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

In re:	§	
	§	Case No. 08-45664 (DML)
Pilgrim's Pride Corporation, et al.	§	
	§	Chapter 11
Debtors.	§	
	§	Jointly Administered
	§	
	§	

**DEBTORS' REPLY TO FLSA MDL PLAINTIFFS' RESPONSE
TO DEBTORS' FIRST OMNIBUS OBJECTION (NO LIABILITY
AND SECTION 507)-FLSA MDL PLAINTIFFS' CLAIMS
(Relates to Docket Nos. 2935 and 3880)**

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”)¹, in support of their First Omnibus Objection (No Liability and Section 507)-FLSA MDL Plaintiffs’ (the “Plaintiffs”) Claims [Docket No. 2935] (the “Objection”) and in reply to the Plaintiffs’ Response to the Objection [Docket No. 3880] (the “Response”) file this Reply (the “Reply”) and respectfully represent in support thereof:

Reply

A. The Plaintiffs Cannot Assert or Allege Damages for Postpetition Attorney’s Fees and Costs

1. The law is clear in the Bankruptcy Courts of the Northern District of Texas: “[a]n unsecured creditor...may not recover its post-petition attorneys’ fees from the Debtors’ estates....” *In re 900 Corp.*, 327 B.R. 585, 600 (Bankr. N.D. Tex. 2005); *Pride Cos, LP v. Johnson (In re Pride Cos., LP)*, 285 B.R. 366, 372 (Bankr. N.D. Tex. 2002); *In re O’Connor*, No. 99-36663, 2003 Bankr. LEXIS 816, at *10 (Bankr. N.D. Tex. 2003) (“As an unsecured creditor, Ruperelia is not entitled to attorneys fees.”); *In re El Paso Refinery*, 244 B.R. 613, 616-617 (Bankr. S.D. Tex. 2000) (an unsecured creditor can “never” get attorney’s fees).²

2. “Section 506(b) of the Bankruptcy Code is the only Code provision authorizing recovery of attorney’s fees by a creditor.” *In re Pride Cos., LP*, 285 B.R. at 372. Section 506(b) states:

to the extent that an allowed secured claim is secured by property the value of which...is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.

¹ The Debtors are Pilgrim's Pride Corporation, 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.

² As the Debtors’ bankruptcy cases are pending in the Bankruptcy Courts for the Northern District of Texas, Fifth Circuit law is authoritative.

The courts employ “the legal maxim of expression *unius est exclusion alterius*, meaning the expression of one is the exclusion of another—...Congress, by permitting the recovery of attorney’s fees in the case of an oversecured creditor, necessarily denied the recovery of attorney’s fees in the case of an undersecured or unsecured creditor.” *Id.*; *In re Loewen Group Int’l Inc.*, 274 B.R. 427, 444 (Bankr. D. Del. 2002) (“If post-petition fees and costs were generally recoverable by all creditors, then Congress would not have expressly provided for their recovery by oversecured creditors in § 506(b).”).

3. Claims are disallowed under section 502(b)(1) if they are unenforceable under applicable law. Therefore, since section 506(b) does not allow postpetition attorney’s fees for unsecured creditors, the Plaintiffs’ claim for such must be disallowed. *See In re Elec. Mach. Enters., Inc.*, 371 B.R. 549, 550-553 (Bankr. M.D. Fla. 2007).

4. Contrary to the Plaintiffs’ assertion in their Response, the multitude of cases in the Fifth Circuit disallowing unsecured creditors’ claims for postpetition attorney’s fees are not distinguishable because a federal statute provides the basis of the Plaintiffs’ claim. As quoted by the U.S. Supreme Court in *Travelers Casualty & Surety Co. of Amer. V. Pac. Gas & Elec.*, “[c]reditors’ entitlements in bankruptcy arise in the first instance from the underlying substantive law creating the debtor’s obligation, subject to any qualifying or contrary provisions of the Bankruptcy Code.” 549 U.S. 443, 450 (2007); *Butner v. United States*, 440 U.S. 48, 57, 54 (1979); *Int’l Brotherhood of Teamsters, see AFL-CIO v. Kitty Hawk Int’l, Inc. (In re Kitty Hawk, Inc.)*, 255 B.R. 428, at LEXIS page *31-32 (Bankr. N.D. Tex. 2000). The Bankruptcy Code does not, to use the same words as the Response, control, nullify, repeal, or contravene the Fair Labor Standards Act (the “FLSA”). Instead, the Bankruptcy Code addresses the treatment of

claims arising under the FLSA in the bankruptcy context. Therefore, while the Plaintiffs' claim allegedly arose under the FLSA, it is still subject to the qualifying provisions of the Bankruptcy Code. And here, as repeatedly pointed out by the Bankruptcy Courts from the Northern District of Texas, the Plaintiffs' claim (not their substantive rights under the FLSA) is affected by sections 502 and 506 of the Bankruptcy Code.

