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

In re:	:	Chapter 11
PILGRIM'S PRIDE CORPORATION, et al.	:	Case No. 08-45664 (Jointly Administered)
Debtors.	:	Hon. D. Michael Lynn

COBANK, ACB'S RESPONSE TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' OBJECTION TO LIEN FINDING IN FINAL DIP FINANCING ORDER

CoBank, ACB ("**CoBank**"), as Administrative Agent for the benefit of the Syndication Parties[1], a secured creditor of Pilgrim's Pride Corporation (the "**Debtor**") a debtor in the above-styled chapter 11 case, hereby files this Response (the "**Response**") to the Official Committee of Unsecured Creditors' (the "**Committee**") Objection to Lien Finding in Final DIP Financing Order (the "**Objection**"). In support of the Response, CoBank respectfully states as follows:

I. FACTUAL BACKGROUND

1. Given the nature of the Committee's Objection, a brief summary of the lending history between CoBank and the Debtor is appropriate.

2. The Debtor, certain Syndication Parties from time to time party thereto, and CoBank, entered into that certain 2006 Amended and Restated Credit Agreement (Convertible Revolving Loan and Term Loan), dated as of September 21, 2006, as amended by that certain First Amendment to Credit Agreement, dated as of December 13, 2006, as further amended by that certain Second Amendment to Credit Agreement, dated as of January 4, 2007, as further amended by that certain Third Amendment to Credit Agreement, dated as of February 7, 2007, as

[1] As that term is defined under the CoBank Credit Agreement.

further amended by that certain Fourth Amendment to Credit Agreement, dated as of July 3, 2007, as further amended by that certain Fifth Amendment to Credit Agreement, dated as of August 7, 2007, as further amended by that certain Sixth Amendment to Credit Agreement, dated as of November 7, 2007, as further amended by that certain Seventh Amendment to Credit Agreement, dated as of March 10, 2008, and as further amended by that certain Eighth Amendment to Credit Agreement, dated as of May 1, 2008 (as the same may hereafter be amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), pursuant to which the Syndication Parties agreed to provide a term loan and revolving loans to the Debtor pursuant to, and upon the terms and conditions set forth in, the Credit Agreement.

3. As a condition to the obligation of the Syndication Parties to make their respective loans to the Debtor under the Credit Agreement and to secure the obligations of the Debtor thereunder, the Debtor entered into (A) that certain Amended and Restated Security and Pledge Agreement, dated as of September 21, 2006 (as amended, restated, supplemented or otherwise modified from time to time, the "**Security Agreement**") pursuant to which the Debtor granted to CoBank, for the benefit of the Syndication Parties, a security interest in and lien on (i) all of the Debtor's equipment, including, without limitation, all processing equipment, packaging equipment, fixtures, machinery, furnishings, appliances, leasehold improvements and trade fixtures (collectively, the "**Equipment**"), attached to or used in connection with the Pledged Facilities (as defined in the Security Agreement), (ii) all of the Borrower's right, title and interest under any policies of insurance covering the Equipment (the "**Insurance**"), (iii) all books and records relating to the Equipment or the Insurance, and (iv) all of the proceeds of any of the foregoing (the items described in clauses (A)(i) through (A)(iv) above are collectively referred to

as the "**Security Agreement Collateral**"), and (B) that certain Security and Pledge Agreement, dated as of January 9, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the "**Pledge Agreement**") pursuant to which the Debtor granted to CoBank, for the benefit of the Secured Parties, a security interest in and lien on (i) all of the issued and outstanding capital stock of Pilgrim's Pride Corporation of Georgia, Inc. (the "**PPC Stock**"), and all options, warrants or other rights to purchase such PPC Stock, (ii) all general intangibles and accounts of the Debtor with respect to the PPC Stock, and (iii) all books and records of the Debtor relating to the PPC Stock (the items described in clauses (B)(i) through (B)(iii) above are collectively referred to as the "**Pledge Agreement Collateral**").

4. In addition, it was a condition to the obligation of the Syndication Parties to make their respective loans to the Debtor under the Credit Agreement that the Debtor enter into certain deeds of trust, mortgages and deeds to secure debt (collectively, the "**Mortgages**") for the benefit of CoBank and the Syndication Parties to secure the obligations of the Debtor under the Credit Agreement. Pursuant to the terms and conditions of the Mortgages, the Debtor granted to CoBank a lien on (i) certain real property located in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, Texas, Virginia and West Virginia (collectively, the "**Land**"), (ii) all buildings and improvements located, erected, constructed or developed on the Land, (iii) all of the Debtor's right, title and interest in and to all real property estates and interests located on or benefiting the Land, including, without limitation, all fixtures, easements, permits, licenses and rights of way, and (iv) all of the Debtor's right, title and interest in and to all equipment and fixtures used on or in connection with the Land (the items described in clauses (i) through (iv) above are collectively referred to as the "**Mortgage Collateral**"; and together with the Security Agreement Collateral and Pledge

Agreement Collateral, the "**CoBank Collateral**").

