



National
Consumer Law
Center

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October 25, 2021

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

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

Re: H.R.4777 - Nondebtor Release Prohibition Act of 2021

Dear Chairman Nadler and Ranking Member Jordon:

The National Consumer Law Center, on behalf of its low-income clients, strongly supports H.R. 4777, the Nondebtor Release Prohibition Act of 2021. H.R. 4777 would prevent the bankruptcy system from being used to shield nondebtor companies from liability for the harm they have caused to consumers.

Too often consumers have been victimized by the wrongful acts of companies who then file bankruptcy as a means to cut off consumer claims and defenses. In some cases, lenders and servicers have sought to escape liability by obtaining orders from the bankruptcy court providing for the sale of consumers' loans or the servicing rights associated with them. Consumers who have later attempted to challenge these loans or servicing practices based on violations of consumer protection statutes have been denied relief by nondebtor purchasers who were sold the loans "free and clear" of any consumer claims and defenses. While Congress sought to stop this abuse in 2005 by enacting section 363(o) of the Bankruptcy Code, companies have taken advantage of a loophole in the law by obtaining nondebtor releases of consumer claims as part of the approval of Chapter 11 plans. For example, this evasion of section 363(o) was recently attempted by the large mortgage lender and servicer Ditech (*In re Ditech Holding Corp.*, 606 B.R. 544 (Bankr. S.D.N.Y. 2019)).

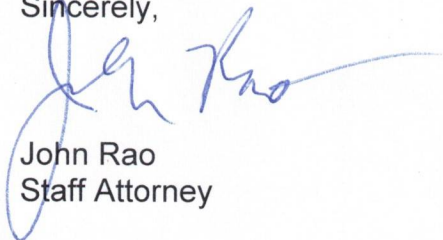
In other cases, corporate wrongdoers who have participated with a debtor company in harming consumers have taken advantage of the company's bankruptcy by getting "nondebtor releases" that shield them from liability. Third-party releases raise significant due process concerns because they are often negotiated without notice to the known parties, such as consumers, who have claims against the entities involved. These

nondebtor releases are often falsely presented as being consensual. In reality, however, they are coerced because consumers are forced to take affirmative steps in a distant bankruptcy proceeding that are often beyond their ability, such as filing a formal objection to a proposed Chapter 11 plan or filling out and submitting an opt-out form, to prevent their claims from being forever cut off.

H.R. 4777 would crack down on this abuse by prohibiting consumer claims from being released simply by a consumer's "failing to accept or reject a proposed plan, failing to object to a proposed plan, or any other silence or inaction." Rather, the bill ensures that claims can be released only if the consumer or entity expressly consents to the release in a signed writing, and only if such consent is given after clear and conspicuous notice to the consumer or entity of the proposed settlement or treatment of the claim under the plan or court order.

H.R. 4777 will stop bad actors from using loopholes in the bankruptcy system to avoid accountability to the victims of consumer abuses. We urge you to pass the Nondebtor Release Prohibition Act of 2021(H.R. 4777) in its current form, without amendment.

Sincerely,



John Rao
Staff Attorney