section 1192 states that the confirmation of a subchapter V plan does not discharge a debtor from "any debt . . . of the kind specified in section 523(a) of this title." 11 U.S.C. § 1192. Section 523(a) prohibits individual debtors from discharging certain debts, including any debt for willful and malicious injury by the debtor. 11 U.S.C. § 523(a)(6). In a traditional chapter 11 case corporate debtors are not subject to section 523(a)'s exceptions to discharge. *See Gaske v. Satellite Rests. Inc. Crabcake Factory USA (In re Satellite Rests. Inc. Crabcake Factory USA)*, 626 B.R. 871, 877 (Bankr. D. Md. 2021). The rationale behind broad discharge for a chapter 11 corporate debtor is that a corporation would otherwise have to deal with an onslaught of lawsuits post-bankruptcy that would make it nearly impossible for a corporate debtor to restructure itself. *Cantwell-Cleary Co., Inc. v. Cleary Packaging, LLC (In re Cleary Packaging, LLC)*, 630 B.R. 466, 470 (Bankr. D. Md. June 29, 2021), *rev'd*, 36 F.4th at 509 (observing that to promote chapter 11's goal of providing corporate debtors a financial fresh start, the Code broadly defines the terms "debt" and "claim" so that all debtors' obligations are dischargeable).

All courts, except one, have concluded that, like corporate debtors in traditional chapter 11 cases, corporate debtors proceeding under subchapter V are entitled to broad discharge. *Jennings v. Lapeer Aviation, Inc. (In re Lapeer Aviation, Inc.)*, No. 21-31500-JDA, 2022 WL 1110072, at *1 (Bankr. E.D. Mich. Apr. 13, 2022); *Catt v. Rtech Fabrications, LLC (In re Rtech Fabrications, LLC)*, 635 B.R. 559, 564 (Bankr. D. Idaho 2021); *In re Satellite Rests. Inc.*, 626 B.R. at 876; *In re Cleary Packaging, LLC*, 630 B.R. at 509; *In Re GFS Indus., LLC*, 2022 WL 16858009, at *3. Subchapter V does not create new exceptions to discharge for corporate debtors because section 523(a) explicitly limits exceptions to discharge to individual debtors.

The plain language of sections 523(a) and 1192(2) compels such conclusion. The canons of construction, statutory scheme of the Code, and evolution of bankruptcy law provide further support. This Court should therefore adopt the reasoning of the majority of courts and hold that section 523(a)(6) only applies to individual debtors, not corporate debtors, even in a subchapter V case. (R. 7.)

A. The Plain Language of Sections 1192 and 523(a) Confirms that Subchapter V Corporate Debtors Are Entitled to Broad Discharge.

Sections 1192 and 523(a) unambiguously provide broad discharge to corporate debtors proceeding under subchapter V. This Court first looks to a statute's language when interpreting a statute. *Germain*, 503 U.S. at 253–54 (citations omitted). When the statute's text is plain, this Court must enforce it according to its terms. *Lamie*, 540 U.S. at 534. Further, this Court must account for the statute's full text, language, and subject matter. *U.S. Nat'l. Bank of Ore. v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 455 (1993) (expressing that the Court should "not be guided by a single sentence or member of a sentence" and should look to the whole statute's provisions and policy). When read in their entirety, sections 1192 and 523(a) require that section 523(a)'s exceptions to discharge apply only to individual debtors in a subchapter V case.

1. The Plain Language of Sections 1192 and 523(a) Excludes Corporate Debtors from Exceptions to Discharge.

Sections 1192 and 523(a) limit exceptions to discharge to individual debtors. Section 1192 broadly promotes "discharge of all debts," excluding section 523(a)'s exceptions to discharge. *See* 11 U.S.C. § 1192. Section 523(a), section 523's preamble, excepts only an individual debtor's discharge. It states that "a discharge under section . . . 1192 . . . does not discharge an individual debtor from" any of the nineteen specified debts listed in section 523(a). *See* 11 U.S.C. § 523(a). Stated alternatively, section 523(a) conditions the exceptions to discharge on the type of debtor. *Id.* If the debtor is an individual, then the debtor cannot discharge certain debts under any circumstances pursuant to section 523(a). *See id.* Section 523(a), however, does not reference corporate debtors. Therefore, the exceptions it sets forth cannot apply to corporate debtors.

