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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' OBJECTION TO MOTION FOR
LEAVE TO FILE PROOF OF CLAIM OUT OF TIME**
(Relates to Docket No. 3812)

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 as and for

¹ 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.

their Objection (this “Objection”) to IntegriTax’s Motion for Leave to File Proof of Claim Out of Time [Docket No. 3812] (the “Motion”) 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”).

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.

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.

**The Schedules, the Bar Date and the
Claims Objections Procedures Order**

5. On January 26, 2009, the Debtors each filed with this Court schedules of assets and liabilities [Docket Nos. 628 – 642] in which the Debtors scheduled approximately 6,000 claims against the Debtors in the aggregate. The Debtors amended their schedules of assets and liabilities on on March 17, 2009 [Docket No. 1204], June 3, 2009 [Docket Nos. 2068, 2074, 2075, 2076], and September 8, 2009 [Docket No. 3261] (collectively, as amended, the “Schedules of Assets and Liabilities”).

6. On April 1, 2009, this Court entered an Order establishing June 1, 2009 (the “Bar Date”) as the deadline for submitting claims against the Debtors [Docket No. 1352] (the “Bar Date Order”).

7. Pursuant to the Bar Date Order, the Debtors caused notices of the Bar Date and “proof of claim” forms to be mailed to, among others, all parties known to the Debtors as having potential claims against the Debtors’ estates as of the Commencement Date. Notice of the Bar Date also was published once in *The Wall Street Journal*, the *USA Today*, *The Mount Pleasant Daily Tribune*, a Texas publication, and the *El Nuevo Día*, a Puerto Rican newspaper.

8. On July 21, 2009, the Court entered an Order establishing procedures for filing omnibus objections in which the Debtors may object to multiple claims within a single objection where the Debtors have at least one common ground for objecting to each such claim [Docket No. 2723] (the “Claims Objections Procedures Order”).

Jurisdiction and Venue

9. 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.

IntegriTax's Motion

10. According to the Motion, IntegriTax acknowledges that it knew it was owed money by the Debtors as early as March of 2009. But IntegriTax knew well before even that date that it would be owed for the Alabama and Florida refunds since IntegriTax submitted the refund requests to the Governments of Alabama and Florida prior to the Commencement Date. Thus, at a minimum, IntegriTax knew the maximum amount of the Debtors' refund and of IntegriTax's contingent claim thereon.

11. IntegriTax also acknowledges that while knowing it was owed or was going to be owed money from the Debtor, IntegriTax received notice of the Bar Date in April of 2009. However, IntegriTax failed to timely file a proof of claim.

12. The Bar Date Notice in these cases specifically provides:

any creditor who fails to file a Proof of Claim on or before the General Bar Date for any Claim such creditor holds against the Debtors, **will be forever barred, estopped, and enjoined from asserting such Claim** (and from filing a Proof of Claim with respect to such Claim) against the Debtors and their estates, and their property will be forever discharged from any and all indebtedness or liability with respect to such Claim, and the holder of such Claim shall not be permitted to vote on any chapter 11 plan or participate in any distribution in the Debtors' chapter 11 cases on account of such Claim or to receive further notice regarding such Claim or with respect to the Debtors' chapter 11 cases.

13. Instead of filing a proof of claim, IntegriTax filed its Motion on October 21, 2009 asking that it be permitted to file a late proof of claim pursuant to Bankruptcy Rule 9006(b)(1). In its Motion, IntegriTax offers no reason explaining why it failed to timely file a proof of claim except that it "did not fully understand the necessity of filing a proof of claim."

IntegriTax has Failed to Demonstrate that its Conduct Constitutes “Excusable Neglect”

14. The Federal Bankruptcy Rules direct a bankruptcy court to establish bar dates in chapter 11 cases. FED. R. BANKR. 3003(c)(3) requires the bankruptcy court to “fix and for cause shown may extend the time within which proofs of claim or interest may be filed.” The bar date is critically important to the administration of a successful chapter 11 case, and the reorganization process:

A bar order serves the important purpose of enabling the parties to a bankruptcy case to identify with reasonable promptness the identity of those making claims against the bankruptcy estate and the general amount of the claims, a necessary step to achieving the goal of successful reorganization....Thus, a bar order does not “function merely as a procedural gauntlet,”...but as an integral part of the reorganization process.

