Team 8

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

TEAM 8
COUNSEL FOR RESPONDENT

JANUARY 19, 2023

QUESTIONS PRESENTED

I. Does a bankruptcy court have the statutory or constitutional authority to ever approve non-consensual releases of direct claims held by third parties against non-debtor affiliates as part of a chapter 11 plan of reorganization?

II. Does 11 USC § 1192(2)'s cross-reference to 11 USC § 523(a)'s exceptions to discharge apply to corporate debtors?

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The Thirteenth Circuit Court of Appeal's decision is available at No. 22-0909 and reprinted at Record 2**.** The Bankruptcy Court for the District of Moot decided in favor of Penny Lane Industries, Inc, Chapter 11 debtor. On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed in favor of Penny Lane Industries, Inc, Chapter 11 debtor.

STATEMENT OF JURISDICTION

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

RELEVANT STATUTORY PROVISIONS

This action requires statutory construction of certain provisions of Title 11 of the United States Code. The following sections are also restated in full in the Appendix, with the exceptions of 11 U.S.C. § 523 and 11 U.S.C. § 524 in order to ensure brevity.

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

> (a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title

The relevant portion of 11 U.S.C. § 1123(b)(6) provides:

> (b) Subject to subsection (a) of this section, a plan may—
>
> (6) include any other appropriate provision not inconsistent with the applicable provisions of this title.

The relevant portion of 11 U.S.C. § 524(e) 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 § 1192 provides:

> If the plan of the debtor is confirmed under section 1191(b) of this title . . . 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 11 U.S.C. § 523(a) 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—

STATEMENT OF THE CASE

I. Facts

Penny Lane Industries, Inc. (the "Petitioner" or "Debtor") is a manufacturer based in the City of Blackbird, Moot. R. at 4. The Debtor is a wholly owned subsidiary of a food's producer, Strawberry Fields Foods, Inc. ("Strawberry Fields"). *Id.* Studies conducted by the United States Environmental Protection Agency and the Centers for Disease Control and Prevention showed that residents of Blackbird consumed and bathed in contaminated water. *Id.* at 5. As a result, residents of Blackbird - like Eleanor Rigby (the "Petitioner" or "Ms. Rigby") - filed lawsuits against the Debtor and named Strawberry Fields as a co-defendant. *Id.* at 5-6. The lawsuits allege that the Debtor knowingly contaminated the groundwater in Blackbird. *Id.* at 4. The allegations of the residents of Blackbird are disputed by the Debtor and Strawberry Fields. *Id.* at 6. Both deny having knowledge that any waste allegedly infiltrated the groundwater in the city. *Id.* They assert that any waste disposed of on the Debtor's property was done so in accordance with applicable laws and regulations in place at the time. *Id.* They also assert that there is insufficient evidence linking the pollutants to any waste disposed of by the Debtor, noting that dozens of other manufacturing facilities are also located upstream along the Liverpool River. *Id.*

However, on account of these allegations, the Debtor filed for bankruptcy under chapter 11 subchapter V on January 11, 2021. *Id.* The debts involved in this bankruptcy case include: (1) less than $2 million owed to Debtor's trade creditors and (2) $400 million cumulative damages asserted by 10,000 claims, of which Ms. Rigby claimed $1 million. *Id.*

Within weeks of the petition date, Ms. Rigby sought to have her claim deemed non-dischargeable pursuant to sections 1192(2) and 523(a)(6). *Id.* at 7. In response, the Debtor filed a motion to dismiss the complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure, made applicable to this bankruptcy proceeding by Rule 7012 of the Federal Rules of Bankruptcy Procedure. *Id.* The bankruptcy court granted the Debtor's motion to dismiss, and Ms. Rigby filed a timely notice of appeal. *Id.*

Though the automatic stay under section 362(a) halted all action against the Debtor, pending litigation against Strawberry Fields and other non-debtors was not automatically stayed. *Id.* Shortly after the petition date, to temporarily stop these actions, the Debtor obtained a temporary injunction from the bankruptcy court. *Id.* This injunction halted all actions against the Debtor's "current and former owners, officers, directors, employees and associated entities" related to the Debtor's alleged conduct *Id.* at 8. The temporary stay, as the bankruptcy court concluded, was to facilitate the negotiation of a global settlement by the Debtor, Strawberry Fields, and numerous creditor groups in mediation. *Id.* Over two months of mediation, several stakeholders negotiated the settlement framework, which was eventually memorialized in the Debtor's Plan of Reorganization (the "Plan"). *Id.*

The Plan includes the establishment of a creditor trust to be funded by two primary sources of income: (a) the Debtor's disposable net income for five years and (b) far more significantly, a $100 million contribution by Strawberry Fields. *Id.* The trust is anticipated to provide a significant distribution to creditors with allowed claims. *Id.* The Strawberry Fields contribution was contingent upon the inclusion of a broad release from all claims from the estate and third-party direct claims. *Id.* This non-consensual third-party release included in the Plan provides the release of all claims that third parties have or might assert in the future against Strawberry Fields to the extent these claims are "based on or related to the Debtor's prepetition conduct, its estate or this chapter 11 case." *Id.* The included release would channel the creditors' claims into the established trust. *Id.* at 9. The Plan was overwhelmingly supported by the unsecured creditors affected by the third-party release: 95% of those who submitted ballots voted in favor of the Plan. *Id.*

There were only two objections to the Plan. First, Ms. Rigby objected to the inclusion of the non-consensual third-party release of direct claims, asserting that such a release is not permissible under applicable bankruptcy and non-bankruptcy law. *Id.* Second, the Norwegian Wood Bank (the "Bank"), whose original secured claim was bifurcated under the Plan, objected, claiming the value of their collateral was understated. *Id.* The bankruptcy court overruled the objection of the Bank, and the Bank did not appeal their objection. *Id.*

II. Procedural History

The bankruptcy court addressed two issues in this case and ruled in favor of the Debtor on both. *Id.* at 4. First, it overruled Ms. Rigby's objection to the Plan, ruling that it had the authority to approve the third-party releases. *Id.* It also dismissed the non-dischargeability claim, ruling that corporations proceeding under section 1192(2) are not subject to the exceptions to discharge in section 523(a). *Id.* Ms. Rigby timely appealed, and the Thirteenth Circuit affirmed. *Id.* at 23.

STANDARD OF REVIEW

The parties do not dispute the facts. Rather the questions presented are based on statutory interpretation of the Bankruptcy Code[1] (the "Code") and constitutional authority granted to Article III judges and are therefore purely issues of law. Thus, the standard of review for this appeal is *de novo*. *Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, 572 U.S. 559, 563 (2014).

[1] The Bankruptcy Code is set forth in 11 U.S.C. §§ 101 *et seq.* Specific sections of the Bankruptcy Code are identified herein as "section _."

SUMMARY OF THE ARGUMENT

Bankruptcy courts continue to be courts of equity. Under their jurisdictional authority, these courts may hear cases "arising under," "arising in," or "related to" title 11, including cases that involve non-debtor entities. *See* 28 U.S.C. § 1334(b); 11 U.S.C. § 157(a). Bankruptcy courts are statutorily authorized to issue orders that are necessary or appropriate to further provisions of the Code both generally and in the confines of approving plans of reorganization. *See* 11 U.S.C. §§ 105(a), 1123(b)(6). The only restriction to this equitable power is ensuring that any orders issued by the bankruptcy court do not run afoul of the Code. Approving non-consensual third-party releases of direct claims falls within this statutory authority. While section 524(e) of the Code prevents the debtor's discharge from *automatically* affecting the liability of non-debtor entities, the Code does not explicitly prohibit bankruptcy courts from approving third-party releases like the one in dispute.

In addition to this statutory authority, bankruptcy courts also possess the constitutional authority to approve non-consensual third-party releases. Bankruptcy courts are granted the constitutional authority to enter final judgments for "core proceedings" that are integral to the restructuring of debtor-creditor relations, which may include proceedings that involve non-debtor entities. In these cases, bankruptcy courts have the authority to adjudicate certain claims, despite consisting of non-Article III judges.

