No. 23-124

In the Supreme Court of the United States

WILLIAM K. HARRINGTON, UNITED STATES TRUSTEE, REGION 2, PETITIONER

v.

PURDUE PHARMA L.P., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE PETITIONER

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
CURTIS E. GANNON
Deputy Solicitor General
MASHA G. HANSFORD
Assistant to the Solicitor General
MICHAEL S. RAAB
MICHAEL SHIH
SEAN R. JANDA
LAWRENCE H. FOGELMAN
PETER ARONOFF
BENJAMIN H. TORRANCE
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

RAMONA D. ELLIOTT
Deputy Director/
General Counsel
NAN ROBERTS EITEL
P. MATTHEW SUTKO
Associate General Counsels
BETH A. LEVENE
SUMI K. SAKATA
Trial Attorneys
Executive Office for United States Trustees
Washington, D.C. 20530

QUESTION PRESENTED

Whether the Bankruptcy Code authorizes a court to approve, as part of a plan of reorganization under Chapter 11 of the Bankruptcy Code, a release that extinguishes claims held by nondebtors against nondebtor third parties, without the claimants' consent.

PARTIES TO THE PROCEEDING

Petitioner (appellee in the court of appeals) is William K. Harrington, United States Trustee, Region 2.

Respondents (appellants and cross-appellees below) are Purdue Pharma L.P.; Purdue Pharma Inc.; Purdue Transdermal Technologies L.P.; Purdue Pharma Manufacturing L.P.; Purdue Pharmaceuticals L.P.; Imbrium Therapeutics L.P.; Adlon Therapeutics L.P.; Greenfield BioVentures L.P.; Seven Seas Hill Corp.; Ophir Green Corp.; Purdue Pharma of Puerto Rico; Avrio Health L.P.; Purdue Pharmaceutical Products L.P.; Purdue Neuroscience Company; Nayatt Cove Lifescience Inc.; Button Land L.P.; Rhodes Associates L.P.; Paul Land Inc.; Quidnick Land L.P.; Rhodes Pharmaceuticals L.P.; Rhodes Technologies; UDF LP; SVC Pharma LP; SVC Pharma Inc.; the Official Committee of Unsecured Creditors of Purdue Pharma L.P., et al.; the Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants; the Raymond Sackler Family; the Ad Hoc Group of Individual Victims of Purdue Pharma L.P.; the Multi-State Governmental Entities Group; and the Mortimer-Side Initial Covered Sackler Persons.

Respondents (appellees and cross-appellants below) also include the City of Grande Prairie, as representative plaintiff for a class consisting of all Canadian municipalities, the Cities of Brantford, Grand Prairie, Lethbridge, and Wetaskiwin; the Peter Ballantyne Cree Nation, on behalf of all Canadian First Nations and Metis People; the Peter Ballantyne Cree Nation, on behalf of itself; and the Lac La Ronge Indian Band.

Respondents (appellees below) further include the States of California, Connecticut, Delaware, Maryland, Oregon, Rhode Island, Vermont, and Washington; the District of Columbia; Ronald Bass; Ellen Isaacs, on be-

half of Patrick Ryan Wroblewski; Maria Ecke, Andrew Ecke, and Richard Ecke.

RELATED PROCEEDINGS

United States Bankruptcy Court (S.D.N.Y.):

In re Purdue Pharma L.P., et al., No. 19-23649 (Sept. 17, 2021) (confirming plan of reorganization)

United States District Court (S.D.N.Y.):

In re Purdue Pharma L.P., et al., No. 21-cv-7532 (Dec. 16, 2021) (vacating confirmation order)

United States Court of Appeals (2d Cir.):

In re Purdue Pharma L.P., et al., No. 22-110 (May 30, 2023) (reversing district court judgment)

In re Purdue Pharma L.P., et al., No. 22-110 (July 24, 2023) (denying petition for rehearing and rehearing en banc)

In re Purdue Pharma L.P., et al., No. 22-110 (July 25, 2023) (denying motion for stay of mandate)

United States Supreme Court:

Harrington v. *Purdue Pharma L.P., et al.*, No. 23A87 (Aug. 10, 2023) (granting certiorari and stay)

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v.

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the court of appeals (J.A. 839-914) is reported at 69 F.4th 45. The order of the court of appeals denying petitioner's motion to stay the mandate (J.A. 917-919) is unreported. The opinion of the district court (J.A. 632-809) is reported at 635 B.R. 26. The opinion of the bankruptcy court (J.A. 297-418) is reported at 633 B.R. 53.

JURISDICTION

The judgment of the court of appeals was entered on May 30, 2023 (J.A. 840). A petition for rehearing was denied on July 24, 2023 (J.A. 915-916). On July 28, 2023, the United States Trustee applied to this Court for a stay of the court of appeals' mandate. On August 10, 2023, the Court treated the application as a petition for a writ of certiorari, granted the stay, and granted the

petition (J.A. 920). The Court's jurisdiction rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced at App., *infra*, 1a-30a.

STATEMENT

This case concerns the reorganization in bankruptcy of respondent Purdue Pharma L.P. and its affiliates, stemming from their role in fueling the opioid epidemic that has ravaged families and communities throughout the Nation. In approving Purdue's reorganization plan, the court of appeals relied on residual provisions of the Bankruptcy Code, 11 U.S.C. 101 *et seq.*, to validate a sweeping nonconsensual release of nondebtors' claims against other nondebtors—the Sacklers and a host of associated individuals and entities. That release extends to claims based on fraud and other willful misconduct that could not have been discharged even if the Sacklers themselves had submitted to bankruptcy and thereby surrendered their assets for distribution to their creditors. The plan instead permits the Sacklers, who would otherwise face claims alleging damages in the trillions, to obtain full repose while keeping billions of dollars that they siphoned from Purdue in the years before these Chapter 11 proceedings.

1. Petitioner is the United States Trustee who oversees bankruptcy cases in the judicial districts for the States of Connecticut, New York, and Vermont. 28 U.S.C. 581(a)(2). He is a Department of Justice official, appointed by the Attorney General, *ibid.*, whose role includes "serv[ing] as [a] bankruptcy watch-dog[] to prevent fraud, dishonesty, and overreaching in the bankruptcy arena." H.R. Rep. No. 595, 95th Cong., 1st Sess. 88 (1977). By statute, although he "may not file a plan"

of reorganization under Chapter 11 of the Bankruptcy Code, "[t]he United States Trustee may raise and may appear and be heard on any issue in any case or proceeding under [the Code]." 11 U.S.C. 307.

2. Between 1999 and 2019, nearly 247,000 people in the United States died from prescription-opioid overdoses. J.A. 653. Purdue manufactured, sold, and distributed OxyContin and other medications that contributed to the opioid epidemic. See J.A. 845-846. Until 2018, Purdue was controlled by members of the Raymond and Mortimer Sackler families. J.A. 845. In addition to owning the company, members of those families had "held various director and officer positions throughout the company," including co-CEO, President, and at least six seats on the Board of Directors. *Ibid.* Under the Sacklers' leadership, Purdue aggressively marketed OxyContin to doctors and pain patients while downplaying concerns about the risks of addiction. J.A. 846.

The opioid epidemic spawned extensive litigation against Purdue and the Sacklers. As early as 2007, members of the Sackler families "anticipated that the effects of litigation against Purdue would eventually impact them directly." J.A. 847. Apparently to mitigate that threat, the Sacklers began to take money out of Purdue, in what one family member characterized "as a 'milking' program." J.A. 681 (citation omitted). Between 2008 and 2016, "Purdue distributed a significant proportion of the company's revenue—an approximated $11 billion in total—to Sackler family trusts and holding companies." J.A. 847-848. Those distributions represented a dramatic increase from previous distribution patterns and left Purdue in "a significantly weakened financial position." J.A. 848. The Sacklers arranged to

place many of those assets into "purportedly spendthrift trusts," including in offshore locations like the Bailiwick of Jersey, in an effort to "insulate" them from creditors in the United States. J.A. 711-712.

3. a. In 2019, Purdue and affiliated companies (collectively, "debtors") filed a Chapter 11 bankruptcy petition. The Sacklers did not seek bankruptcy relief. Shortly after debtors' bankruptcy filing, the bankruptcy court enjoined all litigation against debtors, the Sacklers, and other nondebtors associated with the Sacklers. At that time, "almost 3,000 actions against [debtors] and over 400 actions against the Sacklers concerning liability for OxyContin" had been filed. J.A. 849. The "claims against the Debtors and Sacklers were estimated at more than $40 trillion." J.A. 849-850. The state-law claims against the Sacklers "include[d], but [were] not limited to, product liability, wrongful death, negligence, * * * negligent misrepresentation, negligence *per se*[,] * * * gross negligence, fraud, fraudulent concealment, deceit and other willful misconduct, unjust enrichment, public nuisance, and claims under state consumer protection and controlled substances laws." C.A. J.A. 1862; see J.A. 664-675. In some of the cases, state courts had already denied the Sacklers' motions to dismiss the claims against them. See J.A. 669.

Instead of entering bankruptcy themselves, the Sacklers negotiated a separate settlement with debtors and a subset of claimants, which debtors implemented in their proposed plan of reorganization. J.A. 849-851. Under the plan, Purdue would become a public-benefit company dedicated to opioid abatement. The bankruptcy estate's remaining funds would be used to pay administrative expenses before being distributed to various creditor trusts, with the bulk of the distribu-

tions going to abatement. An opioid victim—even one who suffered catastrophic injuries or loss of loved ones—might receive a gross amount between $3500 and $48,000, minus yet-to-be-calculated deductions and holdbacks, including payments for attorneys' fees and expenses, for the operation of a personal-injury trust, for an ad hoc group of individual victims, and for committees representing personal-injury claimants. See J.A. 558-559, 575; C.A. J.A. 1695. To obtain payment, personal-injury claimants are required to submit records establishing the use of Purdue-branded opioids, even though many were never prescribed opioids and older medical records may be unavailable. See J.A. 564-573; see also Jonathan Lipson, *Purdue Pharma Victims Are Getting Caught in Bureaucracy of Harm*, U.S.L.W. (updated Aug. 14, 2023), https://news.bloomberglaw.com/us-law-week/purdue-pharma-victims-are-getting-caught-in-bureaucracy-of-harm. Payments to victims receiving more than the minimum amount will be spread over a period of up to ten years. See C.A. J.A. 1805, 1812; see also J.A. 574.

