No. 22-0909

IN THE

Supreme Court of the United States

IN RE PENNY LANE INDUSTRIES, INC., DEBTOR,

ELEANOR RIGBY,
Petitioner,

V.

PENNY LANE INDUSTRIES, INC.,
Respondent.

ON APPEAL FROM THE

UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

BRIEF FOR RESPONDENT

JANUARY 19, 2023

TEAM NUMBER 6
COUNSEL FOR RESPONDENT

QUESTIONS PRESENTED

I. Whether a bankruptcy court has the authority to approve non-consensual releases of direct claims held by third parties against non-debtor affiliates as part a Chapter 11 plan of reorganization.

II. Whether a corporate debtor proceeding under Subchapter V of Chapter 11 of the Bankruptcy Code may, pursuant to 11 U.S.C. § 1192, discharge debts of types specified in subparagraphs (1) through (19) of 11 U.S.C. § 523(a).

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The Thirteenth Circuit Court of Appeals' decision is available at No. 22-0909 and reprinted at Record 2. Both the Bankruptcy Court and the United States District Court for the District of Moot decided in favor of the Respondent, Penny Lane Industries, Inc. and against Petitioner, Eleanor Rigby. On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed the Bankruptcy Court's decision in favor of the Respondent.

STATEMENT OF JURISDICTION

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

RELEVANT STATUTORY PROVISIONS

This case requires construction of the following provisions of the United States Constitution and of Titles 11 and 28 of the United States Code. These provisions are restated in the Appendix, also.

Article III, Section 1 of the United States Constitution provides:

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.

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

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

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

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

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

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

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

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

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

(b) Subject to subsection (a) of this section, a plan may--
(1) impair or leave unimpaired any class of claims, secured or unsecured, or of interests;

(5) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims; and
(6) include any other appropriate provision not inconsistent with the applicable provisions of this title.

The relevant portion of 11 U.S.C. § 1129 provides:

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

(b)(1) Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.
(2) For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(B) With respect to a class of unsecured claims--

(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain

property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

The relevant portion of 11 U.S.C. § 1141 provides:

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

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

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

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

(i) made a fraudulent return; or

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

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 . . . 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. § 151 provides:

In each judicial district, the bankruptcy judges in regular active service shall constitute a unit of the district court to be known as the bankruptcy court for that district. Each bankruptcy judge, as a judicial officer of the district court, may exercise the authority conferred under this chapter with respect to any action, suit, or proceeding and may preside alone and hold a regular or special session of the court, except as otherwise provided by law or by rule or order of the district court.

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--

(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.

(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

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

(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that

resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

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

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

STATEMENT OF THE CASE

Debtor Penny Lane Industries, Inc. ("Penny Lane") manufactures plastic, glass, and metal food containers and is a major employer in the economically distressed City of Blackbird, Moot. R. 4, 12. Penny Lane is a wholly owned subsidiary of Strawberry Fields, which manufactures cereal and convenience foods. R. 4, 5. In 2017, Petitioner Ms. Eleanor Rigby filed suit against Penny Lane and Strawberry Fields alleging that Penny Lane dumped pollutants into the ground water supply. Ms. Rigby alleged that this contamination exposed her four-year-old daughter to pollutants that led to her death from leukemia. Ms. Rigby further alleged that Penny Lane's Chief Executive Officer had known since 2014 that Penny Lane's disposing policies could cause Blackbird's residents serious injury. The Center for Disease Control and the Environmental Protection Agency have not conclusively determined the source of this contamination; yet hundreds of lawsuits like Ms. Rigby's were subsequently filed against Penny Lane and Strawberry Fields. R. 6. Ultimately, Penny Lane and Strawberry Fields deny the allegations set forth in the suits and they have not been found liable in any of these pending suits. R. 6. However, in the face of hundreds of lawsuits, Penny Lane filed for bankruptcy on January 11, 2021. It elected to proceed under Subchapter V of Chapter 11. R. 6.

While Penny Lane is facing almost $400 million in disputed, unliquidated tort claims related to its alleged dumping of pollutants, the "parties have stipulated that [Penny Lane] is a 'small business debtor' eligible for relief under Subchapter V because its 'aggregated noncontingent liquidated' debts were less than $7.5 million on the petition date and because it otherwise satisfies the requirements for a small business debtor set forth in section 1182." R. 6 n.5. When Penny Lane filed its bankruptcy case, the automatic stay under § 362(a) stayed the pending litigation against Penny Lane. R. 7. Further, Penny Lane sought, and the Bankruptcy Court granted, a temporary injunction pausing litigation against its "current and former owners,

officers, directors, employees, and associated entities" relating to its alleged dumping activities; this temporary injunction stayed the litigation against Strawberry Fields. R. 7, 8. This stay has been in place as Penny Lane, Strawberry Fields, and key stakeholders in the bankruptcy case negotiated a settlement agreement. R. 8.

The associated parties, including Ms. Rigby, engaged in extended, arms-length negotiations through mediation. R. 8. The parties reached a settlement agreement that was memorialized in Penny Lane's plan of reorganization ("the Plan"). The Plan creates a creditors' trust funded by 1) Penny Lane's net disposable income for five years, and 2) $100 million from Strawberry Fields. R. 8. Under the Plan creditors will recover 30-40 cents on the dollar for allowed claims. R. 8.

In exchange for funding the Plan and making creditor recovery possible, the Plan releases Strawberry Fields from both estate claims and third-party direct claims, including "any and all claims" that third parties "have asserted or might assert in the future against Strawberry Fields" that are related to Penny Lane's "pre-petition conduct." R. 8. This nonconsensual release binds all parties regardless of whether they participated in the bankruptcy case or whether they disapprove of the Plan. R. 8, 9. The Plan does not address the merits of creditors' claims, only directs that such claims be resolved through the trust structure. R. 9, 13.

Without this release, Strawberry Fields would not contribute to the creditors' trust, leaving creditors to recover from Penny Lane's net disposable income only. *See* R. 8. And, under the Plan, Strawberry Fields contributes substantially more than "any [other] likely recovery" against them. R. 10. Further, all creditors, tort claimants and otherwise, recover more under the Plan than they otherwise would. R. 10. Finally, the Plan represents the only "reasonably conceivable means" to satisfy creditor claims. R. 10.

Ultimately, over 95 percent of creditors voted in favor of the Plan, including the class of unsecured creditors who would be affected by the releases. Only two creditors objected to the Plan—Ms. Rigby and Norwegian Wood Bank ("Bank"), a secured creditor.

Ms. Rigby objected to the Plan asserting that non-consensual third-party releases are impermissible under both bankruptcy and non-bankruptcy law. R. 9. The Bank, on the other hand, objected to the Plan because it argued that the Plan was not "fair and equitable" as required under §§ 1191(b) and 1129(b)(2)(A). R. 9. After a days long confirmation hearing, the Bankruptcy Court confirmed the Plan over Ms. Rigby and the Bank's objections.

In addition to the dispute over the Plan confirmation, Ms. Rigby also commenced an adversary proceeding against Penny Lane seeking to have her claim deemed non-dischargeable under §§ 523(a)(6) and 1192(2). R. 7. Ultimately, the Bankruptcy Court granted Penny Lane's motion to dismiss finding that the non-dischargeability provisions of § 523(a) apply only to individuals, not corporate entities, even when a corporate debtor elects to proceed under Subchapter V of Chapter 11. R. 7.

Ms. Rigby timely appealed the Bankruptcy Court's rulings. The Thirteenth Circuit granted the parties' request for direct appeal to that court. R. 11. The Thirteenth Circuit consolidated the appeals and affirmed the Bankruptcy Court on both issues. R. 11.

SUMMARY OF THE ARGUMENT

This Court should affirm the Thirteenth Circuit Court of Appeals and find for the Respondent Penny Lane Industries, Inc. on both issues.

The Thirteenth Circuit properly affirmed the Bankruptcy Court's confirmation of Penny Lane's plan of reorganization because it was the best and most feasible solution available and because the Bankruptcy Court had statutory and constitutional authority to confirm a plan that included a nonconsensual release of third-party claims against Strawberry Fields.

Penny Lane's plan of reorganization is the best and most feasible solution for several reasons. First, under the Plan, all creditors recover more than they would recover otherwise. They recover more under the Plan than they would if Penny Lane were to liquidate, and they recover more than they would if they were to pursue their individual claims against Penny Lane and Strawberry Fields directly. Further, the Plan ensures that creditors have equal access to recovery, regardless of when claims arise or are filed. And, creditors need not risk litigation, shoulder its expense, nor endure its delay because the creditors' trust expedites and guarantees recovery for all allowed claims.

