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Debtors in Possession

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

**In re**

**PILGRIM'S PRIDE CORPORATION, *et al.*,**

**Debtors.**

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**Chapter 11**

**Case No. 08-45664 (DML)**

**JOINTLY ADMINISTERED**

**DEBTORS' MOTION PURSUANT TO SECTION 105 OF THE BANKRUPTCY CODE  
AND BANKRUPTCY RULE 9019 AUTHORIZING AND APPROVING THE THIRD  
STIPULATION BETWEEN THE DEBTOR AND FM INSURANCE COMPANY**

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON DECEMBER 1, 2009 AT  
10:30 AM (CT) AT THE ELDON B. MAHON U.S. COURTHOUSE, 501 W. TENTH  
STREET, FORT WORTH, TEXAS. IF YOU OBJECT TO THE RELIEF REQUESTED,  
YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH  
PARAGRAPH OF THIS PLEADING. YOU MUST FILE YOUR RESPONSE WITH  
THE CLERK OF THE BANKRUPTCY COURT BY NOVEMBER 24, 2009 AT 4:00 PM  
(CT). YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PARTIES  
INCLUDED ON THE MASTER SERVICE LIST FILED WITH THIS COURT.**

TO THE HONORABLE D. MICHAEL LYNN,  
UNITED STATES BANKRUPTCY JUDGE:

Pilgrim's Pride Corporation ("PPC") and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors in possession (collectively, the "Debtors"),<sup>1</sup> respectfully represent:

### **Background**

1. On December 1, 2008 (the "Commencement Date"), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

### **Pilgrim's Pride's Businesses**

3. PPC, together with its debtor and non-debtor subsidiaries (collectively, "Pilgrim's Pride"), has one of the best brand names in the chicken industry. It is one of the largest producers of chicken in the United States and the second-largest producer in Mexico. Pilgrim's Pride has operations throughout the continental United States, Puerto Rico, and Mexico. Formed in 1946 as a retail feed store partnership between Lonnie A. "Bo" Pilgrim and his brother, Aubrey E. Pilgrim, PPC has been a publicly traded company since 1986.

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<sup>1</sup> The Debtors in these cases are PPC; PFS Distribution Company; PPC Transportation Company; To-Ricos, Ltd.; To-Ricos Distribution, Ltd.; Pilgrim's Pride Corporation of West Virginia, Inc.; and PPC Marketing, Ltd.

4. Through vertical integration, Pilgrim's Pride manages the breeding, hatching and growing of chickens. Pilgrim's Pride also manages the processing, preparation, packaging, sale and distribution of its product lines, which Pilgrim's Pride believes has made it one of the highest quality, lowest-cost producers of chicken in North America. In the continental United States, Pilgrim's Pride produces both prepared chicken products and fresh chicken products. In Mexico and Puerto Rico, it produces exclusively fresh chicken products. Pilgrim's Pride's products are sold to foodservice, retail and frozen entrée customers, distributed primarily through retailers, foodservice distributors and restaurants.

#### **Jurisdiction and Venue**

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

#### **Relief Requested**

6. By this Motion, the Debtors seek, pursuant to Section 105 of the Bankruptcy Code and Bankruptcy Rule 9019, authorization and approval to enter into a Third Stipulation Between the Debtor and FM Insurance Company with Respect to Advances for Pre-Petition Losses (Gainesville Property) (the "Stipulation"), between PPC, as Debtor, and FM Insurance Company ("FM Global," and together with the PPC, the "Parties"), a copy of which is attached hereto as Exhibit A. Pursuant to the Stipulation, the Parties have agreed to a compromise regarding a final payment to be made by FM Global with respect to a prepetition loss sustained on the Debtors' Gainesville Property (as defined below).

#### **Prepetition Loss at Gainesville Property**

7. On April 27, 2007, the Debtor sustained a pre-petition loss at a certain processing plant owned and operated by the Debtor and located at 920 Queen City Parkway,

Gainesville, Georgia (the "Gainesville Property") involving a roof collapse which caused extensive damage to the building, equipment, and its contents (the "Gainesville Loss").

8. FM Global is the insurer, and the Debtor is the named insured under a property insurance policy, Advantage Policy Nos. JT756 ("Policy JT756"), pursuant to which FM Global provides property damage and time element insurance coverage (which includes lost sales and extra expenses) to the Debtor. Policy JT756 provides coverage to the Debtor with respect to the Gainesville Loss.

#### **Advances Related to the Gainesville Loss**

9. As requested by the Debtor, on or about July 13, 2007, FM Global advanced \$2 million toward the property damage component under Policy JT756 to the Debtor against the Gainesville Loss (the "First Gainesville Advance").

