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Attorneys for Debtors and
Debtors in Possession

**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' THIRTY-EIGHTH OMNIBUS OBJECTION TO CLAIMS
(NO LIABILITY)—CHARLES AND BRENDA POOL'S CLAIMS—
NUMBERS 3731 AND 5047**

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 file this Objection (the “Objection”) and respectfully represent in support thereof:

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 Bankruptcy Code (the “Bankruptcy Code”) in the Bankruptcy Court for the Northern District of Texas, Fort Worth Division (the “Bankruptcy Court”). 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. On April 9, 2009, the Bankruptcy Court entered the Order Establishing Alternative Dispute Resolution Procedures for Resolution of Personal Injury Claims [Docket No. 1435] (the “ADR Order”) which approved mandatory dispute resolution procedures (the “ADR Procedures”) for resolution of any claims for liability against one of the Debtors for death, bodily injury, including but not limited to causes of action under tort, wrongful death, or negligence laws or theories, arising from or related to events occurring prior to the Commencement Date.

4. On July 21, 2009, the Bankruptcy Court entered the Order Approving Procedures for Objecting to Proofs of Claim and for Notifying Claimants of Such Objections [Docket No. 2723] (the “Claims Objections Procedures Order”), which

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

established 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. Pursuant to the Claims Objections Procedures Order, the Debtors hereby object to each of the proofs of claim set forth in **Exhibits A** attached hereto.

Pilgrim's Pride Business

5. 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.

6. 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, and are distributed primarily through retailers, foodservice distributors, and restaurants.

Facts

7. Prior to the Commencement Date, on or about April 26, 2005, Charles and Brenda Pool (collectively, the "Pools") filed their Second Amended Original Petition with the District Court of San Augustine County, Texas, alleging PPC and Rex Rains ("Rains") negligently disposed chicken litter on the Pools' property and that Mr. Pool,

Marketing, Ltd.

thereafter, contracted a rare condition from a fungal spore that emanated from the litter on their property.

8. PPC filed a Motion for Summary Judgment on March 17, 2005 and its Fourth Amended Answer on May 26, 2006 (the "Answer"), both are attached collectively as **Exhibit B**. The Motion for Summary Judgment has been pending for more than four and one half years and no response has been filed thereto.

9. After the Commencement Date, on May 27, 2009, the Pools each filed a proof of claim, claim numbers 5047 and 5751 respectively (collectively, the "Claims"), asserting claims against PPC for negligence arising from Mr. Pool's alleged personal injuries, and Mrs. Pool's alleged loss of consortium. The Pools are also asserting a right to punitive damages, interest and costs.

Jurisdiction

10. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

11. Pursuant to Bankruptcy Rule 3007 and section 502 of the Bankruptcy Code, the Debtors object to the Claims. The Debtors seek an order: (a) sustaining the Objection; and (b) disallowing the Claims in their entirety as the Debtors are not liable for the allegations therein.

Objections

A. Objections to Merits of Proofs of Claim

12. Put simply, this is a claim about unfounded blame. The alleged personal

injuries stem from exposure to chicken litter that was:

(a) sold by an independent contract grower of PPC's, who personally owned the litter ("Rains"); to

(b) an intermediary ("JD Litter"); who further sold the litter to

(c) yet another intermediary ("B&K Equipment"); who further sold the litter to

(d) a party that was authorized by the Pools to dump it on their land ("Higgins").

13. As a result of the chain of events detailed above, Mr. Pool allegedly contracted histoplasmosis and his wife suffered loss of consortium.

14. As reflected in the Motion for Summary Judgment and Answer, PPC is not liable for the Pools' claims for multiple reasons.

15. First, PPC did not owe the Pools a duty because PPC did not own the litter---Rains did. In addition, PPC did not dispose of the litter on Pool's property --- Higgins did, with the Pools' authorization.

16. Second, assuming *arguendo* that PPC did own the litter, PPC is not vicariously liable for the acts and omissions of Rains, who is an independent contractor, not a PPC employee.

17. Third, assuming *arguendo* that PPC was vicariously liable for Rains' acts and/or omissions, Rains was not negligent.

18. Fourth, Mrs. Pool's claims fail because they are derivative of Mr. Pool's claims.

19. Fifth, punitive damages are precluded because the Pools are not entitled to

actual damages.

B. Objection due to failure to comply with ADR Procedures

20. The Claims should also be denied because the Pools have not attempted to comply with the ADR Procedures. The ADR Procedures state in bold print on the very first page that **“If you hold a PI Claim [sic] you MUST participate in these ADR Procedures.”** *See* ADR Procedures at p. 1.