The statute's plain language also reveals Congress' intent: Section 523(a)'s exceptions to discharge do not apply to corporate debtors. *In re GFS Indus., LLC*, 2022 WL 16858009, at *7 (agreeing with other bankruptcy courts' conclusion that Congress intended to continue to limit the application of section 523(a) to individuals in a subchapter V case). Section 523(a) does not refer to corporate debtors, and no language in section 1192(2) expands section 523(a) to include subchapter V corporate debtors. *Id.* (noting that section 1192's reference to section 523(a) "only incorporates the list of nondischargeable debts, without expanding it"); *In re Rtech Fabrications, LLC*, 635 B.R. at 566 ("The Court finds that § 523(a)'s discharge exceptions only apply to an individual debtor and § 1192(2)'s reference to § 523(a) does not expand its applicability to entity debtors."). This is a common-sense interpretation: In creating a bankruptcy framework designed to empower small businesses to restructure, it would make no practical sense for Congress to create exceptions that inhibit their ability to do so.

2. An Interpretation That Expands Section 523(a)'s Exceptions to Discharge to Corporate Debtors Would Render Section 523's Preamble Meaningless.

Congress' decision to add "section 1192" to section 523's preamble does not alter to whom section 523(a) applies. *In re GFS Indus., LLC*, 2022 WL 16858009, at *4 (expressing that Congress did not distinguish dischargeability based on the type of debtor when it drafted section 1192). This Court must "lean in favor of a construction which will render every word operative" so that no part of the statute is rendered idle, insignificant, or merely superfluous. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 69, 174 (2012) (citation omitted). If this Court reads sections 1192(2) and 523(a) as expanding section 523(a)'s exceptions to discharge to subchapter V corporate debtors, it would be ignoring the very existence of section 523's opening sentence. *See In re GFS Indus., LLC*, 2022 WL 16858009, at *4. Section 523(a)'s exceptions to discharge cannot be read in a vacuum; they must be read along with the rest of the statute's text. *See U.S. Nat'l. Bank of Ore.*, 504 U.S. at 455. When giving effect to every word of the statute, section 523 unequivocally limits the exceptions to individuals. *In re GFS Indus., LLC*, 2022 WL 16858009, at *4 ("The fact that Congress added § 1192 into § 523 demonstrates that Congress intended § 1192(2) to limit the § 523 exceptions in Subchapter V to individuals only."); *see In re Satellite Rests. Inc.*, 626 B.R. at 876. Moreover, many of the exceptions to discharge could only ever apply to individuals, supporting the idea that Congress intended for section 523(a) to solely apply to individual debtors. *See, e.g.*, 11 U.S.C. §§ 523(a)(5), (15) (domestic support obligations and marital property settlements).

The Creditor asks this Court to close its eyes to section 523's preamble by suggesting that section 523(a)'s exceptions to discharge also apply to corporate debtors proceeding under subchapter V. *See* 11 U.S.C. § 523. But Congress' reference to section 1192 in section 523(a) would be senseless if that were the case. *See In re GFS Indus., LLC*, 2022 WL 16858009, at *4

(noting that if Congress intended section 523(a)'s exceptions to apply to corporations as well, "it would be unnecessary to add § 1192 to a statute that plainly applies to individual debtors only"). The only reasonable interpretation, therefore, is that the statute should continue working as it always has and apply only to individuals. *See In re Satellite Rests. Inc.*, 626 B.R. at 877.

Similar logic applies to section 1192(2)'s cross-reference to section 523(a). The Creditor implies that section 1192(2) empowers section 523(a) to cast a wider net than the plain text of section 523(a) permits. *In re GFS Indus., LLC*, 2022 WL 16858009, at *4 ("[T]he language of § 1192(2) does not empower § 523(a) to cast a wider net than the text of § 523(a) permits."). If Congress intended section 1192 to expand section 523(a)'s exceptions to discharge to corporate debtors, it would have said so. *In re Rtech Fabrications*, 635 B.R. at 565. Instead, section 1192 contains only a naked reference to section 523(a), indicating that section 523(a), as it is written, governs exceptions to discharge for subchapter V debtors. *See* 11 U.S.C. § 1192. This is the only interpretation that "would render every word operative." *In re Satellite Rests. Inc.*, 626 B.R. at 876. This Court should abide by section 523(a)'s language explicitly limiting the exceptions to discharge to individual debtors. *Id.*

B. The Code's Statutory Scheme Encourages Discharge for Corporate Debtors.

This Court need not consider additional factors when the plain language of a statute is unambiguous, but it may look to the Code's greater statutory scheme for further support that small businesses in a subchapter V case are meant to receive full discharge. *In re Cleary Packaging, LLC*, 630 B.R. at 473; *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988). Reading sections 1192 and 523(a) as limiting section 523(a)'s exceptions to discharge to individual debtors "is most consistent with the overall statutory scheme of the

Bankruptcy Code's discharge provisions and chapter 11 as a whole." *In re Rtech Fabrications*, 635 B.R. at 565.

