



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed June 15, 2020

  
United States Bankruptcy Judge

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

In re: § Chapter 11  
4 WEST HOLDINGS, INC., *et al.*, § Case No. 18-30777 (HDH)  
REORGANIZED DEBTORS. § (Jointly Administered)

ORDER GRANTING MOTION FOR  
FINAL DECREE CLOSING BANKRUPTCY CASES  
PURSUANT TO 11 U.S.C. § 350(a) AND FED. R. BANKR. P. 3022

On this day came on to for consideration the *Motion for Final Decree Closing Bankruptcy Cases Pursuant to 11 U.S.C. § 350(a) and Fed. R. Bankr. P. 3022* [Dkt. No. 1924] (the "**Motion**"), filed by GlassRatner Advisory & Capital Group, LLC, as Trustee (the "**Distribution Trustee**") of the 4 West Distribution Trust (the "**Distribution Trust**"), Millenia Claims Management, LLC (the "**Tort Claims Trustee**") as Trustee of the 4 West Tort Claimants Trust (the "**Tort Claimants Trust**"), and Gilmour Consulting LLC, as Trustee (the "**GUC Trustee**" and with the Distribution Trustee and Tort Claims Trustee, the "**Moving Trustees**") of the 4 West General Unsecured Creditors'

Trust (the "**GUC Trust**" and with the Distribution Trust and Tort Claimants Trust, referred to as the "**Trusts**"). The Court finds that:

1. Notice and service of the Motion and notice of hearing regarding the Motion were proper and sufficient in all respects and that no other or further notice regarding the Motion need be given.

2. It has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and that adjudication of the Motion is a core proceeding pursuant to 28 U.S.C. §§ 157 and 1334.

3. The Debtors' estates have been fully administered within the meaning of 11 U.S.C. § 350.

4. The Confirmation Order<sup>1</sup> has become final, the deposits required under the Plan have been distributed, property proposed by the Plan to be transferred has been transferred, the Moving Trustees have managed the property to be dealt with under the Plan, payments under the Plan have commenced and all motions, contested matters and adversary proceedings have been finally resolved.

5. All requirements and predicates of 11 U.S.C. § 350(a) and Bankruptcy Rule 3022 have been met, satisfied and approved.

6. Each of the Trusts are hereby terminated or shall be deemed terminated following completion of any final distributions and payment of any remaining Trust expenses that may need to be made in accordance with and pursuant to the terms and timing set forth herein and the respective Trusts (the "**Trusts Termination**"). Each of the Moving Trustees are discharged upon the applicable Trusts Termination with the full protections and benefits set forth in the Plan, Confirmation Order and respective Trusts.

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<sup>1</sup> All capitalized terms used in this Order, if not defined in this Order, shall have the meaning set forth in the Motion and if not defined in the Motion or in this Order, shall have the meaning set forth in the Debtor's Modified Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code filed January 14, 2019 [Dkt. No. 1361].

7. Findings Applicable to the Distribution Trust and/or the GUC Trust and/or Tort Claimants Trust:

7.1 All remaining Distribution Trust Assets, as defined in the Distribution Trust Agreement, including all cash, after payment of remaining Trust Costs (as defined in the Distribution Trust Agreement), Accounts Receivables, and South Carolina Other Assets, including books and records and information related thereto, shall be transferred to Omega in satisfaction of Class 1 Omega Secured Claim.

7.2 All Distribution Trust Claims have been fully and finally resolved. The Distribution Trustee has paid all Distribution Trust Claims in full. The Administrative Claim Bar Date and the Order Granting Distribution Trust's Motion for Entry of an Order to set an August 31, 2019 Bar Date for Filing Post-Effective Date Administrative Claims [Dkt. No. 1597] bars and prohibits any additional or potential Distribution Trust Claims from being asserted by any party-in-interest.

7.3 All Tort Claimant Trust Claims have been fully and finally resolved. The Tort Claimant Trustee has paid all Tort Trust Claims in Full. The applicable Bar Date bars and prohibits any additional Tort Trust Claims from being asserted by any party-in-interest. All Tort Claimant Trust Assets have been utilized to pay all Accounts Receivables, Tort Settlements, and Trust Costs. As such, the Tort Claimant Trust has a zero balance.