21. Pursuant to the ADR Procedures, the initial requirement is that each personal injury claimant provide a Confirmation of Loss Form. Specifically, all personal injury claimants, like the Pools were required to do as follows:

“At any time prior to the Bar Date, a Claimant shall submit a sworn statement describing all damages allegedly sustained by the Claimant and providing necessary information and attaching documentary proof, if any, substantially in the form attached hereto as Exhibit 1 (the “Confirmation of Loss Form”). The completed Confirmation of Loss Form must be returned to the Debtors at the address specified in Part VII hereof **along with a copy of the Claimant’s proof of claim**. A Claimant may include a settlement offer in a Confirmation of Loss Form.

Any Claimant who does not timely return a completed Confirmation of Loss Form, unless otherwise agreed to by the Debtors, (i) shall be disqualified from participating in the ADR Procedures, (ii) shall not be entitled to relief from the automatic stay of section 362 of the Bankruptcy Code, and (iii) may have its PI Claim disallowed.”

See ADR Procedures at §V(A)(1).

22. The Pools never submitted a Confirmation of Loss Form either before the Bar Date, or any time since.

23. Due to their failure to submit the Confirmation of Loss Form, or otherwise acknowledge the ADR Procedures, undersigned counsel contacted the Pool on at least two occasions to engage them on the dispute resolution process. No response was ever received. In addition, Stephanie Hancock, a risk management analyst for PPC, called and

spoke to the Pools about the proof of damages aspect of the process. The Pools never provided any information.

24. Pursuant to Article VI of the ADR Procedures (Failure to Comply with ADR Procedures):

“If, absent express waiver by the Debtors, a Claimant fails to comply with the ADR Procedures, negotiate in good faith or cooperate with the Debtors as may be necessary to effectuate the ADR Procedures, the Bankruptcy Court may, after notice and a hearing, find such conduct to be in violation of the ADR Order or an abandonment of or failure to prosecute the PI Claim, or both. Upon such findings, the Bankruptcy Court may, among other things, disallow and expunge the PI Claim, in whole or in part, or grant such other or further remedy deemed just and appropriate under the circumstances, including, without limitation, awarding attorneys’ fees, other fees and costs to the Debtors.”

See ADR Procedures at Art. VI.

25. The ADR Procedures further highlight upfront that failure to comply therewith may result in the disallowance of the Claim. *See* ADR Procedures at page 1 (“it is very important that you read and comply with the ADR Procedures; your failure to do so may result in the disallowance of your PI Claim”).

26. The ADR Order likewise orders that, “if a Claimant fails to comply with the ADR Procedures, negotiate in good faith or cooperate with the Debtors as may be necessary to effectuate the ADR Procedures, this Court may, after notice and a hearing, *grant appropriate relief*, including, without limitation, awarding attorneys’ fees, other fees and costs to the Debtors”. *See* ADR Order at p. 4.

27. PPC submits that the Pools were provided ample warning of the consequences of failing to comply with the ADR Procedures and the ADR Order. The Pools have elected to ignore these simple requirements. These claims should be expunged.

Reservation of Rights

28. The Debtors reserve the right to further object to the Claims on any other ground.

Notice

29. Notice of this Objection has been provided to: (i) the U.S. 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) the Pools at the address indicated on the Claims; and (vi) the 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 respectfully request that the Court issue an order (a) sustaining the Objection; (b) disallowing the Claims in their entirety as the Debtors are not liable for the allegations therein; and (c) granting such other legal and equitable relief as to which the Debtors are entitled.

Dated: November 30, 2009
Fort Worth, Texas

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Attorneys for Debtors and
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

	§	
	§	Chapter 11
In re	§	
	§	Case No. 08-45664 (DML)
PILGRIM'S PRIDE CORPORATION, <i>et al.</i> ,	§	
	§	JOINTLY ADMINISTERED
Debtors.	§	
	§	Hearing Date and Time: January 5, 2010 at
10:30 a.m.	§	
	§	Response Deadline: December 30, 2009 at 4:00
p.m.		

NOTICE OF DEBTORS' OBJECTION TO YOUR CLAIM

TO THE CLAIMANTS IDENTIFIED ON *EXHIBIT* ANNEXED TO DEBTORS' THIRTY-EIGHTH OMNIBUS OBJECTION TO CLAIMS (NO LIABILITY)—CHARLES AND BRENDA POOL'S CLAIMS— NUMBERS 3731 AND 5047

PLEASE TAKE NOTICE THAT ALTHOUGH YOU HAVE FILED A PROOF OF CLAIM (THE "CLAIM"), PILGRIM'S PRIDE CORPORATION ("PPC") AND ITS DEBTOR AFFILIATES, AS DEBTORS AND DEBTORS IN POSSESSION IN THE ABOVE-REFERENCED CASES (COLLECTIVELY, THE "DEBTORS") HAVE NOW FILED AN OBJECTION SEEKING TO DISALLOW YOUR CLAIM (THE "OBJECTION"). THE OBJECTION IS APPENDED TO THIS NOTICE AND IS ENTITLED "THIRTY-EIGHTH OMNIBUS OBJECTION TO CLAIMS (NO LIABILITY)—CHARLES AND BRENDA POOL'S CLAIMS— NUMBERS 3731 AND 5047." THE OBJECTION SEEKS TO DISALLOW YOUR CLAIM IN ITS ENTIRETY. THEREFORE, YOU SHOULD READ THIS NOTICE AND THE ATTACHED OBJECTION CAREFULLY.

