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 WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

BRIEF FOR THE PETITIONER

TEAM NUMBER 5
Counsel for Petitioner.

January 19, 2023

QUESTIONS PRESENTED

I. Whether the United States Court of Appeals for the Thirteenth Circuit erred in holding that a bankruptcy court has the authority to confirm a chapter 11 plan of reorganization containing non-consensual releases of third-party claims against a non-debtor.

II. Whether the United States Court of Appeals for the Thirteenth Circuit erred in holding that corporate debtors, pursuant to 11 U.S.C. § 1192 of subchapter V of chapter 11, may discharge the types of debts specified in subparagraphs (1) through (19) of 11 U.S.C. § 523(a).

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The decision of the United States Court of Appeals for the Thirteenth Circuit is available at No. 21-0803. The Bankruptcy Court for the District of Moot decided in favor of Penny Lane Industries, Inc. (the "Debtor"). On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed the lower court's decision in favor of the Debtor.

STATEMENT OF JURISDICTION

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

PERTINENT STATUTORY PROVISIONS

This action implicates statutory construction of certain provisions of Title 11 and Title 28 of the United States Code. There is a further balance in reading the language of the Code and recognizing its relevance to related Constitutional provisions. The following are also restated in the Appendix.

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

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

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

> 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 portions 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)(2)(B)(i)(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;
>
> **(g)(4)(A)(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—

The relevant portions 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, such as—
>
> * * *
>
> **(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. § 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–
>
> * * *
>
> **(2)** of the kind specified in section 523(a) of this title.

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

> **(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—
>
> * * *
>
> **(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.
>
> **(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.

STATEMENT OF THE CASE

This case arises from the Debtor's attempt to distort the Bankruptcy Code.[1] First, the Debtor's Plan is decidedly unequitable as it permits broad releases of non-debtor liabilities, an outcome clearly not contemplated by the Code. Second, the Debtor distorts and misapplies the express language of 11 U.S.C. § 1192 in an attempt to discharge liability for which it would be otherwise responsible. Either outcome would be clearly contrary to the fundamental principles of the Bankruptcy Code.

I. FACTUAL BACKGROUND

The present action stems from the gross misconduct of Penny Lane Industries, Inc.—actions that prompted Ms. Rigby to file a state court claim in an attempt to seek reparations from those at fault for the death of her four-year-old child. R. at 5.[2] From 2013 to 2017, Penny Lane Industries, Inc. (the "Debtor") disposed of toxic waste in a manner that contaminated the City of Blackbird, Moot's water supply, exposing tens of thousands of residents to fatal toxins. R. at 3, 5. Many developed illnesses, birth defects, and died. R. at 5. One such individual was Ms. Rigby's daughter, who developed leukemia as a result of the contamination. R. at 5.

Ms. Rigby and hundreds of other residents of Blackbird and neighboring communities filed tort suits against the Debtor and Strawberry Fields as co-defendants. R. at 5, 6. The claims consisted of allegations that the Debtor was liable for knowingly disposing of toxins in Blackbird's groundwater supply and that Strawberry Fields, the Debtor's sole equity holder, was liable because it knew or should have known of the Debtor's misconduct. R. at 3–4, 6.

[1] The Bankruptcy Code (or, the "Code") is set forth in 11 U.S.C. §§ 101 *et seq*. Specific sections of the Bankruptcy Code are identified herein as "section ___."
[2] "R. at ___." refers to the corresponding page of the Thirteenth Circuit's Opinion, Case No. 21-0803.

Facing the impending lawsuits, the Debtor filed for bankruptcy in January of 2021 under chapter 11, subchapter V. R. at 6. At the time of its bankruptcy filing, the Debtor owed its trade creditors less than $2 million, but faced nearly 10,000 unsecured and unliquidated tort claims asserting cumulative damages of $400 million. R. at 6. Ms. Rigby's claim accounted for $1 million of the total damages. R. at 6.

In the normal course, an automatic stay halted all non-bankruptcy litigation against the Debtor, including Ms. Rigby's tort suit. R. at 7. The Bankruptcy Court subsequently granted the Debtor a temporary injunction that stayed the pending suits against Strawberry Fields and other non-debtors to facilitate settlement discussions. R. at 7–8.

In two month's time, several creditors negotiated a settlement agreement (the "Plan"), which provided creditors with distributions estimated at 30–40 cents on the dollar. R. at 8. The Plan established a creditor trust consisting of the Debtor's disposable net income for five years and a $100 million contribution by Strawberry Fields. R. at 8. Strawberry Fields was eager to reach a settlement to "buy peace" and avoid negative publicity, but nonetheless conditioned its contribution to the trust on a broad release from all claims regardless of whether creditors participated in the bankruptcy case or formulation of the Plan provisions. R. at 8, 10. Specifically, Strawberry Fields mandated that the Plan's language discharge "'any and all claims' that third parties 'have asserted or might assert in the future against Strawberry Fields' to the extent such claims are 'based on or related to the Debtor's pre-petition conduct, its estate or this chapter 11 case." R. at 8.

Of those creditors who cast a vote, ninety-five percent voted to confirm the Plan. R. at 9. Ms. Rigby and Norwegian Wood Bank, who was owed $3.5 million, notably objected to the

Plan. *See* R. at 9. Following only a four-day confirmation hearing, the bankruptcy court confirmed the Plan, notwithstanding the objections. R. at 10.

Ms. Rigby commenced an adversary proceeding requesting that the Bankruptcy Court not discharge her claims pursuant to 11 U.S.C. §§ 523(a) and 1192(2) because section 523(a) does not provide for the discharge of liabilities resulting from a debtor's "willful and malicious" conduct. R. at 7. The Debtor filed a 12(b)(6) motion to dismiss, arguing section 523(a) is limited to individual debtors and therefore did not limit the Debtor-corporation's discharge. R. at 7. The Bankruptcy Court approved the Debtor's motion to dismiss. R. at 7.

II. PROCEDURAL POSTURE

The Bankruptcy Court for the District of Moot addressed two issues under the present suit—a plan dispute and a non-dischargeability action dispute. R. at 7. For each issue, the court ruled in favor of the Debtor and the Court of Appeals for the Thirteenth Circuit affirmed. R. at 7, 23. First, the Bankruptcy Court for the District of Moot overruled Ms. Rigby's objection to the Plan, holding that it had both statutory and constitutional authority to issue a final order confirming a plan with a third-party injunction. R. at 4. Second, the Bankruptcy Court for the District of Moot dismissed Ms. Rigby's non-dischargeability action pursuant to section 523(a)(6) and section 1192(2), concluding that section 1192's discharge exception applies strictly to individual debtors. R. at 4, 7. The Thirteenth Circuit affirmed this dismissal. R. at 15.

STANDARD OF REVIEW

The issues addressed on *certiorari* are purely questions of law that originated in bankruptcy and are thus subject to *de novo* review. *See In re Soileau*, 488 F.3d 302, 305 (5th Cir. 2007). Under a *de novo* standard of review, the reviewing court should determine questions of law as if they were the first reviewing court. *See Razavi v. Comm'r*, 74 F.3d 125, 127 (6th Cir. 1996).

SUMMARY OF THE ARGUMENT

The Thirteenth Circuit erred in its affirmance of the Bankruptcy Court's confirmation of the Plan. Because the purpose of bankruptcy is to adjust the debtor-creditor relationship, the Code is replete with provisions that limit a bankruptcy court's statutory authority to debtors. 11 U.S.C. § 524(e) and 11 U.S.C. § 524(g) explicitly deny bankruptcy courts the authority to approve non-consensual third-party releases, except in asbestos cases. Further, if this Court affirms the decision of the Thirteenth Circuit by reading 11 U.S.C. §§ 105(a), 1123(a)(5), and 1123(b)(6) as authorizing non-consensual third-party releases, it would effectively be creating substantive rights that conflict with clear congressional intent. If this Court nonetheless determines that the statutory provisions apply to non-debtors, 28 U.S.C. § 157 prohibits bankruptcy courts from entering final judgments on non-core claims, which include non-consensual third-party releases of non-debtors.