5. In fact, claims arising under federal law are limited in the bankruptcy context quite frequently. *See, e.g.*, 11 U.S.C. 502(b)(3) (specifically limiting tax claims). Further, even general limitations of the Bankruptcy Code control claims derived from federal law. In *Johnson v. IRS (In re Johnson)*, 146 F.3d 252, 256 (5th Cir. 1998), the Fifth Circuit Court of Appeals discussed how section 502(b)(2) of the Bankruptcy Code, which limits all claims for "unmatured interest," affects a federal tax claim. In *Johnson*, the IRS was allowed unmatured interest only because section 523 of the Bankruptcy Code provides that tax claims are nondischargeable. 146 F.3d at 260. Therefore, without section 523's specific exception for tax claims, the IRS would not have been allowed unmatured interest the basis for which was federal law. *In re Johnson*, 146 F.3d at 260. The fact that the IRS' claim arose under federal law had no bearing on the court's analysis whatsoever. *See id.* Like section 502(b)(2), sections 502(b)(1) and 506(b) limit the Plaintiffs' claim even though the claim arises out of a federal statute.

6. The Plaintiffs also argue that the Supreme Court's ruling in *Travelers* has effectively overruled the vast weight of authority in this District disallowing postpetition attorney's fees for unsecured creditors. This is incorrect. In *Travelers*, the Supreme Court dealt solely with the Ninth Circuit's "Fobian Rule" which distinguished between fees incurred litigating state law issues in bankruptcy proceedings and attorneys' fees

incurred litigating bankruptcy issues in those cases, allowing the fees if they related to a valid state law or contract claim, and disallowing them if they related solely to bankruptcy issues. 549 U.S. at 452. Finding no basis for the Fobian Rule in the Bankruptcy Code, the Court struck it down. *Travelers Casualty & Surety Co. of Am.*, 549 U.S. at 452.

7. While the Court determined that the only way to disallow a claim comes from section 502(b) of the Bankruptcy Code, the Court specifically limited its holding to striking down the Fobian Rule and expressly refused to determine whether section 502(b)(1) coupled with section 506(b) would disallow an unsecured creditor's claim for postpetition attorneys' fees. *Id.* at 450, 454-455. In limiting its holding to the Fobian Rule, the U.S. Supreme Court stated “[w]e granted certiorari to resolve a conflict among the lower courts regarding the Fobian Rule, which is **analytically distinct** from...§ 506(b).” *Id.* at 455 (emphasis added). Thus, the Travelers opinion did not overrule the cases from courts in the Fifth Circuit disallowing postpetition attorney's fees.

8. In support of its position, the Plaintiffs cite two post-*Travelers* courts from the Ninth Circuit as well as a Northern District of New York case. But the Plaintiffs did not cite post-*Travelers* authority that does not support their position. *See, e.g., In re Elec. Mach. Enters., Inc.*, 371 B.R. at 550-553 (finding that *Travelers* “declined to express an opinion on whether unsecured creditors are entitled to post-petition attorneys' fees” and that postpetition attorney's fees were, in fact, not allowable). Regardless, the cases cited by the Plaintiffs are not in the Northern District of Texas or even in the Fifth Circuit. And the fact that these cases are post-*Travelers* is of no consequence since, as stated

above, the *Travelers* opinion does not overrule the clear and distinct holdings of the courts in the Fifth Circuit that unsecured creditors are not entitled to postpetition attorney's fees.

B. Prepetition Attorney's Fees and Costs

9. The Debtors seek to disallow the Plaintiffs' claim for prepetition attorney's fees and costs because the Plaintiffs did not and are not complying with Bankruptcy Rule 3001. The Plaintiffs did not comply with Form 10 when drafting their proof of claim and they have not attached or provided the Debtors with the appropriate documentation that separately itemizes or lists prepetition attorney's fees and costs.

10. The Debtors acknowledge that claims may be amended. But the amount of prepetition attorneys' fees and costs was known at the time the Proofs of Claim were filed. As stated in the Objection, the procedure for undocumented claims is clear in the Northern District of Texas:

A failure to fully comply with Bankruptcy Rule 3001, by failing to attach supporting documentation to a proof of claim, will mean that the proof of claim lacks prima facie validity, but will not necessarily mean that it will be disallowed. Without an objection, the claim will be allowed....If a debtor objects to a proof of claim for failure to attach supporting documentation, and the creditor fails to supply it thereafter, the court would expect the debtor to request that the claim be disallowed. In such event, the creditor would have the burden of proof to support its claim.

In re Gulley, 400 B.R. 529, 540 (Bankr. N.D. Tex. 2009).

11. The Debtors have objected to Plaintiffs' claim for prepetition attorney's fees because it was unsupported. Therefore, the claim for such lacks prima facia validity and the Plaintiffs are required to supply the appropriate documentation or else be disallowed pursuant to the holding in *In re Gulley*. Plaintiffs' counsel has indicated that they will provide records of prepetition fees. Debtors concede that this objection, to the

extent it seeks total disallowance, will be moot if such records are provided, but reserve the right in such event to contest the reasonableness and necessity of such fees.

Notice

12. Notice of this Reply has been provided to: (i) the U.S. Trustee; (ii) the 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) the names and addresses where notices should be sent listed on the MDL Claims (as defined in the Motion).

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

Dated: November 10, 2009
Fort Worth, Texas

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