The bankruptcy estate lacks sufficient assets to fund the plan, in part because the Sacklers "drained Purdue's total assets by 75%," reducing its "'solvency cushion' by 82%." J.A. 848 (citation omitted). Before the bankruptcy court, the Sacklers—who were then worth approximately $11 billion, J.A. 895—agreed to fund the plan by contributing $4.325 billion through payments spread over nearly a decade. J.A. 851. In exchange, the plan includes a series of provisions (referred to in this brief as the "Sackler release"), which would extinguish virtually all Purdue-related opioid claims against the Sacklers and associated nondebtors without the consent of all affected claimants. J.A. 852-853.

Only those claimants who had previously filed proofs of claim against debtors were entitled to vote on the plan confirmation. See Fed. R. Bankr. P. 3003(c)(2). Hundreds of thousands of those claimants did not vote; fewer than 20% of 618,194 claimants entitled to vote—and fewer than 50% of the subset of claimants with personal-injury claims—ended up voting on the plan. C.A. J.A. 6253, 6258. The vast majority of the creditors who voted accepted the plan; but several States opposed confirmation, as did more than 2600 personal-injury claimants. See J.A. 635; C.A. J.A. 6258, 6260.

The U.S. Trustee, eight States, the District of Columbia, a group of Canadian creditors, and some individual claimants specifically objected to confirmation of a plan that included the Sackler release. See J.A. 635-636; see also, *e.g.*, Bankr. Ct. Doc. 3275, at 9 (July 19, 2021); D. Ct. Doc. 94, at 21-22 (Oct. 25, 2021).

b. The bankruptcy court rejected those objections and confirmed the plan. See J.A. 297-418, 419-555. The version of the Sackler release approved by the bankruptcy court provides that any current or future holder of a claim against the released parties "permanently release[s]" Purdue-related civil causes of action about opioids. J.A. 274. The release "permanently and forever stay[s], restrain[s] and enjoin[s]" all the current and future claimants "from taking any action" to "receiv[e] payments * * * or judgment of any form" J.A. 279. The released parties include hundreds and potentially thousands of nondebtors—including many members of the Sackler families, such as "[t]he spouses, children, and grandchildren" of several listed individuals, and their "predecessors, successors, permitted assigns, subsidiaries (other than the Debtors), controlled affiliates, spouses, heirs, executors, [and] estates and nominees."

J.A. 117, 217. The release covers any civil claim "of any kind, character, or nature whatsoever," expressly including claims for "fraud" and "willful misconduct," so long as a debtor's or the estate's conduct is the "legal cause" of the claim "or is otherwise a legally relevant factor." J.A. 193, 275. With the exception of the United States, the release governs everyone who holds a Purdue-related opioid claim against any of the released nondebtors. J.A. 215, 287-295. The release does not require affirmative consent through an opt-in requirement, and it applies even to claimants who expressly objected to it. See J.A. 274-276.

4. The district court vacated the confirmation order containing the release, concluding that the Bankruptcy Code does not authorize courts to extinguish, without consent, direct claims held by nondebtors against other nondebtors. See J.A. 632-809. The court deemed unpersuasive plan proponents' reliance on general Code provisions recognizing bankruptcy courts' residual equitable authority over bankruptcy proceedings. See J.A. 783-788 (citing 11 U.S.C. 105(a) and 1123(b)(6)). This Court's decisions, the district court explained, have repeatedly rejected arguments based on "'a general, equitable power'" seeking "to award relief that varies or exceeds the protections contained in the Bankruptcy Code." J.A. 759-760 (quoting *Law* v. *Siegel*, 571 U.S. 415, 425 (2014)).

5. Debtors and several plan proponents appealed.

a. While the appeals were pending before the court of appeals, the eight objecting States and the District of Columbia reached an additional deal with debtors and the Sacklers. J.A. 865-866. Under that deal, the Sacklers increased their proposed contribution to the bankruptcy estate, agreeing to pay a further $1.175 billion in

guaranteed payments and up to $500 million in contingent payments. J.A. 811-815. The States and the District of Columbia agreed to advise the court of appeals of their "non-opposition to the Appeal," and they further promised that if the court of appeals ruled in debtors' favor but this Court later granted certiorari they would not "file a party brief at the merits stage in [this] Court." J.A. 823-824.

b. A divided panel of the court of appeals reversed the district court's order. J.A. 839-914. At the threshold, the majority held that the bankruptcy court had subject-matter jurisdiction over third-party direct claims against nondebtors because it was "likely" "that the resolution of the released claims would directly impact the *res*." J.A. 874. The majority pointed to the similarity between some of the third parties' and the estate's claims against the Sacklers, and also to the possibility that some of the released parties could seek indemnification from the debtors based on the released claims. J.A. 874-875. The court further held that the claims encompassed by a third-party release are non-core under *Stern* v. *Marshall*, 564 U.S. 462, 471 (2011), meaning that the district court, rather than the bankruptcy court, would need to exercise de novo review before approving their release. J.A. 867-868.

On the merits, the court of appeals majority held that two provisions of the Bankruptcy Code, read together, authorize courts sitting in bankruptcy to approve nonconsensual third-party releases. J.A. 876-880. The first provision states that "[t]he [bankruptcy] court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Code. 11 U.S.C. 105(a). The second provision states that "a plan may[] * * * include any other appropriate provi-

sion not inconsistent with the applicable provisions of" the Code. 11 U.S.C. 1123(b)(6).

The majority acknowledged that Section 105(a) does not confer independent authority on bankruptcy courts; an invocation of Section 105(a) must instead be "tied to another Bankruptcy Code section," J.A. 877 (citation omitted). But the majority interpreted Section 1123(b)(6) to permit a court sitting in bankruptcy to take any action not "expressly forbid[den]" by the Code. J.A. 878. The majority concluded that, because the Code does not expressly prohibit the approval of nonconsensual third-party releases in bankruptcy, such releases are authorized.

As to the government's constitutional arguments, the court of appeals majority acknowledged that the extinguished claims were a species of property interest. J.A. 897. But it held that affected claimants had been afforded constitutionally sufficient notice. J.A. 897-898. The majority also held that the bankruptcy court did not violate due process by terminating nondebtors' opioid claims against other nondebtors without an ability to opt out. J.A. 898-899.

The court of appeals majority then adopted a novel seven-factor balancing test to govern approval of third-party releases. Those factors are whether (1) there is an identity of interests between debtors and released parties; (2) the released claims are factually and legally intertwined with claims against the debtor; (3) the breadth of the release is necessary to the plan; (4) the release is essential to the reorganization; (5) the released nondebtors contributed substantial assets to the reorganization; (6) the affected claimants expressed overwhelming support for the plan; and (7) the plan provides for the fair payment of enjoined claims. J.A. 887-

889. After concluding that the Sackler release satisfies that test, the majority affirmed "the bankruptcy court's approval of the Plan" and remanded the case to district court for further proceedings. J.A. 902.

c. Judge Wesley concurred in the judgment, "reluctantly" agreeing that, under "binding" Second Circuit precedent, a bankruptcy court has authority to approve nonconsensual third-party releases. J.A. 903. But he expressed considerable skepticism of the reasoning in those earlier cases, which he viewed as being "without any basis in the Code." J.A. 904.

Judge Wesley took the view that the majority erred by inferring "a power that is nothing short of extraordinary" from what is "effectively" "silence" in 11 U.S.C. 1123(b)(6). J.A. 910. The "residual equitable authority" granted by that provision, he explained, is authority "'to modify *creditor-debtor relationships*.'" J.A. 911 (quoting *United States* v. *Energy Resources Co.*, 495 U.S. 545, 549 (1990)). He further reasoned that such equitable authority incorporates "'traditional standards in equity practice,'" and that "the involuntary release of direct claims against nondebtors is 'an extraordinary thing'" that is unlike "anything traditionally recognized at equity." J.A. 912-913 (citations omitted).

d. The government filed a motion to stay the court of appeals' mandate. The court denied a stay and denied a petition for rehearing filed by a creditor. J.A. 915-919. This Court then granted a stay and, treating the government's stay application as a petition for a writ of certiorari, granted certiorari. J.A. 920.

SUMMARY OF ARGUMENT

I. At the stay stage before this Court, some respondents challenged the U.S. Trustee's standing to seek vacatur of the confirmation order. The Court need not

consider the U.S. Trustee's standing because at least one other party with standing is seeking the same relief as the U.S. Trustee as a respondent in support of petitioner. But if the Court wishes to address the question, the U.S. Trustee plainly has both statutory and Article III standing to pursue this appeal. As six courts of appeals have held, the U.S. Trustee's statutory authority to "raise" and "be heard" on any issue, 11 U.S.C. 307, gives him the right to appeal. And this Court's cases establish that Congress may confer standing upon the United States—acting, as here, through a federal officer—to pursue the United States' sovereign interests in vindicating federal law.

II. A. On the merits, the Sackler release, which extinguishes nondebtors' claims against other nondebtors without the claimants' consent, is not authorized by the Bankruptcy Code.

1. The Code grants courts unusual powers to modify relations between debtors and their creditors; those powers are specifically authorized by the Constitution for addressing a debtor's true financial distress. A debtor undergoing bankruptcy must shoulder a host of obligations and must generally apply all its assets to the satisfaction of its creditors' claims. In exchange, the debtor may receive a discharge of its debts, except for those that Congress has deemed nondischargeable, such as an individual's debts for money obtained by fraud. But the Code grants the benefits of a discharge only to the debtor who went through bankruptcy. With the exception of a narrow provision involving asbestos liability that is undisputedly inapplicable here, the Code provides no express authority to release nondebtors from personal liability to other nondebtors.

2. In the absence of an express authorization, plan proponents have relied on catchall provisions preserving the bankruptcy court's residual equitable authority, 11 U.S.C. 105(a) and 1123(b)(6). But there is no basis to infer a vast power, greater in many ways than the powers specifically authorized by the Code, from those residual provisions. Doing so violates two basic principles of statutory interpretation. First, plan proponents read a general authorization to approve "appropriate provision[s]," 11 U.S.C. 1123(b)(6), to swallow the Code's "more limited, specific authorization[s]." *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 566 U.S. 639, 645 (2012). Second, plan proponents treat a catchall provision as granting a power of a fundamentally different character from the preceding, enumerated examples of what is authorized.