Finally, regardless of whether this Court classifies third-party claims against non-debtors as core or non-core proceedings, bankruptcy courts exceed their constitutional authority when they confirm plans containing broad, non-consensual third-party releases. Bankruptcy courts have authority over third-party claims against non-debtors only where the creditor's claim is integral to the restructuring of the debtor-creditor relationship, which occurs in "rare and exceptional" circumstances. As the Bankruptcy Court for the District of Moot has failed to articulate any exceptional facts or circumstances in Ms. Rigby's case, her claim—and others like hers—cannot be released against Strawberry Fields.

The Thirteenth Circuit also erred in holding that the discharge exceptions of section 523(a) do not apply to corporate debtors proceeding under subchapter V of chapter 11 when plan confirmation is effected through subchapter V's cramdown provision. First, the plain language of section 1192 dictates that the discharge exceptions specified in section 523(a) apply to both

corporations and individuals. Further, section 1192(2) disallows discharge of the kinds of debts enumerated in section 523(a), but this section does not limit its application to individual debtors. Even if this Court were to accept the Debtor's interpretation of section 1192(2) as applying strictly to individual debtors, this interpretation would lead to absurd results, which makes Ms. Rigby's interpretation of the statute the better reading. Finally, the Debtor's interpretation of section 1192 is contrary to Congress's purpose in enacting subchapter V.

ARGUMENT

I. THE BANKRUPTCY COURT LACKS AUTHORITY TO CONFIRM PLANS CONTAINING NON-CONSENSUAL RELEASES OF NON-DEBTOR LIABILITIES

The Thirteenth Circuit erred in affirming the Bankruptcy Court's holding that a bankruptcy court has the authority to confirm plans containing non-consensual third-party releases for three reasons: (a) bankruptcy courts lack statutory authority; (b) even if the Code applies to non-debtors, the bankruptcy court lacks jurisdiction over non-core proceedings; and (c) bankruptcy courts must have constitutional authority, which is only available in "rare and exceptional" circumstances.

A. Bankruptcy Courts Lack Statutory Authority Over Non-Consensual Releases of Non-Debtor Liabilities

The Bankruptcy Court lacks statutory authority for three reasons: (1) 11 U.S.C. § 524(e) restricts the discharge of a non-debtor; (2) 11 U.S.C. §§ 105(a), 1123(b)(6), and 1123(a)(5) do not create substantive rights that conflict with section 524(e); and (3) the Bankruptcy Code's purpose supports a broad prohibition of non-consensual third-party releases outside of asbestos cases.

1. 11 U.S.C. § 524(e) explicitly restricts the discharge of a non-debtor.

First, section 524(e) does not provide for a discharge of non-debtor liabilities. Second, Congress's inclusion of section 524(g)—an enumerated exception allowing the discharge of a

non-debtor's liabilities in asbestos cases—indicates that Congress intended for non-consensual third-party releases to otherwise be broadly prohibited.

a. The plain text of section 524(e) demonstrates Congress's intent to unambiguously deny bankruptcy courts the authority to approve non-consensual third-party releases.

The text of section 524(e) plainly states that a debtor's discharge has absolutely no affect on any other party's liability. 11 U.S.C. § 524(e). The language of the statute therefore explicitly discharges only the applicable debtor and cannot impact the liabilities of a non-debtor, as has been held by the Fifth, Ninth, and Tenth Circuits. *See Matter of Highland Cap. Mgmt., L.P.*, 48 F.4th 419, 436 (5th Cir. 2022); *In re Am. Hardwoods, Inc.*, 885 F.2d 621, 626 (9th Cir. 1989); *In re W. Real Est. Fund, Inc.*, 922 F.2d 592, 601 (10th Cir. 1990). This Court should follow such precedent and accordingly enforce the statute's plain meaning. *See Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000).

b. Congress included a specific exception to section 524(e), demonstrating its intent to otherwise broadly prohibit non-consensual non-debtor releases.

Congress's inclusion of section 524(g)—the *only* exception to section 524(e)'s narrow applicability to a debtor—demonstrates Congress's intent to limit non-consensual third-party releases solely to asbestos cases. Section 524(g) is a specific provision authorizing the discharge of non-debtors in asbestos-related cases, only where specific and statutorily enumerated criteria are met. *See* 11 U.S.C. § 524(g); *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012).

Congress's inclusion of section 524(g) does not merely "impose additional requirements on asbestos-related releases" as alleged by the Thirteenth Circuit. R. at 15. *Expressio unis est exclusio alterius* prevents courts from reading additional exceptions into section 524. *See Duncan v. Walker*, 533 U.S. 167, 173 (2001) (quoting *Bates v. United States*, 522 U.S. 23, 29–30

(1997) (internal quotations omitted)). Where Congress enumerates an exception to a general prohibition, other exceptions may not be implied. *See Andrus v. Glover Const. Co.*, 446 U.S. 608, 616–17 (1980). Therefore, additional exceptions to section 524(e) may not be read into the Code and this Court should hold that releases of third-party claims against non-debtors are broadly prohibited.

The language of section 524(g) supports section 524(e)'s broad prohibition of non-consensual third-party releases. Section 524(g) applies to asbestos cases *"[n]otwithstanding* the provisions of section 524(e)." 11 U.S.C. § 524(g)(4)(A)(ii) (emphasis added). The inclusion of the word "notwithstanding," suggests "that the type of injunction Congress was authorizing in § 524(g) would be barred by § 524(e) in the absence of the statute." *In re Purdue Pharma, L.P.*, 635 B.R. 26, 92 (S.D.N.Y. 2021).

2. 11 U.S.C. §§ 105(a), 1123(b)(6), and 1123(a)(5) do not provide courts with residual authority to approve non-consensual third-party releases.

Contrary to the Debtor's contentions, sections 105(a) and 1123(b)(6) do not create residual, substantive rights under the Bankruptcy Code. Further, section 1123(a)(5) limits means for plan implementation to the assets of the debtor.

a. Section 105(a) does not create substantive rights not permitted by the Bankruptcy Code.

Section 105(a) does not permit the release of a non-debtor because courts are not permitted to create new substantive rights not otherwise available under the Code. Several circuit courts agree with this position. *See, e.g.*, *Matter of Highland Cap. Mgmt., L.P.*, 48 F.4th at 437; *In re Lowenschuss*, 67 F.3d 1394, 1402 (9th Cir. 1995); *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 236 (3d Cir. 2004), as amended (Feb. 23, 2005). The Fourth, Sixth, and Eleventh Circuits, however, have held that section 105(a) authorizes bankruptcy courts to approve non-consensual third-party releases. *See In re A.H. Robins Co.*, 880 F.2d 694, 701 (4th Cir.

1989); *Class Five Nev. Claimants v. Dow Corning Corp. (In re Dow Corning Corp.)*, 280 F.3d 648, 658 (6th Cir. 2002); *In re Seaside Eng'g & Surveying, Inc.*, 780 F.3d 1070, 1076 (11th Cir. 2015).

Ms. Rigby contends that section 105(a) does not grant bankruptcy courts authority to approve chapter 11 plans containing non-consensual non-debtor discharges. Section 105(a) states that "the 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). While section 105(a) may authorize bankruptcy courts broad power to provide equitable relief, this power is limited and cannot conflict with other portions of the Code. *See United States v. Energy Res. Co.*, 495 U.S. 545, 549 (1990); *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988). If this Court reads section 105(a) as permitting all third-party releases, it would conflict with Congress's express language in section 524 prohibiting all non-consensual third-party releases other than those in asbestos cases. Further, this Court has held that where tension exists between specific and general statutory provisions, courts should yield to the more specific provision, in this case section 524. *See Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992). Therefore, while Ms. Rigby acknowledges that section 105(a) grants bankruptcy courts broad equitable powers, such powers cannot conflict with section 524's clear mandate to prohibit non-consensual third-party releases.

b. Section 1123(b)(6) prohibits confirmation of a chapter 11 plan that conflicts with other provisions of the Code.

Section 1123(b)(6) does not grant bankruptcy courts power to approve non-consensual third-party releases. Section 1123(b)(6) is substantively analogous to section 105(a), authorizing only plans consistent with all applicable provisions of the Bankruptcy Code. 11 U.S.C. §

1123(b)(6). Accordingly, as the release of non-debtor liabilities is prohibited by section 524(e), non-debtor liabilities cannot be released pursuant to section 1123(b)(6).

c. Section 1123(a)(5) enumerates means for plan implementation that solely govern the debtor's assets.

