No. 22-0909

IN THE

Supreme Court of the United States

OCTOBER TERM, 2022

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

PENNY LANE INDUSTRIES, INC., RESPONDENT.

On Writ of
Certiorari from
The United States
Court of Appeals
For the Thirteenth
Circuit

PETITIONER'S BRIEF

TEAM P. 53
Counsel for Petitioner

QUESTIONS PRESENTED

I. Under 11 U.S.C. §105(a), did the bankruptcy court overstep its statutory authority when, it impermissibly approved non-consensual releases of direct claims against Strawberry Fields for the tortious acts of the Debtor, thus violating 11 U.S.C. § 524(e)?

II. Under 11 U.S.C. § 1192, may a corporate debtor receive discharge of debts specified in 11 U.S.C. § 523(a)(1)–(19), despite willfully and knowingly dumping toxic chemicals that led to the death of a four-year-old girl.

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OPINIONS BELOW

The Thirteenth Circuit Court of Appeals' decision is available at No. 21-0803 and reprinted. R. at 2. The bankruptcy court ruled in favor of the Penny Lane Industries, Inc., chapter 11 Debtor. R. at 10. On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed in favor of Penny Lane Industries, Inc., chapter 11 Debtor. *Id.*

STATEMENT OF JURISDICTION

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

RELEVANT STATUTORY PROVISIONS

The relevant federal laws controlling this case are found within the provisions of 11 U.S.C. §§ 105(a), 523(a), 524(g), 1192.

STATEMENT OF THE CASE

Factual Background

Penny Lane Industries, Inc. (the "Debtor"), a facility that manufactures plastic, glass, and metal food containers, is located in the City of Blackbird, Moot. R. at 3. The Debtor caused the suffering and injuries to the residents of Blackbird and the neighboring communities due to their intentional disposal of toxic environmental pollutants and industrial chemicals. *Id.* at 3-4. This contamination led to the death of a four-year-old girl. *Id.* at 5. The Debtor is a wholly owned subsidiary of Strawberry Fields Foods, Inc. ("Strawberry Fields"). *Id.* at 4-5. The residents of Blackbird and the neighboring communities are the "Creditors." *Id.* at 3.

A sizable groundwater plume exists under the city of Blackbird. *Id.* at 5. The federal and state authorities suspect that the Debtor's actions led to the contamination of the area's groundwater supply. *Id.* Studies from the United States Environmental Protection Agency and the Centers for Disease Control and Prevention conclude that, from 2013 to 2017, the Blackbird residents used water that reflected concentrations almost three thousand times the permitted level. *Id.* Exposure to such high concentrations of toxins have been linked to chronic illnesses, as well as birth defects and, worst of all, death. *Id.* Hundreds of Blackbird residents and nearby community members filed lawsuits against the Debtor seeking damages for illness and death caused by the Debtor's actions. *Id.* at 6. In 2017, Ms. Rigby filed one of those lawsuits, seeking justice for her four-year-old daughter, who died after exposure to the toxins in the groundwater. *Id.* at 5.

Ms. Rigby's complaint pled three claims, one of which asserts that Strawberry Fields, the Debtor's parent company, is liable for the contamination of the Liverpool River. *Id.* According to Ms. Rigby, Strawberry Fields knew or should have known that its subsidiary was dumping toxic industrial chemicals onto their property as a cost-saving measure. *Id.* at 5-6.

The Debtor and Strawberry Fields dispute these allegations, and instead argue that they dumped waste onto the property in accordance with applicable environmental laws and regulations. *Id.* at 6. They also deny knowing that the chemical waste contaminated the groundwater plume under Blackbird. *Id.* And to divert responsibility to other manufacturing facilities in the area, the Debtor and Strawberry Fields assert that there is insufficient evidence linking them to the chemical contamination of the water. *Id.*

When the Debtor realized that it owed less than $2 million to its trade creditors, and was facing approximately $401 million in damages to the victims of the chemical poisoning, it filed a chapter 11, subchapter V bankruptcy petition. *Id.*

Procedural History

In 2017, Ms. Rigby asserted that her daughter died of leukemia after being exposed to chemicals dumped by the Debtor. *Id*. at 6. The Debtor filed its bankruptcy petition to deal with the damages owed to the hundreds of vulnerable people of the Blackbird community they harmed due to disposing of toxic chemicals on their property that likely contaminated the groundwater. *Id.* at 3. While there is no judicial determination regarding Ms. Rigby's or the other residents' claims against the Debtor or Strawberry Fields, the Debtor faces nearly 10,000 claims asserting cumulative damages of approximately $401 million. *Id.* at 6. "Ms. Rigby file[d] an unsecured claim against the Debtor for $1 million. *Id.* Neither the Debtor nor Strawberry Fields have filed an objection to Ms. Rigby's claim in the bankruptcy case. *Id.* at 7.