10. On or about April 13, 2009, pursuant to the Stipulation Between The Debtor And FM Insurance Company With Respect to Advances for Pre-Petition Losses, which was approved by this Court on March 26, 2009 [Docket No. 1305] (the "First Stipulation"), FM Global advanced another \$1.5 million toward the property damage claims and another \$500,000 toward time element damages for the period April 2007 to June 2007 under Policy JT756 (the "Second Advance").

11. As requested by the Debtor, on or about September 28, 2009, FM Global advanced another \$448,469.64 toward the property damage claims and another \$2,659,827.36 toward time element damages for the period April 2007 to June 2007 under the Policy JT756 (the "Third Advance").

12. The Debtor has now requested that FM Global make a final payment to the Debtor toward all claims associated with the Gainesville Loss, in the sum of \$1 million,

which consists of \$951,195.36 for property damage and \$48,804.64 for time element damages for the period April 2007 to June 2007 (the "Final Payment"). FM Global has not yet made the Final Payment.

### **The Agreement**

13. The Final Payment aggregates \$1 million. In exchange for immediately distributing these funds to the Debtor, FM Global has requested that the Debtor agree that all prior advances and the Final Payment have been fairly and fully adjusted. Accordingly, to resolve the dispute, the Parties have agreed to enter into a settlement, the salient terms of which are as follows:

- The Debtor agrees that the First, Second and Third Advances made to the Debtor by FM Global under Policy JT756 for property and time element damages, in the total amount of \$7,108,297 have been fairly, fully and finally adjusted by the parties, their respective agents, independent adjusters and attorneys based upon information provided by the Debtor to FM Global to date.
- After application of the \$1 million deductible, as well as deduction of the First, Second and Third Advances made to the Debtor by FM Global pursuant to the terms and conditions of Policy JT756, the Debtor is entitled to the Final Payment.
- FM Global agrees that within ten (10) calendar days of its receipt of a final, non-appealable order of the Bankruptcy Court granting a motion to approve the specific provisions of the Stipulation, it shall make payment to the Debtor in the amount of the Final Payment.

### **The Controlling Legal Standard**

14. Bankruptcy Rule 9019(a) provides that, "[o]n motion by the [debtor in possession] and after notice and a hearing, the court may approve a compromise or settlement." FED. R. BANKR. P. 9019(a). Compromises are tools for expediting the administration of the case and reducing administrative costs and are favored in bankruptcy. *See In re Bond*, 1994 U.S. App. Lexis 1282, \*9-\*14 (4th Cir. 1994) ("To minimize litigation and expedite the

administration of a bankruptcy estate, ‘compromises are favored in bankruptcy’.”); *Fogel v. Zell*, 221 F.3d 955, 960 (7th Cir. 2000); *In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996); *In re Allied Prop., LLC*, 2007 Bankr. LEXIS 2174, \*12 (Bankr. S.D. Tex. June 25, 2007). Various courts have endorsed the use of Bankruptcy Rule 9019. *See, e.g., Official Committee of Unsecured Creditors v. Cajun Elec. Power Coop., Inc. (In re Cajun Elec. Power Coop., Inc.)*, 119 F.3d 349 (5th Cir. 1997); *Cook v. Robbye Wardron, Ch. 7 Trustee*, 2006 U.S. Dist. LEXIS 31411 (S.D. Tex. Apr. 18, 2006); *In re Foundation for New Era Philanthropy*, Case No. 95-13729B, 1996 Bankr. LEXIS 1892 (Bankr. E.D. Pa. Aug. 21, 1996); *In re Miller*, 148 B.R. 510 (Bankr. N.D. Ill. 1992); *In re Check Reporting Service, Inc.*, 137 B.R. 653 (Bankr. W.D. Mich. 1992).

15. In granting a motion pursuant to Rule 9019(a), a court must find that the proposed settlement is fair and equitable and is in the best interests of the estate. *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *Cajun Elec. Power Coop.*, 119 F.3d at 355; *Fisher v. Pereira (In re 47-49 Charles St., Inc.)*, 209 B.R. 618, 620 (S.D.N.Y. 1997); *In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 426 (S.D.N.Y. 1993), *aff’d*, 17 F.3d 600 (2d Cir. 1994); *United States ex. Rel. Rahman v. Oncology Assoc., P.C.*, 269 B.R. 139, 152 (D. Md. 2001); *In re Frye*, 216 B.R. 166, 174 (E.D. Va. 1997).