The adjudication of claims based on the non-consensual third-party releases further the primary purpose of chapter 11 bankruptcy. Reorganization under chapter 11 provides debtors and creditors with unique benefits that liquidation does not support. A debtor's reorganization allows debtors to successfully rehabilitate by continuing their business operations and by maximizing the value of their estate, all in preparation to provide creditors with maximum recovery. Without reorganization, both debtors and creditors are left without a sufficient remedy. Non-debtor contributions, which often lead to the inclusion of a third-party release provision, offer debtors the opportunity for successful reorganization which, in turn, fully embraces the foundational principles of chapter 11 bankruptcy.

The passage of the Small Business Reorganization Act of 2019 (the "SBRA"), which include section 1192, was designed to encourage and increase the success of reorganizations for small businesses. The plain text of section 1192 provides that corporations are not subject to the exceptions to discharge listed in section 523(a). This is clear by using the definitions in the Code itself, as well as prescribing undefined key terms their plain and ordinary meaning. Using those definitions, section 1192 and section 523(a) can be read with their full intent in effect: that the exceptions to discharge in section 523(a) do not include corporations.

The Code is also written in a way that any other construction would render the language of sections 1192 and 523(a) superfluous. The updated version of section 523(a), enacted alongside SBRA, includes a reference to section 1192. The only reason the update was necessary was to include the limiting language provided in section 523(a) within the reading of section 1192. The update to section 523(a) was made in mind of the language of section 1192(2), not in ignorance. An interpretation that does not apply the limiting language of section 523(a) to a reading of section 1192(2) is one that renders the amendment superfluous.

The plain text and the rule against superfluity clearly state the meaning of section 1192. However, even if this Court finds the text remains ambiguous, the legislative history and the intent of the SBRA provide additional support in favor of the Debtor's position. Congress provided no clear intent or language that would extend the exceptions to discharge to corporations. An interpretation otherwise would conclude that the passage of the SBRA – the goal of which was to increase successful reorganizations – also simultaneously increased the obstacles for a business to reorganize by providing a nineteen new exceptions to discharge. Congress has provided an exception to discharge for corporations in the past but took eight years of deliberation before deciding to do so, a far cry from the SBRA, which was introduced and signed into law in less than a year. Further, when they did provide an exception to discharge for corporations in section 1141(d)(6), they clearly stated their intent within the statutory language.

A central argument that courts have made when determining that section 1192 provides an exception to discharge for corporations is the similarity of the language in section 1192 to statutes within chapter 12 of the Code. However, the presence of section 1192 distinguishes the language of chapter 11 from similar language in chapter 12. While subchapter V does limit types of debtors from the outset, it does so based on debt amount and type. In contrast, chapter 12 limits the types of debtors based on profession and size. The two chapters have different purposes, and therefore, section 1192 can be distinguished from its similar counterparts in chapter 12.

The overarching goals of bankruptcy and the Code also would be stifled by any interpretation other than the Debtor's. The fresh start principal would now be in jeopardy, as now small businesses using section 1192 would still be subject to massive liabilities even after the confirmation of a plan. Further, as shown in this case, it would treat similarly situated creditors differently. Here, the Petitioner would profit while other similarly situated creditors would see a reduction in the amount available to pay under the Plan. The incentive to reorganize, a central goal of the SBRA, would also be dissuaded. Instead of being able to provide an effective plan, pay creditors, and begin to provide economic resources again, debtors would likely be forced, or at minimum incentivized, to liquidate instead. Such a situation would not only leave debtors worse off, but it would also leave both the creditors and the local economies worse off. These sound policy rationales strongly favor the Debtor's position.

This Court should affirm on both issues.

ARGUMENT

This Court should affirm the Thirteenth Circuit's decision that a bankruptcy court has the authority to approve a Chapter 11 plan of reorganization that allows non-consensual releases of direct claims against non-debtor affiliates as part of a chapter 11 plan of reorganization. This Court should also affirm the circuit court's decision that corporations subject to section 1192(2) are not subject to the exceptions to discharge in section 523(a).

I. THE THIRTEENTH CIRCUIT CORRECTLY HELD THAT BANKRUPTCY COURTS HAVE THE STATUTORY AND CONSTITUTIONAL AUTHORITY TO APPROVE NON-CONSENSUAL RELEASES AGAINST A NON-DEBTOR AS PART OF A CHAPTER 11 PLAN OF REORGANIZATION.

Federal courts are a product of statutory limitations, and bankruptcy courts are no different. Naturally, this includes jurisdictional control limited by 28 U.S.C. § 1334(b) and 28 U.S.C. § 157(a). These statutes provide that bankruptcy courts have jurisdiction over title 11 cases and those cases "arising under," "arising in," or "related to" title 11 cases. Section 1334(b) provides, in relevant part: "[T]he district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11." 28 U.S.C. § 1334(b). 28 U.S.C. § 157(a) provides: "Each district court may provide that any or all proceedings arising under title 11 shall be referred to the bankruptcy judges for the district." 28 U.S.C. § 157(a). While Congress did not specify the scope of "related to" jurisdiction, the language of the statute indicates that the jurisdiction should be intentionally broad, covering various issues surrounding bankruptcy proceedings. *See Celotex Corp. v. Edwards,* 514 U.S. 300, 307-08 (1995). This breadth allows bankruptcy courts to "deal efficiently and expeditiously with all matters connected with the bankruptcy estate." *Id.* at 308.

"While 'related to' jurisdiction is not 'limitless,' it is fairly capacious" and may cover third-party claims to which the debtor is not directly involved. *SPV OSUS, Ltd. v. UBS AG,* 882 F. 3d 333, 340 (2d Cir. 2018) (citing *Celotex Corp. v. Edwards*, 514 U.S. at 307-08 n. 5-6); s*ee also* 1 *Collier on Bankruptcy* ¶ 3.01[3][ii] (16th ed. 2022).

To determine if such claims fall within the jurisdiction of the bankruptcy court, courts must determine whether the claim at issue is "related to" the bankruptcy. *SPV OSUS*, 882 F. 3d at 340. Claims "related to" bankruptcy proceedings are those where "the outcome of that proceeding could conceivably have an effect on the estate being administered in bankruptcy." *In re Greektown Holding, LLC*, 728 F. 3d 567, 577 (6th Cir. 2013). This effect need not be the product of automatic liability against the bankrupt estate; rather, a more flexible approach is appropriate. *SPV OSUS,* 882 F. 3d at 340. While jurisdiction is not limitless, it may include more than disputes between debtor and creditor so long as the dispute has the possibility of an effect on the bankrupt estate. *See id.* (quoting *N.Y. Commercial Bank v. Pullo,* No. 12-02052 BRL, 2013 WL 494050, at *3 (Bankr. S.D.N.Y. Feb. 7, 2013)). For example, the Petitioner's claims against Strawberry Fields stem from the Debtor's alleged conduct, which would allow Strawberry Fields to claim contribution and indemnification rights against the Debtor and its estate. *See SPV OSUS,* 882 F. 3d at 340 (finding that jurisdiction over the third-party claim existed given the "gravamen of SPV's complaint is that defendants are joint tortfeasors with [Debtor]," which would provide defendants with claims against the bankrupt estate). These claims could conceivably affect the bankrupt estate, and thus, the Petitioner's claims against Strawberry Fields are "related to" the Debtor's bankruptcy proceedings, providing the bankruptcy court with jurisdiction over these claims.

A. Bankruptcy courts have the statutory authority to approve non-consensual third-party releases that are integral to the plans of reorganization.