7.4 All accounting expenses, professional fees and other Costs incurred by the Distribution Trustee, GUC Trustee, or Tort Claimant Trustee as disclosed in the Modified Final Report, GUC Trust Report, and Tort Claimant Trust Report, are proper and appropriate and are approved, any additional costs, expenses, professional fees and other Costs incurred by the Distribution Trustee or GUC Trustee hereafter shall be payable

without further notice or Court approval and deducted from the Distribution Trust Holdback (as defined below) or GUC Trustee assets as appropriate.

7.4 The Distribution Trust Assets, GUC Trust Assets, and Tort Claimant Trust Assets, as may be defined in the Distribution Trust Agreement, GUC Trust Agreement, or Tort Claimant Trust Agreement, have been fully administered and the objectives and purposes of the Distribution Trust, as set forth in, among other provisions, paragraphs 2.2 and 2.3 of the Distribution Trust Agreement, GUC Trust, and Tort Claimant Trust have been fulfilled by the Distribution Trustee and/or GUC Trustee and/or Tort Claimant Trustee, as applicable. The Distribution Trustee, GUC Trustee, and Tort Claimant Trustee shall be discharged from all responsibilities of any kind or character upon the payment of the Distribution Trust Holdback (as defined below) and final distribution of any remaining GUC Trust Assets and Tort Claimant Trust Assets, respectively. All Privileges (as defined in the Distribution Trust Agreement, GUC Trust, Tort Claimant Trust or applicable law) shall remain solely with the Distribution Trustee and/or GUC Trustee and/or Tort Claimant Trustee, as applicable, both before and after discharge. No additional reporting shall be required of the Distribution Trustee, GUC Trustee, or Tort Claimant Trustee after the Modified Final Report and GUC Trust Report.

7.5 The Distribution Trustee has fulfilled any and all obligations with regard to the Transition Services Agreement, as set forth in Section 2.3(a) of the Distribution Trust Agreement.

7.6 The Distribution Trustee's, GUC Trustee's, and Tort Claimant Trustee's actions and administration of the Distribution Trust Assets, GUC Trust Assets, and Tort Claimants Trust Assets, respectively and related activities entitles such Distribution Trustee, GUC Trustee, and Tort Claimant Trustee and their respective agents and professionals are

entitled to the full benefit of all indemnifications, exculpations, releases, limitations of liability and other benefits and protections set forth in the Plan, Confirmation Order, Distribution Trust Agreement, GUC Trust Agreement, Tort Claimant Trust Agreement, and applicable law.

7.7 All of the Distribution Trustee's, GUC Trustee's, Tort Claimant's Trustee's actions, statements, management and efforts related, directly or indirectly, to the administration of the respective Distribution Trust, GUC Trust, or Tort Claimant Trust including the Claims resolution process, were within the authority and powers granted to the Distribution Trustee, GUC Trustee, and Tort Claimant Trustee who fulfilled all obligations under the Plan, Confirmation Order, Distribution Trust Agreement, GUC Trust Agreement and Tort Claimant Trust Agreement. The Distribution Trustee, GUC Trustee, and Tort Claimant Trustee properly consulted with Beneficiaries, as appropriate.

7.8 The Distribution Trustee's requested \$250,000 holdback as set forth in paragraph 23 of the Motion (net of additional expenditures, the "**Distribution Trust Holdback**") is reasonable and approved.

7.9 Pursuant to the terms and provisions of the Plan, Confirmation Order and the Distribution Trust Agreement, including Section 9 of the Distribution Trust Agreement, upon return to Omega of the unused portion of the Distribution Trust Holdback and the entry of this Order, the Distribution Trust shall be terminated for all purposes without any further notice or Court approval.

7.10 The Distribution Trustee's termination of its engagement of SNF Receivable Solutions LLC ("**SNF**") is hereby approved. Omega, in its discretion, may retain SNF to collect its Accounts Receivables. Further, the Distribution Trustee is authorized, but not directed to assign its contract with SNF to Omega.