1. Chapter 11 Broadly Encourages Discharge for Corporate Debtors.

Because subchapter V is part of chapter 11, this Court must interpret section 1192 consistently with chapter 11's statutory scheme granting corporate debtors broad discharge. *See In re GFS Indus., LLC*, 2022 WL 16858009, at *5; *see also In re Rtech Fabrications*, 635 B.R. at 565 ("A non-individual debtor's discharge in a chapter 11 case is generally all encompassing."); Ralph Brubaker, *Taking Exception to the New Corporate Discharge Exceptions*, 13 Am. Bankr. Inst. L. Rev. 757, 765–66 (2005). The Creditor's proposition that section 523(a)'s exceptions to discharge apply to subchapter V corporate debtors frustrates chapter 11's statutory scheme. *In re GFS Indus., LLC*, 2022 WL 16858009, at *10 (explaining that applying section 523(a) to subchapter V corporate debtors would frustrate the entire chapter 11 statutory scheme because "making § 523(a) applicable to corporations is such a deviation from the common understanding of the Bankruptcy Code"). Congress has "strenuously protected" corporate debtors' comprehensive discharge in chapter 11 cases since 1978. *See In re Rtech Fabrications*, 635 B.R. at 565; *Mallinckrodt PLC v. City of Rockford (In re Mallinckrodt PLC)*, No. 20-12522 (JTD), 2021 WL 2460227, at *4 (Bankr. D. Del. June 16, 2021). The only exceptions to a corporate debtor's discharge that Congress has implemented are narrow and addressed through a single provision: section 1141(d)(6). *In re Rtech Fabrications*, 635 B.R. at 565. Even then, it took eight years for Congress to enact section 1141(d)(6). *Id.*

The Creditor's reading of the statute suggests that Congress shifted chapter 11's historic treatment of a corporate debtor's discharge by incorporating nineteen new exceptions to discharge in a bill that was introduced and signed into law all within one month. *In re Cleary Packaging,*

LLC, 630 B.R. at 475. It is unimaginable that Congress decided to abandon more than forty years of bankruptcy law and create a slew of new exceptions to discharge in the span of one month when it previously took Congress eight years to pass a single exception to discharge. *Pa. Dep't of Pub. Welfare v. Davenport*, 495 U.S. 552, 557 (1990) ("The Code will not be read to erode past bankruptcy practice absent a clear indication that Congress intended such a departure."). *Whitman v. Am. Trucking Ass'ns*, 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, one might say, hide elephants in mouseholes.").

Moreover, the only substantial difference between a subchapter V corporation and chapter 11 corporation is their size. *In re Cleary Packaging, LLC*, 630 B.R. at 475. Subchapter V corporations function in the same general manner as chapter 11 corporations. *Id.* This, when combined with subchapter V's purpose of encouraging small business reorganization, leads to the conclusion that section 523(a)'s exceptions to discharge are not intended to apply to a corporate debtor in a subchapter V case. This Court should hold that section 1192 treats a subchapter V corporate debtor's discharge in the same manner as a traditional chapter 11 corporate debtor. *Id.*

2. Congress Already Accounted for Exceptions to Discharge for Corporate Debtors in Section 1141.

As noted, chapter 11 addresses exceptions to discharge for corporate debtors in section 1141(d)(6). Section 1141(d)(6) references specific subparagraphs of section 523(a)(2) and only grants an exception to discharge for certain tax debts from certain entities. *See* 11 U.S.C. § 1141(d)(6). Section 1141(d)(6) says: "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)." *Id.* Contrarily, section 1192(2) encompasses a broader scope and makes no mention of how section 523(a) bears on a corporate debtor. *In re GFS Indus., LLC*, 2022 WL 16858009, at

*4. This Court should interpret section 1141(d)(6) as an acknowledgment from Congress that section 523(a) applies only to individuals unless otherwise stated like in section 1141(d)(6). *See id.* at *4, *7.

Further, Congress appreciates the importance of differentiating between a corporate and individual debtor. Congress has made it a point to distinguish between individuals and corporations repeatedly throughout the Code. For example, section 101, the Code's definitional section, separates the term "individual" from "corporation" several times. *See* 11 U.S.C. § 101(9) (defining a corporation as including an "association having a power or privilege that a private corporation, but not an individual or a partnership, possesses"). More so, when Congress intends to apply a provision to both individual and corporate debtors, it uses the term "person." *See* 11 U.S.C. § 101(41) ("The term 'person' includes individual, partnership, and corporation . . . ."). Other parts of the Code also show this distinction. *See* 11 U.S.C. § 1322 (limiting chapter 13 to individuals); 11 U.S.C. § 727(a)(1) (limiting chapter 7 discharges to individuals); 11 U.S.C. § 523(a) (limiting exceptions to discharge to individuals). Congress would have made this distinction or incorporated the term "person" in section 1192(2) if it meant to expand section 523(a)'s exceptions to discharge to corporate debtors in a subchapter V case.

