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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 (DML)
	)	
Debtors.	)	(Jointly Administered)

MOTION TO DESIGNATE INSIDER VOTES
PURSUANT TO SECTION 1126(e)

Black Horse Capital Management LLC as manager for Black Horse Capital LP, Black Horse Capital (QP) LP and Black Horse Capital Master Fund Ltd. (collectively "Black Horse"),[1] owners of equity interests in Pilgrim's Pride Corporation ("PPC") and holders of PPC 8 3/8% Senior Subordinated Notes respectfully moves the Court (the "Motion") to designate all votes

[1] Black Horse's address is: Black Horse Capital Advisors LLC, 338 South Sharon Amity Road, #202, Charlotte, NC 28211. Black Horse owns 3,079,355 shares of common stock in PPC and holds a face amount of $5,600,000 of the PPC 8 3/8% Senior Subordinated Notes.

cast by Lonnie "Bo" Pilgrim, Lonnie Ken Pilgrim, entities related to the Pilgrim family, and the Chief Executive Officer, Don Jackson, (collectively, the "Insiders") in Class 10(a) - Equity Interests in PPC - with respect to the Amended Chapter 11 Joint Plan of Reorganization (the "Plan") of the above-captioned debtors (the "Debtors"), as not cast in good faith pursuant to 11 U.S.C. § 1126(e) of the United States Bankruptcy Code (the "Bankruptcy Code"). In support of this Motion, Black Horse states as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion pursuant to section § 1126(e) and 28 U.S.C. §§ 157 and 1334.

2. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (L), and (O).

PRELIMINARY STATEMENT

3. The only class impaired by, and therefore entitled to vote on, the Plan is Class 10(a) - Equity Interests in PPC, of which Black Horse is a member. On October 22, 2009, this Court set a voting deadline of December 1, 2009 at 5:00 p.m. (prevailing Central Time). (Dkt. 3828). As of the submission of this Motion, Black Horse does not have a list of the voting shareholders and how they voted.

4. Black Horse expects, however, that the Debtors will contend that the Plan has been accepted by Class 10(a) almost entirely due to the votes by Insiders controlling a majority of the shares of PPC. These Insiders have been offered various incentives, and therefore clearly have motives, which are ulterior to and different from the motives and incentives facing ordinary non-insider shareholders. Simply put, the Debtors have found ways to offer each of them

lucrative individual carrots, unrelated to their capacities as shareholders, to vote in favor of the Plan.

5. Specifically, Lonnie "Bo" Pilgrim and Don Jackson will be on the board of directors of the new Pilgrim's Pride. Don Jackson will be the Chief Executive Officer and Lonnie Ken Pilgrim will be the Senior Vice President, Transportation. (*See* Plan Supplement, Ex. E, F). In the event Lonnie "Bo" Pilgrim is unable to serve in his Board position, the board seat will be filled by his son, Lonnie Ken Pilgrim. (Plan, Ex. C, § 5.2). After the Mandatory Exchange Transaction, Lonnie Ken Pilgrim will be also be a member of the board of directors of JBS USA Holdings, Inc. ("JBS") (Plan Supplement, Ex. G, p. 196).

6. In addition, Lonnie "Bo" Pilgrim, age 81, has entered into a "Consulting Agreement," which will become effective at the Closing Date of the transactions contemplated by the Stock Purchase Agreement, in which Lonnie "Bo" Pilgrim *will be paid $1.5 million per year for 5 years* for vague "consulting services" described as:

> providing services to the reorganized business of Pilgrim's Pride Corporation (the "Company") that are comparable in the aggregate with the services provided by [Lonnie "Bo" Pilgrim] to the Company prior to the Effective Date, including without limitation advisory services with regard to governmental relations, strategic and operation matters and other such services as may be reasonably necessary to perform the Consulting Services.

(Form 10-K, Ex-10.57, attached as Ex. A). Pursuant to the Plan, he will also be relieved of his obligation as guarantor of a substantial portion of the bank debt of Pilgrim's Pride Corporation. (*See* Disclosure Statement, Ex. C, p. 128-129, Plan §§ 10.8, 10.9). Moreover, PPC has chicken grower contracts involving farms owned by Lonnie "Bo" Pilgrim and leases commercial egg property from him with a monthly payment of $62,500. (Form 10-K, p. 185, attached as Ex. A).

7. Indeed, Lonnie "Bo" Pilgrim has admitted that he "wears many hats in this matter" and has stated he "cannot serve as the principal defender of stockholder rights: when he would be most needed as an advocate, his fiduciary duty as chairman would require that he remain neutral." (Response Of Bo Pilgrim And Pilgrim Interests, Ltd. To The Motion Of Ad Hoc Shareholders Group For Order Directing The Appointment Of An Official Committee Of Equity Security Holders Pursuant To 11 U.S.C. 1102(a), Dkt. 1614). In contradiction with his stated fiduciary duty to be neutral, however, Lonnie "Bo" Pilgrim has entered into a plan support agreement with JBS (the "PSA"). (Plan Supplement, Ex. G, Ex. 2.3). Under the PSA, Lonnie "Bo" Pilgrim has agreed, among other things, to support the Plan and Stock Purchase Agreement, support any other matter necessary to the consummation of the Transactions, and not object, on any grounds, to any aspect of the Plan, the Disclosure Statement, or the confirmation of the Plan. (*Id.*).