7.11 The Distribution Trustee's Notice of List of Distributions to Holders of Un-Negotiated Checks for Allowed Claims, filed on February 13, 2020 [Dkt. No. 1919] fulfills the Distribution Trustee's obligations under Article 7.D.4(c) of the Plan. The Distribution Trustee may re-distribute to Omega all such amounts represented by un-negotiated checks for whom such claimant has not contacted the Distribution Trustee.

7.12 To the extent a distribution mailed by the GUC Trust to a GUC Trust Beneficiary at the address for such GUC Trust Beneficiary set out on the Class 4 Claims List (as such term is defined in the GUC Trust Agreement) is returned as undeliverable, the GUC Trust may, but shall have no obligation to attempt to make the distribution again, provided however, that if a distribution is returned with a forwarding address for a GUC Trust Beneficiary, the GUC Trust shall make one attempt to deliver the distribution to that address. Such relief is in accordance with Section 6.4 of the GUC Trust Agreement and will reduce the cost of operating the GUC Trust as well as shorten the remaining duration of time during which the GUC Trust must continue operating, all to the financial benefit of the GUC Trust Beneficiaries. Thereafter, the GUC Trustee shall have no further obligation with respect to an undelivered distribution.

7.13 The Distribution Trust and the GUC Trust are each hereby recognized to be a liquidating trust under Treas. Reg. § 301.77014-4(d). Both the Distribution Trust Agreement and the GUC Trust Agreement make clear that the Distribution Trust and the GUC Trust are each intended to operate as a liquidating trust, both through its explicit citation to section 301.77014-4(d) as well as its stated operational purpose of liquidating the Distribution Trust Assets and the GUC Trust Assets, respectively, and making distributions to their respective Beneficiaries. The Confirmation Order inexplicably provides that "[t]he GUC Trust shall be established for the sole purpose of liquidating and distributing the

General Unsecured Claims Cash Amount in accordance with Treas. Reg. Section 301.77014-4(b) or applicable state law, with no objective to continue or engage in the conduct of a trade or business." The citation to section 301.77014-4(b) is clearly a scrivener's error, as both the Distribution Trust and Tort Claimants Trust were created under are Treas. Reg. § 301.77014-4(d). Not only do the terms of the GUC Trust make clear that it was created as a liquidating trust, but the cited language in the Confirmation Order is self-contradicting as written – while the Confirmation Order explicitly provides that the GUC Trust was established "with no objection to continue or engage in the conduct of a trade or business," section 301.77014-4(b) governs the operation of business trusts, which are typically "device[s] to carry on a profit making business." Thus, both the clear terms of the Distribution Trust Agreement and the GUC Trust Agreement and the unintentionally paradoxical language of the Confirmation Order make clear that both the Distribution Trust and the GUC Trust were each intended to be a liquidating trust under Treas. Reg. § 301.77014-4(d).

7.14 As a liquidating trust created pursuant to Treas. Reg. § 301.77014-4(d), the GUC Trust is required to obtain the Federal Employee Identification Number ("FEIN") of each GUC Trust Beneficiary. Although the GUC Trustee was able to collect FEINs from a large number of GUC Trust Beneficiaries, the FEINs of approximately 550 GUC Trust Beneficiaries with small claims have not yet been obtained. The GUC Trustee has attempted to collect these GUC Trust Beneficiaries' FEINs and, indeed, has contacted these GUC Trust Beneficiaries on two previous occasions. On March 20, 2020 the GUC Trustee sent a third request to GUC Trust Beneficiaries who had not yet provided the GUC Trustee with FEINs – stating that any GUC Trust Beneficiary who does not provide the GUC Trustee with a FEIN within 21 days of such notice forfeited all rights to a distribution under the GUC Trust. Nonetheless, the GUC Trustee will accept FEINs provided through the

effective date of this order. Any creditor who fails to present an FEIN before such time shall have no further right to receive a distribution from the GUC Trust.