3. Corporate Debtors in Chapter 12 Cases Are Distinguishable from Corporate Debtors in Subchapter V Cases.

Despite the Creditor and the Fourth Circuit's contention, chapter 12's treatment of corporate debtors is dissimilar to subchapter V's treatment of corporate debtors. It is true that subchapter V's language draws not only on provisions in chapter 11, but also those in chapter 12. *In re Cleary Packaging LLC*, 630 B.R. at 471. Certain language in section 1192, for example, is "virtually identical" to language in section 1228. *In re GFS Indus., LLC*, 2022 WL 16858009, at

*9. As a result, a minority of courts have addressed whether the exceptions to discharge in section 523(a) apply to corporate debtors in either chapter 12 or subchapter V cases.

Specifically, two pre-subchapter V cases state that section 523(a)'s exceptions to discharge may apply to a chapter 12 corporate debtor. *Southwest Ga. Farm Credit, ACA v. Breezy Ridge Farms, Inc. (In re Breezy Ridge Farms, Inc.)*, No. 08-12038-JDW, 2009 WL 1514671, at *1 (Bankr. M.D. Ga. May 29, 2009); *New Venture P'ship v. JRB Consol., Inc. (In re JRB Consol., Inc.)*, 188 B.R. 373 (Bankr. W.D. Tex. Mar. 22, 1995). In *In re JRB Consolidated, Inc.*, a creditor filed a complaint to determine dischargeability under sections 523(a)(2) and 523(a)(6) against a corporate debtor proceeding under chapter 12. *In re JRB Consol., Inc.*, 188 B.R. at 373. The debtor filed a motion to dismiss the complaint on the grounds that section 523(a) did not apply to chapter 12 corporate debtors due to section 523(a)'s exclusive application to individuals. *Id.* The court denied the motion to dismiss, holding that, for the purposes of chapter 12, section 523(a)'s exceptions to discharge apply to corporate debtors as well as individual debtors. *Id.* at 374.

Extending the courts' logic to subchapter V cases because of the similarity in language between sections 1192 and 1228, however, disregards the way chapters 11 and 12 function. (R. 7.) Critical to the *In re JRB Consolidated, Inc.* court's holding was the difference between the operation of chapter 11 corporate discharges and chapter 12 corporate discharges. *In re GFS Indus., LLC*, 2022 WL 16858009, at *6. The court noted that chapter 11's provisions are narrower, only excepting from discharge the few debts listed in section 1141(d). *Id.* In fact, the court even stated that its holding should not be extended to chapter 11 cases. *In re JRB Consol., Inc.*, 188 B.R. at 374 ("It seems clear from [Section 1141] that corporate debtors in Chapter 11 are not subject to a complaint to determine dischargeability of debt under § 523(a)."). Because subchapter V should be read in the context of chapter 11, this Court should not extend the *JRB Consolidated* court's

holding to subchapter V cases. *In re GFS Indus., LLC*, 2022 WL 16858009, at *3; *In re Satellite Rests. Inc.*, 626 B.R. at 877.

Additionally, Chapter 12 is structured differently than subchapter V. Subchapter V was designed as an alternative for small businesses to obtain a fresh start and applies to a wide range of corporations. *In re Cleary Packaging, LLC*, 630 B.R. at 472 n.9. In contrast, chapter 12 was designed for a niche demographic: "family farmers" and "family fisherman." *Id.*

In sum, chapter 11 and the Code's scheme support a holding that section 523(a)'s exceptions to discharge do not pertain to corporate debtors in subchapter V. *In re Rtech Fabrications*, 635 B.R. at 565.

C. The History and Purpose of Section 1192 Demonstrate that Congress Did Not Intend to Expand Section 523(a)'s Exceptions to Discharge to Small Businesses.

1. The History of Section 1192 and the Code Show That Congress Did Not Intend to Expand Section 523(a)'s Exceptions to Discharge to Corporate Debtors.

According to section 1192's legislative history, Congress did not mean for section 523(a)'s exceptions to discharge to extend to corporate debtors. Subchapter V of chapter 11 was born out of the Small Business Debtor Reorganization Act ("SBRA"). *In re GFS Indus., LLC*, 2022 WL 16858009, at *10. When drafting the SBRA, Congress intended to apply existing, pre-SBRA discharge exceptions in subchapter V cases, not expand them. As one court pointed out,

> [t]he Report of the Judiciary Committee of the House of Representatives states that the new Section 1192 discharge excepts debts on which the last payment is due after the plan and "any debt that is otherwise nondischargeable." The use of the words "otherwise nondischargeable" logically refers to the existing form of Section 523(a), which by its express language applies only to individual debtors.

In re Satellite Rests. Inc., 626 B.R. at 878 (citation omitted).