Once the Debtor filed its petition, an automatic stay for the commencement of all non-bankruptcy litigation was triggered by section 362(a). *Id.* Because Strawberry Fields is a non-debtor, the automatic stay did not apply to litigation currently pending against it; therefore, the Debtor obtained a temporary injunction from the bankruptcy court that halted all actions related to the contaminated groundwater claims against the Debtor's "current and former owners, officers, directors, employees and associated entities," which included Strawberry Fields. *Id.* at 8. "The bankruptcy court concluded that such a temporary injunction was appropriate to facilitate negotiation of a global settlement by the Debtor, Strawberry Fields, and a number of ad hoc creditor groups in mediation. The expiration date of the injunction has been extended several times while mediated negotiations, and this litigation, continued." *Id.*

After months of post-petition mediation, the Debtor filed a non-consensual Plan of Reorganization (the "Plan"). *Id.* at 3-4. The Plan created a creditors' trust, which is largely funded by the Debtor's corporate parent, Strawberry Fields. *Id.* at 4. Strawberry Fields formed the fund for the purpose of self-interest because the trust was created under the premise that all claims against the Debtor be discharged and that broad, non-consensual release of claims be given to the Debtor and Strawberry Fields, by the Creditors. *Id.* After a four-day confirmation hearing, the bankruptcy court confirmed the Plan, but Ms. Rigby objected. *Id.* at 10. The court concluded the Plan was fair and reasonable because "no other reasonably conceivable means" existed to achieve the current result. *Id.* Their reasoning for confirming the Plan stemmed from the belief it would prevent complex and costly litigation. *Id.* Lastly, the court stated that the Plan offered significant benefit to the creditors at a faster pace than litigation. *Id.*

Ms. Rigby timely appealed both of the bankruptcy court's rulings. *Id.* Upon the parties' request, the disputes were certified for direct appeal to this court pursuant to 28 U.S.C. § 158(d) and, thereafter, consolidated in this appeal. *Id.*

STANDARD OF REVIEW

When dealing with non-core proceedings, the bankruptcy court only has the ability to issue findings of fact and conclusions to be reviewed by the district court. *Stern v. Marshall*, 564 U.S. 462, 499 (2011), On appeal, this Court reviews these proceedings *de novo*. *Id.*

SUMMARY OF THE ARGUMENT

Both the bankruptcy court and the Thirteenth Circuit Court of Appeals relied on an incorrect interpretation of the Bankruptcy Code when it confirmed the Debtor's Plan that contained broad, non-consensual, third-party releases not permitted by the Bankruptcy Code and, further, allowed the Debtor's discharge of debts stemming from willful or malicious conduct.

On behalf of her deceased child, Ms. Rigby asks this Court to settle the long-standing debate that non-consensual third-party releases are impermissible, outside of the asbestos cases' exception. On these present facts, there are no deaths or injuries related to asbestos. Congress has remained silent for decades since implementing section 524(g), failing to adopt new measures or amending the Bankruptcy Code to include for third-party releases outside of the asbestos context. Additionally, in the cases in which third-party releases were approved by lower courts, the facts were either rare or unusual in which the third-party claim stemmed from the bankruptcy case. That is not the case here. Ms. Rigby argues that the actions of the non-debtor are the cause of the claim and not at all with respect to the bankruptcy case. If this Court were to allow a non-debtor the ability to insert releases into the confirmation of a plan, then the equitable powers of the bankruptcy court become meaningless, and non-debtors can be afforded all the protections of a discharge

without succumbing to any of the procedures. Ms. Rigby asks this Court to affirm Congress' acquiescence with respect to not addressing non-debtor releases outside of the asbestos context.

With respect to the discharge of debts under 11 U.S.C. § 1192, Ms. Rigby's wrongful death claim against Strawberry Fields and the Debtor for contaminating groundwater through their willful and malicious chemical dumping falls within "the kind [of debts] specified in section 523(a);" therefore, the Court should exclude the debts owed to Ms. Rigby from discharge. Section 1192(2) states that the kind of debts specified in section 523(a) are pertinent to the application of this discharge provision. The word kind refers to the list of debts outlined in section 523(a), not the types of debtors section 523 typically governs. Because section 1192 applies to individual and corporate debtors, the Debtor and Strawberry Fields are not exempt from debts that fall within the willful and malicious injury category.

In addition to the language of section 1192, there are several reasons why Ms. Rigby's claim is not dischargeable. *First*, Congress' intended for section 1192(2) to apply to corporate debtors. *Second*, section 1192 is more specific than section 523; therefore, section 1192 should be the controlling provision. *Third*, relying on the majority opinion's interpretation, section 1192 would allow for debt discharge of all types for corporate debtors, even the ones exempted in section 1141, which is absurd. *Fourth*, courts have applied section 523 to corporations under the application of other chapters; hence, they should do so here. *Finally*, discharging debts that derive from the willful and malicious injury to the residents of Blackbird of small business debtors and corporations removes responsibility from companies and long-term harm to those who suffer from the inconsiderate and harmful actions of corporations that employ improper tactics to save a penny. Thus, Ms. Rigby asks this Court to weigh the importance of non-debtor releases and discharges of

debts for corporations that employ careless business practices that cause irreparable harm to the citizens of the Blackbird community.

ARGUMENT

I. THE BANKRUPTCY COURT UNDERVALUED THE CLEAR AND CONVINCING LANGUAGE OF 11 U.S.C. §524(E), WHICH LIMITED ITS STATUTORY AUTHORITY, WHEN IT ALLOWED FOR A RELEASE THAT AFFECTED THE LIABILITY OF A NON-DEBTOR.

For most of the twentieth century, mass tort claims did not appear in bankruptcy cases. This was until 1982, when the world's asbestos miner, Johns-Manville Corp. ("Manville"), filed for chapter 11 bankruptcy. *In re Johns-Manville Corp.*, 36 B.R. 727, 729 (Bankr. S.D.N.Y. 1984). One of the pivotal issues in this case was whether the Asbestos Committee had provided sufficient evidence to show that the proposed filing was one of egregious error "in over-calculation of Manville's financial problems [which] establish the kind of bad faith in the sense of an abuse of this Court's jurisdiction which will vitiate the filing of a Chapter 11 petition." *Id.* at 730. The decision in that case signified what would soon be the 1994 amendment to the Bankruptcy Code, Congress' addition of section 524(g). This amendment has left circuit courts split in determining their reach when implementing judgments and finalizing orders.

