

Louis R. Strubeck, Jr.
 Ryan E. Manns
 Norton Rose Fulbright US LLP
 2200 Ross Avenue
 Suite 3600
 Dallas, TX 75201-7932
 Email: louis.strubeck@nortonrosefulbright.com
 ryan.manns@nortonrosefulbright.com

Francis J. Lawall (admitted *pro hac vice*)
 Donald J. Detweiler (admitted *pro hac vice*)
 Joanna J. Cline (admitted *pro hac vice*)
 Pepper Hamilton LLP
 Hercules Plaza, Suite 5100
 1313 N. Market Street
 Wilmington, DE 19899-1709
 E-mail: lawallf@pepperlaw.com
 detweild@pepperlaw.com
 clinej@pepperlaw.com

Counsel to the Official Committee of Unsecured Creditors

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE NORTHERN DISTRICT OF TEXAS
 DALLAS DIVISION**

In re:)	Chapter 11
)	
4 WEST HOLDINGS, INC., <i>et al.</i> ,)	Case No. 18-30777-(HDH)
)	
Debtors.)	(Jointly Administered)
)	
4 WEST HOLDINGS, INC., <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Adv. Pro. No. 18-03237-HDH
)	
OMEGA HEALTHCARE INVESTORS,)	
INC., <i>et al.</i> ,)	
)	
Defendants.)	
)	

**OFFICIAL COMMITTEE OF UNSECURED
 CREDITORS’ MOTION TO CONSOLIDATE**

Plaintiff, the Official Committee of Unsecured Creditors (the “Committee”)¹ of 4 West Holdings, Inc., *et al.* (the “Debtors”), by and through its undersigned counsel, hereby files this motion (the “Motion”) to consolidate two actions relating to the recharacterization of the Debtors’ properties – Adv. Pro. No. 18-cv-03237-hdh filed by the Debtors on July 27, 2018 (the “Debtor Action”), and Adv. Pro. No. 18-cv-03241-hdh filed by the Committee on August 13,

¹ All capitalized terms used herein but not defined have the meaning set forth in the Committee’s Complaint. Adv. Dkt. No. 1.

2018 (the “Committee Action,” together with the Debtor Action, the “Actions”). In support of the Motion, the Committee respectfully submits as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

RELEVANT FACTS

2. On May 29, 2018, the Committee filed the *Official Committee of Unsecured Creditors’ Motion for Standing to Pursue Derivative Claims Against the Omega Parties on Behalf of the Debtors’ Estates* [Dkt. No. 469].

3. On June 14, 2018, the Committee filed the *Official Committee of Unsecured Creditors’ Memorandum of Law in Further Support of Motion for Standing to Pursue Derivative Claims Against the Omega Parties on Behalf of the Debtors’ Estates* [Dkt. No. 579].

4. On June 15, 2018, the Court held a hearing on the Motion for Standing and all associated pleadings.

5. On July 27, 2018, the Debtors filed an adversary proceeding to commence the Debtor Action.

6. On August 1, 2018, the Court held a status conference on various motions. During the status conference, the Committee requested the Court enter an order granting the Committee limited standing to bring the Committee Action.

7. On August 7, 2018, the Court entered the *Order Granting in Part, and Continuing in Part, the Official Committee of Unsecured Creditors’ Motion for Standing to Pursue Derivative Claims Against the Omega Parties on Behalf of the Debtors’ Estates* (the “Standing Order”) [Dkt. No. 806] effectively giving the Committee standing to bring the Committee Action.

8. On August 13, 2018, the Committee filed an adversary proceeding to commence the Committee Action.

9. The Debtors have consented to the consolidation of the Actions.

RELIEF REQUESTED

10. The Committee hereby requests that this Court consolidate the Actions and have the Debtor Action serve as the lead case because they share common issues of law and fact.