The Honorable A. Thomas Small, Jr. also showcased Congress' intent when testifying in support of the SBRA. While explaining subchapter V's discharge provision, he made no reference to the expansion of section 523(a)'s exceptions to discharge to corporate debtors. *Id.* (citation omitted). As noted previously, Congress understands the importance of distinguishing between corporate and individual debtors in the Code. *In re GFS Indus., LLC*, 2022 WL 16858009, at *4. The absence of any reference to an expansion of section 523(a) to corporate debtors in the House Report and Judge Small's testimony confirms that Congress intended to apply section 523(a) as originally written prior to the enactment of the SBRA. *Id.*

Finally, Congress has taken repeated steps throughout history to broaden a corporate debtor's discharge. Before Congress established the Code in 1978, the Bankruptcy Act of 1898 (the "Act") governed. Chapter X of the Act comprehensively discharged all debts for corporate debtors except taxes owed to the government. Brubaker, *supra*, at 762–63. But chapter XI of the Act, the primary tool of reorganization for small businesses at the time, barred discharge for a corporate debtor "guilty of any of the acts . . . which would be a bar to the discharge" of a bankrupt individual. *Id.* at 762–64 (internal citation omitted). Small business reorganization became unfeasible because creditors could thwart reorganization plans by alleging wrongdoing and sabotage restructuring efforts to receive greater recovery than similarly situated creditors. *See id.* at 764–65. To combat these issues, Congress enacted chapter 11 as it exists today and expanded a corporate debtor's discharge. *In Rtech Fabrications*, 635 B.R. at 565.

Given this history, it is difficult to conclude that Congress "intended to re-introduce all the problems with exceptions to the discharge of a corporation that it eliminated over 50 years earlier." Hon. Paul W. Bonapfel, Guide to the Small Business Reorganization Act of 2019, (2022), https://www.ganb.uscourts.gov/sites/default/files/sbra_guide_pwb.pdf at 237. This is especially

true when considering that subchapter V is "universally proclaimed to have the purpose of facilitating reorganization of small businesses." *Id.* The Creditor's argument that section 523(a)'s exceptions to discharge apply to corporate debtors in subchapter V simply does not align with bankruptcy law's history and policy.

2. Section 1192's Purpose Shows that Congress Did Not Intend to Expand Section 523(a)'s Exceptions to Discharge to Corporate Debtors.

Congress did not mean for section 523(a) to extend to corporate debtors. The primary purpose of subchapter V is to provide recourse to small business owners and individual debtors without the related costs and restraints imposed in a traditional chapter 11 case. *In re GFS Indus., LLC*, 2022 WL 16858009, at *2. Subchapter V was necessary because, despite the protections chapter 11 provides, small businesses were still struggling to reorganize. H.R. Rep. No. 116–171, at *369 (2019). Congress previously tried to address these struggles with amendments to the Code in 2005 but further measures were needed to encourage small businesses to restructure. *Id.* at 3.

The Fourth Circuit's suggestion that section 1192(2)'s cross-reference to section 523(a) permits nineteen new exceptions to discharge flies in the face of Congress' repeated efforts to make reorganization for small businesses more attainable. "The idea that Congress would aim to create a simpler option for a corporation to pursue bankruptcy while simultaneously implementing impediments to that debtor achieving a discharge of its debts defies reason." *In re GFS Indus., LLC*, 2022 WL 16858009, at *10. Similarly, large corporations receive a discharge of all debts in chapter 11 if their plan is confirmed, despite the possibility that an executive may behave unethically while running the entity. *In re Cleary Packaging, LLC*, 630 B.R. at 475. Punishing smaller businesses for similar individual conduct does not make sense and fails to align with subchapter V's purpose. *Id.*

The Fourth Circuit's holding also conflicts with fairness and equity principles. Unsecured creditors in a subchapter V case would benefit from corporate debtors having full discharge. As the court in *In re GFS Indus., LLC* observed, "every dollar paid on the nondischargeable debt in excess of a pro rata share of disposable income is a dollar that is not paid to unsecured creditors generally." *In re GFS Indus., LLC*, 2022 WL 16858009, at *10. In this case, if the Court accepts the Creditor's interpretation of sections 1192 and 523(a), the other creditors would receive a lower distribution. *See Howard Delivery Serv., Inc. v. Zurich Am. Ins. Co.*, 547 U.S. 651, 655 (2006) (stating that the Code aims to achieve equality of distribution among similarly situated creditors). Courts would also have to deal with an overwhelming amount of non-dischargeability actions, amounting to a loss for everyone involved. *In re GFS Indus., LLC*, 2022 WL 16858009, at *10.

Overall, the Code's text, history, policy, and subchapter V's purpose all support the holding that section 523(a)'s exceptions to discharge do not apply to corporate debtors in a subchapter V case. Subchapter V corporate debtors should therefore receive full discharge as Congress intended.