Section 1123(a)(5) does not provide authority for courts to grant non-consensual third-party releases. Section 1123(a)(5) delineates a non-exhaustive list of means for plan implementation; however, those means only govern the debtor's own assets—not the assets of, or claims against, a third party. *See* 11 U.S.C. § 1123(a)(5); *see also In re Purdue Pharma, L.P.*, 635 B.R. at 108. While section 1123(a)(5)'s list is non-exhaustive, the canon of *ejusdem generis* dictates that the listed means of plan implementation are instructive of the class of means allowed under the statute—namely *debtor* assets. *See Cir. City Stores, Inc. v. Adams*, 532 U.S. 105, 114–15 (2001); *In re Purdue Pharma, L.P.*, 635 B.R. at 108. Therefore, section 1123(a)(5) should not be applied to non-consensual third-party releases, which by their nature implicate solely non-debtors.

3. The purpose of the Bankruptcy Code compels this Court to prohibit non-consensual third-party releases outside of asbestos cases.

Granting releases to non-debtors runs contrary to the purposes of the Bankruptcy Code, leading Congress to consider adopting a statute explicitly preventing the practice. Two fundamental purposes of the Bankruptcy Code are (1) to maximize the recovery of creditors and (2) to provide the debtor with a fresh start. *In re DeNadai*, 259 B.R. 801, 806 (Bankr. D. Mass.) *aff'd sub nom. DeNadai v. Preferred Cap. Markets, Inc.*, 272 B.R. 21 (D. Mass. 2001). In recent years, new bankruptcy practices shielding non-debtors from liability—such as the Texas Two-Step—have been utilized by large corporations to eliminate their liabilities in mass tort claims. Andrew V. Alfano, *Plastronics, LTL & the "Texas Two-Step"*, 41-NOV. AM. BANKR. INST. J. 24, 24 (Nov. 2022); *see, e.g.*, *In re LTL Mgmt., LLC*, 637 B.R. 396, 403 (Bankr.

D.N.J. 2022). Under the Texas Two-Step, companies create a subsidiary and transfer the liabilities of the parent company to the subsidiary. Alfano, *supra* at 24. The subsidiary company then files for bankruptcy—absolving the true tortfeasor from liability. *Id.* Like the Texas Two-Step, in allowing bankruptcy courts to confirm plans containing non-consensual third-party releases, this Court would be providing a means for non-debtors to exploit statutory loopholes and "seize[] all the Bankruptcy Code's benefits with few of the costs." Samir D. Parikh, *Mass Exploitation*, 170 U. PA. L. REV. ONLINE 53, 57 (2022).

Further, the Texas Two-Step and non-consensual third-party releases function as means to immunize tortfeasors—resulting in underfunded settlement trusts that prevent recovery for future victims. Parikh, *supra* at 57. If this Court allows non-debtors to discharge liabilities through non-consensual third-party releases, it will be paving the way for new abuses of the bankruptcy code—like the Texas Two-Step. *See In re SGL Carbon Corp.*, 200 F.3d 154, 169 (3d Cir. 1999).

Congress's current considerations surrounding the adoption of the Non-Debtor Release Prohibition Act of 2021, which would prohibit a bankruptcy court from releasing or modifying a non-debtor's liability, demonstrate that it has contemplated the ways in which large corporations can attack the most vulnerable creditors through loopholes in the Bankruptcy Code. H.R. REP. NO. 117-4777. Therefore, this Court should not affirm a decision that deprives tort victims, like Ms. Rigby, of their sole avenue of recovery.

B. Even if the Provisions Above Apply to Non-Debtor Liabilities, Bankruptcy Courts Nonetheless Lack Jurisdiction Over Such Liabilities.

First, pursuant to 28 U.S.C. §§ 157 and 1334, bankruptcy courts lack subject matter jurisdiction over confirmations of plans containing non-consensual third-party releases. Second, the Bankruptcy Court's confirmation of the Debtor's Plan at bar exceeded its constitutional

authority under *Stern v. Marshall*. Third, the Bankruptcy Court violated the Due Process Clause of the Constitution because it extinguished third-party claims without adjudicating them on the merits.

1. Under 28 U.S.C. §§ 157 and 1334, bankruptcy courts cannot exert jurisdiction over non-consensual third-party releases.

The Bankruptcy Court for the District of Moot lacked jurisdiction over the Plan's confirmation because (a) the Plan contained non-consensual third-party releases of claims that were non-core proceedings and (b) by releasing said claims, the Bankruptcy Court exceeded its authority in issuing a final judgment.

a. Third-party releases constitute non-core proceedings.

The release of Strawberry Fields under the Plan is a non-core proceeding that is, at most, "related to" the imminent bankruptcy case. Sections 1334 and 157 confer subject matter jurisdiction to bankruptcy courts in four situations: "(1) cases 'under' title 11, that is, the bankruptcy petition; (2) proceedings 'arising under title 11;' (3) proceedings 'arising in' a bankruptcy case; and (4) proceedings 'related to a bankruptcy case.'" *New Jersey Dep't of Env't Prot., et al. v. Occidental Chem. Corp., et al.* (*In re Maxus Energy Corp.*), 560 B.R. 111, 121 (Bankr. D. Del. 2016) (quoting *In re Exide Techs.*, 544 F.3d 196, 205 (3d Cir. 2008)); 28 U.S.C. § 1334. While cases "under," "arising under," or "arising in" Chapter 11 cases are core proceedings, proceedings "related to a bankruptcy case" are classified as non-core proceedings. *In re Maxus Energy Corp.*, 560 B.R. at 121. The distinction is fundamental because a bankruptcy court may only exert jurisdiction over non-core proceedings where the parties unanimously consent. *See* 28 U.S.C. § 157(c)(2); *In re U.S. Fidelis, Inc.*, 481 B.R. 503, 513 (Bankr. E.D. Mo. 2012).

While confirmation of plans are core proceedings under 28 U.S.C. § 157(b)(2)(L), third-party releases of non-debtor liabilities are non-core proceedings. *In re U.S. Fidelis, Inc.*, 481 B.R. 503, 513 (Bankr. E.D. Mo. 2012). First, third-party direct claims—by their inclusion of non-debtors—inherently do not arise "under" title 11. *See In re Digital Impact, Inc.*, 223 B.R. 1, 11 (Bankr. N.D. Okla. 1998). Ms. Rigby's claim against Strawberry Fields is a tort claim against a non-debtor—clearly separate from a debtor's bankruptcy filing under title 11. R. at 9. Second, Ms. Rigby's claim was not a proceeding "arising under" title 11 because her claim originated from tort law—not the Bankruptcy Code. *See In re Digital Impact, Inc.*, 223 B.R. 1, 11 (Bankr. N.D. Okla. 1998). Lastly, Ms. Rigby's claim did not "arise in" a case under title 11 because state law tort claims can arise outside the context of a bankruptcy case. *See A.H. Robins Co. v. Dalkon Shield Claimants Trust*, 86 F.3d 364, 372 (4th Cir. 1996). Therefore, third-party releases must—by definition—at most constitute "related to," i.e., non-core proceedings. *In re U.S. Fidelis, Inc.*, 481 B.R. 503, 513 (Bankr. E.D. Mo. 2012).

b. Because the third-party releases are non-core proceedings, section 157 prohibits bankruptcy courts from entering a final judgment.

The Bankruptcy Court lacked authority to enter a final judgment for Ms. Rigby's claim pursuant to section 157(c)(1). *See* 28 U.S.C. § 157(c)(1). Section 157(c)(1) confers authority to *district courts*—not bankruptcy courts—to issue final determinations in non-core proceedings. *See id.* While a bankruptcy court may *hear* non-core proceedings and provide recommendations to the district court, it is ultimately up to the district court to make a final determination if the parties do not consent. *See id.*; *see also In re U.S. Fidelis, Inc.*, 481 B.R. at 512. Where a bankruptcy court approves a plan extinguishing a non-core claim, it "finally determines" that claim—it essentially issues a decision on the merits, which is subject to *res judicata* and claim preclusion. *See In re Purdue Pharma, L.P.*, 635 B.R. at 82; *Stoll v. Gottlieb*,

305 U.S. 165, 171 (1938); *Travelers Indemnity Co. v. Bailey*, 557 U.S. 137, 155 (2009). As stated, such a decision can only be properly left in the hands of the district court. *See In re U.S. Fidelis, Inc.*, 481 B.R. at 512; 28 U.S.C. §157(c)(1). Therefore, the Bankruptcy Court exceeded its jurisdiction in confirming the Plan in spite of Ms. Rigby's objection because the confirmation constituted a final adjudication of Ms. Rigby's claim.