IF YOU AGREE WITH THE OBJECTION TO YOUR CLAIM, YOU DO NOT NEED TO TAKE ANY ACTION IN RESPONSE TO THIS NOTICE OR THE OBJECTION.

IF YOU DISAGREE WITH THE OBJECTION, PLEASE FOLLOW THE INSTRUCTIONS BELOW FOR FILING A RESPONSE TO THE OBJECTION.

PLEASE TAKE NOTICE that you may contact the Debtors at **(877) 512-**

0008, or by email at Claiminfo@pilgrimspride.com, to ask questions or to attempt to resolve the Objection to the Claim outside of court and without the need to hire an attorney. You must clearly provide the following information to the Debtors: (1) the name of the claimant(s) that you are calling or emailing about, (2) the title of the Objection (here, the “Thirty-Eighth Omnibus objection to Claims (No Liability)— Charles and Brenda Pool’s Claims— Numbers 3731 and 5047”), and (3) either a phone number or email address that the Debtors may use to contact you to attempt to resolve the Objection to the Claim.

PLEASE TAKE FURTHER NOTICE that if you disagree with the Objection and are unable or unwilling to resolve the Objection with the Debtors, you or your attorney **must** both (1) attend the hearing on the objection (the “Hearing”) in person or, consistent with court procedures, by telephone and (2) file a written response (the “Response”) to the Objection with the Clerk of the United States Bankruptcy Court, Eldon B. Mahon U.S. Courthouse, 501 West Tenth Street, Fort Worth, Texas 76102 **no later than December 30, 2009 at 4:00 p.m. (Prevailing Central Time)**. You must file and serve copies of the Response on (1) the Debtors’ attorneys: Attn: R. Adam Swick, Baker & McKenzie LLP, 2300 Trammell Crow Center, 2001 Ross Avenue, Dallas, Texas 75201; (fax) 214-965-7045; and (2) the Official Committee of Unsecured Creditors: Attn: Monica S. Blacker, Andrews Kurth LLP, 1717 Main Street, Suite 3700, Dallas, TX 75201; (fax) 214-659-4844; so as to be **received** no later than **December 30, 2009 at 4:00 p.m. (prevailing Central Time)** (the “Response Deadline”).

PLEASE TAKE FURTHER NOTICE that your Response must contain, at a minimum, the following:

- (i) A caption setting forth the name of the Court, the name of the debtors, the case number and the title of the Omnibus Objection to which the Response is directed;
- (ii) The name of the Claimant and description of the basis for the amount of the Claim;
- (iii) A concise statement setting forth the reasons why the Claim should not be disallowed for the reasons set forth in the Objection, including, but not limited to, the specific factual and legal bases upon which the claimant will rely in opposing the Objection;
- (iv) The name, address(es), telephone number and facsimile number of the person(s) (who may be the Claimant and/or the Claimant’s legal representative) to whom counsel for the Debtors should serve any reply to the Response, and who possess the authority to reconcile, settle, or otherwise resolve the Objection on the Claimant’s behalf.

PLEASE TAKE FURTHER NOTICE that, if you or your designated attorney or representative do not timely file and serve the Response in accordance with the above-referenced procedures and attend the Hearing (in the absence of a written agreement between you and the Debtors providing otherwise), the Court may enter an order granting the relief requested in the Objection. **If you fail to respond in accordance with this Notice, the Court may grant the relief requested in the Objection without further notice or hearing.**

PLEASE TAKE FURTHER NOTICE that if you or your designated representative or attorney do file a Response, the Hearing on the Objection will automatically be adjourned to another hearing that is at least 30 days thereafter to allow the Debtors to file a reply to your Response. Only those Responses made in accordance with the above-referenced requirements and timely filed and received by the Court and the Debtors' attorneys will be considered by the Court at a hearing on the Objection.

PLEASE TAKE FURTHER NOTICE that nothing in this Notice or the accompanying Objection constitutes a waiver of the Debtors' right to assert any claims, counterclaims, rights of offset or recoupment, preference actions, fraudulent-transfer actions, or any other bankruptcy or nonbankruptcy claims against you. The Debtors also reserve the right to assert additional objections to your Claim.

Dated: November 30, 2009
Fort Worth, Texas