8. Pursuant to Don Jackson's Chief Executive Officer's Employment Agreement, he will receive, or has received benefits including: (1) a base salary of $1,500,000; (2) a sign on cash bonus of $3,000,000; (3) a sign on stock grant of 3,085,656 shares of PPC's common stock; and (4) a "Reorganization Bonus" in an amount not to exceed $2,000,000 upon confirmation of a plan of reorganization of PPC "that does not provide for a sale of a majority of the Company's and its subsidiaries assets, provided that a majority of the Company's assets have not been sold under section 363 of the Bankruptcy Code…" (*See* Motion for an Order Authorizing Debtors to Enter Into Employment Agreement with Don Jackson, Dkt. 235). The Insiders are also receiving broad third-party releases pursuant to the Plan, which is of particular value for those currently subject to the shareholder class action suit pending at *In re Pilgrim's Pride Corporation Securities Litigation*, 08-00419-TJW (E.D. Tex.) (*See* Plan § § 10.8, 10.9).

9. In addition, as described in PPC's Form 10-K/A attached to the Disclosure Statement, a collection of Pilgrim family members are presently employed by Pilgrim's Pride at salaries ranging from the low to mid-six figures. (Disclosure Statement, Ex. 3.1, Form 10-K/A, p. 5). While the Debtors have to date failed to disclose the identity of insiders that will be employed or retained post-confirmation and the nature of such insiders' compensation, such disclosure is required by section 1129(a)(5)(B), and Black Horse reserves the right to argue any such compensation as an additional basis on which to designate votes.

10. In short, these Insiders indisputably wear two hats -- on one hand the Insiders are equity holders in the same position as Black Horse and the other non-Insider equity holders. However, the Insiders also wear their Insider hats and, in that capacity, there are a host of ways they can receive benefits to induce them to support the Plan that are separate and apart from their shareholder status, and that are not shared with shareholders generally. Without putting too fine a point on it, JBS and the Debtors seem to have found most of those ways -- lucrative jobs, lucrative consulting arrangements, prestigious board and executive positions, lucrative bonuses, side contracts, lucrative jobs for family members, and releases from existing claims. It's an impressive array, and when it's added up, there is simply no denying that the Insiders whose votes Black Horse seeks to designate have ulterior reasons, unrelated to the treatment of their PPC stock, to support the Plan. That is all it takes to require that their votes be designated under section 1126(e).

RELIEF REQUESTED

11. By this Motion, Black Horse seeks entry of an Order designating the Class 10(a) votes of shares owned or controlled by the Insiders as not having been cast in good faith pursuant

to section 1126(e) of the Bankruptcy Code, and therefore not counted in determining whether Class 10(a) accepted the Plan under section 1126(d).

ARGUMENT

12. Section 1126(e) permits the designation of any vote on a plan that was either not cast or not procured in good faith providing, in pertinent part, "after notice and a hearing, the court may designate any entity whose acceptance or rejection of such plan was not in good faith…" 11 U.S.C. § 1126(e). If a court makes this designation, the designated votes are not considered when determining whether a plan has been accepted by a particular class of claims or interests. *See* 11 U.S.C. § 1126(d) ("A class of interests has accepted a plan if such plan has been accepted by holders of such interests, *other than any entity designated under subsection (e) of this section* ….") (emphasis supplied).

13. The Bankruptcy Code does not define "good faith," but courts applying § 1126(e) have developed the meaning of good faith on the basis of the facts of each particular case. *In re Save Our Springs (S.O.S.) Alliance Inc.,* 388 B.R. 202, 230 (Bankr. W.D. Tex. 2008). Most importantly, a finding that a vote was not cast in good faith does ***not*** require "a showing of wrong-doing on the creditor's part," however, courts "generally agree that bad faith includes acting with an unacceptable ulterior motive." *Id.* at 230, 232 (citing *In re Landing Assoc., Ltd.,* 157 B.R. 791, 807 (Bankr. W.D. Tex. 1993).

14. A holder can vote in self-interest; however, "[i]t is always necessary to keep in mind the difference between a creditor's self interest as a creditor and a motive which is ulterior to the purpose of protecting a creditor's interest." *In re Crosscreek Apartments, Ltd.,* 211 B.R. 641, 644 (Bankr. E.D. Tenn. 1997). When the questioned activity, "is in aid of an interest *other than an interest as a creditor,* [it] may amount to bad faith…" *Landing Assoc.,* 157 B.R. at 803

(citing *In re P-R Holding Corp.*, 147 F.2d 895, 897; *Town of Belleair, Fla. v. Groves*, 132 F.2d 542, 543 (5th Cir. 1942), *cert denied*, 318 U.S. 769 (1942)) (emphasis in original); *see also In re Dune Deck Owners Corp.*, 175 B.R. 839, 845 (Bankr. S.D.N.Y. 1995) (the court must decide whether the creditor voted on the Plan "because of how it affects its claim, or instead, because the creditor really seeks to obtain some collateral advantage in another capacity."); *In re Allegheny Int'l, Inc.*, 118 B.R. 282, 290 (Bankr. W.D. Penn. 1990) (explaining that, "Votes must be designated when the court determines that the 'creditor has cast his vote with an 'ulterior purpose' aimed at gaining some advantage to which he would not otherwise be entitled in his position.'" (internal citations omitted)).

