

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

NEIL L. BRADLEY
EXECUTIVE VICE PRESIDENT &
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November 3, 2021

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Jim Jordan
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Nadler and Ranking Member Jordan:

The U.S. Chamber of Commerce opposes H.R. 4777, the “Nondebtor Release Prohibition Act,” which would upend the American bankruptcy system, which decades of experience have demonstrated to be one of the fairest means available to resolve complex mass tort litigation while protecting the interests of victims. H.R. 4777 would needlessly complicate the bankruptcy system, make it more difficult for victims to obtain appropriate compensation in a timely manner, and put in place roadblocks to resolving numerous complex litigation matters.

Complex mass tort bankruptcies often involve third parties, including debtor companies’ predecessors and successors in interest, suppliers, users, and corporate affiliates. Limiting the ability of courts and companies to address litigation issues globally would harm legitimate claimants by depriving them of resources and forcing them into litigation. Compensation systems established through bankruptcy allow claimants to receive timely payments rather than having to pursue lengthy litigation against multiple defendants. Eliminating litigation, and its extraordinary costs and inefficiencies, also maximizes the funds available to victims.

The premise behind H.R. 4777 is flawed in multiple ways. For example, there is no compelling evidence that current law, which requires judges to review the facts and circumstances of proposed third party litigation releases, has been abused to the detriment of victims. On the contrary, the House Judiciary Committee received powerful testimony in previous Congresses that plaintiffs’ attorneys generate questionable claims to influence active bankruptcies and, later, extract undeserved payouts from court-approved trust funds. H.R. 4777 would, instead, feed into this type of behavior by providing additional leverage to the trial bar in these types of bankruptcies.

Furthermore, the bill would also require a court to dismiss any Chapter 11 case if, *within a decade prior to filing bankruptcy*, the debtor or a predecessor of the debtor divided assets and liabilities between various subsidiaries. This would upend typical corporate governance decisions permitted by existing state laws and would chill otherwise lawful and beneficial corporate decision making, even when a company has no intention to file for bankruptcy. And discouraging or preventing companies experiencing financial challenges from separating non-

performing assets from profitable ones could result in job losses as one subsidiary's difficulties cause others to become insolvent.

Rather than attacking corporations for pursuing a path that provides both substantial support for victims and certainty to employees, shareholders, and the communities that these businesses support, Congress should wholistically examine the bankruptcy system, explore reforms that would improve outcomes for claimants, and increase transparency instead of disproportionately advantaging the trial bar as H.R. 4777 does. Accordingly, we oppose H.R. 4777 and urge the members of the Committee to do the same.

Sincerely,

A handwritten signature in blue ink, appearing to read "Neil L. Bradley". The signature is fluid and cursive, with a large loop at the end.

Neil L. Bradley

cc: Members of the House Committee on the Judiciary