

CREATIVITY TO CIRCUMVENT COLLAPSE: UNDERSTANDING THE SUCCESS OF 4 WEST HOLDINGS

This article examines the Chapter 11 reorganization of 4 West Holdings, Inc. and its affiliates, a group of skilled nursing facility operators that filed for bankruptcy on June 22, 2018, with a purportedly confirmable pre-negotiated plan backed by their largest creditor. Midway through the confirmation process, a dispute over the interpretation of a critical plan provision jeopardized confirmation, threatening conversion to Chapter 7 liquidation. In response, 4 West's legal team devised a novel approach utilizing Bankruptcy Rule 3019 to modify the plan without requiring re-solicitation using Rule 3019. The bankruptcy court ultimately confirmed the Third Amended Plan on January 14, 2019. This article explores the background, negotiation history, and legal strategy employed in the 4 West case, offering critical insights into the flexibility of Rule 3019 and its application in complex Chapter 11 proceedings.

By Thomas R. Califano and Julia Jean Citron *

On June 22, 2018, 4 West Holdings, Inc. and its debtor affiliates ("4 West") filed chapter 11 with what they believed was a pre-negotiated, confirmable plan with the support of its largest creditor (the "Primary Creditor"). However, midway through the confirmation process, a dispute arose over the reading of a key plan provision. When the dispute was resolved, 4 West's ability to confirm a plan was imperiled and the case was in danger of converting to chapter 7 liquidation. Through a novel and unconventional strategy, 4 West's professional team was able to confirm a plan. This Article provides a background of the case and explains the strategy which saved it. By modifying the plan to include post-petition transactions for the benefit of the secured creditor, 4 West successfully argued that the modified plan gave the

creditor better treatment than the original plan the creditor had voted in favor of, and thus, the creditor should be bound by its previous accepting vote. The Debtors' Third Amended Plan was confirmed on January 14, 2019.

DEBTORS' BACKGROUND AND INITIALLY STEADY RELATIONSHIP WITH THE PRIMARY CREDITOR

4 West Holdings, Inc., Orianna Investment, Inc. and 133 affiliates were licensed operators of 41 skilled nursing facilities and managers of one skilled nursing facility, in Georgia, Indiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia, with 4,667 licensed beds.

* THOMAS R. CALIFANO is a partner at Sidley Austin LLP's New York City office. His e-mail address is tom.califano@sidley.com. JULIA JEAN CITRON is an associate at Sidley Austin LLP's New York City office. Her e-mail address is julia.citron@sidley.com.