7.15 Any unclaimed distributions or proceeds of uncashed checks shall be redistributed among the other GUC Trust Beneficiaries or, if the amount is under the distribution threshold, after satisfaction of any remaining GUC Trust expenses, deposited with the Clerk of the Court or donated to charity by the GUC Trustee as the GUC Trustee deems appropriate. Further, the Distribution Trust Unclaimed Funds shall be distributed to Omega.

7.16 The Distribution Trustee's, GUC Trustee's, and Tort Claimant Trustee's proposed retention of copies of books, records and information related to the Distribution Trustee's, GUC Trustee's, Tort Claimant Trustee's administration of their respective trusts, including distributions, reconciliation of Claims and related issues for a period of one year from the entry of this Order is reasonable and approved. After one year from the date of the entry of this Order, the Distribution Trustee, GUC Trustee, and Tort Claimant Trustee may destroy and dispose of all such books, records and information without additional notice or Court approval.

8. The Trusts respective books, records and related information constitute property of the Debtors' bankruptcy estates that is burdensome and is of an un consequential value and benefit to the Debtors' estates.

9. The relief sought in the Motion is in the best interests of the Trusts, their respective beneficiaries, and all parties-in-interests; and the legal and factual bases for relief set forth in the Motion establishes just cause for the relief requested in the Motion and granted in this Order.

10. Accordingly, this Court having considered the Motion, attachments thereto, exhibits, related evidence, arguments of counsel and further taking judicial notice of relevant documents filed



during these bankruptcy cases, and evidence from prior hearing finds that sufficient cause exists for entry of this order and the following relief.

11. The Distribution Trustee has: (i) complied with the requirements and terms of the Distribution Trust Agreement, (ii) fulfilled the purposes of the Distribution Trust (including as set forth in section 2.3 of the Distribution Trust Agreement), (iii) has properly satisfied all objectives and obligations of the Distribution Trust (including as set forth in section 2.2 and Article V of the Distribution Trust Agreement), (iv) complied in all material aspects with the terms of the Distribution Trust Agreement, (v) performed all acts necessary and required to fully administer the Trust Assets, resolved all claims and made all required distributions, save and except the final distribution to Omega, which per the Motion will be made upon entry of this Order, and (vi) paid all amounts due and owing the United States Trustee pursuant to section 1930 of Title 28 of the U. S. Code.

12. The Distribution Trustee, and any professionals retained thereby, shall be entitled to all protections, safeguards, exculpations, limitations of liabilities, and all other benefits as set forth in the Plan, Confirmation Order and Distribution Trust Agreement (including as set forth in section 3.10 of the Distribution Trust Agreement).

It is therefore,

**ORDERED** that the relief requested in the Motion is **GRANTED**. It is further

**ORDERED** that, pursuant to 11 U.S.C. § 350(a) and FED. R. BANKR. P. 3022, this order (the "**Order**") shall constitute the final decree in the above-captioned jointly administered and substantively consolidated bankruptcy cases, and in each of the cases jointly administered under and substantively consolidated with the above captioned case (collectively referred to herein as the "**Bankruptcy Case**"). It is further

**ORDERED** that the Bankruptcy Cases are hereby closed effective upon the Trust's Termination, as provided herein. It is further

**ORDERED** that the Moving Trustees are authorized and directed to take all steps necessary to effectuate the closing of the Bankruptcy Case, including paying any just due and owing professional fees. It is further

**ORDERED** that nothing in this Order shall affect and hereby affirms the rights of the Trusts and Moving Trustees under Article VII of the Plan and otherwise, including, without limitation, the right to retain and redistribute undeliverable or unclaimed distributions, including distributions that would have otherwise been meant to satisfy claims but for which the Trustees were unable to, *inter alia*, obtain a federal EIN or a valid mailing address for the creditor. It is further

**ORDERED** that each of the Moving Trustees (and their respective professionals) shall be and hereby are granted all protection, benefits and rights as set forth in the Plan, Confirmation Order and respective Trusts, including exculpations, releases, indemnities, limitations of liabilities and other benefits and protections. Further, nothing in this Order shall diminish in any manner whatsoever the exculpations, releases, indemnities, and other benefits and protections, afforded the Moving Trustees and their respective professionals. It is further