Next, Penny Lane and the Debtor's community are better off under the Plan because Penny Lane continues to operate and the community of Blackbird, Moot avoids losing the jobs Penny Lane provides. Finally, the Plan is the most feasible solution because pursuant to the Plan's provisions, Strawberry Fields contributed $100 million to the creditors' fund, a contribution that enables creditors to recover significantly on their claims. Strawberry Fields will not contribute to the creditors' fund without the release of claims against it included in the Plan, and without Strawberry Fields' contribution, creditor recovery will be severely diminished. In short, the nonconsensual release provision in the Plan is essential for the Plan's success and for creditor recovery.

The Bankruptcy Court did not exceed its equitable powers when it confirmed the Plan. Bankruptcy courts have broad equitable powers that allow them to modify debtor-creditor relationships and use discretion when confirming plans of reorganization. Congress intended bankruptcy courts to have judicial authority broad enough to allow them to confirm plans of reorganization as they see fit. This equitable judicial authority allows bankruptcy courts to confirm plans with nonconsensual release provisions.

The Bankruptcy Court had statutory authority to confirm the Plan under Titles 28 and 11 of the United States Code. Bankruptcy courts have statutory authority to hear and determine bankruptcy matters under Sections 151, 157, and 1334 of Title 28 of the United States Code. Bankruptcy courts may hear and determine core proceedings under Sections 157 and 1334. Core proceedings are matters "arising under" the Bankruptcy Code or "arising in" a bankruptcy case. Non-core proceedings are matters "related to" bankruptcy cases. However, while Sections 157 and 1334 allow bankruptcy courts to *hear* non-core proceedings, they may *determine* them in specific instances only. Bankruptcy courts must obtain the parties' consent to determine non-core proceedings. Otherwise, they must submit proposed findings of fact and conclusions of law for a district court's *de novo* review.

Because a nonconsensual release of third-party claims against a non-debtor is not a core-proceeding, but rather is a non-core matter "related to" a debtor's bankruptcy proceeding, bankruptcy courts may confirm plans with such releases with the parties' consent or subject to *de novo* review. Here, Ms. Rigby consented to the Bankruptcy Court's determination of the matter through her litigation conduct. But even if she did not, Ms. Rigby retains her right to recovery via the creditors' trust which preserves her constitutional due process rights. Further, even third parties who remain uninvolved in the bankruptcy proceeding retain this right to recovery. And, even if Ms. Rigby did not consent, a bankruptcy court has the proper expertise to determine whether a plan should be confirmed, and if a plan implicates non-core matters "related to" the bankruptcy case, a bankruptcy court may confirm the plan subject to *de novo* review. This approach is consistent with this Court's jurisprudence in *Executive Benefits Insurance Company v. Arkins*.

Looking to Title 11, no provision of the Bankruptcy Code prohibits a plan of reorganization from including a nonconsensual release of third-party claims against a non-debtor. On the contrary, Sections 105 and 1123 give bankruptcy courts broad authority and discretion to confirm plans of reorganization tailored to the rights and needs of debtors, creditors, and other stakeholders. And, the inclusion of a nonconsensual release of a third-party claim against a non-debtor is not inconsistent with any provision of the Bankruptcy Code.

On the second issue, this Court should also affirm the Thirteenth Circuit's decision that the interplay between §§ 523(a) and 1192(2) does not permit Ms. Rigby to pursue a non-dischargeability action against Penny Lane. The Thirteenth Circuit found correctly that the § 523(a) exceptions to discharge apply to individuals only, even for those debtors proceeding under Subchapter V of Chapter 11. Therefore, Penny Lane, as a corporate Subchapter V debtor, may discharge debts of the types specified in § 523(a). Both principles of statutory interpretation and sound policy direct this result.

First, the plain language of §§ 523(a) and 1192(2) permits Penny Lane to discharge debts of the types specified in § 523(a). Section 523(a)'s introductory phrase clearly limits the exception to discharge to individuals when it provides that "[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 . . . ." 11 U.S.C. § 523(a) (emphasis added). This language does not specify that the exception applies to a "corporate" debtor or even the more general "debtor;" indeed, § 523(a) exceptions to discharge are specifically limited to *individual* debtors. Moreover, this introductory phrase includes a direct reference to § 1192. Therefore, an individual debtor receiving a discharge pursuant to § 1192 cannot discharge a debt excepted under § 523(a). A corporate debtor, on the other hand, may discharge a debt of a type listed in § 523(a).

This plain language analysis could end with an examination of only § 523(a); however, the plain language of § 1192 further highlights that only individual debtors are subject to § 523(a)'s exceptions to discharge. That provision provides that for a debtor receiving a discharge pursuant to § 1192 the "court shall grant the debtor a discharge of all debts provided in section 1141(d)(1)(A) of this title . . . except any debt-- (2) *of the kind* specified in section 523(a) of this title." 11 U.S.C. § 1192 (2019) (emphasis added). A debt of the kind specified in § 523(a) does not refer to only the general types of debts listed in that section but refers to the kinds of debts already excepted from discharge under § 523(a). Those debts already excepted from discharge include only those applicable to an individual debtor. Ultimately, § 1192's language does not seek to expand § 523(a)'s applicability to include Subchapter V corporate debtors. It merely ensures that individual debtors receiving a discharge pursuant to § 1192 do not receive a discharge of the debts already excepted from discharge under § 523(a)'s plain language.

The legislative history surrounding the enactment of § 1192 within Subchapter V of Chapter 11 and bankruptcy policy support the conclusion that §§ 523(a) and 1192(2) only except individual debtors from discharge. First, there is no indication in the legislative history surrounding this provision's enactment that Congress wished to drastically expand the exceptions to discharge for corporate debtors. Indeed, Chapter 11 and the Bankruptcy Code provide a generous discharge scheme for corporate debtors, allowing them to discharge all debts upon confirmation of a plan except under one narrow exception—fraudulent debts owed to the government. Congress's failure to even mention a possible expansion of nineteen additional exceptions to discharge for corporate debtors proceeding under Subchapter V of Chapter 11 would merit discussion. This obvious lack of discussion is indicative of how Congress must

have intended the new Subchapter V discharge scheme to follow established bankruptcy policy and practice.

Established Chapter 11 corporate bankruptcy policy and practice includes the confirmation of a bankruptcy plan that allows the debtor to survive post-bankruptcy. Congress stated it has the same goal for small business debtors proceeding under Subchapter V of Chapter 11. If Congress's goal is for these businesses to survive post-bankruptcy, it does not follow to leave the business open to great liability—expanding the § 523(a) exception to include corporate debtors proceeding under Subchapter V would do just that.

For these reasons, the Thirteenth Circuit should be upheld on both issues.

ARGUMENT

I. The Thirteenth Circuit properly affirmed the Bankruptcy Court's confirmation of the Debtor's plan of reorganization because the Plan was the best solution available to all stakeholders and because the Bankruptcy Court had statutory and constitutional authority to confirm a plan with a nonconsensual release of third-party claims against non-debtors.

The Bankruptcy Court for the United States District Court of Moot confirmed a plan of reorganization that balances the rights of creditors, most of whom are alleged victims of a mass tort, with the needs of an ailing debtor and its economically depressed community. Debtor Penny Lane Industries ("the Debtor" or "Penny Lane") filed for relief under Chapter 11 after residents of Blackbird, Moot alleged that Penny Lane contaminated the community's water. R. 3. Even though the allegations are disputed and have not been proven, Penny Lane and its parent company, Strawberry Fields, worked to create a creditors' trust from which alleged victims could recover for their injuries. R. 4. The creditors' trust is one aspect of a carefully negotiated plan of reorganization ("the Plan") that almost all stakeholders in Penny Lane's bankruptcy proceedings supported. R. 4. For the reasons discussed below, the Plan represents the best and most feasible solution available and this Court should affirm the Bankruptcy Court's confirmation of it.

A. The Bankruptcy Court's confirmation of the Debtor's plan of reorganization represents the best and most feasible solution available to creditors, the Debtor, and the Debtor's community.

The Bankruptcy Court confirmed a plan that represents the best solution available because creditors, the debtor, and the debtor's community are better off under the Plan than they would be otherwise, and because the Plan is the only feasible way to achieve this outcome. Petitioner Eleanor Rigby ("Ms. Rigby") objects to the Plan's nonconsensual release of third-party claims against Strawberry Fields. R. 4. However, Chapter 11 plans of reorganization balance the rights and needs of all stakeholders to achieve an equitable result, and here the Bankruptcy Court balanced the equities properly.

When determining whether to confirm a plan, a bankruptcy court undertakes a holistic evaluation of its impact on creditors, the debtor, and others affected. *See, e.g.*, *In re Boy Scouts of Am. and Del. BSA, LLC*, 642 B.R. 504, 617 (Bankr. D. Del. 2022). Consistently, bankruptcy courts consider a plan's alternatives when making this determination. *See, e.g.*, *id.* Bankruptcy courts are more likely to confirm plans under which creditors recover more for allowed claims compared to when they would recover less under the available alternatives. *See, e.g., id.* Similarly, bankruptcy courts are more likely to confirm plans that treat classes of creditors equally. *See, e.g., id.*; 11 U.S.C. § 1129. And, bankruptcy courts consider whether provisions of a plan are necessary for its success when determining whether to confirm a plan, particularly when creditors object to those provisions. *See, e.g.*, *In re Boy Scouts*, 642 B.R. at 617.