3. Those problems only multiply when considering the broader statutory context. The Sackler release conflicts with several other express limitations on courts' authority under the Code. It grants the functional equivalent of a discharge to a nondebtor, despite the Code's clear provisions limiting a discharge to the debtor, who undertook the many duties and obligations imposed by the Code to obtain a fresh start. It also provides full repose to the Sacklers without requiring them to commit substantially all their assets to compensating their creditors; in that way, it allows the Sacklers to shield billions of dollars of their fortune while extinguishing, without payment, claims alleging trillions of dollars in damages. Equally troubling, it releases the Sacklers from claims based on fraud and other forms of willful misconduct that could not be discharged if the Sacklers themselves had filed for bankruptcy. And, while the plan appropriately preserves the jury trial

right for claims against the debtor, the release extinguishes claimants' jury rights against the Sacklers. A long line of this Court's cases has rejected similar efforts to read general grants of authority to reach outcomes incompatible with the structure and purposes of the Code.

The history of bankruptcy law further confirms the lack of authority for the release because this Court specifically held under the Bankruptcy Act of 1898 that courts lack power to enjoin nondebtors from pursuing state-law claims against other nondebtors.

4. Congress's narrow allowance for asbestos trusts in 11 U.S.C. 524(g)—which is the only provision of the Code specifically authorizing an injunction of claims between nondebtors—also illustrates the impermissible breadth of the release approved by the court of appeals. Unlike the Sackler release, Section 524(g) provides substantive protection for the value of released claims as well as procedural protections.

B. The court of appeals based its decision approving the release on Section 105(a) and Section 1123(b)(6), but it did not engage in a textual analysis, resting almost exclusively on this Court's prior characterization of Section 1123(b)(6) as codifying a residual authority to modify creditor-debtor relationships. The residual authority to modify *creditor-debtor relationships*, however, provides no license to transform the relations *between nondebtors*.

The court of appeals also disregarded the limits on equity courts' traditional authority, which did not include the power to enjoin nonparties or "to craft a 'nuclear weapon' of the law." *Grupo Mexicano de Desarrollo S.A.* v. *Alliance Bond Fund, Inc.*, 527 U.S. 308, 332 (1999).

C. At a minimum, the court of appeals' interpretation raises serious constitutional questions. The release allows federal courts to wield great power over state-law causes of action, a form of private property, and it extinguishes nonparties' causes of action, with res judicata effect, without providing the claimants an opportunity to affirmatively consent or even to opt out. In each of those ways, the legality of the release, if statutorily authorized, would raise difficult and sensitive constitutional questions. Neither Section 105(a) nor Section 1123(b)(6) contains the exceedingly clear language necessary to overcome the canon of constitutional avoidance.

D. Finally, plan proponents have made various policy arguments in support of the release. Appeals to policy cannot replace statutory authorization. Moreover, the public interest strongly supports holding third-party releases unlawful. Nonconsensual releases enable tortfeasors to obtain legal immunity from the claims of their victims without taking on the obligations required by the Code. And they deprive tort victims of their day in court without consent. Nor is forcing claimants to release claims in conjunction with a bankruptcy proceeding the only way to resolve sprawling tort liability. As recent examples illustrate, mass-tort cases can be resolved within the tort system or by providing compensation to claimants to obtain their consensual release.

ARGUMENT

I. THE U.S. TRUSTEE HAS STANDING

At the stay stage before this Court, two filings contended—for the first time in these proceedings—that the U.S. Trustee lacks standing to contest the court of appeals' order approving the reorganization plan.

See Debtors Stay Opp. 32-37; Official Committee of Unsecured Creditors (UCC) Stay Opp. 20-22. That contention lacks merit.

A. As an initial matter, those respondents' standing objections rest on the since-disproved assumption that the U.S. Trustee is the only party still seeking vacatur of the confirmation order. See Debtors Stay Opp. 36. The Canadian creditors have indicated that they intend to "file a brief on the merits as a respondent in support of the petitioner." Canadian Creditors Stay Resp. 4. And the Canadian creditors will seek the same relief as the U.S. Trustee: vacatur of the confirmation order. See *id.* at 3-4. Those creditors, who object to the reorganization plan's nonconsensual extinguishment of their right to bring claims against the Sacklers, see *id.* at 6-7, have standing to proceed. The existence of one litigant with standing to seek a particular form of relief satisfies Article III. See *Biden* v. *Nebraska*, 143 S. Ct. 2355, 2365 (2023). Thus, the Court need not address the U.S. Trustee's own standing.

B. 1. In any event, the U.S. Trustee plainly has standing to seek this Court's review of the lawfulness of the Sackler release. Debtors previously asserted that the U.S. Trustee lacks statutory "standing to appeal." Debtors Stay Opp. 4. That assertion, which debtors did not raise before the lower courts, is forfeited. It is also erroneous. Section 307 of the Bankruptcy Code specifically provides that "[t]he United States trustee may raise and may appear and be heard on any issue in any case or proceeding under [the Code] but may not file a [Chapter 11] plan." 11 U.S.C. 307. U.S. Trustees—who are part of the Department of Justice—frequently appear in bankruptcy proceedings to litigate the legal viability of Chapter 11 reorganization plans. See U.S.

Dep't of Justice, *U.S. Trustee Program Annual Report Fiscal Year 2021*, at 13, Fig. 3 (2022), www.justice.gov/ust/page/file/1535521/download (showing U.S. Trustees sought relief in Chapter 11 plan confirmation proceedings 395 times in Fiscal Year 2021). And U.S. Trustees appeal orders in Chapter 11 cases, including as the sole appellant. See, *e.g.*, *In re FTX Trading Ltd.*, No. 23-2297 (3d Cir. appeal docketed July 19, 2023) (pending); *Garvin* v. *Cook Invs. NW, SPNWY, LLC*, 922 F.3d 1031, 1033-1035 (9th Cir. 2019); *In re Diamond Offshore Drilling, Inc.*, No. 21-cv-1380 (S.D. Tex. Sept. 3, 2021), slip op. 1.

As a matter of plain text, the U.S. Trustee's Section 307 authority to "raise" and "be heard" on any issue includes the right to appeal. See *Black's Law Dictionary* 1318, 1510 (11th ed. 2019) (defining "raise" as "[t]o bring up for discussion or consideration" and "opportunity to be heard" as including "[t]he chance to appear in a court or other tribunal and present evidence and argument"). Tellingly, when Congress wished to grant a right to raise issues in a bankruptcy proceeding, but not to appeal, it specifically drew that line. For instance, the Securities and Exchange Commission (SEC) "may raise and may appear and be heard on any issue" in a case under the Code, "but [it] may not appeal from any judgment, order, or decree entered in the case." 11 U.S.C. 1109(a); see, *e.g.*, 11 U.S.C. 1164 (providing that certain other entities may "raise" and "appear" and "be heard," "but may not appeal"). Section 307 contains no appeal exclusion for the U.S. Trustee.

It is thus well established that a U.S. Trustee's statutory authority to be heard on "'any issue' includes the right to appeal and the right to object to confirmation of the debtor's plan." 2 *Collier on Bankruptcy* ¶ 307.02,

at 307-3 (Richard Levin & Henry J. Sommer eds., 16th ed. Sept. 2020) (*Collier*) (footnote omitted). As the Sixth Circuit explained, a U.S. Trustee had "standing to appeal" a bankruptcy-court decision that "had not affected his pecuniary interest" because Congress made him "responsible for 'protecting the public interest and ensuring that bankruptcy cases are conducted according to law.'" *In re Revco D.S., Inc.*, 898 F.2d 498, 499-500 (1990) (citation omitted). And every other court of appeals to consider the question has likewise held that Section 307 grants U.S. Trustees standing to appeal regardless of the government's financial interest. See, *e.g.*, *In re Zarnel*, 619 F.3d 156, 162 (2d Cir. 2010); *In re Donovan Corp.*, 215 F.3d 929, 930 (9th Cir. 2000); *In re Columbia Gas Sys. Inc.*, 33 F.3d 294, 299 (3d Cir. 1994); *In re Clark*, 927 F.2d 793, 796 (4th Cir. 1991); *In re Plaza de Diego Shopping Ctr., Inc.*, 911 F.2d 820, 824 (1st Cir. 1990).

2. Some plan proponents have contended that Article III may invalidate Congress's grant of statutory authority to the U.S. Trustee, pointing to decisions about the limits on Congress's authority to create statutory standing for private persons who have no concrete harm apart from a desire for proper application of the law. Debtors Stay Opp. 34-35; UCC Stay Opp. 21-22. But a statute authorizing suit by the United States is fundamentally different. As a matter of "history and tradition" informing "the types of cases that Article III empowers federal courts to consider," *TransUnion LLC* v. *Ramirez*, 141 S. Ct. 2190, 2204 (2021) (citation omitted), the United States has a long-recognized right to sue in appropriate circumstances to prevent injury to the general welfare. "No one doubts" that a sovereign "has a cognizable interest in the continued enforceability of its

laws that is harmed by a judicial decision" precluding their enforcement. *Hollingsworth* v. *Perry*, 570 U.S. 693, 709-710 (2013) (citation and internal quotation marks omitted); see, *e.g.*, *United States* v. *Jicarilla Apache Nation*, 564 U.S. 162, 165 (2011) (recognizing the federal government's "sovereign interest in the execution of federal law").

The United States regularly participates as a party in an array of cases—most obviously criminal prosecutions, but also civil cases—to vindicate its sovereign interest in the enforcement of federal law, even in the absence of any pecuniary interest. There is a long tradition of such participation even when—unlike here—there is no express statutory authorization. For instance, this Court considered the SEC's standing to appeal in a case where the SEC alone petitioned for certiorari to enforce its interest in the proper application of a pre-Code bankruptcy law. *SEC* v. *United States Realty & Improvement Co.*, 310 U.S. 434, 458-460 (1940). The Court held that, notwithstanding the SEC's lack of a "personal, financial or pecuniary interest," it had standing to intervene in the case and to appeal to vindicate "the public interests which the Commission was designated to represent." *Id.* at 459-460; see *id.* at 460 (citing cases); see also, *e.g.*, *FTC* v. *Dean Foods Co.*, 384 U.S. 597, 605 (1966) (holding that the court of appeals had jurisdiction over the FTC's request for an injunction to protect its ability to block a merger if it later determined the merger would violate federal law).