The statutory authority of a bankruptcy court to issue orders regarding third-party releases mirrors its broad jurisdictional authority. The Code clearly allows the bankruptcy court to issue orders that are "necessary or appropriate" to "carry out the provisions of the Code" under section 105(a). 11 U.S.C. § 105(a). Under section 1123(b)(6), which governs plans of reorganization, bankruptcy courts may approve plans that "include any…appropriate provision not inconsistent with the applicable provisions of the Code." 11 U.S.C. § 1123(b)(6). When viewing these provisions in conjunction with section 1123(a)(5), bankruptcy courts have the statutory authority, without hindrance from other provisions of the Code, to order the approval of plans of reorganization that contain non-consensual third-party releases.

i. *The Bankruptcy Code authorizes bankruptcy courts to approve non-consensual third-party releases in appropriate circumstances, as those found in this case.*

The majority of courts that have ruled on this issue are clear – bankruptcy courts are authorized by statute to grant non-consensual third-party releases. *See SE Prop. Holdings, LLC v. Seaside Engineering & Surveying (In re Seaside Engineering & Surveying),* 780 F. 3d 1070, 1078 (11th Cir. 2015); *Airadigm Communications, Inc. v. Federal Communications Commission (In re Airadigm Communications, Inc.)*, 519 F. 3d 640, 657 (7th Cir. 2008); *In re Millennium Lab Holdings II, LLC*, 945 F. 3d 126, 136 (3d Cir. 2019). While the circuits remain split on this issue, the circuits ruling in favor of third-party releases include the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, and 11th Circuits.[2]

[2] As of the writing of this brief, the Second Circuit has docketed an appeal to address the present issue yet again. *See In re Purdue Pharm, L.P.,* No. 22-110-bk *et al*. (2d Cir. *appeal docketed* Jan. 18, 2022).

It is well-established that bankruptcy courts operate under the broad equitable power to enforce the Code. *See In re Seaside,* 780 F. 3d at 1078; *see also Local Loan Co. v. Hunt,* 292 U.S. 234, 240 (1934) ("[C]ourts of bankruptcy are essentially courts of equity, and their proceedings inherently proceedings in equity."). This principle is derived from the All Writs Statute, which provides: "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of this respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651. Section 105(a) embraces the same principle, stating that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out provisions of this title." 11 U.S.C. § 105(a); *see also In re Seaside,* 780 F. 3d at 1078. Similar to the source from which it was derived, the All Writs Statute, section 105(a), was created with the purpose of granting bankruptcy courts the necessary authority to efficiently handle matters affecting bankruptcy. H.R. Rep. No. 95-595 at 316-17 (1977). This includes issues related to non-debtor entities. Under the Code, bankruptcy courts have the authority to take "appropriate equitable measures" when modifying creditor-debtor relations. *In re Dow Corning Corp.*, 280 F. 3d 648, 656 (6th Cir. 2002); *see also U.S. v. Energy Resources Co., Inc.*, 495 U.S. 545, 549 (1990). In addition to the court's broad discretion when issuing orders to further implement the Code generally, bankruptcy courts are specifically authorized to approve plans of reorganization that "include any other appropriate provision not inconsistent with the applicable provisions of [the Code]." 11 U.S.C. § 1123(b)(6). Section 1123(b)(6) extends the same equitable powers granted by section 105(a) to bankruptcy courts when handling plans of reorganization. *In re Airadigm*, 519 F. 3d at 657. These provisions afford bankruptcy courts the "residual authority" to approve appropriate plans that include non-consensual third-party releases.

The statutory authority to approve such releases, however, does not rest solely in these equitable powers. *See Law v. Siegel*, 571 U.S. 415, 421 (2014) ("We have long held that 'whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of' the Bankruptcy Code.") (quoting *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988)). Congress specified the parameters within which each plan of reorganization must comply. *See* 11 U.S.C. § 1123. These limitations are broad yet unambiguous. For example, section 1123(a) specifies what mandatory provisions debtors must include in their plan. *See In re Tanning Co.*, 496 B.R. 644, 660-61 (1st Cir. BAP (Me.) 2013). Among these mandates is section 1123(a)(5). Under this provision, "a plan shall…provide adequate means for the plan's implementation." 11 U.S.C. § 1123(a)(5). While Congress provides examples of what may constitute "adequate means," this non-exhaustive list does not purport to restrict how debtors adequately implement the plan absent being restricted by "any otherwise applicable non-bankruptcy law." 11 U.S.C. § 1123(a)(5)(A)-(J); *see also In re Charles Street African Methodist Episcopal Church of Boston*, 499 B.R. 66, 100 (Bankr. D. Mass. 2013).

In other words, section 1123(a)(5) provides that the inclusion of a non-consensual third-party release is appropriate in plans of reorganization where the release serves as adequate means for the plan's implementation. For example, in this case, the Debtor's plan for reorganization established a trust funded by both the Debtor's disposable income for five years and, more substantially, by Strawberry Fields. R. at 8. Without the contribution of Strawberry Fields, which was contingent upon their release of direct claims, Debtor could not ensure "adequate means for the plan's implementation." Thus, the plan for reorganization lawfully included the non-consensual third-party release as the bankruptcy court had the authority to take the "necessary or appropriate" steps to "carry out provisions of" the Bankruptcy Code by approving such releases included in the plan.

ii. *Section 524(e) does not prohibit bankruptcy courts from approving non-consensual releases like those relevant in this case.*

The Code does not explicitly prohibit bankruptcy courts from issuing orders that approve plans of reorganization consisting of non-consensual third-party releases. *In re Dow*, 280 F. 3d at 656. "[W]here Congress has limited the powers of the bankruptcy court, it has done so clearly." *In re Airadigm*, 519 F. 3d at 656. In fact, prior to the 1979 amendments to the Code, Congress clearly limited power of the bankruptcy court and answered the question before this Court, stating "[t]he liability of a person who is a co-debtor with, or guarantor or in any manner, a surety for, a bankrupt shall not be altered by the discharge of such bankrupt." *Id.* at 656 n.4 (quoting 11 U.S.C. § 34 (repealed Oct. 1, 1979)). However, Congress amended this limitation to what is now section 524(e), which provides: "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). While certain circuits have conflated the language of this statute to prohibit non-debtor releases, there is nothing in this provision that explicitly prohibits such releases. *In re Seaside*, 780 F. 3d at 1078. When the language of the statute is plain, the court should enforce it according to its terms. *U.S. v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989) (quoting *Caminetti v. United States*, 424 U.S. 170, 485 (1917)). "The natural reading of this provision does not foreclose third-party release from a creditor's claims." *In re Airadigm*, 519 F. 3d at 656. This section merely explains the general effect of a debtor's discharge absent any other influence. *See In re Dow*, 280 F. 3d at 657; *see also In re Seaside*, 780 F. 3d at 1078; *see also In re Edgeworth*, 993 F.2d 51, 53 (5th Cir. 1993). Thus, the plain language of section 524(e) does not prohibit the use of non-consensual third-party releases.

Finding that section 524(e) prohibits the inclusion of such releases would contradict the legislative history and comprehensive reading of section 524. Congress, when amending section 524, included a "Rule of Construction" intended to be adopted into the interpretation of the statute. The "Rule of Construction" provides: "Nothing in [section 524(g)], shall be construed to modify, impair, or supersede any other authority the court has to issue injunctions in connection with an order confirming a plan of reorganization." Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, § 111(b), 108 Stat. 4106, 4117 (uncodified). Congress included this Rule to clarify that section 524(g) "is not intended to alter any authority bankruptcy courts may already have to issue injunctions in connection with a plan of organization." 140 Cong. Rec. H10, 766 (Daily ed. Oct 4, 1994) (Rep. Brooks). The legislative history clearly shows that Congress amended section 524 not to create an exception to section 524(e) but to address the magnitude of asbestos litigation claims occurring at the time of the amendments. *See id.*; *see also In re Richard Potasky Jeweler, Inc.*, 222 B.R. 816, 827 n.19 (S.D. Ohio 1998) ("Section 111(b) was intended by Congress to avoid any conjecture that, absent cases involving asbestos, bankruptcy courts lacked the power to issue permanent injunctions."); Jason J. Jardine, *The Power of the Bankruptcy Court to Enjoin Creditor Claims Against Nondebtor Parties in Light of 11 U.S.C. §524(e): In re Dow Corning Corp.*, 2004 BYU L. Rev. 283, 306-08 (2004) (stating that section 524(g) does not limit the application of injunction provisions). The House Report discussing section 524(g) reflects Congress's narrow focus on asbestos litigation claims, stating: "The Committee expresses no opinion as to how much authority a bankruptcy court may generally have under its traditional equitable powers to issue an enforceable injunction of this kind. The Committee has decided to provide explicit authority in the asbestos area because of the singular cumulative magnitude of the claims involved." 140 Cong. Rec. H10, 766 (Daily ed. Oct 4, 1994) (Rep. Brooks). Therefore, section 524(e) does not, by the plain language of the statute nor its legislative history, prohibit the inclusion of non-consensual third-party releases from a plan of reorganization.