16. The decision to approve a particular settlement lies within the sound discretion of the bankruptcy court. *See TMT Trailer Ferry*, 390 U.S. at 424-25; *CFB-5, Inc. v. Cunningham*, 371 B.R. 175, 181 (N.D. Tex. 2007); *Nellis v. Shugrue*, 165 B.R. 115, 123 (S.D.N.Y. 1994). In ruling on a motion to approve a compromise, the role of the Bankruptcy Court is to determine whether the compromise reached is in the best interest of the creditors of the estate. *In re Jackson Brewing Co.*, 624 F.2d 599, 602-03 (5th Cir. 1980); *Cunningham*, 371 B.R. at 181.

17. While a court must “evaluate ... all ... factors relevant to a fair and full assessment of the wisdom of the proposed compromise,” *Anderson*, 390 U.S. at 424-25, a court need not conduct a “mini-trial” of the merits of the claims being settled, *W.T. Grant Co.*, 699 F.2d at 608; *Cajun Elec. Power Coop.*, 119 F.3d at 356, and only need to apprise itself of the relevant facts and law so that it can make an informed and intelligent decision. *Cajun Elec. Power Coop.*, 119 F.3d at 356; *In re Heritage Org., L.L.C.*, 2007 Bankr. LEXIS 2873, \*28 (Bankr. N.D. Tex. Aug. 31, 2007).

18. The court may give weight to the informed judgment of the debtor that a compromise is fair and equitable. *In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993); accord *In re Ashford Hotels Ltd.*, 226 B.R. 797, 802 (Bankr. S.D.N.Y. 1998) (“Significantly, that test does not contemplate that I substitute my judgment for the Trustee’s, but only that I test his choice for reasonableness.... If the Trustee chooses one of two reasonable choices, I must approve that choice, even if, all things being equal, I would have selected the other.”). The debtor need only show that its decision falls within the “range of reasonable litigation alternatives.” *Allied Prop., LLC*, 2007 Bankr. LEXIS 2174, \*12; *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2nd Cir. 1983), *cert. denied*, 464 U.S. 822, 104 S. Ct. 89, 78 L. Ed. 2d 97; *Cook v. Waldron*, 2006 U.S. Dist. LEXIS 31411, 2006 WL 1007489 at \*4 (S.D. Tex. Apr. 18, 2006).

19. In addition, Section 105 of the Bankruptcy Code provides in pertinent part that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

**The Stipulation is Fair and Equitable and  
Falls Well Within the Range of Reasonableness and Should Be Approved**

20. The Stipulation represents a fair and reasonable compromise and settlement of the dispute between FM Global and the Debtor, falls within the range of reasonableness and is beneficial to the Debtors' estates and their creditors. The Stipulation will enable the Debtors to have immediate access to \$1 million final payment under Policy JT756, for the benefit of the Debtors' estates and their creditors. The Debtors have reviewed the Gainesville Loss and believe that the previous advances made to date under Policy JT756 and the Final Payment sufficiently reflect the losses incurred by the Debtors with respect to the Gainesville Loss and that such loss has now been fairly, fully and finally adjusted. The Debtors' request to partially adjust certain of the advances made by FM Global was previously been approved by this Court on March 26, 2009 [Docket No. 1305].

21. Accordingly, the Debtors submit that the relief requested herein is justified under Section 105 of the Bankruptcy Code and Bankruptcy Rule 9019.

**Notice**

22. Notice of this Motion has been provided to: (i) the Office of the United States Trustee; (ii) counsel to the statutory committees appointed in these chapter 11 cases; (iii) counsel to the Debtors' prepetition secured lenders; (iv) counsel to the Agent to the Debtors' postpetition lenders; and (v) all parties on the Master Service List filed with this Court (collectively, the "Notice Parties"). The Debtors submit that no other or further notice need be provided.

**No Previous Request**

23. Other than with respect to the First Stipulation, no previous request for the relief sought herein has been made by the Debtors to this or any other court.



WHEREFORE the Debtors respectfully request that the Court grant the relief  
requested herein and such other and further relief as it deems just and proper.

Dated: November 4, 2009  
Fort Worth, Texas

/s/ Stephen A. Youngman  
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Attorneys for Debtors and  
Debtors in Possession

**EXHIBIT A**

**Stipulation**

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

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<b>IN RE:</b>	)	<b>CHAPTER 11</b>
	)	
<i>PILGRIM'S PRIDE</i>	)	
<i>CORPORATION, et al.,</i>	)	<b>Case No. 08-45664 (DML)</b>
	)	
	)	<b>Jointly Administered</b>
<b>Debtors.</b>	)	
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**THIRD STIPULATION BETWEEN THE DEBTOR AND  
FACTORY MUTUAL INSURANCE COMPANY WITH RESPECT  
TO FINAL PAYMENT FOR PRE-PETITION LOSS  
(GAINESVILLE PROPERTY)**