5. Further, pursuant to the terms of this Court's "Final Financing Order Authorizing (1) Borrowing with Priority Over Administrative Expenses and Secured by Liens on Property of the Estates Pursuant to Section 364(c) and Section 364(d) of the Bankruptcy Code, (2) the Debtors' Use of Cash Collateral Including to Repurchase Receivables and Granting Adequate Protection Therefor Pursuant to Sections 361 and 363 of the Bankruptcy Code, and (3) Modifying the Automatic Stay" (the "**DIP Order**"), the Court found "that the mortgages, security interests and liens granted to the Pre-Petition Agents for the ratable benefit of the respective Pre-Petition Lenders under the respective Pre-Petition Loan Documents or this Final Order are senior (subject to Permitted Senior Liens), valid, fully perfected, non-voidable and enforceable mortgages, security interests and liens fully securing the Pre-Petition Credits (the "**Lien Finding**")."

6. Pursuant to the DIP Order, the Court provided the Committee 90 days following its appointment, or until March 5, 2009, in order to challenge the Lien Finding set forth therein. See DIP Order at ¶ 12. The DIP Order further provided that this March 5th deadline could be extended by order of the Court.

7. Upon completing its review of CoBank's collateral position, and without bothering, even as a courtesy, to open a dialogue with counsel for CoBank on any perceived issues concerning lien perfection, the Committee filed its Objection on February 24, 2009.

II. RESPONSE

8. The Committee objects to the Lien Finding based upon the Committee's belief that CoBank failed to properly perfect its interest in certain portions of the Security Agreement Collateral due to an allegedly faulty, or incomplete, UCC-1 Financing Statement filed in the

State of Delaware. According to the Objection, the Committee believes CoBank's lien is unperfected because it does not include or cover the Personal Property Collateral located at the following "Pledged Facilities": Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, South Carolina, and Tennessee; Lee County, North Carolina, Angelina and Nacogdoches, Texas; and a tract located in Shelby, County, Texas (the "**Unperfected Facilities**"). See Objection at 3. CoBank's investigation into the Committee's claims is ongoing and CoBank will respond more fully to the Committee's contentions in connection with the lawsuit recently filed by the Committee for declaratory relief that relates to the Objection. Even a cursory review of the collateral documents, however, illustrates major flaws in the Committee's assertions regarding CoBank's "Unperfected Facilities."

9. For example, the Committee asserts that CoBank failed to properly perfect its security interest with respect to a tract of land located in Shelby County, Texas. See Objection at 3. To CoBank's knowledge, and as the UCC-1 Financing Statement attached to the Committee's Objection as Exhibit B confirms, CoBank in fact properly perfected its security interest in all personal property located at the Tenaha, Texas, feedmill, located in Shelby County, by filing the UCC-1 Financing Statement with the Delaware Secretary of State. See Exhibit B to the Objection. As such, CoBank's liens on all of the Security Agreement Collateral located at the Shelby County feedmill are properly perfected.

10. More importantly, even if the balance of the Committee's assertions in the Objection are factually correct, CoBank's liens remain perfected (and the Committee does not challenge same) with regard to any and all real property and the accompanying fixtures that are part of the CoBank Collateral. Pursuant to the Security Agreement and the Mortgages, CoBank received a security interest in and liens upon all fixtures and equipment located on or used in

connection with the Land and the Pledged Facilities. Because the vast majority, if not all, of this equipment constituting CoBank's collateral is ***attached to*** and made a part of the Pledged Facilities and the Land, such equipment is a fixture that runs with the underlying land (and is subject to CoBank's properly perfected liens), and is not subject to, nor affected by, any alleged limiting description in the UCC-1 Financing Statement that forms the basis of the Committee's Objection.[2] Therefore, the effect of the Committee's attack on CoBank's liens is minimal, at best, because the value of CoBank's collateral, which is the basis for the assumption in paragraph 5 of the DIP Order that CoBank is an oversecured creditor under Section 506 (b) of the Bankruptcy Code, lies in the value of the Pledged Facilities and the fixtures located on the Pledged Facilities and the Land, rather than any miscellaneous removable personal property owned by the Debtors that may exist at such facilities or on the Land.

III. RESERVATION OF RIGHTS

11. CoBank files this Response expressly subject to, and without waiver of any and all rights, remedies, challenges and objections. CoBank also specifically reserves, and does not waive, its ability to supplement the Response, and to present any additional arguments at any hearing in connection with the Objection or any related litigation commenced by the Committee.

WHEREFORE, CoBank respectfully requests that the Court (i) deny the Committee's Objection, (ii) grant CoBank such further relief as is just and proper.

[2] Indeed, because the Committee failed to challenge the Lien Finding with regard to CoBank's liens on the Debtor's real property and/or fixtures at the various Pledged Facilities, the Court's Lien Finding, to that extent, is final.

Dated: March 6, 2009.

Respectfully submitted,

FULBRIGHT & JAWORSKI L.L.P.

By: *Louis R. Strubeck*

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ATTORNEYS FOR COBANK, ACB

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that the above captioned pleading (the "Response") was served on the parties at the addresses listed in the attached service list on this 6th day of March, 2009. The Response was served by first-class mail, postage prepaid and/or electronic service.

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