Nor does this case present any risk—as when Congress authorizes an unharmed private party to sue—of "infring[ing] on the Executive Branch's Article II authority." *TransUnion*, 141 S. Ct. at 2207. To the contrary, in challenging the lawfulness of the Sackler re-

lease under the Bankruptcy Code, the U.S. Trustee, who is subject to removal by the Attorney General, 28 U.S.C. 581(c), is permissibly exercising the Executive's authority.

As a result, this Court's cases already "establish" that Congress may "confer[] standing upon" the United States, acting through a federal officer or agency, to "pursue the public's interest" "without infringing Article III of the Constitution." *Director* v. *Newport News Shipbuilding & Dry Dock Co.*, 514 U.S. 122, 132-133 (1995). That is what Congress did when it enacted Section 307. As a result, the U.S. Trustee has both statutory and Article III standing to challenge the lawfulness of the Sackler release.

II. THE BANKRUPTCY CODE DOES NOT AUTHORIZE NONCONSENSUAL THIRD-PARTY RELEASES

A. The Statutory Text, Context, Purposes, And History Establish That Nonconsensual Third-Party Releases Are Not Authorized

The traditional tools of statutory interpretation establish that the nonconsensual release of nondebtors' opioid-related claims against other nondebtors cannot be reconciled with the Bankruptcy Code.

1. Bankruptcy law generally addresses the relations between debtors and their creditors, not between nondebtors

"Congress' power under the [Constitution's] Bankruptcy Clause contemplates an adjustment of a failing debtor's obligations" and the distribution of "the property of the debtor among his creditors." *Railway Labor Execs.' Ass'n* v. *Gibbons*, 455 U.S. 457, 466 (1982) (brackets, citations, and internal quotation marks omitted). Thus, this Court has explained that bankruptcy is

the "subject of the relations between a[] * * * debtor and his creditors, extending to his and their relief." *Wright* v. *Union Cent. Life Ins. Co.*, 304 U.S. 502, 513-514 (1938) (citation omitted). The Bankruptcy Code's intricate provisions are intended to give the honest but unfortunate debtor a "fresh start" while ensuring the maximum possible "equitable distribution" to creditors by exercising "jurisdiction over all of the debtor's property." *Central Va. Community College* v. *Katz*, 546 U.S. 356, 363-364 (2006); see *Stellwagen* v. *Clum*, 245 U.S. 605, 617 (1918).

The Code therefore establishes a basic *quid pro quo*. A debtor seeking bankruptcy relief must shoulder a host of obligations. Those include the debtor's obligation to disclose all its creditors, its assets and liabilities, its current income and expenditures, and matters relating to its financial affairs. 11 U.S.C. 521(a). Absent the consent of individual creditors, 11 U.S.C. 1129(a)(7), a Chapter 11 debtor must then apply all its assets (with certain narrow exemptions for individual debtors, see 11 U.S.C. 522) to the satisfaction of its creditors' claims. In exchange, the debtor may receive a discharge of its debts, except for those that Congress deemed nondischargeable as a matter of public policy, such as an individual debtor's debts "for money * * * to the extent obtained by[] * * * fraud." 11 U.S.C. 523(a)(2)(A); see 11 U.S.C. 1141(d).

Consistent with that framework, the Code grants the benefit of a discharge only to a debtor who has assumed bankruptcy's burdens. The Code "releases *a debtor* from personal liability with respect to any discharged debt by voiding any past or future judgments on the debt and by operating as an injunction to prohibit creditors from attempting to collect or to recover the debt."

Tennessee Student Assistance Corp. v. *Hood*, 541 U.S. 440, 447 (2004) (emphasis added). The discharge that a debtor can obtain is powerful: It "voids any judgment * * * , to the extent that such judgment is a determination *of the personal liability of the debtor*" with respect to a discharged debt; "operates as an injunction against" any action "to collect, recover or offset any such debt *as a personal liability of the debtor*"; and, with certain exceptions, "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, [certain] property *of the debtor* * * * acquired after the commencement of the case." 11 U.S.C. 524(a) (emphases added).

Critically, with the exception of a single, narrow provision addressing liability related to asbestos exposure, 11 U.S.C. 524(g)—which is undisputedly inapplicable here—the Code provides no express authority to release nondebtors from personal liability to other nondebtors. Such authorization would extend the benefits of a fresh start without requiring those nondebtors to file for bankruptcy and undertake the various obligations applicable to debtors.

2. *The residual equitable powers in Sections 105(a) and 1123(b)(6) do not include the power to authorize nonconsensual third-party releases*

No provision in the Code specifically authorizes a release of non-asbestos claims against a nondebtor. But rather than rely on an authorization that speaks directly to the issue, plan proponents and the court of appeals claim to find that vast power—one that, in many respects, dwarfs the powers specifically given to courts under the Code—in 11 U.S.C. 105(a) and 1123(b)(6), provisions that preserve bankruptcy courts' residual

equitable authority. Neither of those provisions authorizes a release like the one approved for the Sacklers.

a. Section 105(a) provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]," and then explains that a reference to "the raising of an issue by a party in interest" does not "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. 105(a). As the court of appeals itself recognized, "§ 105(a) alone cannot justify the imposition of third-party releases" unless "at least one other provision of the Bankruptcy Code * * * provide[s] the requisite statutory authority." J.A. 877; see *Collier* ¶ 105.01[1], at 105-6 (Apr. 2019) ("[The statutory text] suggests that an exercise of section 105 power be tied to another Bankruptcy Code section and not merely to a general bankruptcy concept or objective.").

b. Section 1123(b)(6), however, does not provide the requisite authority. Section 1123 sets out various provisions that a plan "shall" include (Section 1123(a)) as well as provisions that it "may" include (Section 1123(b)). 11 U.S.C. 1123. The latter set includes plan terms that direct "the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor," "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate," or "the sale of all or substantially all of the property of the estate," 11 U.S.C. 1123(b)(2), (3)(A), and (4), as well as terms that "modify the rights" of claimants in their capacity as claimants of the debtor or the estate, 11 U.S.C. 1123(b)(5). Paragraph (6) is a catchall, which states that

"a plan may * * * include any other appropriate provision not inconsistent with the applicable provisions of this title." 11 U.S.C. 1123(b)(6).

The structure of Section 1123 indicates that its final provision does not extend to the resolution of claims between nondebtors. Because the preceding paragraphs specifically address the settlement and adjustment of claims "belonging to the debtor or to the estate," 11 U.S.C. 1123(b)(3)(A), and modification of the rights of those who hold secured or unsecured claims against the debtor, 11 U.S.C. 1123(b)(5), Section 1123(b)(6) cannot be read as granting authority to order the involuntary settlement and adjustment of claims that *nondebtors* have *against third parties*.

This Court addressed a similar question in *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 566 U.S. 639, 643-644 (2012). In that case, a debtor proposed a plan that provided that the debtor's assets would be sold at an auction at which the debtor's main creditor would not be permitted to "credit-bid"—that is, to submit a bid that relied on the amount of the debtor's debt to offset some or all of the purchase price. *Id.* at 641. The relevant provision authorized several alternative ways to proceed, and the debtor contended that the plan was lawful because the provision it invoked "d[id] not expressly foreclose the possibility of a sale without credit-bidding." *Id.* at 644. The Court rejected that argument, explaining that where "a general authorization and a more limited, specific authorization exist side by side," the "well established canon" that "the specific governs the general" prevents "a specific provision" from being "swallowed by the general one." *Id.* at 645.

The same conclusion follows from a distinct principle of statutory interpretation: Section 1123(b)(6) is a

catchall, allowing the inclusion of "any other appropriate provision not inconsistent" with the Code's other limits. 11 U.S.C. 1123(b)(6). And under the familiar rule of *ejusdem generis*, "when a statute sets out a series of specific items ending with a general term, that general term is confined to covering subjects comparable to the specifics it follows." *Hall St. Assocs., L.L.C.* v. *Mattel, Inc.*, 552 U.S. 576, 586 (2008); see, *e.g.*, *Christopher* v. *SmithKline Beecham Corp.*, 567 U.S. 142, 163-164 (2012). The specific items in Section 1123(b) all address provisions for adjusting the relationship between the debtor and its creditors. Indeed, this Court has previously interpreted Section 1123(b)(6)—then located at Section 1123(b)(5)—as embodying the "traditional understanding that bankruptcy courts, as courts of equity, have broad authority to modify *creditor-debtor relationships*." *United States* v. *Energy Resources Co.*, 495 U.S. 545, 549 (1990) (emphasis added). For that reason, the plan proponents and the court of appeals err in reading Section 1123(b)(6) as granting the power to modify relationships *between nondebtors*—a power of a fundamentally different character from that of the preceding, specific examples.

3. Nonconsensual third-party releases conflict with other limits on powers under the Code

The broader statutory context supplies strong additional support for the U.S. Trustee's reading of Sections 105(a) and 1123(b)(6). Even where a general provision might authorize a bankruptcy court's action, the action is "unauthorized if it contravene[s] a specific provision of the Code," *Law* v. *Siegel*, 571 U.S. 415, 422 (2014), and the Sackler release conflicts with several express limitations on courts' powers under the Code.

a. Interpreting Section 1123(b)(6) to authorize third-party releases circumvents the Code's express discharge provisions by granting the functional equivalent of a discharge to nondebtors. The Code repeatedly provides that a discharge of obligations incurred before bankruptcy is available only to the debtor. "The court shall grant *the debtor* a discharge" under certain conditions. 11 U.S.C. 727(a) (emphasis added); see also 11 U.S.C. 727(b) ("a discharge under subsection (a) of this section discharges *the debtor* from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim" meeting certain criteria) (emphasis added). The order confirming a reorganization plan "discharges *the debtor* from any debt" meeting certain criteria, 11 U.S.C. 1141(d)(1)(A) (emphasis added), except that the confirmation "does not discharge *a debtor*" if other circumstances are present, 11 U.S.C. 1141(d)(3) (emphasis added). And a plan "may" provide for "the settlement or adjustment of any claim or interest belonging *to the debtor or to the estate*." 11 U.S.C. 1123(b)(3)(A) (emphasis added). By "explicitly including" such provisions allowing for the discharge of the debtor and adjustment of claims belonging to the estate, "Congress implicitly excluded a general * * * rule" that would conflict with that framework's limitations. *TRW Inc.* v. *Andrews*, 534 U.S. 19, 28 (2001).

Indeed, the Code expressly states that "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). Again, that makes sense: A nondebtor has not assumed the many duties and obligations specified by the Code, so it should not be permitted to reap the Code's rewards.