B. Bankruptcy Courts have the Constitutional Authority to Release Third-Party Direct Claims under *Stern v. Marshall* When Said Release is 'Integral to the Restructuring of Debtor-Creditor Relations.'

The leading Supreme Court case governing a bankruptcy court's constitutional authority is *Stern v. Marshall,* 564 U.S. 462 (2011). In *Stern*, the Court held that, while the bankruptcy court had the statutory authority to issue a final judgment of the debtor's state-law counterclaim against the creditor, as a non-Article III judge, it lacked the constitutional authority to do so. *Stern*, 564 U.S. at 482. Under the requirements of *Stern*, the bankruptcy court in this case had the constitutional authority to approve the plan's third-party release provision.

"Bankruptcy courts may hear and enter final judgments in 'core proceedings' in a bankruptcy case" under 28 U.S.C. § 157(b)(1) (listing 16 categories of what may constitute a "core proceeding"). And yet, the Supreme Court found that there are certain adjudicative powers reserved for "the Judiciary." *Stern,* 564 U.S. at 484 ("When a suit is made of 'the stuff of the traditional actions at common law' . . . and is brought within the bounds of federal jurisdiction, the responsibility for deciding that suit rests with Article III judges in Article III courts.'") (quoting *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 90 (1982)).

Despite the various restrictions, it remains clear that Congress intended to share at least some of the judicial responsibility with bankruptcy courts. *Wellness Int'l Network, Ltd. v. Sharit*, 575 U.S. 665, 680-81 (2015) ("Congress could choose to rest the full share of the Judiciary's labor on the shoulders of Article III judges. But doing so would require substantial increase in the number of district judgeships."). Since there are nonetheless restrictions on which "core proceedings" may be adjudicated by bankruptcy courts, the focus of relevant actions should be on the contents of the proceedings rather than their mere categorization. *In re Millennium Lab*, 945 F. 3d at 136. In other words, when determining if a bankruptcy court has the constitutional authority to adjudicate certain claims, the question is not whether the proceeding is deemed "core" but rather "whether the action at issue stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process." *Stern*, 564 U.S. at 499. When discussing the claims allowance process, the *Stern* Court relied on *Langenkamp v. Culp*, 498 U.S. 42 (1990), highlighting that certain claims "can be heard in bankruptcy because *then* 'the ensuring preference action by the trustee become[s] integral to the restructuring of the debtor-creditor relationship'." *Id.* at 497 (emphasis in the original) (quoting *Langenkamp*, 498 U.S. at 44). If the "integral to the restructuring" requirement was limited to the claims allowance process, the *Stern* Court would not have included causal emphasis with the word *"then"* when evaluating the effects of that case. Nor would the Supreme Court have relied on the same "integral" language in a case prior to *Langenkamp – Granfinanciera, S.A. v. Nordberg,* 492 U.S. 33 (1989). In *Granfinanciera*, another case relied on by the *Stern* Court, the Supreme Court held that the petitioner was entitled to a jury trial to be presided over by an Article III court, in part, because the action was not "integral to the restructuring of debtor-creditor relations." *Granfinanciera*, 492 U.S. at 58. The implication of *Langenkamp* and *Granfinanciera* is simple: courts can adjudicate matters that are necessarily resolved in the claims allowance process *because* they are integral to the restructuring of the debtor-creditor relationship.[3] *In re Millennium Lab*, 945 F. 3d at 136. Thus, a bankruptcy court is

[3] The rationale of the Supreme Court to rely on the "integral to the restructuring of debtor-creditor relations" language may not be tied directly to any one theory. *In re Millennium Lab,* 945 F. 3d at 136 n.8. However, this does not invalidate the applicability of this principle. In fact, even the author of the *Stern* decision – Justice Roberts – focused on the importance of bankruptcy courts having the authority to restructure debtor-creditor relations. *Sharit*, 575 U.S. 665 (2015) (Roberts, C.J., dissenting) ("Our precedents have also recognized an exception to the requirements of Article III for certain bankruptcy proceedings. When the Framers gathered to draft the Constitution, English statutes had long empowered nonjudicial bankruptcy 'commissioners' to collect a debtor's property, resolve claims by creditors, order the distribution of assets in the estate, and ultimately discharge the debts. This historical practice, combined with Congress's constitutional authority to enact bankruptcy laws, confirms that Congress may

"within constitutional bounds when it resolves a matter that is integral to the restructuring of the debtor-creditor relationship." *Id.* at 135.

Debtor's Plan serves as an example of when non-consensual third-party releases are integral to the restructuring of the debtor-creditor relationship. Included in the Debtor's Plan is the creation of a trust with the sole purpose of making substantial distributions to creditors. This trust, in large part, is funded by the generous contribution of Strawberry Fields, indicating that the majority of the creditors' recovery, including Ms. Rigby's, is due largely to said contribution. However, this contribution, and consequently the stability of the creditor's trust, would not have existed without the inclusion of the third-party release also included in the Plan. The Strawberry Fields contribution directly affects debtor-creditor relations in this case, proving that the third-party releases were, in fact, integral to the restructuring of the debtor-creditor relationship.

C. The purpose of Chapter 11 bankruptcy proves that affirming the approval of non-consensual releases in appropriate circumstances supports the integrity of bankruptcy and reorganization for business debtors.

Chapter 11 bankruptcy focuses, ultimately, on the successful rehabilitation of debtors and maximizing recovery for creditors. Chapter 11 reorganization allows debtors to truly rehabilitate: debtors may restructure their business's finances to ensure that their business may continue to operate, which, in turn, allows creditors to be paid. *See* H.R. Rep. No. 95-595 at p. 220 (1977). To determine what constitutes a successful rehabilitation, bankruptcy courts must balance the interests involved, including how the interests of both debtor and creditor affect the success of the debtor's reorganization. *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 527 (1984). Section 1123 governs the contents of a plan of reorganization. 11 U.S.C. § 1123. While there are certain aspects of the Code

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assign to non-Article III courts adjudications involving 'the restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power'.")(internal citations omitted).

that are required for a plan – section 1123(a) – the Code also lists *optional* inclusions for a debtor's plan in section 1123(b). 11 U.S.C. § 1123(a)-(b). Congress could have required all plans of reorganization to have the same contents; however, this is not feasible. The types of businesses filing for chapter 11 bankruptcy vary, and the plain language of the statute reflects this. In other words, plans need not follow a codified template, but rather may be created to accommodate whatever the debtor needs for successful reorganization. This includes how each respective debtor can best maximize recovery for their creditors. Reorganization is more economically efficient for debtors, preserving not only jobs but the debtor's assets as well. H.R. Rep. No. 95-595 at p. 220; *see also id.* at 528 ("The fundamental purpose of reorganization is to prevent the debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources.").

Third-party releases adopted into plans of reorganization can allow debtors to successfully rehabilitate and maximize their estate. One of the prominent issues for chapter 11 debtors in situations such as the one is the increasing number of creditors trying to maximize their recovery with the debtor's limited resources. *See In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 292-93 (2d. Cir. 1992). Without the contributions from third parties that may lead to such releases, debtors are placed in an even more pressing predicament, operating solely from their bankrupt assets. As a result, even within the confines of relevant plans of reorganization, both debtor and creditor would be negatively affected by the "inequitable, piecemeal dismemberment of the debtor's estate" – the exact consequence that chapter 11 attempts to avoid. *In re Johns-Manville Corp.*, 97 B.R. 174, 178 (Bankr. S.D.N.Y. 1989). Consequently, the entire purpose of chapter 11 is lost: creditors recover less, and the business debtor loses much of the ability to rehabilitate.