Here, the Bankruptcy Court undertook a holistic evaluation of the Plan and confirmed it after determining it was the best solution available. As further detailed below, the Plan allows creditors to recover equally and more than they would otherwise, the Plan meets the needs of the debtor and the debtor's community, the Plan represents the most feasible solution available to

achieve these outcomes, and including the nonconsensual release of third-party claims provision was necessary for the Plan's success.

1. Creditors recover more under the Plan than they would otherwise.

Creditors have no better route to recovery than the Plan as it was confirmed. First, all of Penny Lane's creditors recover more under the Plan than they would otherwise. The Plan creates a creditors' trust through which all creditor claims are funneled. R. 8. Creditors will receive a "significant distribution" of "30-40 cents on the dollar" for all allowed claims. R. 8. This is "substantially greater" than what creditors would recover "if the Debtor [were] liquidated under Chapter 7." R. 10. Even creditors with unliquidated tort claims are better off under the Plan. It is undisputed that Ms. Rigby and "all other tort claimants [receive] more under the Plan than they would otherwise be able to recover by prosecuting their claims against the Debtor and Strawberry Fields to conclusion." R. 11. Creditors are better off under the Plan as to their claims against debtor Penny Lane, *and* as to their claims against the Debtor's parent company Strawberry Fields.

2. The nonconsensual release of third-party claims against Strawberry Fields is necessary for creditor recovery and the Plan's success overall.

The Bankruptcy Court determined rightly that the nonconsensual release provision was necessary for the Plan's success, and in confirming the Plan, the Bankruptcy Court delivered creditors a deal they could not negotiate on their own. Strawberry Fields plays an integral role in the creditors' recovery under the Plan. The Plan ensures creditors have $100 million from which to satisfy claims, a contribution Strawberry Fields made to the creditors' trust. R. 8. In exchange for making this creditor recovery possible, the Plan releases Strawberry Fields from claims against it. *Id.* Specifically, Strawberry Fields demanded the release of "any and all" estate claims and third-party claims against it "based on or related to the Debtor's pre-petition

conduct, its estate or this Chapter 11 case." R. 8. While it may seem like Strawberry Fields drove a hard bargain, in reality, Strawberry Fields gave more to the creditors' trust than it would likely be liable for on the creditors' claims against it. R. 10. Strawberry Fields chose to "buy peace" and move forward with its subsidiary's reorganization, rather than defend numerous individual claims, claims it may well have defended successfully. *See* R. 6, 10. Very likely, creditors would recover less from successful judgments against Strawberry Fields than they would from channeling their claims through the creditors' trust as it exists under the Plan, a reality that reflects the "premium" Strawberry Fields paid in exchange for the release of claims provision. *See* R. 10.

Without the release of claims provision in the Plan, Strawberry Fields was unwilling to contribute $100 million the creditors' trust, and without Strawberry Fields' contribution, the only other funding for the trust is Penny Lane's disposable income for five years. R. 8. When the Bankruptcy Court confirmed the Plan and its provisions, it secured significant funding from which creditors could recover, funding without which creditors would recover substantially less.

3. The Plan ensures equal treatment for creditors and delivers expedited and guaranteed recovery.

The Plan treats creditors equally and ensures recovery for creditors with allowed claims without the risk of litigation. Pursuant to the absolute priority rule, a plan must provide for equal recovery across each class of creditors. *See* 11 U.S.C. § 1129(b)(2)(B)(ii). Here, the Plan ensures that creditors have equal access to recovery. The Plan's trust structure allows current creditors to recover while preserving funds for "later-litigated or later-arising claims." R. 13. Importantly, Ms. Rigby's class of creditors, tort claimants, have access to equal recovery under the Plan, in conformity with the absolute priority rule.

Further, the Plan treats creditors favorably by expediting and guaranteeing their recovery. Under the Plan creditors avoid the "risk, delay, and expense" of ongoing "litigation against multiple defendants." R. 12. Rather than chancing a loss in court, creditors receive "a significant distribution" from the trust for their allowed claims. R. 9. Creditors voted overwhelmingly in support of the Plan, evidence that the Plan treats creditors favorably. R. 9. The Plan delivers creditors fast, affordable, and guaranteed recovery in a fashion that is fair and equitable.

4. The Debtor and the Debtor's community are better off under the Plan.

The Debtor and the Debtor's community enjoy better outcomes under the Plan, achieving the fundamental purpose of Chapter 11 reorganization. "The fundamental purpose of reorganization is to prevent" liquidation and job loss. *NLRB v. Bildisco & Bildisco,* 465 U.S. 513, 528 (1984). Here, debtor Penny Lane continues to operate as a "viable business" rather than closing. R. 11. Consequently, Penny Lane's "already economically challenged" community, Blackbird, Moot, retains substantial jobs locally. R. 12 (citing *Bildisco,* 465 U.S. at 528). In confirming the Plan, the Bankruptcy Court balanced the rights of creditors with Penny Lane's interests and the economic well-being of the Blackbird community.

5. The Bankruptcy Court chose the most feasible solution to achieve these outcomes when it confirmed the Plan.

Finally, the Bankruptcy Court chose the most feasible solution available when it confirmed the Plan. It is undisputed that there is "no other reasonably conceivable means to achieve the result accomplished by the Plan." R. 10. If creditors want maximum and equal recovery on their claims, if the Debtor wants to stay in business, and if the Blackbird community wants to retain jobs for its workforce, the Plan is the way to do it. The Bankruptcy Court chose not only the best solution available when it confirmed the plan, it chose the only feasible one.

B. The Bankruptcy Court exercised properly its equitable powers when confirming the Debtor's plan of reorganization.

In addition to choosing the best solution available, the Bankruptcy Court operated within its equitable powers to confirm the debtor's plan of reorganization. A bankruptcy court's "equitable powers are traditionally broad." *In re Aradigm Commc'ns, Inc.*, 519 F.3d 640, 657 (7th Cir. 2008) (citing *United States v. Energy Res. Co., Inc.*, 495 U.S. 545, 549 (1990)). Bankruptcy courts can use this "broad authority to modify creditor-debtor relationships." *In re Dow Corning Corp.*, 280 F.3d 648, 656 (6th Cir. 2002) (citing *Energy Res. Co.*, 495 U.S. at 549). A bankruptcy court exercises this authority when it uses its "considerable discretion to approve plans of reorganization." *Id.* (citing *Energy Res. Co.*, 495 U.S. at 549). And, a bankruptcy court acts within its equitable powers and its discretion when it approves a plan with a nonconsensual release of third-party claims against a non-debtor. *Id.* The majority of the Federal Circuit Courts of Appeals agree. *See In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 141 (2d Cir. 2005); *In re Millennium Lab Holdings II, LLC*, 945 F.3d 126, 140 (3d Cir. 2019); *In re Seaside Eng'g & Surveying, Inc.*, 780 F.3d 1070, 1084 (11th Cir. 2015); *In re Penny Lane Indus., Inc.*, No. 22-0909 (13th Cir. 2022). Notably, Congress intended for bankruptcy courts to have "the full powers of courts of law, equity, and admiralty" with "general jurisdiction and broad judicial powers." H.R. REP. No. 595, at 12, 32 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 5973, 5993 (1977); *accord Celotex Corp. v. Edwards*, 514 U.S. 300, 308 (1995).[1]

This case illustrates perfectly a bankruptcy court exercising its equitable judicial authority to balance the competing interests of creditors, debtors, and other stakeholders in a bankruptcy proceeding. Here, the Bankruptcy Court did what bankruptcy courts across the

[1] Although bankruptcy courts are Article I courts rather than Article III courts as Congress intended originally, this distinction factors into the constitutional authority discussion below. *See* H.R. REP. NO. 595 at 32, 38.

country do: it exercised its broad equitable authority to confirm a plan, the contents of which it had considerable discretion to include and approve. This case is similar factually and legally to the mass tort case before the bankruptcy court in *In re Purdue Pharma, L.P.*, which illustrates a bankruptcy court exercising its equitable authority within its discretion. *See generally* 633 B.R. 53 (Bankr. S.D.N.Y. 2021), *vacated*, 635 B.R. 26, 81 (S.D.N.Y. 2021). There, the bankruptcy court confirmed a plan releasing third-party claims against non-debtor shareholders who owned the closely held corporate debtor in exchange for the shareholders' $4.325 billion contribution to a fund compensating victims of the debtor's tortious conduct. *Id.* at 84. There, as here, the bankruptcy court confirmed the plan because creditor recovery was greater under than plan than would be possible otherwise, the non-debtors contributed to a fund to satisfy creditor claims in exchange for the nonconsensual release of third-party claims against them, creditor recovery depended on the trust structure and the non-debtor funding considerably, creditors voted to support the plan overwhelmingly, and the plan resulted from an arms-length mediation process. *Id.* at 61, 79, 85–86, 109, 119. [2]