BASIS FOR RELIEF

11. Federal Rule of Civil Procedure 42(a), incorporated herein by Federal Rule of Bankruptcy Procedure 7042, provides that if actions “involve a common question of law or fact,” a court may consolidate actions or issue an order to avoid unnecessary cost or delay. Fed. R. Civ. P. 42(a). It is entirely within the court’s discretion to consolidate actions to “promote the administration of justice.” *Gentry v. Smith*, 487 F.2d 571, 581 (5th Cir. 1973). The Fifth Circuit encourages judges “to make good use of Rule 42(a) . . . in order to expedite [a] trial and eliminate unnecessary repetition and confusion.” *Id.* Furthermore, consolidated actions will not deny any parties the right to litigate the merits of their claims. *See Allison v. Citgo Petroleum Corp.*, 151 F.3d 402, 425 (5th Cir. 1998).

12. As a threshold matter, common issues of law and fact exist between the Actions. Both Actions seek a “Declaratory Judgment for Recharacterization of the Master Leases as Financing Arrangements under 28 U.S.C. §§ 2201 and 2202, and Federal Rule of Civil Procedure 57.” *See* Debtor Action, ECF No. 2; Committee Action, ECF No. 2. Accordingly, each action will require this Court to determine that the Master Leases between the Debtors and the Omega Parties, although labeled a sale/leaseback, was intended to be a financing arrangement.

13. Consolidating the Action would promote judicial economy. The Actions are already assigned to this Court, and both are identified on the Court’s electronic docketing system as associated cases. A single schedule can therefore address both Actions and reflect the same general

timeline for proceedings before this Court. Indeed, consolidating the Actions will simplify the Court's and the parties' preparations for addressing the issues presented in the Actions.

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court enter an order, attached as Exhibit A, consolidating the Actions and providing the Committee such other and further relief as the Court may deem just, proper and equitable.

DATED: August 20, 2018
Dallas, Texas

Respectfully submitted,

/s/ Ryan E. Manns

Louis R. Strubeck, Jr.

Ryan E. Manns

Norton Rose Fulbright US LLP

2200 Ross Avenue, Suite 3600

Dallas, TX 75201

Telephone: 214-855-8000

E-mail: louis.strubeck@nortonrosefulbright.com

ryan.manns@nortonrosefulbright.com

-and-

Donald J. Detweiler

Francis J. Lawall

Joanna J. Cline

Pepper Hamilton LLP

Hercules Plaza, Suite 5100

1313 N. Market Street

Wilmington, DE 19899-1709

Telephone: 302-777-6500

E-mail: detweild@pepperlaw.com

lawallf@pepperlaw.com

clinej@pepperlaw.com

*Counsel for the Official
Committee of Unsecured Creditors*

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:)	Chapter 11
)	
4 WEST HOLDINGS, INC., <i>et al.</i> ,)	Case No. 18-30777-(HDH)
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4 WEST HOLDINGS, INC., <i>et al.</i> ,)	
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Plaintiffs,)	
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v.)	Adv. Pro. No. 18-03237-HDH
)	
OMEGA HEALTHCARE INVESTORS,)	
INC., <i>et al.</i> ,)	
)	
Defendants.)	
)	

**ORDER GRANTING OFFICIAL COMMITTEE OF
UNSECURED CREDITORS' MOTION TO CONSOLIDATE**

CAME ON to be considered the *Official Committee of Unsecured Creditors' Motion to Consolidate* (the "Motion"),² and having reviewed the Motion and all other papers related thereto heretofore filed; and this Court having jurisdiction to consider the Motion; and venue

² Capitalized terms not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

being proper; and notice of the Motion having been sufficient; and the relief requested in the Motion being warranted, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED;
2. The Debtor Action, Adv. Pro. No. 18-cv-03237-hdh filed by the Debtors on July 27, 2018, will serve as the lead case;
3. Nothing in this Order, nor in the Motion, shall be deemed to prejudice or estop in any respect the Committee's rights to assert any cause of action against any party or to allege any fact in connection therewith, all of which rights are expressly reserved hereby; and
4. This Court shall retain jurisdiction over all matters arising from the implementation and/or interpretation of this Order.

IT IS SO ORDERED

END OF ORDER