Debtor, in this case, merely embraced the true spirit of chapter 11 bankruptcy. With the pending flood of litigation spurring from their alleged conduct, the Debtor was placed in a position to contemplate the principles of chapter 11 bankruptcy, including how to pay their creditors and how to do so in a way that ensures their rehabilitation. Logically, without the contribution of Strawberry Fields, the Debtor would be left with substantially less with which to operate its business. In other words, without the third-party release included in the settlement (which was ultimately incorporated into the Plan), the Debtor would not have the chance to embrace the benefits of which chapter 11 was created to afford.

While the principles of chapter 11 bankruptcy are generally applicable, the circumstances in which third-party releases are appropriate in plans of reorganization are reserved for "unusual" cases. *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 143 (2d. Cir. 2005). When used in these certain circumstances, third-party releases are yet another tool for debtors to use when attempting to rehabilitate.[4] Courts have chosen various factors to focus on when determining if non-consensual third-party releases are appropriate in a given case. *In re Master Mortgage Investment Fund, Inc.*, 168 B.R. 930, 935 n.4-8 (Bankr. W.D. Mo. 1994) (highlighting different focal points courts used when determining whether to allow the inclusion of non-consensual third-party releases).

These principles of chapter 11 bankruptcy, in general, must nonetheless be applied in conjunction with section 105(a) when determining when third-party releases are appropriate. The Code highlights the equitable powers of the bankruptcy court while simultaneously giving the bankruptcy court deference of when to use said equitable powers. The Thirteenth Circuit properly

[4]Third-party releases follow a similar line of reasoning to "critical vendors". Based on the "doctrine of necessity," the approval of "critical vendors" by bankruptcy courts stems from the general principle of chapter 11: to assist debtors in reorganization. *See* Michael St James, *Why Bad Things Happen In Large Chapter 11 Cases: Some Thoughts About* Courting Failure, 7 Transactions: Tenn. J. Bus. L. 169, 177 (2005)*; see also* George W. Kuney, *"All Writs" In Bankruptcy And District Courts: A Story of Differing Scope*, Rev. Litig. 255, 274 (2015). Bankruptcy courts recognize that repayment of critical vendors may benefit a debtor's plan of organization in way that would not happen without a "critical vendor order". As such, bankruptcy courts should view third-party releases in much of the same way: to ensure debtors are provided the tools to assist in successful reorganization.

noted that this case is not about "exceptional circumstances" but about identifying the appropriate circumstances in which bankruptcy courts may exercise their statutory and constitutional authority.

Sections 105(a) and 1123(b)(6) provide the bankruptcy court with the authority to determine when third-party releases in plans of reorganization should be allowed. This equitable power allows the bankruptcy court to do what they were appointed to do: efficiently and equitably address debtor-creditor relations. No section of the Code, including section 524(e), explicitly prohibits bankruptcy courts from wielding this power. And in relying on the residual authority afforded to them by the Code, bankruptcy courts embrace the true spirit of the Code: by allowing chapter 11 debtors to take full advantage of the reorganization benefits afforded to them, by helping chapter 11 debtors maximize the value of their estate, and by providing creditors the best opportunity at maximum recovery. Therefore, this Court should affirm the Thirteenth Circuit's decision that bankruptcy courts have the statutory and constitutional authority to approve plans of reorganization that include non-consensual third-party releases.

II. THIS COURT SHOULD HOLD THAT CORPORATIONS SUBJECT TO SECTION 1192(2) ARE NOT SUBJECT TO THE EXCEPTIONS TO DISCHARGE IN SECTION 523(A).

The passage of the SBRA reflected a clear desire of Congress to increase the success of reorganization for small businesses. *See* H.R. Rep. No. 116-171. Congress did so by creating a new avenue for small businesses to achieve that goal, creating subchapter V, a new subchapter within chapter 11. Subchapter V contains many tools to increase the success of reorganization, reflecting the clear intent of Congress. "Commentators and courts have determined that the legislation's purpose is to provide recourse to small business owners and individual debtors without the attendant costs and restraints imposed in traditional Chapter 11 cases. Notably, Subchapter V cases do not require the payment of US Trustee fees, filing of a disclosure statement, or application of the absolute priority rule." *In re GFS Indus., LLC*, No. 22-50403-CAG, 2022 WL 16858009, at

*2 (Bankr. W.D. Tex. Nov. 10, 2022). Section 1192, the law in question before this Court, was passed as part of subchapter V. The key issue that courts have dealt with regards section 1192(2) and its cross-reference to section 523(a). The text of section 1192 in question reads: "[T]he court shall grant the debtor a discharge of all debts . . . except any debt . . . of the kind specified in section 523(a) of this title," and the cross-reference to section 523(a) reads that "[a] discharge under section . . . 1192 . . . of this title does not discharge an individual debtor from any debt." 11 U.S.C. 1192; 11 U.S.C 523(a).

All bankruptcy courts that have dealt with the issue have joined the Thirteenth Circuit in finding that the exceptions to discharge in section 523(a) only apply to individuals. *See Jennings v. Lapeer Aviation, Inc. (In re LaPeer Aviation, Inc.),* Adv. No. 22-03002, 2022 WL 1110072 (Bankr. E.D. Mich. Apr. 13, 2022); *Catt v. Rtech Fabrications, LLC (In re Rtech Fabrications LLC),* 635 B.R. 559 (Bankr. D. Idaho 2021); *In re Cleary Packaging LLC*, 630 B.R. 466, 473 (Bankr. D. Md. 2021), *rev'd and remanded sub nom. In re Cleary Packaging, LLC*, 36 F.4th 509 (4th Cir. 2022). *Gaske v. Satellite Rest., Inc. Crabcake Factory USA (In re Satellite Rest., Inc. Crabcake Factory USA),* 626 B.R. 871 (Bankr. D. Md. 2021); *In re GFS Indus., LLC*, No. 22-50403-CAG, 2022 WL 16858009, at *7 (Bankr. W.D. Tex. Nov. 10, 2022). Only a single circuit court, overruling the bankruptcy court, has found that the exceptions to discharge apply to corporations as well. *In re Cleary*, 36 F.4th 509. However, the holding of the 4th Circuit has been rejected by other courts deciding the issue after the 4th Circuit's ruling. *See In re GFS Indus.*, No. 2022 WL 16858009, at *7.

The Thirteenth Circuit's ruling is the correct one, and this Court should join in its holding. A plain text reading of section 1192 and section 523(a) is unambiguous and clearly states that the exceptions to discharge only apply to individual debtors. The rule against superfluity, a key canon of construction, supports the same result. Even if this Court finds the statute ambiguous, the legislative history of section 1192 strongly supports a ruling that the exceptions to discharge only apply to individuals. Further, even though the statutory language of section 1192 is similar to statutes in chapter 12, the difference between chapter 11 and chapter 12 prevents the same conclusion from being applied to the current issue. The goals of the Code itself would be subverted by finding that the exceptions to discharge apply to corporations, and it would go against strong public policy rationale. This Court, in light of the supporting reasons that the exceptions to discharge applies only to individuals, should uphold the ruling of the Thirteenth Circuit.