CONCLUSION

For the foregoing reasons, this Court should affirm the Thirteenth Circuit's decision, holding that (i) bankruptcy courts have the statutory and constitutional authority to confirm chapter 11 plans containing non-consensual third-party releases of direct claims and (ii) section 523(a)'s exceptions to discharge exclude corporate debtors proceeding under subchapter V.

APPENDIX

11 U.S.C. § 105 – Power of court

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.
(b) Notwithstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title.
(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.
(d) The court, on its own motion or on the request of a party in interest—

(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and
(2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, may issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—

(A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or
(B) in a case under chapter 11 of this title—

(i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;
(ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;
(iii) sets the date by which a party in interest other than a debtor may file a plan;
(iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;
(v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or
(vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

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11 U.S.C. § 523 – Exceptions to discharge

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

(1) for a tax or a customs duty—

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

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

(i) was not filed or given; or

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

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

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

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

(B) use of a statement in writing—

(i) that is materially false;

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

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

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

(C)

(i) for purposes of subparagraph (A)—

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

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

(ii) for purposes of this subparagraph—

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

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

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

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

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

(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;
(5) for a domestic support obligation;
(6) for willful and malicious injury by the debtor to another entity or to the property of another entity;
(7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty—

(A) relating to a tax of a kind not specified in paragraph (1) of this subsection; or
(B) imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition;

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

(A)

(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or
(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

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

(9) for death or personal injury caused by the debtor's operation of a motor vehicle, vessel, or aircraft if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;
(10) that was or could have been listed or scheduled by the debtor in a prior case concerning the debtor under this title or under the Bankruptcy Act in which the debtor waived discharge, or was denied a discharge under section 727(a)(2), (3), (4), (5), (6), or (7) of this title, or under section 14c(1), (2), (3), (4), (6), or (7) of such Act;
(11) provided in any final judgment, unreviewable order, or consent order or decree entered in any court of the United States or of any State, issued by a Federal depository institutions regulatory agency, or contained in any settlement agreement entered into by the debtor, arising from any act of fraud or defalcation while acting in a fiduciary capacity committed with respect to any depository institution or insured credit union;
(12) for malicious or reckless failure to fulfill any commitment by the debtor to a Federal depository institutions regulatory agency to maintain the capital of an insured depository institution, except that this paragraph shall not extend any such commitment which would otherwise be terminated due to any act of such agency;
(13) for any payment of an order of restitution issued under title 18, United States Code;
(14) incurred to pay a tax to the United States that would be nondischargeable pursuant to paragraph (1);

(14A) incurred to pay a tax to a governmental unit, other than the United States, that would be nondischargeable under paragraph (1);
(14B) incurred to pay fines or penalties imposed under Federal election law;

(15) to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in

connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit;
(16) for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case;
(17) for a fee imposed on a prisoner by any court for the filing of a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the debtor under subsection (b) or (f)(2) of section 1915 of title 28 (or a similar non-Federal law), or the debtor's status as a prisoner, as defined in section 1915(h) of title 28 (or a similar non-Federal law);
(18) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, under—

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

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

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

(19) that—

(A) is for—

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

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

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

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

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

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

For purposes of this subsection, the term "return" means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order

entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.

(b) Notwithstanding subsection (a) of this section, a debt that was excepted from discharge under subsection (a)(1), (a)(3), or (a)(8) of this section, under section 17a(1), 17a(3), or 17a(5) of the Bankruptcy Act, under section 439A [3] of the Higher Education Act of 1965, or under section 733(g) [3] of the Public Health Service Act in a prior case concerning the debtor under this title, or under the Bankruptcy Act, is dischargeable in a case under this title unless, by the terms of subsection (a) of this section, such debt is not dischargeable in the case under this title.

(c)

(1) Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), or (6) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section.

(2) Paragraph (1) shall not apply in the case of a Federal depository institutions regulatory agency seeking, in its capacity as conservator, receiver, or liquidating agent for an insured depository institution, to recover a debt described in subsection (a)(2), (a)(4), (a)(6), or (a)(11) owed to such institution by an institution-affiliated party unless the receiver, conservator, or liquidating agent was appointed in time to reasonably comply, or for a Federal depository institutions regulatory agency acting in its corporate capacity as a successor to such receiver, conservator, or liquidating agent to reasonably comply, with subsection (a)(3)(B) as a creditor of such institution-affiliated party with respect to such debt.

(d) If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust.

(e) Any institution-affiliated party of an insured depository institution shall be considered to be acting in a fiduciary capacity with respect to the purposes of subsection (a)(4) or (11).

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11 U.S.C. § 524 – Effect of Discharge

(a) A discharge in a case under this title—

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

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the

commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1192, 1228(a)(1), or 1328(a)(1), or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

. . .