2. The Bankruptcy Court's confirmation of the Debtor's Plan exceeds its constitutional constraints under *Stern v. Marshall*.

Regardless of whether this Court qualifies non-consensual third-party releases as core or non-core proceedings, bankruptcy courts lack jurisdiction over claims that are not integral to the restructuring of the debtor-creditor relationship. Further, in the case at bar, the Bankruptcy Court exceeded its constitutional authority under *Stern v. Marshall* by confirming a plan providing for releases of a vast range of claims without determining whether those claims were integral. Additionally, non-consensual third-party releases are only granted in "rare and exceptional" circumstances—which are not present in the instant case.

a. Even if third-party claims constitute "core proceedings," this Bankruptcy Court can only exert jurisdiction under Article III of the Constitution over claims integral to the restructuring of the debtor-creditor relationship.

In *Stern v. Marshall*, this Court held the bankruptcy court lacked jurisdiction to enter a final judgment on a debtor's state law counterclaim that was explicitly permitted as a core proceeding under 28 U.S.C. § 157(b)(2)(C). *Stern v. Marshall*, 564 U.S. 462, 471 (2011). While this Court acknowledged that the claim was permitted under statutory authority, it held that Article III of the Constitution nonetheless barred the bankruptcy court from entering final judgment on the counterclaim. *See Patterson v. Mahwah Bergen Retail Grp., Inc.*, 636 B.R. 641, 667 (E.D. Va. 2022) (citing *Stern*, 564 U.S. at 475). This Court determined that the relevant inquiry into a bankruptcy court's jurisdiction was not whether "a proceeding may have some

bearing on a bankruptcy case," but rather whether "the action at issue stem[ed] from the bankruptcy itself or would necessarily be resolved in the claims allowance process." *Patterson*, 636 B.R. at 667 (citing *Stern*, 564 U.S. at 475).

Accordingly, the relevant standard for enabling a bankruptcy court to exercise jurisdiction over third-party claims against non-debtors pursuant to Article III requires that the claim be "integral to the restructuring of the debtor-creditor relationship." *In re Purdue Pharma, L.P.*, 635 B.R. at 40.

b. The Bankruptcy Court's confirmation of the Debtor's Plan, which provided overly broad and categorical third-party releases, exceeded its constitutional authority under *Stern v. Marshall*.

In *Patterson,* the Eastern District of Virginia determined that the bankruptcy court exceeded the "constitutional limit of its authority" under *Stern v. Marshall* when it confirmed a plan containing broad, third-party releases. *Patterson*, 636 B.R. at 656. There, the *Patterson* court considered that the plan "release[d] the claims of *at least* hundreds of thousands of potential plaintiffs not involved in the bankruptcy, shielding an incalculable number of individuals . . . from every conceivable claim . . . for an unspecified time stretching back to time immemorial." *Id.*

Similarly, the Plan at bar "expressly releases and discharges 'any and all claims' that third parties 'have asserted or might assert in the future against Strawberry Fields.'" R. at 8. Between 2013 and 2017, tens of thousands of individuals were exposed to toxins as a result of the Debtor's and Strawberry Fields's tortious conduct. R. at 3. Yet, prior to the Debtor's filing under chapter 11, only "hundreds" of plaintiffs had filed suit. R. at 6. Much like the unconstitutional plan in *Patterson,* the Plan here released the claims of tens of thousands of potential plaintiffs. R. at 8.

Further, the Plan expressly releases claims to the extent they are "based on or related to the Debtor's pre-petition conduct, its estate, or this chapter 11 case" and "binds parties regardless of whether they participated in the bankruptcy case and regardless of whether they voted in favor of, or against, the Plan." R. at 8. Like in the *Patterson* plan, the Plan shields Strawberry Fields from "every conceivable claim" regardless of whether or not the plaintiff was involved in the bankruptcy case. *Patterson*, 636 B.R. at 655.

Therefore, the Bankruptcy Court exceeded its constitutional authority under *Stern* by granting non-consensual third-party releases for an "extraordinarily vast range of claims" without taking any "steps to determine if it had the power to extinguish the liability on a particular claim." *Id.*

c. The Bankruptcy Court exceeded its constitutional authority by failing to prove the presence of "rare and exceptional" circumstances when it confirmed the Plan.

In *In re Dow Corning Corporation*, the Sixth Circuit considered seven factors in determining whether a bankruptcy court could approve a chapter 11 plan enjoining a non-consenting creditor's claim against a non-debtor—whether (1) there was "an identity of interests between the debtor and third party;" (2) the non-debtor "contributed substantial assets to the reorganization;" (3) "[t]he injunction [was] essential to reorganization;" (4) "[t]he impacted class, or classes, has overwhelmingly voted to accept the plan;" (5) "[t]he plan provides a mechanism to pay for all, or substantially all, of the class or classes affected by the injunction;" (6) the plan offers an opportunity for claimants not to settle and recover in full; and (7) "[t]he bankruptcy court made a record of specific factual findings that support its conclusions." 280 F.3d at 658. The Fourth and Eleventh Circuits have both adopted the Sixth Circuit's *Dow Corning* factors as a test. *Behrmann v. Nat'l Heritage Found.*, 663 F.3d 704, 712 (4th Cir. 2011) (finding the *Dow Corning* factors should guide "a bankruptcy court when considering whether to

approve nondebtor releases"); *In re Seaside Eng'g & Surveying, Inc.*, 780 F.3d at 1079 (recommending that bankruptcy courts following the *Dow Corning* factors).

In *In re Dow Corning Corporation*, the Sixth Circuit held that the bankruptcy court failed to provide specific factual evidence to support a finding of "rare and exceptional" circumstances; the court merely made conclusory statements that the factors had been met. 280 F.3d at 658. The court therefore held that the third-party releases were impermissible. *See id.*

In the present case, much like in *In re Dow Corning Corporation,* the Bankruptcy Court failed to elicit any evidence of unusual circumstances, but rather made conclusory statements. The Bankruptcy Court acknowledged that non-consensual third-party releases are only granted in "extraordinary cases." R. at 10. Nonetheless, the Court confirmed the Plan's third-party releases for three reasons: (1) the "highly unusual and complex nature of the case;" (2) the "significant monetary contribution being made by Strawberry Fields," resulting in a "meaningful distribution to creditors . . . substantially greater than what creditors would receive if the Debtor was liquidated under chapter 7;" and (3) the "overwhelming creditor support for the Plan." R. at 10.

i. The Bankruptcy Court provided no evidence of a "highly unusual and complex nature of the case."

First, the Bankruptcy Court asserted the presence of unusual circumstances in part because of the "highly unusual and complex nature of the case." R. at 10. The Court based its decision on the fact that "failure to approve the settlement would likely result in complex and protracted litigation with attendant risk, cost and delay" to creditors. R. at 10. However, if this Court determines that the potential for complex litigation qualifies as an "exceptional circumstance," this Court would affirm a categorical release of all third-party claims. In essence,

this Court would essentially erode the protections of the "unusual circumstances" test because third-party claims—by their litigious nature—present risks of costs and delay.

ii. The Bankruptcy Court provides no evidence that the non-debtor's contribution was substantial.

Second, the Bankruptcy Court stated that the third-party releases at bar presented exceptional circumstances because the "significant monetary contribution being made by Strawberry Fields" resulted in a "meaningful distribution to creditors . . . substantially greater than what creditors would receive if the Debtor was liquidated under chapter 7." R. at 10. The Bankruptcy Court supported its determination by stating that "Strawberry Fields's $100 million contribution was substantially greater than any likely recovery from Strawberry Fields, representing a premium paid . . . to 'buy peace' and avoid the negative publicity and reputational damage of further litigation." R. at 10. These were the only justifications offered. *See* R. at 10. The Plan did not demonstrate how the $100 million figure would aid in a meaningful distribution to creditors beyond eliminating Strawberry Fields's liability. *See* R. at 10. Further, the Bankruptcy Court failed to proffer any evidence that the monetary contribution to creditors was greater than what would have been obtained in a chapter 7 proceeding. *See* R. at 10. In *In re Dow Corning Corporation*, the court found that the bankruptcy court did not adequately prove that there were exceptional circumstances because it failed to explain how and why the contributions third parties made were "significant contributions to the reorganization." 280 F.3d at 659. Similarly, here, the Bankruptcy Court failed to "specify facts" that Strawberry Fields's contributions were indeed significant contributions to the reorganization.

iii. The Bankruptcy Court did not provide an accurate picture when it asserted there was "overwhelming creditor support."