A. <u>The plain text of 11 U.S.C. §§ 1192 and 523(a) and the rule against superfluity both support a reading that the exceptions to discharge only apply to individual debtors.</u>

As the case requires statutory interpretation, this Court should begin its analysis with the text itself and give each term, unless otherwise defined their plain meaning. *Sebelius v. Cloer*, 569 U.S. 369, 376 (2013). Here, using the definitions provided in the Code and giving undefined terms their plain meaning, the text is clear: the exceptions to discharge only apply to individual debtors. Further, a key canon of construction, the rule against superfluity, demands the same interpretation, as the Petitioner's position requires the Court to accept a superfluous interpretation of section 1192 and section 523(a). Therefore, this Court should follow the plain meaning of the sections and reject an interpretation that renders the statutory language superfluous and find that the exceptions to discharge only apply to individual debtors.

i. The plain text of sections 1192 and 523(a) supports a reading that the exceptions to discharge only apply to individual debtors.

The first place to begin the analysis of the issue at hand is with the plain meaning of the statute. This Court recognizes the key principle that "[w]hen the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." *Dodd v. United States*, 545 U.S. 353 (2005) (quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank, N. A.,* 530 U.S. 1, 6 (2000)). The plain text of sections 1192 and 523(a) supports the Respondent's position. Courts who have dealt with this same analysis have acknowledged that the statutes may seem unclear upon a cursory reading. *In re Cleary*, 36 F.4th. at 512. However, upon breaking down the statutes to define key terms, it is clear that a plain text reading of sections 1192 and 523(a) supports the Respondent's position.

The Code itself offers a powerful resource to help with understanding sections 1192 and 523(a) by defining terms in section 101. As this Court has stated, "[w]hen a statute includes an explicit definition, we must follow that definition." *Digital Realty Tr., Inc. v. Somers*, 138 S. Ct. 767, 776 (2018) (quoting *Burgess v. United States,* 553 U.S. 128 (2008)). Here, the Code offers definitions of key terms such as "debtor" and "person." The Code defines "debtor" as meaning "person or municipality concerning which a case under this title has been commenced." 11 U.S.C. § 101(13). Further, the Code defines "person" as including an "individual, partnership, and corporation" *Id*. at (41). The Debtor clearly meets the definition of a "corporation" under the Code. *See id.* at (9).

The next step is looking to define other key terms, "kind" and "individual." Unfortunately, the Code does not provide a definition. However, in that absence, we can follow this Court's traditional principle that "[w]hen a statute does not define a term, we typically 'give the phrase its ordinary meaning'." *Hall v. United States,* 566 U.S. 506, 511 (2012) (quoting *FCC v. AT & T Inc.,* 562 U.S. 397 (2011)). Further, the context of these words within the Code itself is crucial, as this Court has noted that "[t]o discern that ordinary meaning, those words 'must be read' and interpreted 'in their context,' not in isolation." *Sw. Airlines Co. v. Saxon*, 142 S. Ct. 1783, 1788 (2022) (quoting *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 139 S. Ct. 1881 (2019)). The record provides an exemplary definition of "kind" as "sharing 'common traits.'" R. at 18. (quoting Kind, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/kind (last visited Jan. 15, 2023). Further, the dictionary definition for "individual," used in section 523(a) as an adjective, as meaning "being an individual," and defining the noun "individual" "as a single human being as contrasted with a social group or institution." (quoting Individual, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/individual (last visited Jan. 15, 2023). Black's Law Dictionary also sheds some light on the meaning of the word, defining "individual" as "of, relating to, or involving a single person" and further defines "person" as "[a] human being." *Individual*, *Black's Law Dictionary* (11th ed. 2019); *Person*, *Black's Law Dictionary* (11th ed. 2019). It is also noteworthy that, while the Code does not define "individual," when defining "person," the Code distinguishes the term "individual" from "corporation," clearly showing an intent to ensure the terms have separate meanings. 11 U.S.C. § 101(41). The Code, as such, follows the widely accepted view of both this Court and Congress that the ordinary meaning of "individual" is a "human being." This Court has said it "routinely uses 'individual' to . . . distinguish between a natural person and a corporation" *Mohamad v. Palestinian Auth*., 566 U.S. 449, 454 (2012). This Court acknowledges that Congress follows the same thought saying that "Congress does not, in the ordinary course, employ the word any differently" and cites multiple laws that reflects Congress distinguishing between an individual and a corporation. *Id.* at 454-55.

The result is a clear picture of exactly what the plain text of the relevant parts of both sections 1192 and 523(a) means. Beginning with section 1192, the relevant part provides: "[T]he court shall grant the debtor a discharge of all debts . . . except any debt . . . of the kind specified in section 523(a) of this title." 11 U.S.C. § 1192. Continuing on to section 523(a), the relevant part provides that "[a] discharge under section . . . .1192 . . . .of this title does not discharge an individual debtor from any debt" and then provides a list of debts. 11 U.S.C. § 523(a).

The result of defining these terms shows the plain text supports the Respondent's position. The application of section 1192 is wide-ranging as it applies to any "debtor," regardless of the type of entity that meets the qualifications for section 1192. The plain text of section 1192 uses no qualifying language alongside "debtor"; understanding the inclusive definition of "debtor" provided in section 101(13) shall govern what entities are covered by section 1192. Section 1192(2) relies on section 523(a) to limit what entities are subject to the exceptions to discharge by stating that "all debts" are dischargeable, except for those that have a common trait with the ones specified in section 523(a). 11 U.S.C. § 1192. Section 523(a) provides that limitation by limiting the type of "debtor" the statute applies to from the outset. 11 U.S.C. § 523(a). The use of limiting language modifying the term "debtor," a broad term, is crucial. The limiting language, "individual," should be given its common meaning of a human being. *See Mohamad*, 566 U.S. 449, 454-55. The common meaning compliments the Code's definition of "debtor," which provides that a debtor is either a "person or municipality," 11 U.S.C. § 101(13), and further defines "person" as an "individual, partnership or corporation," *Id.* at (41), showing that the Code itself distinguishes between individuals and corporations. Here, the Code is limiting what type of debtor by using the word "individual," restricting the applicability of section 523(a) the "individual debtor." 11 U.S.C. § 523(a). The plain meaning of individual does just that, restricting section 523(a) to human beings only, excluding corporations.

Using the defined terms, section 1192 reads that a court shall grant a debtor — a person, which means individual, partnership, or corporation — a discharge of all debts, except any debt of the kind — a debt sharing common traits with the ones specified in section 523(a). Now, section

523(a), using the defined terms, reads that a discharge under section 1192 does not discharge an individual debtor — being a single human being debtor, as opposed to the inclusive definition of "debtor" in the Code — from the debts below. The plain text, using the defined terms of sections 1192 and 523(a), supports Respondent's position that corporations subject to section 1192(2) are not subject to the exceptions to discharge in section 523(a).

ii. The rule against superfluity supports a reading that the exceptions to discharge only applies to individual debtors.

A reading of sections 1192 and 523(a) that applies the exceptions to discharge only to individual debtors is the only reading that gives each word its effect. A key canon of statutory construction – the rule against superfluity – would be violated under the Petitioner's view. This Court has recognized the importance of the rule against superfluity, stating that "a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous." *Clark v. Rameker*, 573 U.S. 122, 131 (2014) (quoting *Corley v. United States,* 556 U.S. 303, 314 (2009)).

The reference to section 1192 in the amended section 523(a) would become inoperative under Petitioner's interpretation. Section 1192 provides no limitation to the debtors that it applies to, it uses the general term "debtor" without any limiting language. 11 U.S.C. § 1192. In contrast, section 523(a) plainly limits the scope of debtors that it applies to, providing that the exceptions to discharge within section 523(a) apply only to "individual debtors." When section 523(a) was amended, it included a reference to section 1192. Specifically, the statute now reads that "A discharge under section...1192...does not discharge an individual debtor". 11 U.S.C. § 523(a).