Here, however, the Sackler release "permanently and forever stay[s], restrain[s] and enjoin[s]" "all persons" "from taking any action" to collect a payment on a covered claim. J.A. 279. In that way, it operates just like a bankruptcy discharge, which serves as an "injunction against * * * an action" to collect a debt. 11 U.S.C. 524(a)(2). Because the Sackler release authorizes the functional equivalent of a discharge for a nondebtor, it is not authorized by the Code.

b. Reading Section 1123(b)(6) as an implicit authorization for third-party releases like the Sackler release would also conflict with the Code's specific limitations on individual bankruptcies.

If the Sacklers themselves had filed for bankruptcy, they would not have been able to shield billions of dollars from their creditors because—absent individual creditor consent, 11 U.S.C. 1129(a)(7)(A)—debtors must devote substantially all assets to the payment of creditors and may be held to account for any fraudulent or constructively fraudulent transfers they may have made. See 11 U.S.C. 522, 541, 548. Yet the Sacklers obtained a release of virtually all Purdue-related opioid causes of action—including claims for fraud—*not* by declaring bankruptcy, but by stripping billions of dollars from Purdue in the years before its bankruptcy and then offering to reinfuse only a portion of their assets into the estate. See Bankr. Ct. Doc. 3469, at 6 (Aug. 6, 2021) (opining that the Sacklers' net worth, estimated at $10.707 billion in 2019 and 2020, was expected to *rise* to $14.574 billion by 2030, even after accounting for proposed plan payments). By permitting the Sacklers, who would otherwise have faced claims asserting trillions of dollars in damages, see J.A. 895, to obtain full repose while keeping billions of dollars that they drained from

Purdue in the years before these Chapter 11 proceedings, the plan violates the basic tradeoff of bankruptcy that, in exchange for a fresh start, a debtor must commit essentially all assets to satisfying claims against it.

The release also violates specific provisions of the Code by providing far broader repose than the Code permits. When debtors filed for bankruptcy, the Sacklers and other released individuals were defendants in hundreds of civil actions alleging causes of action including fraud. None of those individual defendants would have been able to discharge all of those claims had they filed for bankruptcy themselves. See 11 U.S.C. 523(a)(2), (4), and (6) (forbidding the discharge of debts for fraud, breach of fiduciary duty, and willful and malicious injury in individual bankruptcies when creditors have timely objected); *Archer* v. *Warner*, 538 U.S. 314, 321 (2003) ("[The Code] ensure[s] that all debts arising out of fraud are excepted from discharge[] no matter what their form.") (citation and internal quotation marks omitted). But the release extinguishes *all* opioid-related claims against the Sacklers and others where debtors' conduct is a legally relevant factor—expressly including claims arising out of fraud. J.A. 193, 274 (settling "any and all Causes of Action" which include present and future claims based on "fraud" and "willful misconduct"); see J.A. 636, 785, 870-871.

To take another example, Congress has provided that "[the Bankruptcy Code] do[es] not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim." 28 U.S.C. 1411(a). In light of that requirement, the plan here allows claimants with personal-injury or wrongful-death claims *against debtors* to pursue their claims before a jury. See, *e.g.*, J.A.

560, 589-590, 607-608 (allowing personal-injury claimants "to liquidate" their claims "in the tort system rather than pursuant to the [plan's] streamlined procedures"); J.A. 592-603 (setting out procedures for liquidation and pro-rata payment). By contrast, the Sackler release would extinguish claimants' personal-injury and wrongful-death claims against the Sacklers and other nondebtors without preserving their jury rights. See J.A. 279 (prohibiting "all Persons" from taking any action to collect the claim, including commencing "any suit * * * in any forum"). It is illogical to read the Code, which so carefully circumscribes the discharge available to a debtor, as granting authority to release the debts of a nondebtor free of those core limitations.

c. This Court's cases interpreting the Code further confirm that analysis. The Court has emphasized that "more than simple statutory silence" is required to conclude that Congress "intend[s] a major departure" from a "basic underpinning" of bankruptcy law. *Czyzewski* v. *Jevic Holding Corp.*, 580 U.S. 451, 464, 465 (2017). At its foundation, bankruptcy provides for restructuring "the relations between a[] * * * debtor and his creditors," *Wright*, 304 U.S. at 513-514 (citation omitted), rather than a forcible restructuring of relations between nondebtors. Permitting a release that goes far beyond what the Sacklers could obtain as debtors would allow the Code's residual authorization for "appropriate provision[s]," 11 U.S.C. 1123(b)(6), to swallow its "more limited, specific authorization[s]," *RadLAX*, 566 U.S. at 645.

This Court has repeatedly rejected efforts to give general provisions of the Code such sweeping reach, holding instead that a bankruptcy court may not rely on general grants of residual equitable authority to reach

outcomes incompatible with the structure and purposes of the Code. See *Czyzewski*, 580 U.S. at 465; *Law*, 571 U.S. at 423-424; *RadLAX*, 566 U.S. at 645. In *Czyzewski*, a bankruptcy court dismissed a case on the condition that the estate distribute its assets in a manner that prioritized general unsecured creditors over certain mid-priority creditors who would have been entitled to payment first had the bankruptcy court approved a plan of reorganization or liquidation. 580 U.S. at 454-455. The bankruptcy court determined that, "in light of the dire circumstances facing the estate and its creditors," "[a] confirmable Chapter 11 plan" would otherwise be "unattainable." *Id.* at 461 (citation and internal quotation marks omitted). The debtors defended the dismissal order by arguing that the Code gives bankruptcy courts broad authority to condition dismissal orders on particular distribution mechanisms. *Id.* at 466; see 11 U.S.C. 349(b). The debtors further emphasized that the Code "does not explicitly state what priority rules—if any—apply to a distribution" upon dismissal. *Czyzewski*, 580 U.S. at 457.

This Court rejected all of those arguments. The Court acknowledged that, by its terms, the Code's priority system governs Chapter 7 liquidations and Chapter 11 reorganizations rather than structured dismissals. *Czyzewski*, 580 U.S. at 464. But it noted that the priority system "has long been considered fundamental to the Bankruptcy Code's operation." *Id.* at 465. The Court accordingly held that "some affirmative indication of intent" was necessary for a court to conclude that "Congress actually meant to make structured dismissals a backdoor means to achieve the exact kind of nonconsensual priority-violating final distributions" that are not permissible in Chapter 7 liquidations and Chap-

ter 11 reorganizations. *Ibid.* And it rejected the debtors' reliance on a provision under which a bankruptcy court may, "for cause, order otherwise," *id.* at 466 (quoting 11 U.S.C. 349(b)) (brackets omitted), determining that the provision "is too weak a reed upon which to rest so weighty a power" as authorizing distributions that would be "flatly impermissible in a Chapter 7 liquidation or a Chapter 11 plan," *ibid.*

This Court reached a similar conclusion in *Law*. There, a bankruptcy trustee obtained an order "surcharging" a debtor's homestead exemption as a sanction on the debtor for committing fraud. *Law*, 571 U.S. at 420. The surcharge made "those funds available to defray * * * attorney's fees." *Ibid.* The Bankruptcy Code does not expressly state that bankruptcy courts lack discretion to surcharge a homestead exemption as an equitable remedy for a debtor's misconduct. See *id.* at 423-424. But given the Code's "carefully calibrated exceptions and limitations," the Court rejected the argument that courts retain "a general, equitable power * * * to deny exemptions based on a debtor's bad-faith conduct" in circumstances not expressly authorized by the Code. *Id.* at 424-425. And just as a court "may not contravene express provisions of the Bankruptcy Code" by using its equitable authority to allow an exemption not expressly authorized by the Code's text, *id.* at 427-428, it may not contravene the express provisions limiting discharges to the debtor, see pp. 25-26, *supra*, by using its residual authority to allow discharges of nondebtors. Each of those decisions confirms that a bankruptcy court cannot rely on general grants of residual authority to reach outcomes incompatible with the structure and purposes of the Code.

d. That conclusion finds further support in this Court's refusal to find that the Bankruptcy Act of 1898 included any power to permanently enjoin third-party claims. In *Callaway* v. *Benton*, 336 U.S. 132 (1949), the debtor was a railway company that sought to acquire properties of a third-party lessor as an important element of its proposed reorganization. *Id.* at 134-135. Some of the lessor's shareholders brought suit in state court to enjoin the acquisition, alleging that state law required unanimous shareholder approval. *Id.* at 135-136. The district court permanently enjoined the dissenting shareholders from pursuing their state-court litigation, ordering the equivalent of a third-party release of the shareholders' claim. See *id.* at 136. The district court reasoned that, by seeking to prevent the acquisition of property important to the plan, the suit served as "an attempt * * * 'to prevent the consummation of the [railway's reorganization] plan.'" *Id.* at 137.

This Court disagreed. Although the Bankruptcy Act of 1898, as amended, allowed federal agencies and courts to override state law when effectuating a reorganization plan, the Court reasoned that the Act did not authorize courts to determine the rights of the third-party shareholders. See *Callaway*, 336 U.S. at 141. "The statute does not," the Court explained, "give the [regulatory agency] or court the right to require acceptance by a lessor *not in reorganization* of an offer for the purchase of its property." *Ibid.* (emphasis added); see *id.* at 147 ("The purchase of formerly leased properties does not involve rights asserted *against the debtor*[.]") (emphasis added). Allowing a court sitting in bankruptcy to preclude third parties from pursuing their state-law rights against nondebtors in state courts would, the Court explained, "leave to individual judges

the question of whether state laws should be accepted or disregarded," *id.* at 141, eliminating state-law rights whenever state law might affect "the prospects of acceptance by the offeree" of an offer important to the plan's success, *ibid.* Put otherwise, although eliminating the state-law cause of action against a nondebtor would be beneficial to the reorganization plan, the Bankruptcy Act did not authorize such a release.[1]

The Sackler release permanently enjoins state-law claims by nondebtor third parties against other nondebtors. Given this Court's rejection of such a power under pre-Code bankruptcy law, it is all the less plausible that, in enacting the Code, Congress intended "to grant the debtor the broad new remedy" of permanently enjoining third parties' state-law claims "without the new remedy's being mentioned somewhere in the Code itself." *Dewsnup* v. *Timm*, 502 U.S. 410, 420 (1992).