This Court should affirm the Bankruptcy Court's confirmation of the Plan because the court had equitable authority and discretion to confirm it. In *Purdue Pharma,* the district court vacated incorrectly the bankruptcy court's confirmation of the plan, holding the bankruptcy court lacked statutory authority to confirm a plan releasing third-party claims. However, bankruptcy courts have sufficient statutory authority to confirm plans containing nonconsensual release provisions so long as they resolve them constitutionally as non-core proceedings. Here, the Bankruptcy Court did confirm the Plan with its nonconsensual release provision in conformity with constitutional requirements, for the reasons discussed below. Because here the Bankruptcy

[2] In *Purdue Pharma*, the court also weighed creditors' projected recovery under the plan against the difficulty of recovering avoidable transfers to help satisfy creditor claims, a factor not at issue here. *See id.* at 91–95.

Court had broad equitable authority and lacked neither statutory nor constitutional authority, this Court should affirm the Bankruptcy Court's confirmation of the Plan.

C. The Bankruptcy Court had statutory authority to confirm a plan of reorganization that included a nonconsensual release of third-party claims against non-debtor Strawberry Fields as a non-core proceeding under Titles 11 and 28 of the United States Code.

The Bankruptcy Court had statutory authority to confirm the Plan and its nonconsensual release of third-party claims against Strawberry Fields, like Ms. Rigby's claim, under Titles 28 and 11 of the United States Code. Generally, a bankruptcy court acts within its statutory authority pursuant to Sections 151, 157 and 1334 of Title 28 when it hears and determines bankruptcy matters in conformity with Congress' core and non-core proceeding framework. More specifically, so long as it proceeds constitutionally within these Title 28 grants of authority, a bankruptcy court acts within its statutory authority to confirm a plan of reorganization, even one including a nonconsensual release of third-party claims, under Sections 105, 1123(b)(6), and 1129 of Title 11.

1. The Bankruptcy Court had statutory authority to confirm a plan with a nonconsensual release as a non-core, "related to" matter under Title 28 of the United States Code.

The Bankruptcy Court had statutory authority to release third-party claims against Strawberry Fields as part of the debtor's plan of reorganization under Title 28 of the United States Code. United States district courts and bankruptcy courts both have statutory authority to resolve matters in bankruptcy. United States district courts have original and exclusive subject matter jurisdiction over cases "under" the Bankruptcy Code. 28 U.S.C. § 1334(a). However, district courts have original but non-exclusive subject matter jurisdiction over certain civil proceedings bankruptcy. *See* 28 U.S.C. § 1334(b). This non-exclusive jurisdiction applies to civil proceedings "arising under" the Bankruptcy Code, "arising in" a case under the Bankruptcy

Code, and "related to" a case under the Bankruptcy Code. *Id.* Because this jurisdiction is nonexclusive, courts other than the district courts may exercise it.

Bankruptcy courts are "unit[s] of the district courts" and may exercise the authority statutorily conferred on them, either by referral from the district courts or through independent exercise of statutory authority. *See* 28 U.S.C. § 151. District courts may refer to bankruptcy courts all cases under the Bankruptcy Code, all proceedings "arising under," the code, all proceedings "arising in" a bankruptcy case, or all proceedings "related to" a bankruptcy case. 28 U.S.C. § 157(a). "Every district court in the country" has done so. GREGORY GERMAIN, BANKRUPTCY LAW AND PRACTICE 52 (4th ed. 2021); *accord* 1 COLLIER ON BANKRUPTCY § 3.02 (15th ed. 1985).

Notwithstanding a district court's referral, a bankruptcy court may "*hear and determine* all cases" under the Bankruptcy Code and all "core proceedings arising under" or "arising in" a case under the code and enter orders and judgments for such matters. 28 U.S.C. § 157(b)(1) (emphasis added). Section 157 sets forth a non-exhaustive list of core proceedings. *See* 28 U.S.C. § 157(b)(2). Confirmation of a plan is a core proceeding. 28 U.S.C. § 157(b)(2)(L).

Notably, bankruptcy courts lack statutory authority to *determine* proceedings "otherwise related to" a bankruptcy case. 28 U.S.C. § 157(c)(1). So, if a matter is "related to" a bankruptcy case only, it is not a core proceeding. *Stern v. Marshall*, 564 U.S. 462, 475 (2011). A bankruptcy court can resolve non-core matters "related to" bankruptcy cases two ways: (1) hear the matter and "submit proposed findings of fact and conclusions of law" for a district court's *de novo* review, or (2) obtain the parties' consent to hear and decide the matter, including consent to issue "orders and judgments." 28 U.S.C. § 157(c)(1), (2). At any time, a district court may withdraw such matter from the bankruptcy court for cause. 28 U.S.C. § 157(d). In sum, a

bankruptcy court may always *hear* a non-core matter, but it may *determine* it only with the parties' consent.

Bankruptcy courts lack authority to determine state law claims that are not core proceedings because they are non-core, "related to" matters. For example, a bankruptcy court lacks authority to determine a state law claim "that exists without regard to any bankruptcy proceeding." *Stern*, 564 U.S. at 499. And, a bankruptcy court lacks authority to determine a claim against an entity that is otherwise uninvolved in bankruptcy proceedings. *Id.*; *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 84 (1982). Conversely, if the claim "stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process," it may be a core-proceeding that a bankruptcy court can determine. *Stern*, 564 U.S. at 499.

Here, the Bankruptcy Court did not exercise its statutory authority to determine a core proceeding. While the Thirteenth Circuit held correctly that the Bankruptcy Court had authority to confirm a plan releasing third-party claims against Strawberry Fields, the Thirteenth Circuit characterized the matter as a core proceeding, improperly. R. 12. As Thirteenth Circuit Judge McCartney correctly observed in his dissent, bankruptcy courts cannot determine matters over which they would otherwise lack authority by including such matters in a plan, and then confirming the plan. *See* R. 27–28. In his words, this would "manufacture" judicial authority. *Id.*; *accord In re Purdue Pharma, L.P.*, 635 B.R. 26, 81 (S.D.N.Y. 2021). Instead, bankruptcy courts must adhere to the statutory authority conferred on them under Sections 157 and 1334.

Here, the release of third-party claims against Strawberry Fields is more like a non-core proceeding for several reasons. First, the claims against Strawberry Fields that the Plan releases, like Ms. Rigby's, are likely to be state law claims that exist outside of bankruptcy rather than claims stemming from Penny Lane's bankruptcy proceedings. Next, the Bankruptcy Court might

not resolve third-party claims like Ms. Rigby's fully through the claims allowance process. Finally, Strawberry Fields is not a debtor in the bankruptcy proceedings, and without the "tsunami" of litigation to which claims like Ms. Rigby's belong, Strawberry Fields might not be involved in the bankruptcy proceedings at all. *See* R. 3. For these reasons, a nonconsensual release of third-party claims in a debtor's plan of reorganization, like the one Ms. Rigby objects to here, is characterized most appropriately as a matter "otherwise related to" the debtor's bankruptcy case, a non-core proceeding. *See* 28 U.S.C. § 157(c).

Because the release is a "related to" matter, the Bankruptcy Court should have heard the matter and submitted proposed findings of fact and conclusions of law for the district court's *de novo* review or obtained the parties' consent to determine the matter. *See* 28 U.S.C. § 157(c)(1), (2). Here, the District Court did not review the Bankruptcy Court's confirmation of the Plan *de novo*. *See* R. 11. In fact, the District Court did not review the Bankruptcy Court's decision at all because Ms. Rigby's appeal was certified to the Thirteenth Circuit directly. *Id.* But, because Ms. Rigby consented to the Bankruptcy Court's authority to determine the matter as detailed below, the Bankruptcy Court operated within its statutory authority when it confirmed the debtor's plan so long as it did so constitutionally within that framework, which in this case, it did. *See* 28 U.S.C. § 157(c)(2).

2. The Bankruptcy Court acted within its statutorily granted discretion to confirm a plan with a nonconsensual release provision under Title 11 of the United States Code.