On August 26, 1982, Manville filed for chapter 11 because of the anticipated debt that would arise from future claims and not because of the debt it faced at the time. *Id.* at 729. "Manville submits that the sole factor necessitating its filing is the mammoth problem of uncontrolled proliferation of asbestos health suits brought against it … [by] those who came into contact with the dust of this lethal substance." *Id.* Manville believed that upwards of 16,000 lawsuits they currently faced, in addition to those that are not yet ripe and have not manifested into asbestos claims, could potentially burden them economically over the next 20-30 years. *Id.* Three of the four motions to dismiss argue that "because the claims of future asbestos victims are not cognizable

or dischargeable in bankruptcy," the court should dismiss them. *Id.* at 730. The Bankruptcy Court for the Southern District of New York concluded that even assuming Manville's future debts to non-actualized claimants are not dischargeable in subsequent bankruptcy proceedings, the court is still permitted in allowing these claims if the claimants are recognized "'parties in interest' under section 1109(b)…." *Id.* at 742. Therefore, for a proper plan to be effective post-petition, it is necessary to represent future claimants to account for potential aftermath. *Id.*

On November 28, 1988, Manville, the Asbestos Committee, and other claimants consummated a "largely consensual" plan that allowed for a pool of funds to pay for those 16,000 current claimants and future claim holders yet to be actualized. *In re Johns-Manville Corp.,* 97 B.R. 174, 176 (Bankr. S.D.N.Y. 1989). Therefore, to make "sufficient [claims] to enable the Trust to evaluate the claim," current or future claimants had to demonstrate the severity of their asbestos-related disease via extensive health documentation and records. *Id.* at 177. This process was to ensure a causal connection between the Debtor's conduct and the actual harm to have a cause for settlement, even for those who would not be able to show future injury.

The purpose of establishing a trust in Manville was to provide a way to compensate fairly for the victims. *Id.* The monetary value of the Trust in Manville reached over a billion dollars. *Id.* With the number of resources poured into that Trust, it would be conceivable to see how that could be accomplished. *Id.* Should the claims procedure not reach a settlement, the claimant was still afforded their procedural due process right to trial. *Id.*

Similar to the facts and issue of the case at bar is the injunction written in the Manville Plan. *Id.* at 177. This injunction ensured that the Trust was the only entity that could have claims enforced upon it and to ensure the availability of future funds being paid into the Trust. *Id.* The injunction stated that asbestos health claimants may proceed only against the Trust to satisfy their

claims and could not sue the debtor or its affiliates, including insurers. "Significantly, the Injunction applies to all health claimants, both present and future, regardless of whether they technically have dischargeable 'claims' under the Bankruptcy Code." *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 640 (2d Cir. 1988).

This unprecedented global settlement of present and future claims in *Manville* became the platform Congress used to enact section 524(g). The only explicit grant of authority a bankruptcy court shall have over third parties is in "asbestos or asbestos-containing products" pursuant to section 524(g). 11 U.S.C. § 524(g). Absent the language of section 524(g)(4)(A)(ii), which states that, "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," there is no other provision in the Bankruptcy Code that grants authority to a bankruptcy court over a non-debtor. 11 U.S.C. § 524(g)(4)(A)(ii). An excerpt from the Congressional Record dated Tuesday, October 4, 1994, sheds light on the purpose of implementing 524(g), which was to provide explicit guidance within asbestos cases.[1]

This language only strengthens the position as to why section 524(g) was enacted for asbestos related cases only. Asbestos and asbestos related diseases were increasing at a rapid rate, and the diagnosis of these diseases could take 10-40 years to mature. Due to the number of claims that were currently being filed, and the realization that there would be future claims, Congress implemented the creation of a trust in accordance with an injunction power to allow claims of such "singular cumulative magnitude" to be channeled into one pool of assets. *Id.*

[1]"The Committee expresses no opinion as to how much authority a bankruptcy court may generally have under its traditional equitable powers to issue an enforceable injunction of this kind. The Committee has decided to provide explicit authority in the asbestos area because of the singular cumulative magnitude of the claims involved." *Vol. E., Collier on Bankruptcy, at App. Pt. 9-78* (reprinting legislative history pertaining to the 1994 Code). amendments).

Here, the factual differences should persuade this Court to prohibit the third-party non-debtor release of this claim. At the outset, this is not an asbestos or an asbestos-related case. The facts do not suggest that the cause of Ms. Rigby's four-year old daughter's death was asbestos related or that any of the 10,000 claimants alleged wrongful death suits against the Debtor related to asbestos illnesses. Additionally, this trust does not equivocate or compare to the monetary value of claims.

Strawberry Fields attempts to contribute 100 million dollars for an extremely broad release. Moreover, the only other additional income being added into the trust to compensate the thousands of claimants, is the Debtor's disposable income for only five years. In addition to claims related to this chapter 11 bankruptcy, Strawberry Fields requests releases from claims stemming from the Debtor's prepetition conduct or its estate are being included in the Plan. This Plan in Ms. Rigby's unfortunate situation attempts to pay thirty to forty cents on the dollar. The bankruptcy court thought this was substantially better than whatever Ms. Rigby would have attained under a chapter 7 discharge. However, this was a claim against Strawberry Fields for their own, independent negligence and thus, the statutory authority of the bankruptcy to adjudicate the claim was absent, and therefore unwarranted.