(e) Except as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.

. . .

(g)

(1)

(A) After notice and hearing, a court that enters an order confirming a plan of reorganization under chapter 11 may issue, in connection with such order, an injunction in accordance with this subsection to supplement the injunctive effect of a discharge under this section.

(B) An injunction may be issued under subparagraph (A) to enjoin entities from taking legal action for the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery with respect to any claim or demand that, under a plan of reorganization, is to be paid in whole or in part by a trust described in paragraph (2)(B)(i), except such legal actions as are expressly allowed by the injunction, the confirmation order, or the plan of reorganization.

(2)

(A) Subject to subsection (h), if the requirements of subparagraph (B) are met at the time an injunction described in paragraph (1) is entered, then after entry of such injunction, any proceeding that involves the validity, application, construction, or modification of such injunction, or of this subsection with respect to such injunction, may be commenced only in the district court in which such injunction was entered, and such court shall have exclusive jurisdiction over any such proceeding without regard to the amount in controversy.

(B) The requirements of this subparagraph are that—

(i) the injunction is to be implemented in connection with a trust that, pursuant to the plan of reorganization—

(I) is to assume the liabilities of a debtor which at the time of entry of the order for relief has been named as a defendant in personal injury, wrongful death, or property-damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products;

(II) is to be funded in whole or in part by the securities of 1 or more debtors involved in such plan and by the obligation of such debtor or debtors to make future payments, including dividends;

(III) is to own, or by the exercise of rights granted under such plan would be entitled to own if specified contingencies occur, a majority of the voting shares of—

(aa) each such debtor;

(bb) the parent corporation of each such debtor; or

(cc) a subsidiary of each such debtor that is also a debtor; and

(IV) is to use its assets or income to pay claims and demands; and

(ii) subject to subsection (h), the court determines that—

(I) the debtor is likely to be subject to substantial future demands for payment arising out of the same or similar conduct or events that gave rise to the claims that are addressed by the injunction;

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

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

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

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

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

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

(3)

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

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

(ii) no entity that pursuant to such plan or thereafter becomes a direct or indirect transferee of, or successor to any assets of, a debtor or trust that is

the subject of the injunction shall be liable with respect to any claim or demand made against such entity by reason of its becoming such a transferee or successor; and

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

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

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

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

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

(4)

(A)

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

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

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

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

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

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

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

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

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

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

(II) a predecessor in interest of the debtor; or
(III) any entity that owned a financial interest in—
(aa) the debtor;
(bb) a past or present affiliate of the debtor; or
(cc) a predecessor in interest of the debtor.

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

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

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

(A) was not a claim during the proceedings leading to the confirmation of a plan of reorganization;
(B) arises out of the same or similar conduct or events that gave rise to the claims addressed by the injunction issued under paragraph (1); and
(C) pursuant to the plan, is to be paid by a trust described in paragraph (2)(B)(i).

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

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

(h) For purposes of subsection (g)—

(1) subject to paragraph (2), if an injunction of the kind described in subsection (g)(1)(B) was issued before the date of the enactment of this Act, as part of a plan of reorganization confirmed by an order entered before such date, then the injunction shall be considered to meet the requirements of subsection (g)(2)(B) for purposes of subsection (g)(2)(A), and to satisfy subsection (g)(4)(A)(ii), if—

(A) the court determined at the time the plan was confirmed that the plan was fair and equitable in accordance with the requirements of section 1129(b);
(B) as part of the proceedings leading to issuance of such injunction and confirmation of such plan, the court had appointed a legal representative for the

purpose of protecting the rights of persons that might subsequently assert demands described in subsection (g)(4)(B) with respect to such plan; and

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

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

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

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

. . . .

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11 U.S.C. § 1123 – Contents of Plan

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

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

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

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

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

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

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

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

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

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

(E) satisfaction or modification of any lien;

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

(G) curing or waiving of any default;

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

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

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

(6) provide for the inclusion in the charter of the debtor, if the debtor is a corporation, or of any corporation referred to in paragraph (5)(B) or (5)(C) of this subsection, of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the

several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends;

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

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

(b) Subject to subsection (a) of this section, a plan may—

(1) impair or leave unimpaired any class of claims, secured or unsecured, or of interests;

(2) subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;

(3) provide for—

(A) the settlement or adjustment of any claim or interest belonging to the debtor or to the estate; or

(B) the retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose, of any such claim or interest;

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

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

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

(c) In a case concerning an individual, a plan proposed by an entity other than the debtor may not provide for the use, sale, or lease of property exempted under section 522 of this title, unless the debtor consents to such use, sale, or lease.