The Bankruptcy Court exercised its statutory authority under the Bankruptcy Code when it confirmed the debtor's plan of reorganization, even though the Plan included a nonconsensual release of third-party claims against Strawberry Fields. A bankruptcy court can confirm a plan of reorganization if it does not exceed its statutory grant of authority to do so. *See e.g.*, *Energy Res. Co.*, 495 U.S. at 549 (citing 11 U.S.C. §§ 1123(b)[6]; 1129). Section 105 permits the court

to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Also, a bankruptcy court may confirm a plan that includes "any appropriate provision not inconsistent with the *applicable* provisions" of the Bankruptcy Code. 11 U.S.C. § 1123(b)(6) (emphasis added). No applicable provision of the Bankruptcy Code prohibits bankruptcy courts from confirming plans with nonconsensual releases of third-party claims against non-debtors. *See Energy Res. Co.*, 495 U.S. at 549.

Bankruptcy courts exercise statutory authority under the Bankruptcy Code, that although limited, is broad enough to allow them to confirm plans of reorganization releasing third-party claims against non-debtors without violating any provision of the code. Ms. Rigby argues that Section 524(e) prohibits the Bankruptcy Court from confirming the Plan. But, as the *Dow Corning* court observed correctly, the language in Section 524(e) "explains the effect of a debtor's discharge. It does not prohibit the release of [claims against] a non-debtor" as part of a plan of reorganization. 280 F.3d at 657. Stated otherwise, Section 524(e) is not applicable as a provision inconsistent with the inclusion of a nonconsensual release of third-party claims against non-debtors in a plan of reorganization. Instead, that section states, "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." 11 U.S.C. § 524(e). Section 524(e) speaks to what discharge of a debtor's debt cannot do independently. For Ms. Rigby's contention to be correct, Section 524(e) would have to direct that neither discharge of a debtor's debt *nor* the confirmation of a plan of reorganization affects another entity's liability for such debt.

Given the full statutory analysis, here the Bankruptcy Court did not confirm a plan with a provision "inconsistent" with the code by allowing the Plan to include a nonconsensual release of

third-party claims; instead, it acted within its statutory grant of authority under Titles 11 and 18 of the United States Code.

D. The Bankruptcy Court had constitutional authority to confirm a plan releasing Ms. Rigby's claim against Strawberry Fields because Ms. Rigby consented, and even if she did not, the Plan preserved her right to recovery, and even if it did not, bankruptcy courts can confirm such plans subject to de novo *review.*

1. The Bankruptcy Court had constitutional authority to confirm the Plan because Ms. Rigby consented impliedly to the Bankruptcy Court's authority through her litigation conduct.

While this Court held in *Stern v. Marshall* that, although a bankruptcy court has statutory authority to resolve a claim it may lack constitutional authority to do so, it implied that a party's consent confers that missing constitutional authority on the bankruptcy court. 564 U.S. at 480. In *Wellness International Network, Ltd. v. Sharif*, this Court confirmed that view. 575 U.S. 665, 684–85 (2015). Article III of the United States Constitution directs how judicial power is vested in the judiciary. U.S. CONST. art. III, § 1. The good behavior clause of Section 1 ensures judges hold tenure for life, removable by impeachment only. See *id.*; *N. Pipeline*, 458 U.S. at 59 (citations omitted). The compensation clause ensures judges receive "fixed and irreducible compensation for their services." *N. Pipeline*, 458 U.S. at 59 (citations omitted). Together, these clauses ensure an independent and impartial judiciary. *Id.* at 59–60. Independence preserves separation of powers under the Constitution and impartiality ensures fair results. *Id.*; *accord Stern*, 464 U.S. at 482–83.

Bankruptcy courts lack the characteristics Article III requires courts to have to exercise full judicial authority constitutionally. Instead, bankruptcy courts are Article I entities which "enjoy neither tenure during good behavior nor salary protection" as required by Article III. *Stern*, 564 U.S. at 469. In response to this Court's holding in *Northern Pipeline*, Congress identified the matters over which bankruptcy courts *can* exercise constitutional judicial authority

as *core proceedings* and labelled the matters over which bankruptcy courts *cannot* exercise such authority as *non-core* proceedings. *See N. Pipeline*, 458 U.S. at 71; *Exec. Benefits Ins. Agency v. Arkison*, 573 U.S. 25, 33 n.7 (2014); 28 U.S.C. § 157. Congress wrote Section 157 to give bankruptcy courts the maximum judicial authority Article III allows. *See generally* H.R. REP. No. 98-882 (1984) (Conf. Rep.), *reprinted in* 1984 U.S.C.C.A.N. 576 (1984). Nonetheless, bankruptcy courts exercise judicial authority with constitutional limits when resolving matters that are merely "related to" bankruptcy cases.

Named for this Court's decision in *Stern v. Marshall*, *Stern* claims are matters "related to" bankruptcy cases that are in "no way derived from or dependent upon bankruptcy law." *See Stern*, 564 U.S. at 499. A bankruptcy court may constitutionally resolve *Stern* claims as non-core matters governed by Section 157(c). *Exec. Benefits*, 573 U.S. at 36. As detailed above, absent the district court's *de novo* review, a bankruptcy court resolves a "related to matter" in conformity with section 157(c) if it obtains the parties' consent to determine the matter. 28 U.S.C. § 157(c)(1), (2); *accord Stern*, 564 U.S. at 471, 475. That consent must be knowing and voluntary to be valid. *Wellness Intern. Network*, 575 U.S. at 669 ("Article III is not violated when the parties knowingly and voluntarily consent to adjudication by a bankruptcy judge."). With knowing and voluntary consent from the parties, bankruptcy courts may issue orders and judgments on matters "related to" bankruptcy, constitutionally. *Id.* at 685–86.

Whether consent is knowing and voluntary depends on whether a party or her counsel "was made aware of the need for consent and the right to refuse it, and still voluntarily appeared to try the case." *Id.* Consent may be implied and need not be express. *Id.* at 683–84. Inaction will not prove knowing and voluntary consent; instead, courts should evaluate a party's actions. *See Patterson v. Mahwah Bergen Retail Grp.*, 636 B.R. 641, 674 (E.D. Va. 2022). Bankruptcy

courts and their reviewing counterparts consistently find that litigation conduct demonstrates implied consent to a bankruptcy court's resolution of a *Stern* claim sufficient to satisfy the knowing and voluntary consent standard under *Wellness*. *See, e.g.*, *In re Paragon Offshore OLC*, 598 B.R. 761, 768–70 (Bankr. D. Del. 2019). Litigation conduct, like appearing before a court, counts. *Mahwah*, 636 B.R. at 674. Appearing before a court without raising objection to the court's jurisdiction or authority counts. *In re Breland*, No. 09-11139, 2016 WL 3193819, at *2 (Bankr. S.D. Ala. May 27, 2016). And, courts find that being represented by counsel and "seeking affirmative relief" in court weigh for finding a party consented impliedly by litigation conduct. *In re Saenz*, Ch. 7 No. 13-70423, Adv. No. 13-07024, 2016 WL 9021733, at *5 (Bankr. S.D. Tex. Dec. 19, 2016).

Because here the nonconsensual release of Ms. Rigby's claim against non-debtor Strawberry Fields is a "related to" matter, and because here there was no *de novo* review, the Bankruptcy Court confirmed the Plan using constitutional exercise of judicial authority only if Ms. Rigby consented. Here, the Bankruptcy Court exercised constitutional judicial authority because Ms. Rigby consented impliedly to the Bankruptcy Court's resolution of her claim by her litigation conduct. First, Ms. Rigby sought affirmative relief from the court. Ms. Rigby filed a claim against Penny Lane as part of the Debtor's Chapter 11 proceedings. R. 6. And, Ms. Rigby "commenced an adversary proceeding against" Penny Lane as part of its Chapter 11 proceedings "seeking to have her . . . claim deemed non-dischargeable." R. 7. Also, Ms. Rigby "participated in the mediation process" that lead to the plan of reorganization. R. 8. Further, the record does not suggest Ms. Rigby proceeded without counsel at any point during these proceedings. Proceeding with counsel weighs for finding that Ms. Rigby consented to the Bankruptcy Court's resolution of her claim.

While Ms. Rigby participated in the bankruptcy proceedings and objected to the nonconsensual release provision in the Plan, this Court may ask how a bankruptcy court can constitutionally confirm a plan with such releases when the affected third parties *do not* participate in the bankruptcy proceedings and thus *do not* timely object. *See* R. 8. Here, the Plan ensures that third-parties who have allowable claims may recover from the creditors' trust, even though they did not participate in the bankruptcy proceedings and even if their claims arise or are brought later. *See* R. 13. As explained below, the trust structure preserves claimants' rights to recovery. If this Court wishes, it can limit the constitutional exercise of confirming a plan with nonconsensual releases of third-party claims to the structure the Bankruptcy Court used here.

2. The Bankruptcy Court had constitutional authority to confirm the Plan releasing claims against Strawberry Fields because the Plan preserves claimant's rights to recovery.