The Bankruptcy Court alleged that because ninety-five percent of voting creditors submitted ballots in the Plan's favor, this suggested "overwhelming creditor support" for the

Plan. R. at 9; *see also In re Dow Corning Corp.*, 280 F.3d at 658. The *Dow Corning* test, however, advises bankruptcy courts to determine whether "[t]he impacted class, or classes, has overwhelmingly voted to accept the plan." *In re Dow Corning Corp.*, 280 F.3d at 658. The Bankruptcy Court failed to do just that. First, the court failed to articulate *how many* of the creditors participated in the vote. Without such information, the Bankruptcy Court failed to determine whether or not the impacted class has overwhelmingly voted in the Plan's favor. Second, the Bankruptcy Court's determination did not consider all potential plaintiffs who are likely to assert tort claims against Strawberry Fields. *See* R. at 3. The Bankruptcy Court cannot hold that there is overwhelming creditor support absent facts indicating the size of the *entire* impacted class.

d. *In Re Millennium Lab Holdings II, LLC.* reinforced that exceptional facts and circumstances are not present in Ms. Rigby's case.

In Re Millennium Lab Holdings II, LLC. concluded that the bankruptcy court was constitutionally authorized to confirm a plan releasing third-party claims against a non-debtor, but specifically stated that its holding was "specific and limited." *In re Millennium Lab Holdings II, LLC.*, 945 F.3d 126, 140 (3d Cir. 2019). In *In Re Millennium Lab Holdings II, LLC.*, the court considered that the record reflected certain "specific exceptional facts," including whether: (1) the plan was subjected to arm's-length negotiations between all parties, (2) the non-debtor's contribution to the plan reflected a "last and best" offer, and (3) permitting an objecting party's claim to move forward would undermine the plan's success. *See id.* at 131, 137, 141.

i. The Plan was not subjected to arm's-length negotiations.

First, the *Millennium* court considered that Millennium's Restructuring Agreement—which contained non-consensual third-party releases—was reached after seven months of "highly adversarial[,] extremely complicated[,]" arm's-length negotiations, in which all parties

were "represented by sophisticated and experienced professionals." *In re Millennium Lab Holdings II, LLC.*, 575 B.R. 252, 256 (Bankr. D. Del. 2017), *aff'd*, 591 B.R. 559 (D. Del. 2018), *aff'd sub nom. In re Millennium Lab Holdings II, LLC.*, 945 F.3d 126, 131 (3d Cir. 2019). In the instant case, the parties negotiated the Plan for only two months, and the record reflects that only "several stakeholders" actively participated in negotiations—a stark contrast to the inclusion of all parties along with representatives in *Millennium*. *See* R. at 8; *In re Millennium Lab Holdings II, LLC.*, 945 F.3d at 131.

ii. Strawberry Fields's contribution to the Plan must reflect a "last and best" offer.

Second, Millennium's Restructuring Agreement reflected a "last and best" offer by the non-debtors—they participated in daily negotiations that culminated in substantial and beneficial payment to creditors. *In re Millennium Lab Holdings II, LLC.*, 945 F.3d at 131. The non-debtors that were parties to the plan transferred 100% of their equity interests in Millennium to Millennium's creditors. *See id.* They contributed $325 million to fund the remainder of the settlement, and even to cover Millennium's fees, costs, and working capital requirements. *See id.* Throughout the negotiations, the non-debtors negotiated and increased the amount of their contributions, reflecting a good faith effort to make the creditors whole. *See id.* at 132.

In the present case, while the Bankruptcy Court did find that Strawberry Fields's $100 million contribution was "substantially greater than any *likely* recovery from Strawberry Fields," the Court does not qualify it as the "best" offer. R. at 10 (emphasis added). Further, the record cites the fear of negative publicity and reputational damages as Strawberry Fields's motivation for its contribution—a showing that restitution for creditors was not their primary goal. R. at 10.

iii. Permitting Ms. Rigby's claim to move forward would not undermine the plan's success.

Third, the objector's claim in *Millennium* is distinguishable from Ms. Rigby's claim in several ways. In *Millennium*, the objector to the Agreement filed a claim worth $100 million. *In re Millennium Lab Holdings II, LLC.*, 945 F.3d at 131. Because the objector's claim would subject the contributing non-debtor to a staggering liability—one that constituted nearly one-third of the amount of the non-debtor's contribution—it would undermine and completely cripple the Agreement's success. *Id.* at 131, 141. In contrast, Ms. Rigby's $1 million claim constitutes merely *one percent* of Strawberry Fields's contribution under the Plan. R. at 6, 9. Therefore, this Court should conclude that Ms. Rigby's case should move forward, as it does not constitute a release mandatory for the Plan's success.

3. Non-consensual third-party releases violate core constitutional principles, namely the right to due process.

The Constitution holds that no person shall be deprived of "life, liberty, or property, without due process of the law." U.S. CONST. amend. V. Allowing bankruptcy courts the authority to extinguish third-party claims solely on the basis that such claims are included in chapter 11 plans eliminates a creditor's constitutional right to be heard. *See Patterson*, 636 B.R. at 671. Disguising claims of such an egregious nature under the cover of the Bankruptcy Code allows non-debtors to circumvent a creditor's due process rights under the Constitution.

II. THE THIRTEENTH CIRCUIT ERRED IN HOLDING THAT CORPORATE DEBTORS, PURSUANT TO 11 U.S.C. § 1192 OF CHAPTER 11, SUBCHAPTER V, MAY DISCHARGE THE TYPES OF DEBT ENUMERATED IN SUBPARAGRAPHS (1) THROUGH (19) OF 11 U.S.C. § 523(a)

The United States Court of Appeals for the Thirteenth Circuit erred in holding that, pursuant to section 1192, corporate debtors are not subject to the discharge exceptions of section 523(a) when proceeding under chapter 11, subchapter V of the Bankruptcy Code. *See* R. at 15.

First, the plain language of section 1192 compels this Court to adopt Ms. Rigby's interpretation of the statute—namely that (1) section 1192 applies to both individual and corporate debtors, and (2) the language of section 1192(2) excepts discharge of the *kinds of debts* enumerated in section 523(a), but does not dictate the *kind of debtor* subject to such discharge exceptions. Both substantive and linguistic canons of statutory construction lend support to Ms. Rigby's interpretation. Additionally, if this Court were to adopt the Debtor's interpretation of section 1192, it would lead to absurd results, an outcome that Congress clearly did not intend. In sum, this Court should give effect to Congress's clearly written mandates; both rules of statutory construction and sound policy rationales give credence to the conclusion that corporate debtors, pursuant to section 1192, are subject to the discharge exceptions specified in subparagraphs (1) through (19) of section 523(a).

A. The Plain Language of Section 1192 Dictates that the Discharge Exceptions Specified in Section 523(a) Apply to Both Corporations and Individuals

When the words of a statute are unambiguous, the statutory analysis begins and ends with the plain language of the provision. *See Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253–54 (1992). Section 1192 provides, in relevant part, that where a "plan of the debtor is confirmed . . . the court shall grant the debtor a discharge of all debts . . . except any debt . . . of the *kind* specified in section 523(a) of this title." 11 U.S.C. § 1192 (emphasis added). In the present case, the plain and ordinary meaning of the language of section 1192 dictates that (1) the statute applies to corporate debtors and individual debtors alike, and (2) the discharge exceptions enumerated in section 523(a) apply to corporate debtors.