A reading, giving effect to each word, recognizes both the lack of limitation in section 1192, and the limitation provided in section 523(a). Only by deeming the addition of section 1192 into section 523(a) as superfluous could Petitioner's view be correct. The amendment of section

523(a) would have been unnecessary had Congress intended to apply the section to corporate and individual debtors. Such a reading violates a central principle of statutory interpretation, that "[w]hen interpreting statutes, courts should 'lean in favor of a construction which will render every word operative, rather than one which may make some idle and nugatory'." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 69, 174 (2012) (citing Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rest upon the Legislative Power of the States of the American Union* 58 (1868)). Bankruptcy courts have cited the amendment of section 523(a) to include section 1192 as supporting the Respondent's position, because, otherwise, the amendment would be unnecessary, violating this canon of construction. *In re GFS Indus., LLC*, 2022 WL 16858009, at *5. Therefore, the only acceptable reading of sections 1192 and 523(a) is one that excludes corporate debtors from the exceptions to discharge.

B. The legislative intent of 11 U.S.C. §§ 1192 and 523(a), as well the larger context of chapter 11 shows that the exceptions to discharge only applies to individual debtors.

This Court should find that both the plain text and the rule against superfluity support the Respondent's position. In the event this Court determines that the statutes remain ambiguous or are concerned about the theory of other bankruptcy courts that section 1192 should hold the same meaning as similarly worded statutes in chapter 12, the Respondent's position is still the correct one. Legislative history can help resolve any lingering ambiguity. While the legislative history firmly supports the Respondent's position, the Court still may only make use of it by finding the text is unclear, in contrast "[i]f the text is clear, it needs no repetition in the legislative history". *Encino Motorcars, LLC v. Navarro*, 138 S. Ct. 1134, 1143 (2018). The Court should find that the text is clear in favor of the Respondent's interpretation, however in the event of ambiguity, the legislative history here can be used as "clear evidence of congressional intent may illuminate ambiguous text." *Milner v. Dep't of Navy*, 562 U.S. 562, 572 (2011). In addition, the differences between chapter 11 and chapter 12 clarify why section 1192 should be treated differently. The legislative history and the differences between chapter 11 and chapter 12 shows that the exceptions to discharge only apply to individual debtors.

i. The legislative history and intent of 11 U.S.C. §§ 1192 and 523(a) shows that the exceptions to discharge only apply to individual debtors.

Congress passed section 1192 and amended section 523(a) in order to increase the chances of businesses successfully reorganizing and did not intend to deny corporations discharges under sections 1192 and 523(a). This Court recognizes the commonly cited phrase of statutory interpretation that "Congress ... does not, one might say, hide elephants in mouseholes." *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 465 (2017) (quoting *Whitman v. American Trucking Assns., Inc.,* 531 U.S. 457, 468 (2001).

Here, diverging away from the historic consensus that section 523(a) does not apply to corporate debtors, would be a dramatic action: that Congress would signify their intent before taking. Bankruptcy courts have consistently held that, in the chapter 11 context, section 523(a) only applies to individuals. *In re GFS Indus.*, 2022 WL 16858009, at *5. ("It is well-settled law in this circuit that the § 523 exceptions to discharge apply only to individuals, not to corporations."). The *In Re GFS* court relied on other courts noting that section 523(a)'s debts contain distinctly human characteristics such as "the 'willful and malicious injury' exception to discharge, like all of the exceptions to discharge found in section 523(a), applies only to individual, not corporate debtors". *Garrie v. James L. Gray, Inc.***,** 912 F.2d 808, 812 (5th Cir. 1990 (quoting *Yamaha Motor Corp., U.S.A. v. Shadco, Inc.,* 762 F.2d 668, 670 (8th Cir. 1985)).

Therefore, in order to find that the Respondent, as a corporation using section 1192, is subject to the exceptions to discharge in section 523(a), there must be clear intent from Congress in the passage of section 1192 that section 523(a) now applies to corporations. The legislative history reflects no such intent.

The intent of Congress, as stated in reports prior to the passage of the SBRA, was to increase the success of reorganizations for small businesses. *See* H.R. Rep. No. 116-171. It seems impossible that Congress, in this endeavor, accidentally discontinued corporate discharges, as it would go against the intent of Congress when they passed the act. It is also worth noting that the timeline of the passage of the SBRA does not suggest Congress intended to dramatically alter the current scheme. The most recent time Congress provided an exception to discharge for corporations, in section 1141(d)(6), it not only explicitly said so, but took eight years to finally pass. *In re GFS Indus.*, 2022 WL 16858009, at *7 ("The only exception to discharge for corporations in the current version of the Bankruptcy Code is found in § 1141(d)(6). This exception was controversial enough that it took eight years to be enacted."). It seems odd to suggest that, given that historical background, Congress added nineteen new exceptions to discharge for corporate debtors in a bill that, in less than a year, was introduced and signed into law. *In re Cleary*, 630 B.R. at 745 (*rev'd and remanded sub nom. In re Cleary*, 36 F.4th 509) ("As such, the suggestion that Congress incorporated 19 new exceptions to discharge for small corporations in a bill that was introduced in April 2019, and signed into law by the President in August 2019.").

Further, Congress would have, at minimum, signaled the intent to depart from the norm of excluding corporate debtors from section 523(a). The House Report provides nothing of the sort and gives no evidence that Congress altered the exceptions to discharge in section 523(a) with the passage of the SBRA.

Congress also knew exactly how to expand exceptions to discharge to corporate debtors, yet intentionally did not in section 1192. The Petitioner's position, that section 1192's lack of a qualifier on the word "debtor" is evidence that Congress expanded section 523(a), ignores a key reality. Congress has expanded section 523(a) to apply to corporations and used drastically different language to do so. Section 1141(d)(6) states that "the confirmation of a plan does not discharge a debtor that is a corporation from any debt (A) of the kind specified in paragraph 2(A) or 2(B) of section 523(a)." 11 U.S.C. § 1141(d)(6). The statutory language here both recognizes that section 523(a) only applies to individuals and intentionally expands it to apply to corporations. *Id.* This is clear evidence that Congress had the tools and was aware of those facts: that section 523(a) could only apply to corporations by specifically expanding it in any statutory language. Congress passed section 1192 without any indication of expanding section 523(a), and did not use the key language, as in section 1141(d)(6). Congress intentionally wrote section 1192 without expanding the application of section 523(a), and in so ensured that the historic practice of applying section 523(a) to individuals would continue.

ii. Section 1192's presence in chapter 11 allows for a different interpretation than similarly worded statutes in chapter 12.

Courts that have ruled against the Respondent's position have cited that due to the similarity in the language of section 1192 and similar statutes in chapter 12 should provide the same result, that the reference to section 523(a)'s exceptions to discharge applies to both corporate and individual debtors. *In re Cleary,* 36 F.4th at 516-17. However, such a reading falsely equates chapter 11 and chapter 12 and assumes both chapters are written with the same intent and application. Chapter 11 provides very limited occasions where a corporate debtor is exempt from discharge, with the only explicit reference in section 1141(d)(6). 11 U.S.C. § 1141(d)(6). The rarity of providing exceptions to discharge is crucial, as it shows both the aversion of Congress to giving corporations exceptions to discharge as well as the desire of Congress to explicitly state when such exceptions are intended to apply. Courts have noted the importance of recognizing the context of section 1192, as a part of chapter 11. *See In re GFS*, 2022 WL 16858009 at *6.

The rationale for treating section 1192 and Chapter 12's similar statutory language differently is primarily based on the difference between chapter 11 and chapter 12. Chapter 11, and by extension the SBRA, have a primary goal of promoting reorganization. While subchapter V does narrow the scope of debtors it applies to, it does so based on the amount of debt, not on the type of debtor. Subchapter V is available to any debtor who is "a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning single asset real estate) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than $7,500,000 (excluding debts owed to 1 or more affiliates or insiders) not less than 50 percent of which arose from the commercial or business activities of the debtor" 11 U.S.C. § 1182(a). As such, the barrier to entry is based on debt amounts and types of debts, not the entity of the debtor.