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[1] The *Callaway* Court also held that the district court did not have jurisdiction under the Bankruptcy Act to adjudicate the shareholders' suit merely because it affects the debtor's estate. 336 U.S. at 142; see *id.* at 141-151. The Code subsequently expanded the jurisdiction of bankruptcy courts. See 28 U.S.C. 157(a), 1334(b); *Celotex Corp.* v. *Edwards*, 514 U.S. 300, 307 & n.5 (1995). But the critical point here is that the Code did not add statutory authority to extinguish state-law claims held by nondebtors against other nondebtors. For that reason, the jurisdictional language in the second part of the *Callaway* opinion does not undermine the import of the Court's statutory holding in the first part of that opinion, nor of the statutory analysis about the Bankruptcy Act's substantive scope in the second part of that opinion. Cf. *Morrison* v. *National Australia Bank Ltd.*, 561 U.S. 247, 254 (2010) (clarifying that the reach of a federal statute "is a merits question," not a question of "[s]ubject-matter jurisdiction").

4. Congress's narrow allowance for asbestos trusts in Section 524(g) illustrates the impermissible breadth of the Sackler release

Although the Bankruptcy Code contains hundreds of provisions addressing the relationship between a debtor and its creditors, only one actually authorizes enjoining nondebtors' claims against other nondebtors. Section 524(g) expressly states that, in the context of asbestos claims, such releases—subject to many limitations and conditions—are permitted, "[n]otwithstanding the provisions of section 524(e)," 11 U.S.C. 524(g)(4)(A)(ii).

The specific and carefully circumscribed authorization in Section 524(g) provides a dramatic contrast to the Sackler release. Section 524(g)'s authorization for the injunction of claims between nondebtors applies solely to bankruptcies involving claims based on asbestos exposure, and only covers claims that allege liability for "the conduct of, claims against, or demands on the debtor" by reason of four specified types of legal relationships with the debtor, 11 U.S.C. 524(g)(4)(A)(ii). The Sackler release is not so cabined; it extinguishes "all civil claims * * * that relate in any way to the operations of Purdue," J.A. 637, and it reaches third parties' direct claims against nondebtors based on those nondebtors' *own* conduct, including fraud and willful misconduct. See p. 27, *supra*.

Significantly, Section 524(g) provides substantive protection for the value of released claims by conditioning the release of claims on the creation of a trust that "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. 524(g)(2)(B)(ii)(V) (emphasis added). By contrast, the Sackler release provides no compensation specific to

the direct claims against the Sacklers and other third parties. See J.A. 562-563, 704; see also J.A. 911 (Wesley, J., concurring in the judgment).

Section 524(g) also incorporates stringent procedural requirements for the protection of affected claimants, such as requiring the court to "appoint[] a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands" covered by the release. 11 U.S.C. 524(g)(4)(B)(i); see 11 U.S.C. 524(g)(2)(B)(ii)(IV), (4)(A)(ii), (4)(B), and (5) (specifying additional protections). No such representative was appointed here. See J.A. 478.[2]

When it enacted Section 524(g), Congress included a "rule of construction," which stated that "[n]othing in [Section 524(g)], or in the amendments made by [its addition to the Bankruptcy Code], shall be construed to modify, impair, or supersede any other authority the

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[2] When the House Judiciary Committee recommended the enactment of Section 524(g) in 1994, it explained that asbestos-related bankruptcies had posed a unique problem because of the "long latency period" of asbestos-related diseases, which created a need to address large numbers of claims "against the emerging debtor company" by future claimants whose "disease had not yet manifested itself." H.R. Rep. No. 835, 103d Cong., 2d Sess. 40 (1994) (1994 House Report). The Committee recognized that "two pioneering cases" involving asbestos manufacturers Johns-Manville and UNR had established a trust that could pay future claims and enjoined certain suits by future claimants after the debtor emerged from bankruptcy, but that the legal validity of that mechanism was uncertain. *Id.* at 41. The Committee "concluded" that "creating greater certitude regarding the validity of the trust/injunction mechanism must be accompanied by explicit requirements" that satisfy "high standards with respect to regard for the rights of claimants, present and future." *Ibid.* As discussed above, the Sackler release does not satisfy the high standards included in Section 524(g).

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. 4117 (11 U.S.C. 524 note). Congress thus cautioned against reading the provision as either a rejection or a ratification of any separate authority under the Code to enjoin some third-party actions. But the inherently narrow nature of the "trust/injunction mechanism" that Congress adopted, 1994 House Report 41, is conspicuous. The failure of the Sackler release to comply with several of Section 524(g)'s substantive and procedural requirements, along with the absence of any express exception to Section 524(e) outside the context of asbestos trusts, supports the conclusion that the Code does not authorize the Sackler release.

B. The Court Of Appeals Misread This Court's Decision In *Energy Resources* And Misconstrued The Limits On Traditional Equitable Authority

The court of appeals concluded that Sections 105(a) and 1123(b)(6), taken together, mean that the equitable power of a court sitting in bankruptcy to approve other plan provisions "is limited only by what the Code expressly forbids, not what the Code explicitly allows." J.A. 878. Under that approach, a court could grant habeas relief to corporate officers in prison, grant an easement on the real property of the debtor's neighbors, or rewrite a property settlement agreement in a divorce pending in state court, so long as it found such actions to be "appropriate" in ensuring the debtor's successful reorganization. 11 U.S.C. 1123(b)(6). That sweeping interpretation cannot be justified.

1. Rather than undertaking the textual or structural analysis discussed in Part II.A, *supra*, the court of appeals rested its interpretation almost exclusively on this

Court's description of Section 1123(b)(6) as "grant[ing] bankruptcy courts a 'residual authority.'" J.A. 877 (quoting *Energy Resources*, 495 U.S. at 549) (emphasis omitted). The quoted case, *Energy Resources*, involved a plan provision directing that a debtor's payments to the Internal Revenue Service (IRS), one of its creditors, be applied, by the IRS, against one tax liability of the debtor rather than another. 495 U.S. at 548. In determining that the Code authorized the plan provision, this Court did describe Section 1123(b)(6) as reflecting "residual authority" of the bankruptcy courts. *Id.* at 549. But it was careful to note that the statutory provision was "consistent with the traditional understanding that bankruptcy courts, as courts of equity, have broad authority to modify creditor-debtor relationships." *Ibid.* That residual power to approve plan provisions that "modify *creditor-debtor* relationships," *ibid.* (emphasis added), provides no justification for approving provisions that modify relations between nondebtors and other nondebtors. See J.A. 911 (Wesley, J., concurring in the judgment) ("[*Energy Resources*] says nothing about a nondebtor's obligations under the Bankruptcy Code whatsoever.").

In addition, the Court in *Energy Resources* determined that ordering the IRS as creditor to categorize the debtor's payment in a specific manner was "wholly consistent" with the Code and applicable tax statutes and therefore did not "transgress[] any limitation on the[] broad power" to modify creditor-debtor relationships. 495 U.S. at 551. Accordingly, the decision offers no support for the invocation of residual authority to alter relationships in a way that would conflict with the Code's text, context, purposes, and history—including by terminating claims for fraud that could not be dis-

charged had the Sacklers individually filed for bankruptcy. See p. 27, *supra*.

2. Even apart from its disregard for that key limitation, the court of appeals separately erred in interpreting Section 1123(b)(6) as a "bottomless" well of residual authority. J.A. 911 (Wesley, J., concurring in the judgment). A court's equitable authority in bankruptcy is not "unlimited"; it instead "incorporate[s] the traditional standards in equity practice." *Taggart* v. *Lorenzen*, 139 S. Ct. 1795, 1801 (2019); see *Energy Resources*, 495 U.S. at 549 (invoking residual authority "consistent with the traditional understanding" of the role of bankruptcy courts "as courts of equity"). But, as Judge Wesley pointed out, the court of appeals "majority d[id] not liken the equitable authority [it] recognized * * * to anything traditionally recognized at equity." J.A. 913.

That omission is revealing: As this Court explained when considering a permanent injunction of a state-law suit brought by a group of nondebtors, exercising power "over a solvent [entity] not in reorganization" requires "an extension of [a court's] traditional powers" in bankruptcy. *Callaway*, 336 U.S. at 148. "To accord a type of relief that has never been available before—and especially (as here) a type of relief that has been specifically disclaimed by longstanding judicial precedent—is to invoke a default rule not of flexibility but of omnipotence." *Grupo Mexicano de Desarrollo S.A.* v. *Alliance Bond Fund, Inc.*, 527 U.S. 308, 322 (1999) (citation and internal quotation marks omitted).

That is particularly so because, in traditional equity practice, injunctions did not control the rights of nonparties. See Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 Harv. L. Rev. 417, 421 (2017); see also, *e.g.*, *Scott* v. *Donald*, 165 U.S.

107, 115 (1897) (rejecting as contrary to "well-settled principles of equity procedure" a decree that "enjoins persons not parties to the suit"). Equity eventually developed a limited exception to the principle against resolving third parties' rights, allowing a precursor to the modern class action. See *Ortiz* v. *Fibreboard Corp.*, 527 U.S. 815, 832-833 (1999). Even then, however, binding a nonparty without its consent required a limited fund "with a definitely ascertained limit"; demanded that "the whole of the inadequate fund" be distributed to the claimants; and applied only to the nonparty's rights against a particular body of property while "'le[aving] unaffected the personal claims of nonappearing members against the debtor.'" *Id.* at 839, 841, 844 n.21 (citation omitted); see *id.* at 836-841. The release here—which applies to *in personam* claims and does not require the Sacklers and other released individuals to dedicate their entire estate to satisfying the third parties' claims—contravenes those historical requirements. Under this Court's "traditionally cautious approach to equitable powers," the "substantial expansion of past practice" that would be necessary to allow the Sackler release should be left "to Congress." *Grupo Mexicano*, 527 U.S. at 329.

The startling breadth of the power inferred by the court of appeals majority also cuts against its reading. Indeed, "the idea that bankruptcy courts can order the involuntary release of direct claims against nondebtors is an extraordinary thing that is different from what courts ordinarily do." J.A. 913 (Wesley, J., concurring in the judgment) (citation, ellipsis, and internal quotation marks omitted). "Even when sitting as a court in equity, [courts] have no authority to craft a 'nuclear weapon' of the law." *Grupo Mexicano*, 527 U.S. at 332;

see 1 Joseph Story, *Commentaries on Equity Jurisprudence* § 19, at 21 (1836) (rejecting the view that a court of equity in England possessed "unbounded jurisdiction" to "superced[e] the law" and "free[] itself from all regard to former rules and precedents," because that would "place the whole rights and property of the community under the arbitrary will of the Judge"). In reaching the contrary conclusion, the court of appeals mistook the bounds of bankruptcy courts' equitable authority.