1. Section 1192 by its plain language applies to both individual and corporate debtors.

Section 1192, by its plain language, applies to both individual and corporate debtors. *See* 11 U.S.C. § 1192. The provision states that "the court shall grant the *debtor*" a discharge of all

debts specified in section 1141(d)(1)(A), with two exceptions. *Id.* (emphasis added). Section 1182, the definitions provision specific to subchapter V filings, defines the term debtor as "a *person* engaged in commercial or business activities." 11 U.S.C. § 1182 (emphasis added). Any definition of the term "person," however, is absent from section 1182, but is rather defined in section 101. *See* 11 U.S.C. § 101(41). The Code clearly defines a "person" as an "individual, partnership, and corporation." *See id.*; *see also Cantwell-Cleary Co., Inc. v. Cleary Packaging, LLC* (*In re Cleary Packaging, LLC*), 36 F.4th 509, 514 (4th Cir. 2022); *Avion Funding, LLC v. GFS Indus., LLC* (*In re GFS Indus., LLC*), 2022 WL 16858009, at *3 (Bankr. W.D. Tex. Nov. 10, 2022). Accordingly, section 1192 can be read as follows: "the court shall grant the *individual, partnership, or* ***corporation*** *engaged in commercial or business activities* a discharge of all debts provided in section 1141(d)(1)(A) of this title," with two exceptions to such discharge. *See* 11 U.S.C. § 1182 (emphasis added).

This plain reading of the provision, which makes section 1192 applicable to corporate debtors, has been supported by case law, and this Court has consistently held that courts should give effect to Congress's intent when statutory language is clear, as it is here. *See, e.g.*, *In re Cleary Packaging, LLC*, 36 F.4th 509 at 514; *In re GFS Indus., LLC*, 2022 WL 16858009, at *3 ("[I]t is evident that the term 'debtor' in § 1192 encompasses corporations, not just individuals."); *see also Connecticut Nat. Bank*, 503 U.S. at 253–54; *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989); *United States v. Goldenberg*, 168 U.S. 95, 102–03 (1897).

The exception to this rule is the doctrine of absurdity, which allows courts to forego the plain meaning of a statute when it would lead to absurd consequences. *See Holy Trinity Church v. United States*, 143 U.S. 457, 459 (1892). The absurdity doctrine, however, is clearly

inapplicable to Ms. Rigby's interpretation of section 1192. This Court has stated that, for the doctrine of absurdity to apply, the result of such an interpretation needs to be, "in a genuine sense, absurd." *Pub. Citizen v. U.S. Dep't of Just.*, 491 U.S. 440, 471 (1989) (Kennedy, J., concurring) (holding that true absurdity would be akin to prosecuting a sheriff because he interfered with mail delivery while he was executing a warrant against a mailman). In other words, for courts to construe a statute's plain language as absurd, it must be clear to everyone that Congress could in no way have intended the result. *See id.*

Quite to the contrary, it is likely that Congress intended section 1192 to apply to both corporate and individual debtors. For one, Congress has narrowly tailored the Bankruptcy Code to individual debtors in the past, and thus could have done so here as well if they wanted to limit section 1192's applicability. *See* 11 U.S.C. § 109(e) ("Only an individual . . . may be a debtor under chapter 13 of this title."); 11 U.S.C. § 727(a) ("The court shall grant the debtor a discharge [under chapter 7], unless—(1) the debtor is not an individual[.]"). Further, bankruptcy scholars have noted that subchapter V mirrors chapter 12, which courts have interpreted applies to corporations. William L. Norton III, *§ 107:20. Subchapter V discharge*, 5 NORTON BANKR. L. & PRAC. 3D § 107:20 (Jan. 2023). Therefore, because Congress is not legislating on a blank slate, and courts can accordingly presume that Congress was aware of these provisions when drafting section 1192, Congress intended for section 1192 to apply to corporations. *See N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 524 (1984); *Cannon v. Univ. of Chicago*, 441 U.S. 677, 696–97 (1979).

Further, section 1192's application to corporate debtors is substantively consistent with the envisioned goals of chapter 11 bankruptcy. The ultimate purpose of chapter 11 bankruptcy is to provide distressed individuals and corporations with opportunities to reorganize and use their

assets for the purposes they were designed. *See* Ronald W. Goss, *Chapter 11 of the Bankruptcy Code: An Overview for the General Practitioner*, UTAH B.J., May 1991, at 8. Subchapter V's particular purpose within chapter 11 is to simplify the chapter 11 reorganization process and reduce costs to debtors, regardless of whether they are corporations or individuals. *See In re Cleary Packaging, LLC*, 36 F.4th at 517; *In re GFS Indus., LLC*, 2022 WL 16858009, at *2. Applying section 1192 to corporate debtors is clearly not contrary to this goal. *See* 11 U.S.C. § 1192. Section 1192 is, in fact, substantially more beneficial to corporate debtors than its chapter 11 counterpart. *See* Michael C. Blackmon, *Revising the Debt Limit for "Small Business Debtors": The Legislative Half-Measure of the Small Business Reorganization Act*, 14 BROOK. J. CORP. FIN. & COM. L. 339, 345–46 (2020).

Thus, absent absurd results, the plain language of section 1192 should be the beginning and end of this Court's statutory analysis. *See Connecticut Nat. Bank*, 503 U.S. at 253–54. As there are clearly no absurd results from the interpretation that section 1192 applies to corporate debtors, this Court is compelled to adopt the plain language of the provision.

2. Section 1192(2) disallows discharge of the *kinds* of debts enumerated in section 523(a), but does not dictate the kind of debtor subject to such discharge exceptions.

Section 1192(2) dictates that corporate debtors are subject to the discharge exceptions enumerated in subparagraphs (1) through (19) of section 523(a). *See* 11 U.S.C. § 1192. Section 1192 states, in relevant part, that the court ". . . shall grant the *debtor* a discharge of all debts . . . except any debt—(2) *of the kind specified* in section 523(a) of this title." *Id.* (emphasis added).

First, the plain language of section 1192(2) read in conjunction with section 1192 as a whole dictates that the discharge exceptions apply to corporate debtors. Second, even if there is ambiguity within section 1192, the statutory canons of construction lend support to Ms. Rigby's interpretation that the provision applies to corporate debtors. Finally, section 1192's

comparability to chapter 12 of the Bankruptcy Code—which applies the discharge exceptions of section 523(a) to corporate debtors—lends further support to the conclusion that section 1192(2)'s discharge exception applies to corporate debtors.

a. The plain language of section 1192(2) compels this Court to hold that the discharge exceptions of section 523(a) apply to corporate debtors.

Section 1192(2), by its plain language, compels this Court to apply the discharge exceptions enumerated in section 523(a) to corporate debtors. *See* 11 U.S.C. § 1192; *see also In re Cleary Packaging, LLC*, 36 F.4th at 515. Section 1192 provides that the court "shall grant the *debtor* a discharge of all [enumerated debts] . . . except any debt—(2) of *the kind specified* in section 523(a)." 11 U.S.C. § 1192 (emphasis added). As discussed at length above, the term "debtor" in section 1192 applies to both corporate and individual debtors. *See id.*; *see also In re Cleary Packaging, LLC*, 36 F.4th 509 at 514; *In re GFS Indus., LLC*, 2022 WL 16858009, at *3. It follows that the discharge exception in section 1192(2)—which excepts debtors from discharge of the kinds of debt specified in section 523(a)—applies to both types of debtors as well. *See* 11 U.S.C. § 1192.

The Debtor erroneously argues that the preamble of section 523(a) limits the interpretation of section 1192 to individual debtors. *See* 11 U.S.C. § 523(a). This interpretation is misguided. *See In re Cleary Packaging, LLC*, 36 F.4th at 515. As the Fourth Circuit held in *In re Cleary Packaging, LLC*, the language used to modify the term "debt"—i.e., debt *of the kind*—lends further support to the interpretation that Congress only intended to include the types of debt in section 523(a), and not the preamble limiting application of the provision to individual debtors. *See id.*; *see also New Venture P'ship v. JRB Consol.* (*In re JRB Consol., Inc.*), 188 B.R. 373, 374 (Bankr. W.D. Tex. 1995). "Kind," by its ordinary understanding, means a category or sort. *See In re Cleary Packaging, LLC*, 36 F.4th at 515; *see also Kind*, MERRIAM-WEBSTER

DICTIONARY ONLINE, https://www.merriam-webster.com/dictionary/kind (meaning "a group united by common traits or interests" or "a specific or recognized variety"). The two phrases—"debt" and "of the kind"—used in tandem, indicate that Congress "intended to reference only the *list of non-dischargeable debts* found in § 523(a)." *In re Cleary Packaging, LLC*, 36 F.4th at 515.

