

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4777
OFFERED BY MR. NADLER OF NEW YORK**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Nondebtor Release
3 Prohibition Act of 2021”.

4 SEC. 2. PROHIBITION OF NONDEBTOR RELEASES.

5 (a) IN GENERAL.—Chapter 1 of title 11, United
6 States Code, is amended by adding at the end the fol-
7 lowing:

8 “§ 113. Prohibition of nondebtor releases

9 “(a) Except as provided in subsection (b) of this sec-
10 tion, subsection (a)(3), (g), (h), or (i) of section 524, sec-
11 tion 1201, and section 1301, the court may not—

12 “(1) with respect to the liability of an entity
13 other than the debtor or the estate on, or the liabil-
14 ity of property of an entity other than the debtor or
15 the estate for, a claim or cause of action of an entity
16 other than the debtor or the estate—

17 “(A) approve any provision, in a plan of
18 reorganization or otherwise, for the discharge,

1 release, termination, or modification of such li-
2 ability; or

3 “(B) order the discharge, release, termi-
4 nation, or modification of such liability; or

5 “(2) with respect to a claim or cause of action
6 of an entity other than the debtor or the estate
7 against an entity other than the debtor or the estate,
8 or against property of an entity other than the debt-
9 or or the estate, enjoin—

10 “(A) the commencement or continuation
11 (including the issuance or employment of proc-
12 ess) of a judicial, administrative, or other action
13 or proceeding to assert, assess, collect, recover,
14 offset, recoup, or otherwise enforce such claim
15 or cause of action; or

16 “(B) any act to assert, assess, collect, re-
17 cover, offset, recoup, or otherwise enforce such
18 claim or cause of action.

19 “(b) Nothing in subsection (a) of this section shall
20 affect any power the court might have—

21 “(1) to authorize a sale, transfer, or other dis-
22 position of property free and clear of claims or inter-
23 ests;

24 “(2) to prevent an entity other than the debtor
25 or the estate from exercising control over or other-

1 wise interfering with a right or interest (including a
2 claim or cause of action) that is property of the es-
3 tate;

4 “(3) to bar a claim or cause of action for in-
5 demnity, reimbursement, contribution, or subroga-
6 tion against an entity that the estate has released
7 from a claim or cause of action for which the holder
8 of the barred claim or cause of action also is or may
9 be liable or has or may have secured;

10 “(4) under applicable nonbankruptcy law, title
11 28, or the Federal Rules of Bankruptcy Procedure,
12 with respect to any claim or cause of action the
13 court is hearing under section 157(a) or 1334(b) of
14 title 28;

15 “(5) to approve any disposition of a claim or
16 cause of action of an entity other than the debtor or
17 the estate to which such entity expressly consents in
18 a signed writing, provided that—

19 “(A) such consent is given only after clear
20 and conspicuous notice to such entity of the
21 proposed disposition in language appropriate
22 for the typical holder of such claim or cause of
23 action;

24 “(B) such consent cannot be given by—

25 “(i) accepting a proposed plan; or

1 “(ii) failing to accept or reject a pro-
2 posed plan, failing to object to a proposed
3 plan, or any other silence or inaction; and

4 “(C) treatment of such entity, and any
5 claims or interests of such entity, under a plan
6 cannot be more or less favorable by reason of
7 such entity’s consent or failure to consent;

8 “(6) to enjoin the commencement or continu-
9 ation (including the issuance or employment of proc-
10 ess) of a judicial, administrative, or other action or
11 proceeding of an entity appointed or employed (or
12 whose appointment or employment was approved) by
13 or under the auspices of the court, in another court
14 and without leave of the court, with respect to acts
15 or omissions for which the entity was so appointed
16 or employed; or

17 “(7) to issue an order or decree subject to sub-
18 section (c).

19 “(c) In a case under chapter 11 of this title, no order
20 or decree temporarily staying or enjoining, pursuant to
21 this title, the commencement or continuation (including
22 the issuance or employment of process) of a judicial, ad-
23 ministrative, or other action or proceeding to assert, as-
24 sess, collect, recover, offset, recoup, or otherwise enforce
25 a claim or cause of action of an entity other than the debt-

1 or or the estate against an entity other than the debtor
2 or the estate, or against property of an entity other than
3 the debtor or the estate, shall extend (or be extended) be-
4 yond 90 days after the date of the order for relief without
5 the express consent of the entity whose claim or cause of
6 action is stayed or enjoined.