Section 524(g) allows for an injunction releasing non-debtors from liabilities in asbestos cases. This is the only exception to section 524(e), and as will be discussed, there is no other authority in Bankruptcy Code to allow Strawberry Fields to attempt to abridge the privileges and protections therein.

A. The Bankruptcy Code does not provide a bankruptcy court any authority over a non-debtor, excepting section 524(g), as the language of section 524(e) is explicit in defining the characteristics of discharging a debt, and its effect on non-debtors.

Section 105(a) of the Bankruptcy Code states that, "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. §105(a). This language, coupled with that of section 1123(a)(5), "[a plan shall] provide adequate means for the plan's implementation," highlights the important issue at dispute here. 11 U.S.C. § 1123(a)(5). The effect of these two sections allow the equitable powers of the bankruptcy court to have its fullest impact. However, these provisions may only be read so much as they are not inconsistent with other provisions of the Bankruptcy Code. 11 U.S.C. § 1123(b)(6). Although there is a split amongst circuit courts, the majority of them either disapprove of third-party releases in its entirety or limit them to extremely rare and unusual circumstances.

1. Sections 105(a) and 1123(a)(5) cannot be read without another provision of Bankruptcy Code giving them enforceability.

The bankruptcy court cannot confirm a plan of reorganization that does not comply with applicable provisions of the Bankruptcy Code.[2] 11 U.S.C. § 1129(a)(1). *In re Lowenschuss,* 67 F.3d 1394, 1401 (9th Cir. 1995). The general provision, Section 105, does not authorize relief inconsistent with provisions that offer specificity. *Id*. (citing *In re American Hardwoods, Inc.*, 885 F.2d 621, 626 (9th Cir.1989) that "the specific provisions of section 524 displace the court's equitable powers under section 105 to order the permanent relief [against a non-debtor]…."). A permanent injunction improperly shields non-debtors from liability, running afoul of the explicit language of section 524(e). *In re Western Real Estate Fund, Inc.*, 922 F.2d 592, 602 (10th Cir. 1990).

[2] Section 105 uses the term "provisions" and not the term "purposes" in describing the bankruptcy court's power to effect the mandate of the Bankruptcy Code. The statutory language thus suggests that an exercise of section 105 power be tied to another Bankruptcy Code section and not merely to a general bankruptcy concept or objective. *2 Collier on Bankruptcy ¶ 105.01[2], p. 105–6* (16th ed. 2013).

The Ninth Circuit in *Lowenschuss*, the Debtor in this matter was a professional corporation that filed for bankruptcy on August 24, 1992. 67 F.3d at 1396. The Court of Appeals for the Ninth Circuit addressed whether the reorganization plan violated the text of the Bankruptcy Code. *Id.* Included within this reorganization plan, was a global release that "purport[ed] to release claims against non-debtors . . . ." *Id.* at 1397. On Appeal, Lowenschuss argues that the release provision was warranted in that other circuits have argued the acceptance of third-party releases. *Id.* at 1398. The Court of Appeals affirmatively disagreed. Instead, combining the languages of sections 524(a) and 524(e), the court reasoned that the discharge under chapter 11, releases the Debtor from personal liability for the debts. *Id.* (emphasis added). Nowhere in that section, does it provide "for the release of third parties from liability; …." *Id.* at 1401. This court further reasoned that the language of Bankruptcy Code must be read to be not inconsistent. *Id.* In other words, the generality of section 105, cannot be read so as to displace the powers of the more specific provisions. *Id.* Most significantly, section 524(e) has specific and explicit authority from Congress to release non-debtors, whereas section 105 must be read in conjunction with another provision for similar authority. *Id.*

Similarly, the Court of Appeals for the Tenth Circuit addressed in *In re Western Real Estate Fund*, whether section 105 authorized a bankruptcy court to issue an injunction barring a creditor from pursuing claims against a non-debtor. 922 F.2d at 594. Landsing Diversified Properties ("LDP"), sought to have an injunction issued against one of its creditors to which they would be prevented from enforcing claims against Public Service Company of Oklahoma ("PSO"). *Id.* While the relationship of LDP and PSO are not affiliated, the Court of Appeals held that the temporary injunction in the form of a stay was permissible. *Id.* However, the Court noted that, "the second and more serious problem with the injunction is its explicitly permanent nature." *Id.* at 600.

They articulated that this injunction attempted to control "in perpetuity" the status of Abel's claims, even when they had nothing to do with the Debtor during the development, implementation, and execution of the reorganization plan. *Id.* With respect to the bankruptcy court to issue a permanent injunction over a non-debtor, the Court of Appeals further reasoned:

> Not only does such a permanent injunction improperly insulate nondebtors in violation of section 524(e), it does so without any countervailing justification of debtor protection—as discussed earlier, the discharge injunction provided for in section 524(a) already frees the debtor from potential derivative claims, such as indemnification or subrogation, that might arise from the creditor's post-confirmation attempts to recover the discharged debt from others.
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> *Id.* at 602.

In the current matter, this is precisely what Strawberry Fields is attempting to do. Without the use of another explicit grant of authority from Bankruptcy Code, relying on solely section 105 does not provide the ability for a bankruptcy court to permanently release a non-debtor claim against a non-debtor. Strawberry Fields is asking a bankruptcy court to, in effect, release claims that did not arise out of the confirmation of the plan, out of the bankruptcy proceedings, or the debtor's estate. Instead, Strawberry Fields wishes to absolve itself of its own liability and negligence, by merely bootstrapping a non-debtor claim in the bankruptcy proceedings, and then articulating that certain funds are available only on the release of this claim.