It is irrelevant to the interpretation of section 1192(2) that the preamble of section 523(a) states that the discharge exceptions are limited only to *individual* debtors. *See id.* Each subparagraph of section 523(a) is a category or sort of debt that is not allowed to be discharged pursuant to section 1192(2). *See id.*; *see also* 11 U.S.C. § 523. The more natural reading, and the plain language of the statute, compels this Court, pursuant to section 1192, to apply the discharge exceptions of 523(a) to corporate debtors. *See* 11 U.S.C. § 1192.

b. Even if section 1192's language is unclear, the canons of statutory construction lend support to Ms. Rigby's interpretation that section 1192(2) applies to corporate debtors.

Even if this Court were to conclude that section 1192 has two reasonable interpretations, the canons of statutory construction lend support to the interpretation that section 1192(2) applies to corporate debtors. First, the specific statutory provision, section 1192, should control over the more general provision—here section 523(a)—when there is any tension between them. Second, the whole act rule lends further support that Ms. Rigby's interpretation of the statute should govern. Finally, the comparability of section 1192 to chapter 12's discharge provision, which applies to corporate debtors, gives credence to the conclusion that section 1192's discharge provision also applies to corporate debtors.

i. Specific statutory provisions govern over more general statutory provisions.

First, specific statutory provisions—such as section 1192—should govern and control over more general statutory provisions when there is tension between them. *See Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992). When comparing section 1192(2) to section 523(a), section 1192(2) is clearly the more specific discharge exception provision. *See In re Cleary Packaging, LLC*, 36 F.4th at 515. Section 1192(2) specifically provides that debtors are not discharged from certain debts under subchapter V of chapter 11 when a bankruptcy plan is confirmed under section 1191(b), which is also known as the cramdown, or non-consensual plan, provision. *See id.*; *see also* 11 U.S.C. § 1191(b). Section 1192(2) is only applied in this very narrow circumstance. *See In re Cleary Packaging, LLC*, 36 F.4th at 515. Section 523(a), alternatively, provides discharge exceptions for *six* separate provisions and impacts four different chapters of the Bankruptcy Code. *See* 11 U.S.C. § 523(a); *see also In re Cleary Packaging, LLC*, 36 F.4th at 515. A provision like section 1192 that addresses a small part of a subchapter is clearly more specific than a provision like section 523(a) that encompasses several chapters of the Bankruptcy Code.

Because section 1192 *specifically* addresses the discharge of debts for subchapter V debtors when there has been a non-consensual release of debts, the Debtor cannot claim that the preamble of the more general provision, section 523(a), should apply. This Court has held that, although another provision may broadly address a particular matter, the provision that specifically addresses a matter will control. *Fourco Glass Co. v. Transmirra Prod. Corp.*, 353 U.S. 222, 228–29 (1957). The language of section 1192, which excepts from discharge the types of debts specified in 523(a), should thus control. Section 523(a)'s preamble is irrelevant in the face of the more specific statutory provision governing discharge in subchapter V cases.

ii. Ms. Rigby's interpretation of section 1192 makes particular sense when read in conjunction with the entirety of the Bankruptcy Code.

When section 1192 is considered against the backdrop of other provisions of the Bankruptcy Code, it is evident that section 1192(2)'s discharge exception applies to corporate debtors as well as individual debtors. The whole act rule dictates that a court must interpret a particular provision within the context of the entire statutory structure. *See In re Trepetin*, 617 B.R. 841, 846 (Bankr. D. Md. 2020); *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989).

Upon viewing the other provisions of the Bankruptcy Code, it is clear Congress was intentional in defining the applicability of certain chapters to certain types of debtors. *See In re Cleary Packaging, LLC*, 36 F.4th 509 at 515; *Duncan v. Walker*, 533 U.S. 167, 173 (2001). Chapter 13 and chapter 7 discharges are limited to individuals, and the general statutory provision for chapter 11 discharges explicitly states that discharge is limited to *individual* debtors. *See* 11 U.S.C. § 109(e); 11 U.S.C. § 727(a)(1); 11 U.S.C. § 1141(d)(2).

Unlike these provisions, section 1192 does not limit its applicability to individuals only. *See* Hon. Paul W. Bonapfel, *Guide to the Small Business Reorganization Act of 2019*, at 203 (2020) (updated 2022), https://www.ganb.uscourts.gov/sites/default/files/sbra_guide_pwb.pdf [hereinafter *SBRA*]. It is generally understood that "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Duncan v. Walker*, 533 U.S. 167, 173 (2001) (quoting *Bates v. United States*, 522 U.S. 23, 29–30 (1997) (internal quotations omitted)). Therefore, the inclusion of "individual" as a modifier for "debtor" in chapter 7, chapter 11, and chapter 13 supports the conclusion that Congress intentionally excluded "individual" as a modifier for "debtor" in section 1192.

This is further supported by the language of section 1182—the definitions section applicable to subchapter V only. *See* 11 U.S.C. § 1182. Congress chose to modify the definition of "debtor" in this section yet failed to include any indication that subchapter V's application should be limited to individual debtors. *See id.* Accordingly, when section 1192 is considered in conjunction with the entire Bankruptcy Code, it is clear that section 1192 is applicable to corporate debtors.

iii. Congress was aware that chapter 12 applied to corporate debtors when it drafted subchapter V.

Under the assumption that Congress is aware of existing law, and that Congress drafts law in accordance with existing law, the language of chapter 12 supports the conclusion that the discharge exceptions of section 1192(2) apply to corporate debtors. *See Cannon v. Univ. of Chicago*, 441 U.S. 677, 696–98 (1979); *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 524 (1984). Indeed, subchapter V was in part modeled after the statutory language of chapter 12's discharge provision—section 1228. *See* 11 U.S.C. § 1228; *In re Trepetin*, 617 B.R. 841, 848 (Bankr. D. Md. 2020); *SBRA*, at 143; Michael C. Blackmon, *Revising the Debt Limit for "Small Business Debtors": The Legislative Half-Measure of the Small Business Reorganization Act*, 14 BROOK. J. CORP. FIN. & COM. L. 339, 351 (2020). This is evident because the statutory language of section 1228 is nearly identical to section 1192, stating, in relevant part, that "the court shall grant the debtor a discharge of all debts provided for by the plan . . . *except any debt*—(2) *of a kind* specified in section 523(a) of this title . . . ." *See* 11 U.S.C. § 1228 (emphasis added); *see also In re Cleary Packaging, LLC*, 36 F.4th at 516 n.2. Courts interpreting section 1228(2) have held that its exception of the discharge for the debts specified in subparagraphs (1) through (19) of section 523(a) applies to corporate debtors. *See Southwest Ga. Farm Credit, ACA v. Breezy Ridge Farms, Inc.* (*In re Breezy Ridge Farms, Inc.*), 2009 WL 1514671, at *2 (Bankr. M.D. Ga.

2009); *In re JRB Consol., Inc.*, 188 B.R. at 374. Given the nearly identical statutory provisions, it is clear that the interpretation of the courts for section 1228 should apply for section 1192 as well. *See Hall v. United States*, 566 U.S. 506, 518–19 (2012) (stating identical words and phrases should be given the same meaning); *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998).

iv. The Debtor's contention—that reading section 1192 as applying to corporate debtors would be superfluous—is unconvincing and without merit.