Further, the Bankruptcy Court did not infringe on Ms. Rigby's constitutional rights because Ms. Rigby, like Strawberry Field's other tort claimants, retains her right to recovery under the Plan. *Stern* claims are ones that bankruptcy courts have statutory but not constitutional authority to resolve, prohibiting them from resolving such claims on their merits. *See Wellness Intern. Network*, 575 U.S. at 673–74 (citing *Exec. Benefits*, 573 U.S. at 30–31). But here, the Bankruptcy Court did not resolve Ms. Rigby's claim on the merits. R. 13. Instead, the Bankruptcy Court confirmed a plan of reorganization that directed how Ms. Rigby can resolve her claim: through the creditors' trust. *See* R. 4, 8, 9. Ms. Rigby filed a claim against Penny Lane in the Chapter 11 proceedings and at present, Ms. Rigby's claim is deemed allowed. R. 7. All allowed claims will receive a "significant distribution" from the creditors' trust. R. 8. Further, the Plan does not release Strawberry Fields from criminal liability for any wrongdoing. *See id.* Via the creditors' trust, Ms. Rigby retains the right to recovery she derives from her claim, were her claim to be meritorious and decided in her favor, which it has not been.

Accordingly, and as the Thirteenth Circuit properly pointed out, Ms. Rigby's due process and jury trial objections are misplaced. *See* R. 13.

3. Even if the Bankruptcy Court lacked constitutional authority to confirm the Plan independently, a bankruptcy court can confirm such a plan constitutionally if a district court reviews the plan *de novo*.

Even if this Court finds that the Bankruptcy Court lacked constitutional authority to confirm a Plan with a nonconsensual release provision on its own, this Court should allow bankruptcy courts to confirm such plans because parties may challenge the decision under *de novo* review in each instance, an approach that ensures constitutionality while maximizing the bankruptcy courts' expertise. Bankruptcy is a specialized area of the law and bankruptcy courts are best positioned to resolve bankruptcy issues. H.R. REP. NO. 95-595, at 19. "In bankruptcy, specialization is necessary to the functioning of the system." *Id.* Bankruptcy courts employ specialized expertise to reach desirable outcomes. *Bildisco & Bildisco*, 465 U.S. at 526. Specifically, bankruptcy courts employ expertise when confirming plans of reorganization which strengthens a plan's feasibility and increases its benefit to creditors, debtors, and other stakeholders. *See id.*

Bankruptcy courts should be allowed to confirm plans subject to the district court's review of any "related to" matters, including nonconsensual release provisions. *De novo* review on appeal operates as a bankruptcy court's submission of proposed findings of fact and conclusions of law, consistent with Section 157(c)(1). This Court endorsed this approach in *Executive Benefits Insurance Agency v. Arkison*, noting that a district court's *de novo* review "cure[s] any error" the bankruptcy court makes in its determinations. 573 U.S. 25, 39–40. This Court should allow bankruptcy courts to confirm plans of reorganization that include nonconsensual release of third-party claims against non-debtors because it keeps plan confirmation within the expertise of bankruptcy courts.

To conclude on the first issue before this Court, because the Bankruptcy Court chose the best solution for all involved, acted within its equitable powers, had statutory and constitutional authority to confirm the Plan, and employed its expertise in doing so, this Court should affirm the Thirteenth Circuit's holding affirming the Bankruptcy Court's confirmation of the Debtor's plan of reorganization.

II. A corporate subchapter V debtor proceeding under Chapter 11 may, pursuant to 11 U.S.C. § 1192, discharge debts of the types specified in subparagraphs (1) through (19) of 11 U.S.C. § 523(a).

In 2019, Congress enacted the Small Business Reorganization Act ("SBRA"), which attempts to streamline the bankruptcy process for "small businesses and individuals who meet the definition of 'debtor' set forth in § 1182." *In re Lapeer Aviation, Inc.*, 2022 WL 1110072, at *1 (Bankr. E.D. Mich. 2022). The SBRA ultimately created Subchapter V of Chapter 11 which permits qualifying debtors to "file bankruptcy in a timely, cost-effective manner, and hopefully allows them to remain in business." *In re Seven Stars on the Hudson Corp.*, 618 B.R. 333, 340 (Bankr. S.D. Fla. 2020) (quoting H.R. REP. NO. 116-171, at 1 (2019)).

Within Subchapter V, different discharge provisions govern depending on whether the debtor's plan confirmation is consensual or non-consensual. *See In re Satellite Rests. Inc. Crabcake Factory USA*, 626 B.R. 871, 875 (Bankr. D. Md. 2021) ("If a plan is consensual and confirmed under Section 1191(a), the debtor receives a discharge under Section 1141(d). However, if a debtor invokes the Subchapter V cramdown provision to confirm a plan, the debtor receives a discharge under Section 1192."). Penny Lane filed for Subchapter V of Chapter 11 on January 11, 2021. R. 6. Ultimately, it was unable to satisfy the requirements for confirming a consensual plan under § 1191(a) and sought confirmation under § 1191(b)'s "cramdown provisions," which the Bankruptcy Court approved. R. 11. Ms. Rigby argues that her claim is non-dischargeable pursuant to §§ 523(a) and 1192(2). R. 7. However, the plain language of §§

1192 and 523(a), the statutory scheme under which those provisions operate, the legislative history surrounding the SBRA's enactment, and established bankruptcy policy prove otherwise.

A. The plain language of §§ 523(a) and 1192 provide that § 523(a)'s exceptions to discharge apply to individual debtors only, even for those debtors proceeding under Subchapter V of Chapter 11.

The pertinent statutory language of §§ 523(a) and 1192 does not permit Ms. Rigby to pursue a non-dischargeability action against Penny Lane because the § 523(a) exceptions to discharge do not apply to corporate debtors proceeding under Subchapter V. Statutory interpretation always begins by examining the statute's language itself and considering the "specific context in which that language is used, and the broader context of the statute as a whole." *United States v. Ron Pair Enter., Inc.*, 489 U.S. 235, 241 (1989); *Ransom v. MBNA Bank (In re Ransom)*, 380 B.R. 799, 806–07 (B.A.P. 9th Cir. 2007). Further, statutory interpretation requires that "every word of a statute" be given effect, "so as to avoid rendering any language superfluous." *Ransom*, 562 U.S. at 70; *In re Rtech Fabrications, LLC*, 635 B.R. 559, 564 (Bankr. D. Idaho 2021). If giving effect to every word of a statute and considering the context reveals that the statute's language is plain and unambiguous, "the sole function of the courts is to enforce [the statute] according to its terms." *Caminetti v. United States*, 242 U.S. 470, 485 (1917).

At issue is the interplay between §§ 1192 and 523(a). Section 1192 provides, "the court shall grant the debtor a discharge of all debts provided in section 1141(d)(1)(A)" but then excepts from discharge the debts "(2) of the kind specified in section 523(a) of this title." 11 U.S.C. § 1192(2). Section 523(a) in turn provides that "[a] discharge under section 727, 1141, *1192*, 1228(a), 1228(b), or 1328(b) of this title does not discharge an *individual* debtor . . . ." 11 U.S.C. § 523(a) (emphasis added).

Giving effect to every word of §§ 1192 and 523(a) while also situating the provisions within Chapter 11's discharge scheme itself reveal that the statutory language is plain and unambiguous—a corporate debtor proceeding under Subchapter V may discharge those debts specified in § 523(a) because the exception to discharge applies to individuals only.

1. When every word in §§ 523(a) and 1192 is given effect, the plain meaning is clear—§ 523(a) exceptions to discharge do not apply to corporate debtors proceeding under Subchapter V.

a. Section 523(a)'s language is clear.

The language of § 523(a) is clear—the exceptions to discharge listed therein apply to individual debtors only, not corporate debtors. This limitation to individual debtors extends to even those debtors proceeding under Subchapter V of Chapter 11. The introductory phrase of § 523(a) provides "(a) a discharge under 727, 1141, *1192,* 1228(a) . . . of this title does not discharge an *individual* debtor from any debt." 11 U.S.C. § 523(a) (emphasis added). Prior to the enactment of the SBRA, the courts have consistently held that "individual" under § 523(a) does not include corporate debtors. *In re Spring Valley Farms, Inc.*, 863 F.2d 832, 834 (11th Cir. 1989) ("A corporate debtor is not an individual debtor for the purposes of § 523."); *see also Yamaha Motor Corp. v. Shadco, Inc.,* 762 F.2d 668, 670 (8th Cir. 1985) (finding that applying § 523 to a corporate debtor would "render meaningless employment by Congress of the term 'individual'"); *see also In re MF Global Holdings Ltd.*, No. 11-15059, 2012 WL 734175, at *3 (Bankr. S.D.N.Y. Mar. 6, 2012) ("In the Second Circuit, it is well-settled that § 523 does not apply to corporate debtors."). Section 523(a)'s language even after the enactment of SBRA does not change this well-settled interpretation.