2. The bankruptcy court, being a non-article III court, was precluded from releasing Ms. Rigby's claim, an adjudication on a matter immaterial to the current bankruptcy proceeding, pursuant to section 1334(b).

As a preliminary matter, there is serious doubt as to the authority of the bankruptcy court to issue a final judgment related to this current matter. Section 1334(b) states that a bankruptcy court has original, but not exclusive jurisdiction over cases related to Title 11. 11 U.S.C. § 1334(b). "Article III simply does not allow third-party non-debtors to bootstrap any and all of their disputes into a bankruptcy case…." *Patterson v. Mahwah Bergen Retail Grp.*, 636 B.R. 641, 667 (E.D. Va.

2022). The precise question this Court should grapple with is not whether this release was integral to the confirmation of the Plan or the restructuring of the Debtor, but "whether the third-party claims released and enjoined by the Bankruptcy Court either stem from the bankruptcy itself or would necessarily be resolved in the claims allowance process." *In re Purdue Pharma, L.P.*, 635 B.R. 26, 81 (S.D.N.Y. 2021).

Perhaps the most parallel case to this current matter is that in *Purdue Pharma*. This case brought national attention to the opioid crisis that has long devastated this nation. Although there is an extensive backstory regarding such a crisis, and admissions of guilt, relevant to this matter, is the filing of bankruptcy by Purdue Pharma ("Purdue"), and the attempted plan confirmation. *In re Purdue Pharma, L.P.*, 635 B.R. at 27. After a 2007 plea agreement from the U.S. government, thousands of lawsuits began piling against Purdue by persons, "who had become addicted to OxyContin and by the estates of addicts who had overdosed…." *Id.* at 34. In September 2019, Purdue filed for bankruptcy. *Id.* As part of the chapter 11 plan of reorganization, Purdue sought a non-debtor release. *Id.* In it, the released parties requested all claims that are "based on or related to the Debtors. their estates, or the chapter 11 cases…" *Id.* at 66. Those in favor argued that there are many benefits to the plan, and that it was necessary for the plan's implementation, and that liquidation would offer less benefit to the creditors and victims. *Id.* at 73. In a 142- page opinion, Judge McMahon for the Southern District of New York District Court held in the contrary, that nothing in the Bankruptcy Code suggests the bankruptcy court had any statutory authority to enter a final judgment on a non-debtor third-party release. *Id.* at 115.

In his ruling, Judge McMahon states that the bankruptcy judge relied on a Third Circuit precedent where the question of a third-party release focused on whether it is integral to the debtor-

creditor relationship, although the application of *Stern v. Marshall* in that case was misguided.[3] *Id.* at 104. He further reasoned because this was not a core proceeding, the bankruptcy was prohibited from extinguishing the third-party claims. *Id.* When the bankruptcy court has enjoined a prosecution of a claim, without an adjudication on the merit, they have finally determined that claim. *Id.* Congress may not allow a bankruptcy court to issue any such order absent the parties' consent when the claim is non-core.

Infinite jurisdiction is what Strawberry Fields, a non-debtor in the present matter, is asking of this Court. Ms. Rigby is alleging that Strawberry Fields knew or should have known of the Debtor's conduct. This is an affirmative accusation in that Ms. Rigby is alleging that the non-debtor did something or actively failed to do something that it should have. This claim is irrespective of the result that followed from the negligence. For example, Strawberry Fields could have had previous reports of contamination dumping by their subsidiary but failed to disclose it to the public or make suitable changes. As such, whether they had previous reports of the dumping, or previous reports of tax fraud, Ms. Rigby, is alleging that they were negligent, nonetheless. The bankruptcy court should not be able to enjoin Ms. Rigby from having her day in trial. To do so, would be to deprive a non-debtor of the due process rights afforded to them. Even if the bankruptcy court has jurisdiction over the claims, Ms. Rigby's claim is one that did not stem from the bankruptcy and should therefore not be adjudicated upon by way of a non-debtor release. Next, the Court's analysis should focus on how allowing corporate discharge of debts associated with willful and malicious injury did not fall within Congress' intent when promulgating section 1192(2) of the Bankruptcy Code.

[3] The Third Circuit case referenced is In re Millennium Lab Holdings II, LLC., 945 F.3d 126 (3d Cir. 2019), where the court applied a "Stern" analysis to determine whether the claim was related to the bankruptcy case. *Stern v. Marshall* asks whether the claims "stem[ ] from the bankruptcy itself or would necessarily be resolved in the claims allowance process." Stern v. Marshall, 564 U.S. 462, 499 (2011).

II. SECTION 1192(2), WHICH ADOPTS THE LIST OF NON-DISCHARGEABLE DEBTS LISTED UNDER SECTION 523(A), EXCLUDES FROM DISCHARGE DEBTS ASSOCIATED WITH MS. RIGBY'S WRONGFUL DEATH CLAIM AGAINST THE DEBTOR AND STRAWBERRY FIELDS.

Under section 1192(2), Ms. Rigby's wrongful death claim against Strawberry Fields and the Debtor for contaminating groundwater through their willful and malicious chemical dumping falls within "the kind [of debts] specified in section 523(a)." 11 U.S.C. § 1192(2). Therefore, the Court should exclude the debts owed to Ms. Rigby from discharge. Traditionally, section 1141(d) sets forth the scope of discharge for chapter 11 cases. 11 U.S.C. Code § 1141(d). However, in subchapter V cases where a bankruptcy court confirms a non-consensual plan, discharge is governed by section 1192. *Id.* section 1181(c). The most pertinent part of this section to our case is section 1192(2), which includes the kind of debt Ms. Rigby is entitled to. Section 1192 states:

> If the plan of the debtor is confirmed under section 1191(b) of this title, as soon as practicable aftercompletion by the debtor of all payments …, the court shall grant the debtor a discharge of all debts provided in section 1141(d)(1)(A) of this title … except any debt—
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> * * *
>
> (2) of the kind specified in section 523(a) of this title.