15. As explained by *Landing Assoc.*, the "mere pursuit of economic gain does not, of itself, indicate bad faith, so long as the interest being served *is that of the creditor as creditor*, as opposed to the creditor in some other capacity." *Landing Assoc.*, 157 B.R. at 803. Therefore, it is "essential to examine the nature of the true interest being benefitted by the questioned activity." *Id.* In *Town of Belleair, Fla. v. Groves*, the Fifth Circuit made such an examination. *See Town of Belleair, Fla. v. Groves*, 132 F.2d 542, 543 (5th Cir. 1942). In *Groves*, a plan of reorganization for a municipality was denied confirmation on the grounds that "special inducements" had been used to secure the acceptance of the plan by a group of bondholders who also owned "an appreciable quantity of taxable property in the City." *See id.* at 542-43. The court found that the bondholders had been principally motivated by the existence of the "special benefits" which benefited their property-owning interest rather than their interests as bondholders, and that such ulterior motives breached the requirement of good faith. *Id.* at 543. Under *Groves*, then, "if the interest benefited by the questioned activity is other than the

creditor's interest, the activity may constitute bad faith sufficient to disqualify the vote." *Landing Assoc.*, 157 B.R. at 803.

16. Similarly, in *In re Holly Knoll P'ship.*, 167 B.R. 381 (Bankr. E.D. Penn. 1994), an insider had purchased claims to vote in favor of a plan. The court explained: "[c]ourts have generally held that if a purchaser of claims in voting the assigned claims is pursuing an interest in addition to its interest as a creditor, bad faith may be found." *Id.* at 388. The court held that, in voting in favor of the plan, the insider "was not acting to protect or maximize its rights as a creditor but, rather, was acting to preserve financial advantages it would receive if the Plan was confirmed and it became Debtor's general partner and collected the proposed management and construction fees." *Id.* at 388-389. Therefore, the court found that the insider's vote accepting the plan was made in bad faith. *Id.* at 389.

17. In short, the operative question is whether the challenged votes are cast in the aid of an interest *other than the interest as a creditor or equity holder that gives rise to the right to vote*. This determination must be made on a case by case basis. As one court applying this analysis explained, "[p]rior cases can offer guidance, but when all is said and done, the bankruptcy court must simply approach each good faith determination with a perspicacity derived from the data of its informed practical experience in dealing with bankrupts and their creditors." *In re Crosscreek*, 211 B.R. at 644.

18. Here that judgment and experience counsels in favor of designating the Insiders' votes. As explained in Black Horse's Objection, the terms of the Plan subject the members of Class 10(a) to the Mandatory Exchange Transaction which makes it very likely that most of the recovery for shareholders *qua* shareholders will be usurped by JBS. The Insider members of Class 10(a), however, have obvious and undeniable ulterior motives to vote in favor of the Plan

due to the host of benefits provided to them as Insiders. It defies reason and logic to suggest that the Insiders' votes are not tainted by the millions of dollars in "special benefits" they and their families will receive under the Plan, separate and apart from what they receive in their capacities as shareholders. These benefits have nothing to do with the interests of the class of shareholders, whose vote they presumably seek to control.

19. As this Motion and the Objection demonstrate, the Insiders' Class 10(a) votes were cast in furtherance of special benefits and inducements, including director and officer positions, a rich consulting agreement, and broad third-party releases, provided to them pursuant to the Plan. Most shockingly, it appears the largest shareholder has been induced to support the Plan with the release of a guarantee of a substantial amount of the Debtors existing debt. When coupled with the chimerical benefits ordinary shareholders can be expected to receive under the Plan, it is difficult to avoid the conclusion that the Insiders support the Plan because of the special inducements it provides to them. Consequently, this Court should determine that the Insiders' votes should be designated as not cast in good faith pursuant to § 1126(e).

WHEREFORE, Black Horse respectfully requests that this Court enter an order: (a) designating any accepting Class 10(a) votes of each of the Insiders and any of their affiliated entities as not cast in good faith pursuant to § 1126(e); (b) requiring that the acceptance or rejection of the Plan by Class 10(a) be determined under section 1126(d) without inclusion of such votes; and (c) granting such other relief as the Court deems just and fair.

Dated: December 1, 2009

Respectfully submitted,

BLACK HORSE CAPITAL MANAGEMENT LLC

By: */s/ Catherine L. Steege*
One of its Attorneys

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