First Fidelity Bank, N.A. v. Hooker Invs., Inc. (In re Hooker Invs., Inc.), 937 F.2d 833, 840 (2d Cir. 1991) (citing *United States v. Kolstad (In re Kolstad)*, 928 F.2d 171, 173 (5th Cir. 1991)).

15. Nevertheless, Bankruptcy Rule 9006(b)(1) provides that a court may, at its discretion, allow a late filed claim “where the failure to act was the result of excusable neglect.” The burden of proving excusable neglect is on the party seeking an enlargement of time to file. *Gonzalez v. Lopez*, No. 07-593-M (BH), 2008 U.S. Dist. LEXIS 109653, at *14 (N.D. Tex. Jan. 23, 2008)

16. In *Pioneer Inv. Serv. Co. v. Brunswick Assoc, Ltd. P’ship*, 507 U.S. 380, 395 (1993), the United States Supreme Court stated that the determination of whether “excusable neglect” exists for purposes of Rule 9006(b)(1) is “an equitable one, taking account of all relevant circumstances surrounding the party’s omission.” The Supreme Court provided an inclusive list of factors for determining whether a claimant’s failure to comply with the bar date was due to excusable neglect. Those factors are:

- the danger of prejudice to the debtor;

- the length of delay and its potential impact on judicial proceedings;
- the reason for the delay, including whether it was within the reasonable control of the movant; and
- whether the movant acted in good faith.

Pioneer, 507 U.S. at 395; *In re Spirit of Prayer Ministries, Inc.*, No. 07-43858-DML-7, 2009 Bankr. LEXIS 2690, at *5 (Bankr. N.D. Tex. Sept. 10, 2009).

17. By far the most important factor is the reason for the delay. *See United States v. Torres*, 372 F.3d 1159, 1163 (10th Cir. 2004) (“fault in the delay...[is] perhaps the most important single factor”); *Graphic Commc’ns Int’l Union Local 12-N v. Quebecor Printing Providence, Inc.*, 270 F.3d 1, 5 (1st Cir. 2001) (reason for delay always a critical factor); *In re Spirit of Prayer Ministries, Inc.*, 2009 Bankr. LEXIS 2690, at *5-6 (“[t]he parties quite properly have focused on...whether Cohee has delayed unreasonably”). In *Pioneer*, the Supreme Court instructed that the issue for a court to decide is whether the claimant “did all he reasonably could to comply with the court ordered bar date.” 507 U.S. at 396.

18. Based on *Pioneer*, the Motion must be denied. IntegriTax acknowledges that it timely received notice of the Bar Date. IntegriTax simply ignored it. This neglectful conduct clearly is not “excusable” since no legitimate excuse has been proffered. *See In re Au Coton, Inc.*, 171 B.R. 16 (S.D.N.Y. 1994) (late proof of claim was properly disallowed by Bankruptcy Court because simple carelessness on part of the claimant did not constitute excusable neglect); *see also In re Am. Classic Voyages Co.*, 405 F.3d 127, 134 (3d Cir. 2005) (creditor’s failure to appreciate the significance of the bar date notice was “entirely avoidable and within [creditor’s] control,” and the “direct result of the negligence of [creditor’s] control,” and the “direct result of the negligence of [creditor’s] counsel,” and thus did not constitute “excusable delay”).

19. Considering the above, IntegriTax's Motion should be denied.

Reservation of Rights

20. The Debtors reserve the right to object to Integritax's claim on any other ground.

Notice

21. The Debtors submit that they have served this Objection on the following: (i) the United States Trustee; (ii) counsel to the statutory committees appointed in these chapter 11 cases; (iii) counsel to any prepetition secured lenders; (iv) counsel to the DIP Agent; (v) IntegriTax; and (vi) parties listed on the Master Service List filed with this Court. The Debtors submit that no other or further notice need be provided.

WHEREFORE, the Debtors request that the Court deny the Motion in its entirety and grant the Debtors such other further relief as is just.

Dated: November 9, 2009
Fort Worth, Texas

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