Id. § 1192.

The language of section 1192(2) clearly articulates its purpose and which parts of section 523(a) apply to the discharge of debts for debtors. *See* 11 U.S.C. § 1192(2). Section 1192(2) states that the kind of debts specified in section 523(a) are pertinent to the application of this discharge provision. *Id.* The word kind refers to the twenty-one specified categories of debts outlined in section 523(a); hence, section 1192(2) adopts the list of non-dischargeable debts, not the types of debtors section 523 typically governs. In the list of non-dischargeable debts, a debtor is not discharged from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." *Id.* at § 532(a)(6). Because section 1192 applies to individual and

corporate debtors, the Debtor and Strawberry Fields are not exempt from debts that fall within the willful and malicious injury category.

In addition to the clear language of section 1192, there are several reasons why Ms. Rigby's claim against the Debtor and Strawberry Fields is not dischargeable. *First*, Congress' intent, assessed through legislative statements, supports the finding that section 1192(2) applies to corporate debtors. *Second*, section 1192 is more specific than section 523; therefore, section 1192 "should be given precedence over the more general provision" in resolving inconsistency. R. at 32; *see, e.g., Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992) ("[I]t is a commonplace of statutory construction that the specific governs the general…."). *Third*, relying on the majority opinion's interpretation, section 1192 would allow for debt discharge of all types for corporate debtors, even the ones exempted in section 1141, which is absurd. *Fourth*, it is not unheard of for section 523 to apply to corporations under the application of other chapters. *Finally*, allowing small business debtors and corporations to receive a discharge from debts that derive from their willful and malicious injury to the property of others, especially residents of the city where the business resides, removes responsibility from companies. This discharge of debts causes long-term harm to those who suffer from the inconsiderate and harmful actions of corporations that employ improper tactics to save a penny.

A. The language of section 1192 does not limit the scope of discharge of section 1192(2) to apply only to individuals; therefore, the provision also applies to corporate debtors.

The majority concluded that section 523(a)'s introductory language provides that section 1192(2)'s exceptions to discharge for debts "of a kind specified in section 523(a)" are limited to applying only to individual debtors. R. at 19. The problem with this conclusion is that if Congress intended to limit the scope of section 1192(2), it would have expressly done so in section 1192. As

mentioned before, subchapter V is not subject to the traditional provisions of chapter 11, such as section 1141; therefore, Congress would have included any limitations on the scope of applicability in section 1192 if they wished to limit the discharge exceptions to only individuals.

Section 1192 applies to both individual and corporate debtors; therefore, the provisions of this section equally apply to both types of debtors unless expressly stated otherwise. Congress has consistently differentiated when certain parts of the Bankruptcy Code apply to individuals versus corporations. For example, in traditional chapter 11 cases, individuals receive a discharge from debts, except "any debt excepted from discharge under section 523," after completing plan payments. 11 U.S.C. § 1141(d)(2), (5). On the other hand, corporations do not receive a discharge from debts that fall within sections 523(2)(A) and 523(2)(B) in traditional chapter 11 cases. *Id.* § 1141(d)(6)(A). Unlike section 1141, no language in section 1192 limits the scope of application of section 523(a) on individuals and corporations. Therefore, section 1192(2) applies to individual and corporate debtors.

The majority opinion in the lower court states, "Only once has Congress deviated from the complete corporate discharge principle, and then only after 8 years of consideration. *See* 11 U.S.C. § 1141(a)(6)." R. at 17. This statement shows that Congress is exceptionally intentional in drafting, interpreting, and applying the Bankruptcy Code. Therefore, the majority opinion ignores Congress' high level of preciseness when drafting the Bankruptcy Code by concluding that the absence of language that differentiates between individuals and corporations in the scope of section 1192 does not mean that Congress intended for section 1192(2)'s mention of section 523(a) to apply to both individuals and corporations.

Examining the text of statutes is the strongest form of statutory interpretation. However, this is only true when the text is not ambiguous nor conflicts with other provisions within the

Bankruptcy Code. For example, despite section 523's introductory clause referencing individuals, section 1192 does not distinguish between debtors; therefore, there is a conflict between the two provisions. Due to this conflict, courts must rely on more than the text to understand Congress' intent on correctly implementing these provisions. R. at 31.

B. Courts should adopt a harmonious reading of section 1192 and section 523; therefore, section 1192(2)'s reference to section 523(a) should be read as shorthand to define the scope of subchapter V discharges for individuals and corporations.