In contrast, Chapter 12 limits the type of debtors from the outset, only applying to family farmers or fishers. Chapter 12 is appropriately titled "Adjustment of Debts of a Family Farmer or Fisherman with Regular Annual Income." 11 U.S.C. § 1201 *et seq.* Therefore, it is consistent with the purpose of chapter 12 that its statutory language intends to apply to all debtors that seek to use it. Chapter 11 has different considerations, as it applies to a wider subset than chapter 12. As such, chapter 11, specifically section 1192's language, should be read as only applying the exceptions to discharge to individuals, not corporations. The chapters are written with the knowledge of which debtors can use the respective chapters in the first place. Chapter 12 is written with the knowledge that the chapter itself has limited the scope of its application, therefore it does not need further limitation. Any exception to discharge applies to all debtors in chapter 12. Chapter 11, specifically section 1192, is written with the knowledge that the chapter can apply to a wide variety of debtor entities, and as such only applies the exceptions to discharge within section 523(a) to individuals as the statute clearly states.

Courts have recognized as such that when dealing with the application of similar language in Chapter 12, noting that "it is a specific chapter, limited to special types of debtors and therefore, it would not be unexpected that Congress may provide for some different treatment of these debtors." *New Venture P'ship v. JRB Consol. (In re JRB Consol., Inc.),* 188 B.R. 373, 374 (Bankr. W.D. Tex. 1995). The *In re JRB* court's ruling has been cited as proof that the exceptions to discharge of section 523(a) should apply to corporations. *See In re Cleary*, 36 F.4th. 509. However, these courts fail to acknowledge that the *In re JRB* court made clear its holding should not be extended to the Chapter 11 context. *See In re JRB Consol*., 188 B.R. at 374. Further, it is crucial to note that the Western District of Texas Bankruptcy Court, the authors of the *In re JRB* opinion, also issued one of the most recent holdings in favor of the Respondent's position. *See In re GFS Indus.*, No. 2022 WL 16858009. The holding did not overrule *In re JRB* in any part, as it acknowledged that due to the differences between chapter 11 and chapter 12, the similar language requires a different meaning. *In re GFS Indus.*, 2022 WL 16858009, at *6-7. The presence of section 1192 in chapter 11 allows for a different meaning than similar language in chapter 12, and reflecting as such, it should mean that the exceptions to discharge should only apply to individuals.

C. The goals of the Bankruptcy Code would be frustrated by applying the exceptions to discharge of 11 U.S.C. § 523(a) to corporations subject to 11 U.S.C. § 1192(2).

The Code's goals of providing fresh start to debtors, treating similarly situated creditors equally, and promoting economic value through reorganization all favor the Debtor's position.

The fresh start principal of bankruptcy is a core tenant of the Code. *See Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 367 (2007). Given this core tenant, it gives a "strong presumption against exceptions to discharge." *Kawaauhau v. Geiger*, 523 U.S. 57, 62 (1998). The statute's language, clearly stating that the exceptions to discharge of section 523(a) are not extended to corporations through section 1192, along with this presumption both provide strong rationales for the Debtor's interpretation. Practically speaking, if the exceptions to discharge in section 523(a) were applied to corporations, such as the Debtor, it would make it quite challenging to achieve the fresh start. Currently, the Debtor and the creditors have worked together to create a plan that allowed for the creditors to be equitably compensated, while also giving the Debtor the ability to start anew. One of the benefits of the Plan is the discharge of key debts. The Debtor would not be able to obtain the benefits of the fresh start, if instead of being discharged of debts, the Debtor would essentially suffer massive liabilities after the plan, despite seeking the protections of bankruptcy.

Another key goal of the Code is to secure equal distribution among similarly situated creditors. *Howard Delivers Serv., Inc. v. Zurich Am. Ins. Co.*, 547 U.S. 651, 655 (2006). Similarly situated creditors would be treated unequally if the exceptions to discharge in section 523(a) applied to corporate debtors. Such an issue inherently arises as a result of denying the debtor a fresh start, that the debtor is now unable to maximize the funds available to creditors in bankruptcy as a result of the lack of discharge. Here, if the Debtor is not able to achieve a discharge, the debts owed to the Petitioner would remain despite the Debtor's reorganization. In turn, the Debtor will now have to pay the entirety of the Petitioner's claim, which will reduce the amount available to pay in the plan. Here, while Ms. Rigby, a single creditor, will achieve a better result, the remainder of the creditors will be worse off. Such a result conflicts directly with the goal of the Code: to achieve equal distribution amongst similar situated creditors.

The incentive to reorganize would be eliminated by extending section 523(a)'s exceptions to discharge to corporate debtors under section 1192. Overall, reorganization is a valuable tool to help debtors from going into liquidation and promoting economic value. *See Bildisco*, 465 U.S. at 528. In addition, the SBRA was passed with similar goals in mind, providing new legislation to increase the odds of small businesses reorganizing successfully instead of liquidating. *See* H.R. Rep. No. 116-171. The Debtor in this case is a prime candidate for reorganization, not liquidation. The Plan would ensure that jobs are not lost and that a community would not lose another economic resource. Further, the Plan provides for greater distribution than if the Debtor was forced to liquidate. R. 10. However, if the Court were to apply the exceptions to discharge in section 523(a) to the Debtor, all the benefits of the reorganization would be gone. In the present case, if the claims are now excepted from discharge, the Plan may not be confirmable, and the Debtor would be forced into liquidation. *Id*. at 22-23. Again, liquidation in this case would leave all parties worse off – the creditors receiving less than they would under the Plan and the debtor unable to obtain a fresh start and continue to provide economic value to the community. R. 10. In the wider context, such a decision by this Court could permanently negate the appeal of both chapter 11 and subchapter V. Debtors similar to the Respondent, who provide economic value to the community, seek to reorganize in order to continue to provide that economic value, and would provide more value to creditors in a reorganization than in liquidation, would now be disincentivized to reorganize. Such a debtor no longer will seek to reorganize, instead favoring the relatively quicker and cheaper option of liquidation. Instead of using chapter 11 as a tool to promote economic value, debtors will now have the lingering cloud of non-dischargeable debts that follow them even once a plan is confirmed. Therefore, sound policy rationale and the purpose of the Code both strongly favor a ruling that the exceptions to discharge in section 523(a) should not apply to corporations using section 1192.

The plain text of section 1192 and section 523(a), using both the defined terms within the Code and the plain and ordinary meaning of undefined terms, correctly reads that corporations subject to section 1192(2) are not subject to the exceptions to discharge in section 523(a). The rule against superfluity supports the same conclusion, as an interpretation otherwise would render section 523(a)'s amendment to section 1192 superfluous. In the event this Court still finds the text ambiguous, the legislative history of the SBRA and history of Congress providing exceptions to corporate discharge give clarity that corporations subject 1192(2) were not intended to be subject to the exceptions to discharge in section 523(a). The presence of section 1192 within chapter 11 allows for a different meaning than similar language in chapter 12 due to the differing purposes and application of the chapters. The goals of bankruptcy, specifically providing a fresh start to debtors, treating similarly situated creditors the same, and encouraging successful reorganizations worth be subverted unless this Court holds corporations subject to section 1192(2) are not subject to the exceptions to discharge in section 523(a).

CONCLUSION

The Code and this Court have provided bankruptcy courts the ability to approve plans that can leave the debtor and creditor in a better position. Affirming the Thirteenth Circuit ensures that these types of plans are achievable, while ensuring that debtors do not remain subject to lingering clouds of litigation and claims after bankruptcy. For the foregoing reasons, we ask that the Court AFFIRM.

APPENDIX

§ 105. Power of court

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

(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and

(2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, may issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that--

(A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or

(B) in a case under chapter 11 of this title--

(i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;

(ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;

(iii) sets the date by which a party in interest other than a debtor may file a plan;

(iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;

(v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or

(vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

§ 1123. Contents of plan

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

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

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

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

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

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

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

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

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

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

(E) satisfaction or modification of any lien;

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

(G) curing or waiving of any default;

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

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

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

(6) provide for the inclusion in the charter of the debtor, if the debtor is a corporation, or of any corporation referred to in paragraph (5)(B) or (5)(C) of this subsection, of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends;

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

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

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

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

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

(3) provide for--

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

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

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

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

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

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

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

§ 1192 - Discharge

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

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

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