3. The court of appeals recognized that third-party releases pose a "heightened potential for abuse," and it therefore purported to allow them "'only in rare cases.'" J.A. 885-886 (citation and internal quotation marks omitted). In fact, however, the seven-factor test adopted by the court of appeals would *lower* the standards set by other circuits that have allowed nonconsensual releases. See, *e.g.*, *In re A.H. Robins Co.*, 880 F.2d 694, 701 (4th Cir.) (finding authority to issue nondebtor injunction where plan "provi[ded] for payment in full" for the claimants affected by the injunction), cert. denied, 493 U.S. 959 (1989). The court of appeals explicitly rejected a requirement that nondebtors be fully compensated for the released claims against the Sacklers, requiring only a "fair resolution of the enjoined claims." J.A. 889. It then found that the Sackler release reflects a "fair" resolution, J.A. 895-896, even though it would extinguish individuals' claims "without providing them any value in return," J.A. 911 (Wesley, J., concurring in the judgment); see pp. 33-34, *supra*.

The court of appeals' test includes factors such as whether "the scope of the releases is appropriate" and whether the nondebtors "contributed substantial assets to the reorganization." J.A. 888. Those amorphous re-

quirements are insufficient to replace the guardrails supplied by specific statutory limits. And they jettison the limits on traditional equitable authority, replacing them with the individual "notions and conscience" of the judge deciding the bankruptcy case. 1 Story, *Commentaries on Equity Jurisprudence* § 19, at 21. Further underscoring the malleable nature of its test, the court did not specify the weight to be given to any factor, nor what a court should do if it determines that some factors are not satisfied. See J.A. 887-890. And the court suggested that "there may even be cases in which all factors are present, but the inclusion of third-party releases in a plan of reorganization should not be approved." J.A. 889. The fact that "it is difficult to give precise content" to many of the court's factors "threatens to turn a 'rare case' exception into a more general rule." *Czyzewski*, 580 U.S. at 469; see *id.* at 470.

In any event, "Congress did not authorize a 'rare case' exception," *Czyzewski*, 580 U.S. at 471, to the principle that only a debtor's debts may be discharged under the Code. And the error of the court of appeals' approach is well illustrated by its decision to craft a multifactor test, entirely unmoored from the Code's text, to determine which nonconsensual third-party releases are permissible. Where Congress specifically authorized the discharge of claims against nondebtors, it provided detailed limits on that power. See pp. 33-35, *supra*. The court of appeals' judicial freewheeling to place ostensible limits on the "extraordinar[y]" power, J.A. 904 (Wesley, J., concurring in the judgment), that it inferred from the Code's residual provisions is no substitute for Congress's reticulated judgments.

C. Constitutional Avoidance Counsels Against Nonconsensual Third-Party Releases

1. Even if Section 1123(b)(6) were susceptible to the court of appeals' interpretation (and it is not), it does not provide a sufficiently clear authorization to support nonconsensual third-party releases in light of the serious constitutional questions raised by that interpretation. "[A] cause of action is a species of property." *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982). And if Congress "wishes to significantly alter * * * the power of the Government over private property," it must "enact exceedingly clear language." *United States Forest Serv.* v. *Cowpasture River Pres. Ass'n*, 140 S. Ct. 1837, 1849-1850 (2020). The Sackler release extinguishes third parties' causes of action. That nonconsensual extinguishment has res judicata effect. See *Travelers Indem. Co.* v. *Bailey*, 557 U.S. 137, 151-154 (2009). It thus unquestionably effectuates an alteration in the government's power over private property. But neither Section 105(a) nor Section 1123(b)(6) contains the exceedingly clear language required to sustain that result.

This Court will not "construe the [Code] in a manner that could in turn call upon the Court to resolve difficult and sensitive" constitutional questions if a construction that would avoid those questions is "fairly possible." *United States* v. *Security Indus. Bank*, 459 U.S. 70, 78, 82 (1982) (citations omitted). Yet the Sackler release permanently extinguishes Purdue-related opioid claims against the Sacklers and other nondebtors without the affirmative consent of the affected claimants and without an opportunity for an objecting claimant to opt out of the release. In that way, it contravenes the "deep-rooted historic tradition that everyone should have his

own day in court." *Martin* v. *Wilks*, 490 U.S. 755, 762 (1989) (citation omitted).

Even in the context of class actions, which are specifically designed to facilitate the mass resolution of claims, "due process requires at a minimum that an absent plaintiff be provided with an opportunity to remove himself from the class." *Phillips Petroleum Co.* v. *Shutts*, 472 U.S. 797, 812 (1985). And even when considering a limited-fund theory, this Court has recognized the "serious constitutional concerns that come with any attempt to aggregate individual tort claims" without the claimants' consent, which caused it to adopt a narrow reading of the Federal Rule of Civil Procedure authorizing mandatory limited-fund class actions. *Ortiz*, 527 U.S. at 845; see *id.* at 845-848.

2. In approving the Sackler release, the court of appeals took the view that constitutional requirements were satisfied by notice of the bankruptcy court's hearing about plan confirmation and an opportunity to be heard, even "without an ability to opt-out." J.A. 898; see J.A. 896-899. But the mere opportunity to voice an objection to a release that will nonetheless extinguish one's claims even in the absence of consent does not resolve constitutional concerns. Cf. *Ortiz*, 527 U.S. at 849 & n.27 (recognizing that "a fairness hearing" in the class-action context does not resolve concerns about the rights of individual class members who are "'presented with what purports to be a binding *fait accompli*, with the only recourse a likely futile objection'") (citation omitted).

For their part, debtors have suggested (Stay Opp. 57) that any constitutional-avoidance argument is defeated by 11 U.S.C. 524(g), which specifically authorizes a limited release of claims against certain nondebtors

related to asbestos exposure. But the analysis for Section 524(g) is different in important ways. As an initial matter, the key point is that substantial *questions* about constitutionality exist, requiring a clear statement from Congress to authorize nonconsensual third-party releases. Section 524(g) expressly and clearly authorizes releases in narrow circumstances, making the constitutional-avoidance canon inapposite.

Moreover, there are significant substantive differences between the narrow releases authorized by Section 524(g) and the sweeping Sackler release. Section 524(g), which aims to address the long latency of asbestos disease that prevents all claimants from being identified at the time of the bankruptcy, channels future claims to a trust that is designed to provide similar value to current and future claimants. See 1994 House Report 40-41. Channeling property rights in that way is a different proposition than extinguishing some claimants' property rights for the benefit of others. In addition, Section 524(g) releases only claims against the debtor or claims "for" the debtor's conduct, which typically belong to the estate, reducing its effects on nondebtors' property rights. See p. 33, *supra*; see also, *e.g.*, *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 234 (3d Cir. 2004) (interpreting Section 524(g) to "limit[]" the third-party injunction to situations "where a third party has derivative liability for the claims against the debtor"). And Section 524(g) imposes stringent procedural requirements to protect the rights of absent parties. It is therefore "a special remedial scheme" that "*expressly* forecloses successive litigation by nonlitigants" and so may "terminate preexisting rights if the scheme is otherwise consistent with due process." *Martin*, 490 U.S.

at 762 n.2 (emphasis added); see *Taylor* v. *Sturgell*, 553 U.S. 880, 895 (2008).

In short, the existence of Section 524(g)'s tailored release power does not eliminate "substantial doubt," *Security Indus. Bank*, 459 U.S. at 78, about the constitutionality of extinguishing third-party rights without Section 524(g)'s protections, without express Congressional approval, and in a far broader array of circumstances. Because neither Section 105(a) nor Section 1123(b)(6) "must necessarily be applied" in a manner that authorizes the Sackler release, the court of appeals' construction of those provisions to allow third-party releases must be rejected. *Ibid.*

D. Policy Considerations Support The U.S. Trustee's Reading

In the lower courts and at the stay stage in this Court, the plan proponents raised an array of policy arguments in support of the Sackler release. But this Court has repeatedly rejected attempts to stretch Bankruptcy Code provisions based on general notions that a certain result would be "in the best interests of all creditors and debtors." *Norwest Bank Worthington* v. *Ahlers*, 485 U.S. 197, 206 (1988); see, *e.g.*, *Czyzewski*, 580 U.S. at 471.

To the extent they are relevant, however, considerations of the public interest weigh strongly in favor of the U.S. Trustee's reading of the Bankruptcy Code. As this case reveals, nonconsensual third-party releases enable tortfeasors to obtain legal immunity from the claims of their victims, including for claims that could not be discharged if the tortfeasors underwent bankruptcy, and to do so without subjecting themselves to the obligations imposed by the Bankruptcy Code. The court of appeals' decision is a roadmap for corporations and

wealthy individuals to misuse the bankruptcy system to avoid mass-tort liability. Such releases deprive tort victims of their day in court without consent. And they erode public confidence in the bankruptcy system, which Congress established to restructure a debtor's relationship with its creditors in a case of true financial distress—not to resolve mass-tort liability against nondebtors by terminating claims belonging to other nondebtors.

Equally troubling, nonconsensual third-party releases permit tortfeasors to choose what portion of their non-exempt assets to give up in exchange for full repose (including repose from claims based on fraud), defying the basic *quid pro quo* at the heart of the Code. The history of this case illustrates that problem. The bankruptcy court initially confirmed the plan with a $4.325 billion contribution from the Sacklers, an amount that was touted by plan proponents as "the best available" to creditors "by a very wide margin," D. Ct. Doc. 151, at 36 (Nov. 15, 2021)—despite the fact that it left billions of dollars in the Sacklers' hands and included less than half of the amount that the Sacklers had siphoned from Purdue in the years before these Chapter 11 proceedings. But after the district court concluded that the Code does not authorize the Sackler release and vacated the order confirming the plan, the Sacklers reached a new agreement with debtors, eight objecting States, and the District of Columbia to pay up to an additional $1.675 billion (*i.e.*, 39% more) in exchange for those objectors' agreement not to oppose the release. See States of California et al. Stay Resp. 1; pp. 7-8, *supra*. Basic principles of fairness forbid nonconsenting claimants from being forced to forgo their claims against the Sacklers while the Sacklers retain much of their for-

tune. Cf. *Ortiz*, 527 U.S. at 821 (holding that certification of a mandatory settlement class on a limited-fund theory requires a showing "that the fund is limited by more than the agreement of the parties").