Historically, courts have read section 1228 and section 523(a) in harmony despite section 1228 applying to corporations and section 523(a) 's language about individuals; therefore, courts should read section 1192 and section 523(a) in a similar harmonious manner. In pari materia requires that courts interpret statutes or acts related to the same subject matter under the same legislative intent. Dru Stevenson, *Canons of Construction Adapted from Scalia & Garner*, Univ. of Hous. L. https://www.law.uh.edu/faculty/adjunct/dstevenson/2018Spring/CANONS%20OF%20CONSTRUCTION.pdf, (Last visited Jan. 18, 2023). "It is to be inferred that a code of statutes relating to one subject was governed by one spirit and policy," and should be read in harmony. Additionally, the prior-construction canon requires that "if a statute uses words or phrases that have already received authoritative construction by the jurisdiction's court of last resort, or even uniform construction by inferior courts or a responsible administrative agency, they are to be understood according to that construction." Stevenson, *supra*. "*See Hall v. United States*, 566 U.S. 506, 519 (2012) ('[I]dentical words and within the same statute should normally be given the same meaning')." R. at 34. Chapter 12 of the Bankruptcy Code contains similar language as section 1192. Section 1228 of the Bankruptcy Code states:

> "(a)…the court shall grant the debtor a discharge of all debts . . . except any debt—
>
> (2) of a kind specified in section 523(a) of this title, except as provided in section 1232(c)."

11 U.S.C. §1228(a)(2).

When courts interpreted this identical language, they interpreted it to include corporations. *See In re Breezy Ridge Farms, Inc.*, 2009 WL 1514671, at *2 (Bankr. M.D. Ga. 2009); *In re JRB Consol., Inc.*, 188 B.R. 373, 374 (Bankr. W.D. Tex. 1995). Because section 1228 and section 1192 of the Bankruptcy Code share similar language, it is logical to read them under the same legislative intent. The lower court attempted to read section 1192 using the legislative intent of traditional chapter 11 provisions. However, this interpretation is incorrect because Congress' intent for creating subchapter V was to create a different system for subchapter V debtors than traditional chapter 11 debtors. This difference in treatment is apparent in the Bankruptcy Code's discharge provisions. *See* § 1141(d)(2) and (3) *as compared to* § 1192. Reading sections 1192(2) and 523(a) in harmony would yield a similar result as the reading of sections 1228 and 523(a). Congress intended for section 1228's language to allow section 523 to apply to corporations, then the same language, even when used in a different chapter, is supported by the same intent. This reasoning is supported by *In re Breezy Ridge Farms, Inc.*, No. 08-12038-JDW, 2009 WL 1514671 (Bankr. M.D. Ga. May 29, 2009), which addresses a similar issue to our case at hand as to if section 523(a) applies to corporations when referenced in other chapters of the Bankruptcy Code.

Breezy Ridge Farms, Inc., a Georgia corporation, filed a chapter 12 petition. *In re Breezy Ridge Farms, Inc.*, No. 08-12038-JDW, 2009 WL 1514671, at *1 (Bankr. M.D. Ga. May 29, 2009). Creditor Southwest Georgia Farm Credit "filed a complaint alleging nondischargeability of certain debts pursuant to sections 523(a)(2), (4), (6), and 1228(b) of the Bankruptcy Code. *Id.* Breezy Ridge Farms, Inc. argued that the debts of a corporate chapter 12 debtor could not be excepted

from discharge, but the court held that they could. *Id.* The court reasoned that a plain language interpretation of section 523(a) was not valid because section 523(a) "does not define the breadth of a discharge," but limits the initial discharge parameters set for in section 1228. *Id.* The court also distinguished between section 1141 and section 1228 by showing that section 1141 contains language that provides distinctions between individual and corporate discharges. *Id.* at 2. They held that the lack of this distinguishing language in chapter 12 means that the list of debts of section 523(a) applies equally to corporations and individuals. *Id.* The court explains that Congress referenced section 523(a) as a shorthand to define the scope of chapter 12 discharge for individuals and corporations. *Id.* Therefore, despite section 523's language expressly stating "individuals," section 1228 is not limited by that language when it refers to section 523(a), especially since section 1228 is the more specific and controlling provision. *Id.*

Courts have applied the same standard associated with sections 1228 and 523(a) to sections 1192 and 523(a). *In re Cleary Packaging, LLC,* 36 F.4th 509 (4th Cir. 2022) is about a creditor who filed an adversary complaint against a debtor who proceeded under subchapter V of chapter 11 as a small business debtor. *Id*. The debtor sought to discharge a $4.7 million judgment that the creditor had won for the debtor's intentional interference with their contract and tortious interference with business relations. *Id.* The creditor argued that the debt was not dischargeable under section 1192(2) which exempted from discharge "any debt … of the kind specified in section 523(a)." *Id.* at 512. The Fourth Circuit concluded that when reading section 1192(2) in harmony with section 523(a), Congress' reference to section 523(a) serves as shorthand for which debts courts should not discharge. The lower court concluded that this interpretation "demonstrate(s) that Congress intended to reject a half century of settled doctrine and silently add approximately two dozen new categories of non-dischargeable debts for chapter 11 debtors in subchapter V

cases," but this is not correct because "the referenced statutory provisions simply cannot bear that weight." R. at 17. The majority opinion fails to consider that subchapter V section 1192 significantly deviates from traditional doctrine. *Id.* at 29. For example, it rejects the absolute priority rule, applies only when plans are non-consensual, and even during liquidation, corporations receive discharges. Subchapter V discharge, 5 Norton Bankr. L. & Prac. 3d § 107:20. Rather than relisting all the exceptions that apply to discharges of debt for corporations, Congress placed section 523(a) 's language in section 1192(2) as a reference point to the expansive list.