**ORDERED**

1. The Distribution Trustee is authorized and directed to pay such final Trust Costs as defined in the Distribution Trust Agreement, including professional fees, and any remaining United States Trustee fees, if any, and deliver the net amount of the Holdback to Omega on or reasonably soon after the 121<sup>st</sup> day from the date of entry of the Order.
2. Subject to the Distribution Trust Holdback, as described in the Motion and approved hereby, the Distribution Trustee shall distribute, transfer and convey any and all of the

Distribution Trust Assets, including without limitation, all cash (including the Distribution Trust Unclaimed Funds), Accounts Receivable and South Carolina Other Assets to Omega in satisfaction of the Class 1 Omega Secured Claim and Omega shall own and possess all rights of ownership thereof. Any and all third parties with possession of any Distribution Trust Assets or any amounts due the Distribution Trust, shall turn over such amounts, in their entirety, promptly to Omega. Further, the Distribution Trust is authorized and directed to execute such documents and instruments, including such quitclaim conveyance documentation, including the transfer of the Distribution Trust Assets to Omega.

3. The Distribution Trustee's Final Report and Statement of Discharge filed on June 8, 2020 [Dkt. No. 2034] (the "**Amended Final Report**") satisfies the Distribution Trustee's obligations under Section 3.14(a) to file a Statement of Discharge, which is hereby approved as required by Section 3.14(b) of the Distribution Trust Agreement. The Distribution Trustee shall receive all the benefits and protections for complying with Section 3.14 as set forth in Section 3.14(b) of the Trust Agreement. The Amended Report is hereby approved and accepted.
4. The GUC Trust Report satisfies any and all obligations of the GUC Trustee under the terms of the GUC Trust Agreement or otherwise to provide a final accounting.
5. The Tort Claimant Trust Report satisfies any and all obligations of the Tort Claimant Trustee under the terms of the Tort Claimant Trust Agreement or otherwise to provide a final accounting.
6. Notwithstanding this Court's approval of the abandonment of the Trusts respective books and records as set forth above, the Distribution Trustee and GUC Trustee shall

retain its books, records and related information that is not delivered to Omega, for a period of twelve (12) months from the date of the entry of this Order.

7. The Distribution Trust is terminated in accordance with and for all purposes, including section 9.1 of the Distribution Trust Agreement, upon the payment of the unused portion of the Distribution Trust Holdback to Omega. It is further

**ORDERED** that the GUC Trust shall be deemed terminated 90 days from the later of the date of the final payment of expenses of beneficiary distribution. Upon termination, the GUC Trustee shall file written notice of termination with the Bankruptcy Court. It is further

**ORDERED** that the Tort Claimant Trust shall be deemed terminated 90 days from the later of the date of the final payment of expenses for distribution. Upon termination, the Tort Claimant Trustee shall file written notice of termination with the Bankruptcy Court. It is further

**ORDERED** that the Moving Trustees' may take all necessary actions and execute all required documents necessary to finalize and wrap-up the administration of their respective Trusts prior to as part of the Termination of such Trusts. It is further

**ORDERED** that notwithstanding the possible application of Bankruptcy Rules 6004, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

**###END OF ORDER###**

**Prepared and submitted by:**

Joseph M. Coleman  
State Bar No. 04566100

John J. Kane  
State Bar No. 24066794

S. Kyle Woodard  
State Bar No. 24102661

**KANE RUSSELL COLEMAN LOGAN PC**

5200 Bank of America Plaza

901 Main Street

Dallas, Texas 75202

Telephone - (214) 777-4200

Telecopier - (214) 777-4299

E-mail: [jcoleman@krcl.com](mailto:jcoleman@krcl.com)

E-mail: [jkane@krcl.com](mailto:jkane@krcl.com)

E-mail: [kwoodard@krcl.com](mailto:kwoodard@krcl.com)

**COUNSEL TO GLASSRATNER ADVISORY  
& CAPITAL GROUP, LLC TRUSTEE OF  
THE 4 WEST DISTRIBUTION TRUST**