After enacting the SBRA, Congress added a direct reference to § 1192 in § 523(a)'s introductory phrase limiting the discharge exception to individuals. This inclusion of § 1192 must be given effect to avoid rendering its incorporation a mere surplusage. *See Nielsen v.*

Preap, 139 S. Ct. 954, 969 (2019) (quoting ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 174 (2012)) (the interpretative canon against surplusage represents "the idea that 'every word and every provision [in a statute] is to be given effect [and that n]one should needlessly be given an interpretation that causes it . . . to have no consequence'"). Therefore, Congress's inclusion of § 1192 in § 523(a)'s introductory clause must be given effect. The effect is to limit the exclusion to discharge under § 523(a) to only individuals receiving a discharge under § 1192. An interpretation otherwise would render Congress's inclusion of § 1192 meaningless. *See In re GFS Indus., LLC*, Ch. 11 Case No. 22-50403, Adv. No. 22-05052, 2022 WL 16858009, at *5 (Bankr. W.D. Tex. 2022) ("[I]nterpreting § 523 as excepting from discharge debts of corporate debtors in Subchapter V would be to ignore the import of § 1192 into § 523(a)."); *see also In re Satellite Rests.*, 626 B.R. at 876 ("[T]he reference to Section 1192 added to Section 523(a) by the SBRA must be given meaning, and the only reasonable meaning is that Congress intended to continue to limit the application of the Section 523(a) exceptions in a Subchapter V case to individuals.").

Finally, again, the courts have consistently interpreted § 523(a) to be applicable only to individual, non-corporate debtors. Given this consistent interpretation, the Court may presume that Congress is aware of that interpretation and by not altering the language of § 523(a) except to include the direct reference to § 1192, Congress has approved of the exception to discharge being applied to individual debtors only. See *Lorillard v. Pons*, 434 U.S. 575, 580–81 (1978) (finding that the Court may presume that Congress is aware of a "judicial interpretation of a statute and it adopts that interpretation when it re-enacts a statute without change"). When Congress added the reference to § 1192 in § 523(a), it only added that specific reference. It did not change any other language, including the limitation that the discharge exception applies to

individuals. Therefore, the Court may presume that Congress knew about and approved the judicial interpretation that the § 523(a) exceptions to discharge do not apply to corporate debtors.

Ultimately, by § 523(a)'s clear and plain language and direct incorporation of § 1192, a discharge received pursuant § 1192 does not discharge an *individual* from any of the enumerated debts in § 523(a). A corporate debtor receiving a discharge pursuant to § 1192, on the other hand, may discharge those debts enumerated in § 523(a).

b. Section 1192(2)'s language is clear.

While § 523(a) is clear that the exception to discharge applies to individuals only, § 1192(2)'s language incorporating § 523(a) is similarly clear—§ 1192 excepts from discharge only those debts already excepted under § 523(a). *See In re GFS Industries*, 2022 WL 16858009, at *4 ("[T]he language of § 1192(2) does not intend to except from discharge any debts that § 523(a) does not already except."). The debts excepted from discharge under § 523(a) are those incurred by individuals only. Therefore, § 1192's language does not provide Ms. Rigby with any basis to conclude that corporate debtors do not receive a complete discharge in Subchapter V under a plan confirmed pursuant to § 1191(b).

Section 1192(2) provides that those debts excepted from discharge are those "of the kind specified in section 523(a) of this title." 11 U.S.C. § 1192(2). While at a quick glance this language does not refer to the character of the debtor, the definition of "kind" as "things that belong together or have some shared quality" reveals that the exception to discharge applies to individual debtors only. *Kind*, BRITTANICA DICTIONARY, https://www.britannica.com/dictionary/kind (2023). The shared quality of the exceptions to discharge in § 523(a) is that only individuals may be excepted from discharge under § 523(a)'s clear language. That is, "of the kind" does not simply incorporate the types of debts enumerated under § 523(a)(1)-(19). Certainly, that interpretation fails to give proper meaning to Congress's

use of the word "kind." Ultimately, "the language of § 1192(2) does not empower § 523(a) to cast a wider net than the text of § 523(a) permits." *In re GFS Inds.*, 2022 WL 16858009, at *4.

Moreover, had Congress intended to include the types of debts listed in § 523(a) to be applicable to corporate debtors, Congress could have drafted language that explicitly did so. Indeed, § 1141(d)(6) provides: "the confirmation of a plan does not discharge a debtor *that is a corporation* from any debt (A) of the kind specified in paragraph 2(A) or 2(B) of section 523(a) that is owed to a governmental unit . . . ." (emphasis added). Congress again added specific language distinguishing dischargeability based on the type of debtor in § 1141(d)(2) which provides: "A discharge under this chapter does not discharge a debtor *who is an individual* from any debt excepted from discharge under section 523(a) of this title." (emphasis added). The Court should presume that Congress has acted intentionally with this omission and is directing the Court to look to § 523(a) to determine to which debtors § 1192(2) refers; and § 523(a) undoubtedly limits the exception to individuals. *See Russello v. United States*, 464 U.S. 16, 23 (1983) ("[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.").

Ultimately, § 1192 first directs the Court to look at what quality the § 523(a) discharge exceptions share—the exceptions share the quality that only an individual is excepted from discharge. Second, § 1192 directs the Court to look to § 523(a) to determine to which type of debtor its dischargeability exceptions apply—again, § 523(a) excepts only an individual debtor from discharge. Therefore, the clear language and the interplay between §§ 523(a) and 1192 reveal that a corporate debtor proceeding under Subchapter V of Chapter 11 may discharge the

debts of the types specified in § 523(a), as the discharge exclusion is applicable only to individual debtors.

2. To adhere to the generous Chapter 11 discharge scheme for corporate debtors, this Court should not find that § 523(a) excepts corporate debtors proceeding under Subchapter V of Chapter 11 from discharge.

Limiting the exceptions to discharge in § 523(a) to individuals, even for those debtors proceeding under Subchapter V of Chapter 11, is consistent with the Code's general discharge provisions, as well as Chapter 11's discharge scheme. *In re Rtech Fabrications*, 635 B.R. at 565. Statutory language "cannot be construed in a vacuum. It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 101 (2012) (citing *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989)).

Subchapter V sits within Chapter 11. Therefore, § 1192 should be interpreted consistently with Chapter 11's discharge scheme. Generally, a corporate debtor's discharge in Chapter 11 is all encompassing and exceptions to discharge are extremely limited. *In re Rtech Fabrications*, 635 B.R. at 563. As one bankruptcy court put it, "the discharge provisions applicable to corporate debtors in a general Chapter 11 have been 'strenuously protected.'" *In re Cleary Packaging LLC*, 630 B.R. 466, 474 (Bankr. D. Md. 2021). Indeed, there is only one narrow exception to discharge for a corporate debtor that can be found in Chapter 11—§ 1141(d)(6). That provision excepts from discharge fraud debts owed to a governmental entity. *See* 11 U.S.C. § 1141(d)(6). This exception to discharge passed in 2005 as part of the Bankruptcy Abuse Prevention and Consumer Act of 2005 ("BAPCPA") after it failed to pass as part of the Consumer Bankruptcy Reform Act of 1998. *See* Roger S. Goldman et al., *Discharging False claims Liability in Bankruptcy, Section 1141(d)(6)(A) of the Bankruptcy Code: An Incentive to Settle FCA Cases?*, 23 NO. 1 HEALTH LAW 40, 41 (2010) (explaining that

originally the proposed exception to discharge was limited to tax fraud debts but in 1997, subsequent proposals attempted to drastically expand the exceptions to discharge for corporate debtors and that these proposals were vehemently opposed by the bankruptcy community, so in 2005, the current narrower exception was passed as part of BAPCPA). Ultimately this narrow and long fought for exclusion should not be read to mean that Congress suddenly incorporated nineteen additional exclusions for corporate debtors with SBRA.

This expansive Chapter 11 corporate discharge scheme is further highlighted in Congress's historical treatment of corporate discharge prior to BAPCPA and SBRA. The Bankruptcy Act of 1898 included exceptions to discharge for particular types of corporate debtors. *See* Ralph Brubaker, *Taking Exception to the New Corporate Discharge Exceptions*, 13 AM. BANKR. INST. L. REV. 757, 764 (2005) (under Chapter XI of the Bankruptcy Act a corporate debtor could be denied discharge if it was found "guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of a[n individual] bankrupt").