Congress created subchapter V to increase the amount of successful small business reorganizations. R. at 29. Because subchapter V produces a different outcome than traditional reorganizations, it is not absurd that Congress intended for section 1192(2) to be supported by a different legislative intent than traditional chapter 11 provisions. Because of the lack of legislative intent for section 1192(2), courts must use the interpretations associated with the most similar language within the Bankruptcy Code when interpreting how section 1192(2) should be applied to discharge. *Hall,* 566 U.S. at 519. Congress wrote section 1192(2) with similar language as section 1228; therefore, courts should read section 1192 and section 1228 as having the same supporting legislative intent. *In re Breezy Ridge Farms, Inc.*, No. 08-12038-JDW, 2009 WL 1514671, at *1. Following this logic, section 1192's language is distinguishable from section 1141; therefore, they do not share similar congressional intent. Because of this distinction, courts should not depend on the legislative intent of section 1141 to interpret section 1192. *Id.*

C. Congress' chapter 11 legislative statements support the idea that Congress does not intend for corporations to receive complete discharges of debt.

A thorough examination of the legislative statements associated with chapter 11 discharges shows that Congress intended for corporations to face limits on dischargeable debts during

reorganization. "Although chapter XI [chapter 11 of former title 11] offers the corporate debtor flexibility and continuity of management . . . a corporation in chapter XI may not be able to get a discharge in respect of certain kinds of claims including fraud claims." 11 U.S.C.S., Ch. 11 (available at https://uscode.house.gov/view.xhtml?path=/prelim@title11/chapter11&edition=prelim). This statement shows that Congress intended to limit the scope of dischargeable debts because Congress stated that corporations "may not be able to get a discharge in respect of certain kinds of claims" and proceeds to refer to fraud claims. *Id.* Congress declares that corporations are not subject to total discharges and uses fraud claims as an example. While Congress expressly mentions fraud claims, this is not an exhaustive list of which types of debts are not dischargeable. This list is not exhaustive because chapter 11 provides multiple categories where corporations cannot receive a discharge. *See* 11 U.S.C. § 1141(d)(6)(A) (stating that corporations do not receive a discharge from debts that fall within sections 523(2)(A) and 523(2)(B). Because different parts of the Bankruptcy Code refer to section 523(a) as a guiding light, this provision serves as a central place where Congress lists non-dischargeable debts for individuals and corporations. Because fraud claims are within the list of debts listed in section 523(a), fraud debts are of the same importance as all the other debts Congress wants debtors to remain responsible for. Therefore, it is understandable that 1192(2) serves as a bridge to connect the entire list of non-dischargeable debts, not just fraud claims, to corporations. While the introduction of section 523(a) does not support this interpretation, the amendment of 1192 does. The inclusion of subsection 2 of section 1192 serves as a remedial amendment to ensure that the intent of Congress to limit the number of dischargeable debts for corporations is understood.

D. If courts cannot read section 1192 and section 523 in harmony, then section 1192, as the more specific provision, should dictate the overall interpretation.

When Congress' intent is not clear, courts can rely on canons of construction to help discern Congress' intent. *Lena v. Pena*, 518 U.S. 187, 211 (1996). The more specific provision should dictate the overall interpretation when there is an inconsistency between the two provisions. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992). Section 1192 is more specific than section 523 because section 1192 applies to a narrower matter (subchapter V cases). R. at 32. Therefore, section 1192 governs the interpretation of section 523(a) as it applies to subchapter V cases. For example, when a subchapter V case involves a debtor with debts of the kind that fall within the list of exceptions of section 523(a), then section 1192(2) states those debts are not dischargeable. Because section 1192 does not limit the scope of application, this provision and the exceptions apply to individuals and corporations.

E. This Court should vacate the majority's interpretation because it would allow corporations to continue operations without any repercussions for causing the death of a four-year-old girl.

When an interpretation of a statute leads to an absurd result, the court must vacate that interpretation. Stevenson, *supra*. A result is absurd when no reasonable person could approve the disposition. *Id.* Because section 1181(c) states that when a bankruptcy court approves a plan under a section 1191(b) cramdown, then the discharge rules of section 1141(d) no longer apply, section 1192(2) does. Under the logic of the majority opinion that section 1192(2) 's reference only applies to individuals, the outcome is that corporations whose plans are under section 1191 and section 1192 receive a complete discharge of debts. This interpretation is absurd because no reasonable person could approve of the outcomes. First, while the purpose of subchapter V is to make reorganization easier, there is still a need to balance the interest of both the debtors and creditors,

which is not achievable with full discharge. Second, this provision would not treat individuals and corporations equally despite the absence of distinguishing language. Third, corporations would receive reorganization of debt, a complete discharge of all debts, and maintain total equity interest. Lastly, the worst of them all is that corporations will not be liable for their actions of intentional harm to others.

The release of financial liability creates a moral issue that ignores the justice owed to people who are creditors due to injury or death the corporation caused. A reasonable person may disapprove of corporations facing the burden of debts that impact reorganization. However, that reasonable person would also disapprove of a corporation not facing financial liability for causing the sickness of city residents and the death of a four-year-old girl. The Debtor chose to file under subchapter V and subjected themselves to the narrower scope of discharge. To allow the Debtor to escape paying their debts for actions that plagued the entire Blackbird community, this Court would be endorsing the message that corporations can employ harmful business tactics to save a penny. While corporations may bring jobs to a community, those jobs are worthless if the residents must trade their environmental safety, health, and lives for the job. Therefore, to grant the Debtor complete discharge under section 1192, this Court would give corporations the power to maintain equity interest, be relieved of debts, and employ life-threatening tactics without discipline.

CONCLUSION

The Bankruptcy Code provides explicit guidance when attempting to resolve global settlements including non-debtors. Non-debtors must not be afforded the benefits of bankruptcy, without succumbing the scrutiny it requires. It is for the aforementioned reasons, we ask this court to REVERSE the lower court decisions with respect to both issues.