The Debtor, in making their superfluity argument, relies on cases that have held that the preamble of section 523(a) applies to section 1192 because the inclusion of section 1192 in section 523(a)'s preamble would be otherwise superfluous. *See generally In re GFS Indus., LLC*, 2022 WL 16858009; *Jennings v. Lapeer Aviation, Inc. (In re Lapeer Aviation, Inc.)*, 2022 WL 1110072 (Bankr. E.D. Mich. April 13, 2022); *Catt v. RTECH Fabrications, LLC (In re RTECH Fabrications, LLC)*, 635 B.R. 559 (Bankr. D. Idaho 2021); *Gaske v. Satellite Restaurants, Inc. Crabcake Factory USA (In re Satellite Restaurants, Inc. Crabcake Factory USA)*, 626 B.R. 871 (Bankr. D. Md. 2021). This Court has held, however, that redundancies are quite common in statutes as Congress drafts provisions at different points in time. *See Connecticut Nat. Bank*, 503 U.S. at 253. As long as statutes are not clearly conflicting, courts must give effect to both provisions. *See id.* Accordingly, just because section 1192 is referenced in section 523(a) does not immediately make the Debtor's interpretation correct. In fact, several provisions of the Bankruptcy Code would be rendered superfluous under the Debtor's reasoning. For example, chapter 12's discharge provision—section 1228—is referenced in section 523(a)'s preamble and yet courts still maintain that its discharge exception provision applies to corporate debtors. *See* 11 U.S.C. § 523(a); *In re Breezy Ridge Farms, Inc.*, 2009 WL 1514671, at *2; *In re JRB Consol., Inc.*, 188 B.R. at 374. In addition, Congress may have taken a belt-and-suspenders approach to the provision, including section 1192 in the preamble of section 523(a) to reinforce

the discharge exception's applicability in section 1192 cases. *See Holland as Tr. of United Mine Workers of Am. 1992 Benefit Plan v. Arch Coal, Inc.*, 346 F. Supp. 3d 99, 107 (D.D.C. 2018), *aff'd sub nom. Holland as Tr. of UMWA 1992 Benefit Plan v. Arch Coal, Inc.*, 947 F.3d 812 (D.C. Cir. 2020); Ethan J. Leib & James J. Brudney, *The Belt-and-Suspenders Canon*, 105 IOWA L. REV. 735, 741 (2020). Thus, the inclusion of section 1192 in the preamble of section 523(a) does not automatically render Ms. Rigby's interpretation of the provision superfluous.

B. The Debtor's Interpretation of Section 1192(2) Will Lead to Absurd Results

Even if this Court determines that the Debtor's interpretation is the more natural reading of the statute, the Debtor's argument will still fail. It is well established that courts should interpret statutes in a way that avoids absurd results. *See United States v. Brown*, 333 U.S. 18, 25–26 (1948); *Holy Trinity Church v. United States*, 143 U.S. 457, 459 (1892); *Gibbons v. Bristol-Myers Squibb Co.*, 919 F.3d 699, 705–06 (2d Cir. 2019); *Pub. Citizen*, 491 U.S. at 470–71 (Kennedy, J, concurring). Interpreting section 1192 as the Debtor suggests would lead to patently absurd results.

Under the Debtor's interpretation, when a plan is confirmed in a subchapter V case through the section 1191(b) cramdown provision, section 1192(2) dictates that only *individual* debtors are subject to the discharge exceptions specified in subparagraphs (1) through (19) of section 523(a). *See In re Cleary Packaging, LLC*, 36 F.4th at 516. Yet, section 1141—the provision that governs subchapter V cases for consensual plans—does not allow *corporate* debtors to discharge debts "of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a)." *See* 11 U.S.C. § 1141(d)(6)(A). Thus, if this Court were to proceed with the Debtor's interpretation of the statute, it would create absurd results because it would provide corporate debtors greater discharge under non-consensual plans—plans where creditors did not consent—than consensual plans. *See id.*; *see also In re Cleary Packaging, LLC*, 36 F.4th at 516. This

would incentivize debtors to pursue non-consensual plans and would accordingly eliminate protections afforded to creditors. *See SBRA,* at 217; *Sapphire Dev., LLC v. McKay*, 549 B.R. 556, 565 (D. Conn. 2016); Theresa J. Pulley Radwan, *No Harm, No Foul: Calculation of Nondischargeable Damages in Transactions Tainted by Fraud*, 58 SMU L. REV. 1385, 1388 (2005). With Congress's clear attention to creditor protection, evident in sections 523(a), 1192(2), and 1328(b), it would be absurd to determine that they intended this result.

Further still, if this Court were to hold that section 1192(2) subsumes section 523(a)'s preamble, this interpretation would create inherent conflict in section 1141(d)(6). Section 1141(d)(6) states that "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)." 11 U.S.C. § 1141(d)(6) (emphasis added). If this Court holds that section 1192(2)'s reference to section 523(a) limits its application to individual debtors, it would render the preamble of section 1141(d)(6)—which is explicitly limited to corporations—meaningless. *See Hall*, 566 U.S. at 518–19 (stating that identical words and phrases should be given the same meaning); *see also* 11 U.S.C. § 1141(d)(6). Thus, a provision that is unquestionably intended to apply to corporations would not be applicable to corporations because of the preamble of section 523(a)'s limited applicability to individual debtors. *SBRA*, at 218. The Debtor's interpretation of this language makes no sense when applied to section 1141(d) and Congress could not have intended such an absurd result. *See id.* Accordingly, even if the Debtor's interpretation of section 1192 is the more plain reading of the statute, because its implementation would lead to absurd results, this Court should enforce the interpretation offered by Ms. Rigby.

C. The Debtor's Interpretation of Section 1192 is Contrary to the Intent of Congress

Sound policy dictates that this Court should not allow the Debtor to discharge the debts specified in section 1192(2). First, requiring section 1192 to apply to corporate debtors will have the same net effect as a normal chapter 11 case; it will not greatly increase the burden of the Debtor. William L. Norton III & James B. Bailey, *The Pros and Cons of the Small Business Reorganization Act of 2019*, 36 EMORY BANKR. DEV. J. 383, 386 (2020). In a typical chapter 11 case, non-consensual plans require debtors to adhere to the absolute priority rule. *See id.*; *see also* 11 U.S.C. § 1129(b)(2)(B). In order for debtors to maintain their equity interests in non-consensual plans, they would have to pay their debts in full. *See* Norton III & Bailey, *supra* at 386. Accordingly, requiring the Debtor to pay these debts under section 1192's discharge exception is not inconsistent with the structure of typical chapter 11 filing. *See id.*

Further, the absolute priority rule set out in section 1129(b) is one of the chief protections provided to creditors in chapter 11 filings. *See* Blackmon, *supra* at 349 n.78. Subchapter V's eradication of this rule thus eliminated a major protection awarded to creditors in chapter 11 cases. *See In re Cleary Packaging, LLC*, 36 F.4th at 517; Blackmon, *supra* at 349 n.78. This is especially problematic for impaired parties who cannot avoid becoming creditors, such as Ms. Rigby—whose four-year-old daughter died of leukemia caused by the horrific actions of the Debtor. R. at 5; *see also* Luke Sperduto, *Three and A Half Rules for Tort Claims in (and Out of) Chapter 11*, 95 AM. BANKR. L.J. 127, 129–31 (2021).

Additionally, debtors obtain added benefits by electing to proceed under subchapter V above and beyond the abrogation of the absolute priority rule. *See* Blackmon, *supra* at 345–46 ("The attractive features of Subchapter V may well, at the margins, entice *more* debtors to file Chapter 11 who, in prior years, would not have sought to reorganize under Chapter 11."). Plans

may be accepted under subchapter five even if *every class* rejects the plan. *See id.* at 349. Thus, the extra protections awarded to impaired creditors by the application of section 1192(2) to corporations is fair given the increased benefits received when a debtor elects to proceed under subchapter V. *See In re Cleary Packaging, LLC*, 36 F.4th at 517 ("Congress understandably applied limitations on the discharge of debts to provide an additional layer of fairness and equity to creditors to balance against the altered order of priority that favors the debtor.")

Finally, it is the choice of the Debtor, and only the Debtor, to proceed under subchapter V of chapter 11 of the Bankruptcy Code. *See* Blackmon, *supra* at 346. Accordingly, if the Debtor chooses to proceed under subchapter V, it must accept the benefits of discharge with the corresponding burdens.

CONCLUSION

Accordingly, this Court should reverse the Thirteenth Circuit's holding that (1) a bankruptcy court has the authority to confirm a chapter 11 plan of reorganization containing non-consensual releases of third-party claims against a non-debtor, and (2) corporate debtors, pursuant to 11 U.S.C. § 1192 of subchapter V of chapter 11, may discharge the types of debts specified in subparagraphs (1) through (19) of 11 U.S.C. § 523(a).

APPENDIX A

CONSTITUTIONAL PROVISIONS

U.S. Const. Art. III § 1

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

BANKRUPTCY CODE PROVISIONS

11 U.S.C. § 105(a). Power of court.

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

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

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

(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 $800 [originally "$500", adjusted effective April 1, 2022]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 $1,100 [originally "$750", adjusted effective April 1, 2022]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 of the Higher Education Act of 1965, or under section 733(g) 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).

The relevant portions 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)(2)(B)(i)(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;

(g)(4)(A)(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—

The relevant portions 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, 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;

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

* * *

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

11 U.S.C. § 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.

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.

The relevant portions of 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.

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.