7 “(d) Nothing in subsection (b) or (c) shall be con-
8 strued to authorize relief within the scope of subsection
9 (b) or (c).”.

10 (b) CLERICAL AMENDMENT.—The table of sections
11 for chapter 1 of title 11, United States Code, is amended
12 by adding at the end the following:

“113. Prohibition of nondebtor releases.”.

13 **SEC. 3. APPEAL OF NONDEBTOR STAYS.**

14 Section 158 of title 28, United States Code, is
15 amended—

16 (1) in subsection (a), by striking “The” and in-
17 serting “Except as provided in subsection (d)(3),
18 the”; and

19 (2) by inserting after subsection (d)(2) the fol-
20 lowing:

21 “(3)(A) The appropriate court of appeals shall
22 have jurisdiction of appeals from all orders and de-
23 crees (whether interlocutory or final) temporarily
24 staying or enjoining (or increasing the duration of
25 any temporary stay or injunction of) the commence-

1 ment or continuation (including the issuance or em-
2 ployment of process) of a judicial, administrative, or
3 other action or proceeding to assert, assess, collect,
4 recover, offset, recoup, or otherwise enforce a claim
5 or cause of action of an entity other than the debtor
6 or the estate against an entity other than the debtor
7 or the estate, or against property of an entity other
8 than the debtor or the estate, entered in a case
9 under chapter 11 of title 11 by—

10 “(i) a bankruptcy judge under section 157
11 of this title; or

12 “(ii) a district court under section 1334 of
13 this title.

14 “(B) If an appeal is taken under subparagraph
15 (A), the stay order or decree shall immediately ter-
16 minate and dissolve and be of no further force or ef-
17 fect 90 days after its issuance by the bankruptcy
18 judge or district court, unless the appeal is dis-
19 missed or the court of appeals affirms the stay order
20 or decree before that date.”.

21 **SEC. 4. DIVISIONAL MERGERS.**

22 Section 1112 of title 11, United States Code, is
23 amended—

24 (1) by redesignating subsection (f) as sub-
25 section (g); and

1 (2) by inserting after subsection (e) the fol-
2 lowing:

3 “(f) On a request of a party in interest, and after
4 notice and a hearing, the court shall dismiss a case under
5 this chapter if the debtor or a predecessor of the debtor
6 was the subject of, or was formed or organized in connec-
7 tion with a divisional merger or equivalent transaction or
8 restructuring that—

9 “(1) had the intent or foreseeable effect of—

10 “(A) separating material assets from mate-
11 rial liabilities of an entity eligible to be a debtor
12 under this title; and

13 “(B) assigning or allocating all or a sub-
14 stantial portion of those liabilities to the debtor,
15 or the debtor assuming or retaining all or a
16 substantial portion of those liabilities; and

17 “(2) occurred during the 10-year period pre-
18 ceding the date of the filing of the petition.”.

19 **SEC. 5. RULE OF CONSTRUCTION.**

20 Nothing in this Act, or the amendments made by this
21 Act, shall be construed to independently grant the court
22 authority to issue nondebtor releases, injunctions, or stays
23 in connection with an order for relief under chapter 11
24 of title 11, United States Code, or in connection with an
25 order confirming a plan of reorganization, nor shall any-

1 thing in this Act or such amendments be construed to
2 imply that any other provision of title 11 of such Code
3 or of nonbankruptcy law grants such authority.

4 **SEC. 6. EFFECTIVE DATE.**

5 (a) IN GENERAL.—Except as provided in subsection
6 (b), this Act and the amendments made by this Act shall
7 take effect on the date of the enactment of this Act and
8 shall apply to any case under title 11, United States Code,
9 that is—

10 (1) pending in bankruptcy as of the date of the
11 enactment of this Act; or

12 (2) filed or reopened on or after the date of the
13 enactment of this Act.

14 (b) VALIDITY OF FINAL ORDERS.—Nothing in this
15 Act, or the amendments made by this Act, shall affect the
16 validity of any final judgment, order, or decree consistent
17 with the application of section 158 of title 28, United
18 States Code, entered before the date of the enactment of
19 this Act.