(d) Notwithstanding subsection (a) of this section and sections 506(b), 1129(a)(7), and 1129(b) of this title, if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

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11 U.S.C. § 1129 – Confirmation of plan

(a) The court shall confirm a plan only if all of the following requirements are met:

(1) The plan complies with the applicable provisions of this title.

(2) The proponent of the plan complies with the applicable provisions of this title.

(3) The plan has been proposed in good faith and not by any means forbidden by law.

(4) Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

(5)

(A)

(i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

(6) Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

(7) With respect to each impaired class of claims or interests—

(A) each holder of a claim or interest of such class—

(i) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date; or

(B) if section 1111(b)(2) of this title applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

(8) With respect to each class of claims or interests—

(A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

(9) Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

(A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of this title, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

(B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of this title, each holder of a claim of such class will receive—

(i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;

(C) with respect to a claim of a kind specified in section 507(a)(8) of this title, the holder of such claim will receive on account of such claim regular installment payments in cash—

(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)); and

(D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

(10) If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

(11) Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

(12) All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

(13) The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

(14) If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first become payable after the date of the filing of the petition.

(15) In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

(16) All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

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11 U.S.C. § 1141 – Effect of confirmation

(a) Except as provided in subsections (d)(2) and (d)(3) of this section, the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as provided in subsections (d)(2) and (d)(3) of this section and except as otherwise provided in the plan or in the order confirming the plan, after confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors, equity security holders, and of general partners in the debtor.

(d)

(1) Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan—

(A) discharges the debtor from any debt that arose before the date of such confirmation, and any debt of a kind specified in section 502(g), 502(h), or 502(i) of this title, whether or not—

(i) a proof of the claim based on such debt is filed or deemed filed under section 501 of this title;

(ii) such claim is allowed under section 502 of this title; or

(iii) the holder of such claim has accepted the plan; and

(B) terminates all rights and interests of equity security holders and general partners provided for by the plan.

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

(3) The confirmation of a plan does not discharge a debtor if—

(A) the plan provides for the liquidation of all or substantially all of the property of the estate;

(B) the debtor does not engage in business after consummation of the plan; and

(C) the debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title.

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

(5) In a case in which the debtor is an individual—

(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;

(B) at any time after the confirmation of the plan, and after notice and a hearing, the court may grant a discharge to the debtor who has not completed payments under the plan if—

(i) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on such date;

(ii) modification of the plan under section 1127 is not practicable; and

(iii) subparagraph (C) permits the court to grant a discharge; and

(C) the court may grant a discharge if, after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that—

(i) section 522(q)(1) may be applicable to the debtor; and

(ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B);

and if the requirements of subparagraph (A) or (B) are met.

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

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

(B) for a tax or customs duty with respect to which the debtor—

(i) made a fraudulent return; or

(ii) willfully attempted in any manner to evade or to defeat such tax or such customs duty.

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11 U.S.C. § 1192 – Discharge

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

(1) on which the last payment is due after the first 3 years of the plan, or such other time not to exceed 5 years fixed by the court; or

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

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11 U.S.C. § 1228 – Discharge

(a) Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable

under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, other than payments to holders of allowed claims provided for under section 1222(b)(5) or 1222(b)(9) of this title, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan, allowed under section 503 of this title, or disallowed under section 502 of this title, except any debt—

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

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

(b) Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

(1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

(2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

(3) modification of the plan under section 1229 of this title is not practicable.

(c) A discharge granted under subsection (b) of this section discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of this title, except any debt—

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

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

(d) On request of a party in interest before one year after a discharge under this section is granted, and after notice and a hearing, the court may revoke such discharge only if—

(1) such discharge was obtained by the debtor through fraud; and

(2) the requesting party did not know of such fraud until after such discharge was granted.

(e) After the debtor is granted a discharge, the court shall terminate the services of any trustee serving in the case.

(f) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is no reasonable cause to believe that—

(1) section 522(q)(1) may be applicable to the debtor; and

(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

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28 U.S.C. § 157 – Procedures

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b)

(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to—

(A) matters concerning the administration of the estate;

(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

(C) counterclaims by the estate against persons filing claims against the estate;

(D) orders in respect to obtaining credit;

(E) orders to turn over property of the estate;

(F) proceedings to determine, avoid, or recover preferences;

(G) motions to terminate, annul, or modify the automatic stay;

(H) proceedings to determine, avoid, or recover fraudulent conveyances;

(I) determinations as to the dischargeability of particular debts;

(J) objections to discharges;

(K) determinations of the validity, extent, or priority of liens;

(L) confirmations of plans;

(M) orders approving the use or lease of property, including the use of cash collateral;

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims; and

(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.

(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

(4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

(c)

(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy

judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

(e) If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.

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28 U.S.C. § 1334 – Bankruptcy cases and proceedings

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)

(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d) Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction--

(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and

(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.