Indeed, a decision endorsing the legality of the Sackler release would predictably make the terms of subsequent releases even less favorable to tort victims by further redistributing bargaining power to deep-pocketed tortfeasors participating in bankruptcy proceedings from the sidelines. Before now, "perceived legal uncertainty" created some "incentives" to protect the rights of claimants, 1994 House Report 41—as shown by the additional $1.675 billion that the Sacklers agreed to pay *after* the district court's vacatur. If this Court holds that nonconsensual releases are unavailable, tortfeasors will have to continue to provide substantial compensation to claimants in exchange for consensual releases. By contrast, if this Court authorizes the extinguishment of some nondebtors' claims by a vote of other nondebtors, the amounts paid by nondebtor tortfeasors in future bankruptcies will likely be lower—with a commensurate reduction in benefits to future bankruptcy estates.

The third-party releases authorized by the decision below further threaten the public interest because they permit courts to extinguish rights in private property that is not part of the bankruptcy estate. And the power to terminate claims without consent goes beyond claims belonging to private citizens to those held by sovereigns, including States, Indian Tribes, and the federal government. One bankruptcy court recently confirmed—over the objections of the U.S. Trustee, the SEC, and the United States—a reorganization plan purporting to exculpate nondebtors from future civil

and even criminal claims belonging to the United States. See *In re Voyager Digital Holdings, Inc.*, 649 B.R. 111 (Bankr. S.D.N.Y. 2023), appeal pending, No. 23-cv-2171 (S.D.N.Y. June 8, 2023). In defending that ruling, the plan proponents in that case have already invoked the decision below, relying specifically on its expansive reading of Section 1123(b)(6). See Debtors Citation of Supplemental Authority at 1, *In re Voyager Digital Holdings, Inc.*, No. 23-cv-2171 (S.D.N.Y. June 8, 2023).

Nor have the plan proponents presented a compelling need for such releases. They have pointed to the challenges associated with resolving mass-tort litigation. See, *e.g.*, Debtors Stay Opp. 29. But there is little reason to think that nonconsensual third-party releases are the only solution. In a prominent recent example, a bankruptcy court rejected another effort to use the bankruptcy system to resolve mass-tort liability, and the parties promptly reached a tentative settlement to resolve over 300,000 lawsuits through the tort system itself. See Jef Feeley & Ryan Beene, Bloomberg Law News, *3M Agrees to Pay More Than $5.5 Billion Over Military Earplugs* (Aug. 27, 2023); see also *In re Aearo Techs. LLC*, No. 22-2890, 2023 WL 3938436 (Bankr. S.D. Ind. June 9, 2023); Canadian Creditors Stay Resp. 11-12 (discussing the *Aearo* case).

Similarly, when mass-tort-related bankruptcies have arisen in circuits that do not permit nonconsensual nondebtor releases, some debtors have still included third-party releases with the consent of the releasing claimants. See, *e.g.*, Bankr. Ct. Doc. 6353, at 37-38, *In re PG&E Corp.*, No. 19-30088 (Bankr. N.D. Cal. Mar. 17, 2020) (providing for consensual releases from claim holders who opted in to granting releases to third par-

ties). In the case of a consensual release, "it is the parties' agreement that serves as the source of the court's authority" to enter provisions binding on the agreeing parties. *Lawyer* v. *Department of Justice*, 521 U.S. 567, 579 n.6 (1997) (citation omitted); see *Sturgell*, 553 U.S. at 893 ("[A] person who agrees to be bound by the determination of issues in an action between others is bound in accordance with the terms of his agreement.") (citation omitted). Cf. *Wellness Int'l Network, Ltd.* v. *Sharif*, 575 U.S. 665, 674 (2015) ("[L]itigants may validly consent to adjudication by bankruptcy courts."). Here, too, the Sacklers were able to obtain consent from the holders of some of the most significant direct claims against them—those brought by the States and the District of Columbia—by providing sufficient compensation that those claimants viewed consenting to the release to be in their interest. There is therefore no compelling policy-based argument to infer the power to impose nonconsensual third-party releases in contravention of the Code's text, context, purposes, and history.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
CURTIS E. GANNON
Deputy Solicitor General
MASHA G. HANSFORD
Assistant to the Solicitor General
MICHAEL S. RAAB
MICHAEL SHIH
SEAN R. JANDA
LAWRENCE H. FOGELMAN
PETER ARONOFF
BENJAMIN H. TORRANCE
Attorneys

RAMONA D. ELLIOTT
Deputy Director/ General Counsel
NAN ROBERTS EITEL
P. MATTHEW SUTKO
Associate General Counsels
BETH A. LEVENE
SUMI K. SAKATA
Trial Attorneys
Executive Office for United States Trustees

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APPENDIX

1. 11 U.S.C. 105 provides:

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 con-

ference 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.

2. 11 U.S.C. 307 provides:

United States Trustee

The United States trustee may raise and may appear and be heard on any issue in any case or proceeding under this title but may not file a plan pursuant to section 1121(c) of this title.

3. 11 U.S.C. 523(a) provides:

Exceptions to discharge

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

(1) for a tax or a customs duty—

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

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

(i) was not filed or given; or

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

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

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

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

(B) use of a statement in writing—

(i) that is materially false;

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

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

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

(C)(i) for purposes of subparagraph (A)—

(I) consumer debts owed to a single creditor and aggregating more than $500[1] for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and

(II) cash advances aggregating more than $750[1] 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

---

1 See Adjustment of Dollar Amounts notes below.

(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;

(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; or

(20) for injury to an individual by the debtor relating to a violation of chapter 77 of title 18, including injury caused by an instance in which the debtor knowingly benefitted financially, or by receiving anything of value, from participation in a venture that the debtor knew or should have known engaged in an act in violation of chapter 77 of title 18.

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.

4. 11 U.S.C. 524 provides in pertinent part:

Effect of discharge

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

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

(2) operates as an injunction against the commencement or continuation of an action, the employ-

ment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1192, 1228(a)(1), or 1328(a)(1), or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

* * * * *

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

* * * * *

(g)(1)(A) After notice and hearing, a court that enters an order confirming a plan of reorganization under chapter 11 may issue, in connection with such order, an injunction in accordance with this subsection to supplement the injunctive effect of a discharge under this section.

(B) An injunction may be issued under subparagraph (A) to enjoin entities from taking legal action for the pur-

pose 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.

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

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

(ii) no entity that pursuant to such plan or thereafter becomes a direct or indirect transferee of, or successor to any assets of, a debtor or trust that is the subject of the injunction shall be liable with respect to

any claim or demand made against such entity by reason of its becoming such a transferee or successor; and

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

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

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

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

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

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

(ii) Notwithstanding the provisions of section 524(e), such an injunction may bar any action directed against a third party who is identifiable from the terms of such in-

junction (by name or as part of an identifiable group) and is alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor to the extent such alleged liability of such third party arises by reason of—

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

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

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

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

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

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

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

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

(II) a predecessor in interest of the debtor; or

(III) any entity that owned a financial interest in—

(aa) the debtor;

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

(cc) a predecessor in interest of the debtor.

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

(i) as part of the proceedings leading to issuance of such injunction, the court appoints a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands of such kind, and

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

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

(A) was not a claim during the proceedings leading to the confirmation of a plan of reorganization;

(B) arises out of the same or similar conduct or events that gave rise to the claims addressed by the injunction issued under paragraph (1); and

(C) pursuant to the plan, is to be paid by a trust described in paragraph (2)(B)(i).

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

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

* * * * *

5. 11 U.S.C. 727 provides:

Discharge

(a) The court shall grant the debtor a discharge, unless—

(1) the debtor is not an individual;

(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed—

(A) property of the debtor, within one year before the date of the filing of the petition; or

(B) property of the estate, after the date of the filing of the petition;

(3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case;

(4) the debtor knowingly and fraudulently, in or in connection with the case—

(A) made a false oath or account;

(B) presented or used a false claim;

(C) gave, offered, received, or attempted to obtain money, property, or advantage, or a promise of money, property, or advantage, for acting or forbearing to act; or

(D) withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs;

(5) the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities;

(6) the debtor has refused, in the case—

(A) to obey any lawful order of the court, other than an order to respond to a material question or to testify;

(B) on the ground of privilege against self-incrimination, to respond to a material question approved by the court or to testify, after the debtor has been granted immunity with respect to the matter concerning which such privilege was invoked; or

(C) on a ground other than the properly invoked privilege against self-incrimination, to respond to a material question approved by the court or to testify;

(7) the debtor has committed any act specified in paragraph (2), (3), (4), (5), or (6) of this subsection, on or within one year before the date of the filing of the petition, or during the case, in connection with another case, under this title or under the Bankruptcy Act, concerning an insider;

(8) the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within 8 years before the date of the filing of the petition;

(9) the debtor has been granted a discharge under section 1228 or 1328 of this title, or under section 660 or 661 of the Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition, unless payments under the plan in such case totaled at least—

(A) 100 percent of the allowed unsecured claims in such case; or

(B)(i) 70 percent of such claims; and

(ii) the plan was proposed by the debtor in good faith, and was the debtor's best effort;

(10) the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter;

(11) after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply with respect to a debtor who is a person described in section 109(h)(4) or who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional courses under this section (The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in this paragraph shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.); or

(12) the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is reasonable cause to believe that—

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

(B) 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).

(b) Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title.

(c)(1) The trustee, a creditor, or the United States trustee may object to the granting of a discharge under subsection (a) of this section.

(2) On request of a party in interest, the court may order the trustee to examine the acts and conduct of the debtor to determine whether a ground exists for denial of discharge.

(d) On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if—

(1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;

(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee;

(3) the debtor committed an act specified in subsection (a)(6) of this section; or

(4) the debtor has failed to explain satisfactorily—

(A) a material misstatement in an audit referred to in section 586(f) of title 28; or

(B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit referred to in section 586(f) of title 28.

(e) The trustee, a creditor, or the United States trustee may request a revocation of a discharge—

(1) under subsection (d)(1) of this section within one year after such discharge is granted; or

(2) under subsection (d)(2) or (d)(3) of this section before the later of—

(A) one year after the granting of such discharge; and

(B) the date the case is closed.

6. 11 U.S.C. 1123 provides:

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.

7. 11 U.S.C. 1141 provides:

Effect of confirmation

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

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

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

uity security holders, and of general partners in the debtor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) made a fraudulent return; or

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