The Debtor, Pilgrim's Pride Corporation (the "Debtor") and Factory Mutual Insurance Company ("FM Global") hereby stipulate as follows:

**Recitals**

**WHEREAS**, on December 1, 2008 (the "Commencement Date"), the Debtor and certain of its affiliates (collectively, the "Debtors") filed voluntary petitions for relief pursuant to Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"), and the Debtors' cases are being jointly administered for procedural purposes only under Case No. 08-45664 before the Honorable D. Michael Lynn;

**WHEREAS**, FM Global is the Insurer, and the Debtor is the Named Insured under Advantage Policy No. JT756 (the "Policy"), pursuant to which FM Global provides property damage and time element insurance coverage to the Debtor;

**WHEREAS**, on April 27, 2007, the Debtor sustained a pre-petition loss at a certain processing plant owned and operated by the Debtor and located at 920 Queen City Parkway, Gainesville, Georgia (the “Gainesville Property”) involving a roof collapse which caused damage to the building, equipment, and its contents (the “Gainesville Loss”);

**WHEREAS**, during the term of November 1, 2006 to November 1, 2007, the Policy, which applies to the Gainesville Loss, provided a total aggregate limit of available coverage of \$3.3 Billion, but subject to a \$1 Million deductible;

**WHEREAS**, on or about July 12, 2007, FM Global advanced \$2 Million toward the property damage claims under the Policy to the Debtor against the Gainesville Loss, as requested by the Debtor (the “First Advance”);

**WHEREAS**, on or about April 13, 2009, FM Global advanced another \$1.5 Million toward the property damage claims and another \$500,000 toward time element damages for the period April, 2007 to June, 2007 under the Policy, as requested by the Debtor (the “Second Advance”);

**WHEREAS**, on or about September 28, 2009, FM Global advanced another \$448,469.64 toward the property damage claims and another \$2,659,827.36 toward time element damages for the period April, 2007 to June, 2007 under the Policy, as requested by the Debtor (the “Third Advance”);

**WHEREAS**, the Debtor and FM Global have reached agreement on the final adjustment of all claims associated with the Gainesville Loss;

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree and stipulate as follows:

1. The First, Second and Third Advances made to the Debtor by FM Global under the Policy for property and time element damages, in the total amount of \$7,108,297 have

been fairly, fully and finally adjusted by the parties, their respective agents, independent adjusters and attorneys based upon information provided by the Debtor to FM Global to date.

2. After application of the \$1 Million deductible, as well as deduction of the First, Second and Third Advances made to the Debtor by FM Global pursuant to the terms and conditions of the Policy, the Debtor is entitled to a final payment on account of all claims associated with the Gainesville Loss in the sum of \$1 Million, which consists of \$951,195.36 for property damage, and \$48,804.64 for time element damage for the period April 2007 to June, 2007 (the "Final Payment").
3. FM Global agrees that within ten (10) calendar days of its receipt of a final, non-appealable order of the Bankruptcy Court granting a motion to approve the specific provisions of this Stipulation, it shall make payment to the Debtor in the amount of the Final Payment.
4. In consideration for the foregoing, the Debtor agrees not to assert any further or additional claims of any kind or nature on account of the Gainesville Loss against FM Global or the Policy.
5. The Debtor and FM Global further agree that their respective agent and/or counsel shall have the authority to promptly prepare, execute and file an appropriate motion to approve this Stipulation (which motion shall be filed by the Debtor, with appropriate notice to all required parties and as otherwise required by local rule and the Bankruptcy Court) with the Bankruptcy Court.
6. Nothing contained in this Stipulation shall operate to modify or amend the terms and provisions contained in the Policy at issue in this matter.
7. This Stipulation shall be effective upon approval by the Bankruptcy Court.

8. Neither this Stipulation nor any of its terms may be modified, altered, amended or waived, except in writing signed by the parties hereto.
9. This Stipulation shall be binding upon and inure to the assigns, representatives and successors of the parties hereto.
10. The Bankruptcy Court shall retain exclusive jurisdiction, even after the effective date of the Confirmed Plan, to hear any matter relating to, or adjudicate any dispute that arises under, this Stipulation.
11. This Stipulation may be executed in counterparts by facsimile, each of which shall be deemed an original, and all of which when taken together shall constitute one document.

**PILGRIM'S PRIDE CORPORATION,**

**FACTORY MUTUAL INSURANCE  
COMPANY,**

By: /s/ Mark A. Lawrence

By: /s/ Kevin P. Brekka

Name: Mark A. Lawrence

Name: Kevin P. Brekka

Its: Vice President, Risk Management  
Duly Authorized

Its: Assistant Vice President, Senior Counsel  
Duly Authorized

Dated: November 3, 2009

Dated: November 3, 2009