Congress changed course with the Bankruptcy Code in 1978, expanding the discharge to corporate debtors proceeding under Chapter 11. This change was an "intentional and decisive change with respect to the scope of a corporate debtor's discharge" compared to the corporate discharge under the Bankruptcy Act. *In re Cleary Packaging*, 630 B.R. at 474; *see also Bankruptcy Act Revision: Hearings on H.R. 31 and H.R. 32 Before the Subcomm. on Civ. and Const. Rts. of the H. Comm. on the Judiciary*, 94th Cong., pt. 3, at 1891 (1975) (statement of Harvey R. Miller et al., National Bankruptcy Conference) ("One change from existing law which is strongly endorsed by the NBC is the provisions . . . which provide that all claims . . . are discharged upon confirmation of the plan . . . whether or not the creditor's claim would otherwise be nondischargeable in straight bankruptcy."). As a result of this clear Congressional intent to

broaden the scope of the corporate discharge, it would be entirely inconsistent with Chapter 11's current discharge scheme for this Court to read § 1192(2) to except nineteen types of debts from discharge. Ultimately, Subchapter V is merely a subchapter with Chapter 11, therefore, Chapter 11's general broad discharge scheme for corporate debtors should be applicable to those corporate debtors proceeding under Subchapter V.

Together, the clear statutory language of §§ 523(a) and 1192 and the statutory scheme under which these provisions operate require that this Court "enforce the statute according to its terms." *Caminetti*, 242 U.S. at 485. Its terms require that only an individual proceeding under Subchapter V is subject to the § 523(a) exclusions to discharge.

B. The legislative history surrounding the enactment of Subchapter V supports the conclusion that a corporate debtor proceeding under Subchapter V may discharge those debts specified in § 523(a).

The legislative history surrounding the enactment of Subchapter V supports the plain language interpretation that §§ 523(a) and 1192 allow a corporate debtor to discharge those debts listed in § 523(a). While statutory interpretation does not require examining the legislative history "[w]hen the import of the words Congress has used is clear," the legislative history in this case does not provide any support for Ms. Rigby's contention that Congress intended to expand § 523(a) exceptions to discharge to corporate debtors. *In re Miller*, 610 B.R. 678, 681 (Bankr. S.D. Ala. 2019); *see* H.R. REP. NO. 116-171, at 8 (2019), *reprinted in* U.S.C.C.A.N. 366, 368 (stating that § 1192 discharges all debts after the plan except "any debt otherwise nondischargeable"). This statement of excluding any debt "otherwise nondischargeable" most logically means any debt not already dischargeable under § 523(a). Section 523(a)'s language clearly limits the exclusion to discharge to individuals. Expanding the exceptions to discharge to corporate debtors under Subchapter V would be an enormous change in long-standing bankruptcy law and policy. Surely, if Congress intended for this change, it would have

extensively debated it, resulting in extensive legislative history on the subject—or at the very least made any reference to it. Congress did not do so, however.

The absence of this discussion is particularly glaring and meaningful considering Congress's prior rejection of extensive exceptions to discharge for corporate debtors when it enacted the Bankruptcy Code and BAPCPA. Therefore, the lack of any legislative history showing that Congress intended to drastically change the corporate discharge scheme further supports the plain meaning interpretation that the exception to discharge is limited to individuals.

C. Allowing corporate debtors proceeding under Subchapter V to discharge those debts specified in § 523(a) adheres to bankruptcy principles and policy.

Congress has stated that the intention of Subchapter V is to help small businesses "remain in business" as often it is difficult for small businesses to do so under standard Chapter 11 procedures. *See* H.R. REP. NO. 116-171, at 1. Further, Congress has said that remaining in business "not only benefits the owners, but employees, suppliers, customers, and others who rely on that business." *Id*. If Congress's stated goal is to help small businesses remain in business and benefit other stakeholders, leaving the surviving business post-bankruptcy saddled "with litigation that will sink it and [with] repayments that will come out of the pockets of the innocent creditors" would not achieve Congress's stated goal. 147 CONG. REC. S420 (daily ed. Mar. 8, 2001) (statement of Sen. Elizabeth Warren) (testifying against expanding the exceptions to discharge applicable to corporate debtors prior to the enactment of BAPCPA). Ms. Rigby's contention that §§ 523(a) and 1192 exclude from discharge § 523(a) debts for corporate debtors proceeding under Subchapter V would not achieve Congress's stated goal. Instead, it would leave the surviving and restructured business saddled with litigation that will likely sink it, detrimentally affecting not only the owners of the business but innocent employees, customers, and suppliers.

Ultimately, Ms. Rigby improperly seeks to punish a corporation for its alleged wrongdoing, but a corporation is not a human that can be punished directly by being denied a "fresh start" like the § 523(a) exceptions to discharge for individuals intend. Instead, "the appropriate remedy when management has misbehaved is to fire the management and sue them personally." *Id*. Ms. Rigby may not feel personally satisfied with this result. However, bankruptcy is based off principles of equity and this Court has held that "the Bankruptcy Code aims, in the main, to secure equal distribution among creditors" and considers the "principle that preferential treatment of a class of creditors is in order only when clearly authorized by Congress." *Howard Delivery Serv., Inc. v. Zurich Am. Ins. Co.*, 547 U.S. 651, 655 (2006). Here, Congress has not clearly authorized preferential treatment of claims excepted from discharge under § 523(a) for Subchapter V corporate debtors. There is no plain language supporting this preferential treatment for claims like Ms. Rigby's nor is there legislative history supporting her argument.

Finally, under Ms. Rigby's interpretation, it is unclear why the § 523(a) exceptions to discharge apply differently to corporate debtors depending on whether the plan confirmation is consensual or non-consensual under subchapter V. This distinction seems arbitrary and undermines "the equality principles of creditor treatment under the Code." *In re GFS Indus.*, 2022 WL 16858009, at *8.

CONCLUSION

Accordingly, the Thirteenth Circuit should be upheld. This Court should affirm the Bankruptcy Court's confirmation of the Plan and should affirm the decision that the interplay between §§ 523(a) and 1192(2) does not permit Ms. Rigby to pursue a non-dischargeability action against Penny Lane.

APPENDIX

Article III of the United States Constitution

Judicial Power, Tenure and Compensation

Section 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.

11 U.S.C. § 105 Power of court

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

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

(a) A discharge under section 727, 1141, 11921 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).

11 U.S.C. § 524 Effect of discharge

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

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

(g)

(1)

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

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

(2)

(A) Subject to subsection (h), if the requirements of subparagraph (B) are met at the time an injunction described in paragraph (1) is entered, then after entry of such injunction, any proceeding that involves the validity, application, construction, or

modification of such injunction, or of this subsection with respect to such injunction, may be commenced only in the district court in which such injunction was entered, and such court shall have exclusive jurisdiction over any such proceeding without regard to the amount in controversy.

(B) The requirements of this subparagraph are that--

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

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

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

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

(aa) each such debtor;

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

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

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

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

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

(II) the actual amounts, numbers, and timing of such future demands cannot be determined;

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

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

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

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

(V) subject to subsection (h), pursuant to court orders or otherwise, the trust will operate through mechanisms such as structured, periodic, or

supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of present claims and future demands, or other comparable mechanisms, that provide reasonable assurance that the trust will value, and be in a financial position to pay, present claims and future demands that involve similar claims in substantially the same manner.

11. U.S.C. § 1123 Contents of plan

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

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

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

(3) provide for--

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

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

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

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

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

11 U.S.C. § 1129 Confirmation of plan

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

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

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

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

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

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

(i) has accepted the plan; or

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

(B) if section 1111(b)(2) of this title applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan on account of such

claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

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

(A) such class has accepted the plan; or

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

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

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

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

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

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

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

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

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

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

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

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

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

or trust that is not a moneyed, business, or commercial corporation or trust.

(b)

(1) Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on

request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

(2) For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides--

(i)

(I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and

(II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or

(iii) for the realization by such holders of the indubitable equivalent of such claims.

(B) With respect to a class of unsecured claims--

(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

(C) With respect to a class of interests--

(i) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

(ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

(e) In a small business case, the court shall confirm a plan that complies with the applicable provisions of this title and that is filed in accordance with section 1121(e) not later than 45 days after the plan is filed unless the time for confirmation is extended in accordance with section 1121(e)(3).

11 U.S.C. § 1141 Effect of Confirmation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) made a fraudulent return; or

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

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 . . . 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. § 151 Designation of bankruptcy courts

In each judicial district, the bankruptcy judges in regular active service shall constitute a unit of the district court to be known as the bankruptcy court for that district. Each bankruptcy judge, as a judicial officer of the district court, may exercise the authority conferred under this chapter with respect to any action, suit, or proceeding and may preside alone and hold a regular or special session of the court, except as otherwise provided by law or by rule or order of the district court.

28 U.S.C. § 157 Procedures

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

(b)

(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a)

of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

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

(A) matters concerning the administration of the estate;

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

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

(D) orders in respect to obtaining credit;

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

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

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

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

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

(J) objections to discharges;

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

(L) confirmations of plans;

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

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

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

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

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

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

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

(c)

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

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

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

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

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

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.