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ATTORNEYS FOR HSBC BANK USA, NATIONAL
ASSOCIATION, AS INDENTURE TRUSTEE

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

In re	§	
	§	Chapter 11
	§	
PILGRIM'S PRIDE CORPORATION, et al.,¹	§	Case No. 08-45664 (DML)
	§	
Debtors.	§	Jointly Administered
	§	

**OBJECTION OF HSBC BANK USA, NATIONAL ASSOCIATION, AS INDENTURE
TRUSTEE, TO DEBTORS' AMENDED JOINT PLAN OF REORGANIZATION
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE (AS MODIFIED)**

HSBC Bank USA, National Association ("**HSBC**"), as successor trustee (the "**Indenture Trustee**") for the Pilgrim's Pride Corporation 7 5/8% Senior Notes due 2015 in the aggregate principal amount of \$400 million (the "**Senior Notes**") pursuant to the Indenture governing the

¹ The Debtors in these cases 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.

Senior Notes dated as of January 24, 2007, supplemented by a First Supplemental Indenture dated as of January 24, 2007 (as supplemented, the “**Senior Indenture**”), submits this objection (the “**Objection**”) to the Debtors’ Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (as amended and modified, the “**Plan**”),² to the extent that the Plan fails to specifically provide that holders of the Senior Notes whose debt will be reinstated pursuant to section 1124 of the Bankruptcy Code will receive (i) post-petition interest at the Additional Interest rate (defined below) specified in the Senior Notes and (ii) interest at the Additional Interest rate on defaulted pre-and post-petition interest payments. In support of its Objection, the Indenture Trustee states:

PRELIMINARY STATEMENT

1. In these solvent chapter 11 cases, the Debtors’ chapter 11 Plan proposes to make distributions to holders of equity, but persists in attempting to circumvent the rights of Senior Noteholders to be paid post-petition interest on the outstanding principal of their notes at the Additional Interest rate set forth in the Senior Notes, as well as interest at the Additional Interest rate on defaulted interest payments which were due but not paid in November, 2008, and May and November, 2009. The Plan provides that the Senior Notes will be reinstated pursuant to section 1124 of the Bankruptcy Code unless holders of debt elect a “Cash-Out Election” (defined below) pursuant to which they may elect to take cash in the amount of principal on their notes plus post-petition interest at the non-default rate and interest at the Additional Interest rates on defaulted interest payments. The Plan provides that those holders who do not elect the Cash-Out Election will have their debt “reinstated” and will be deemed “unimpaired,” but the Plan fails to provide that such holders will receive their contractually provided for post-petition interest on

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

principal and interest on the defaulted interest payments at the Additional Interest rate specified in the Senior Notes.

2. As shown in the accompanying Memorandum of Law submitted in support of this Objection, the cases are clear that, because the Debtors are solvent and propose to make distributions to equity, holders of the Senior Notes are entitled to receive post-petition interest on their outstanding debt, and interest on all defaulted interest payments, at the Additional Rate specified in the Senior Notes. The cases likewise establish that, even if the Senior Notes are reinstated pursuant to section 1124, the holders of the Senior Notes are entitled to receive interest on their debt at the Additional Interest rate from the petition date to the date of reinstatement and are entitled to receive interest at that rate on all defaulted interest payments. Unless the Plan provides for holders of reinstated debt to receive such contractual interest, they cannot be deemed “unimpaired.” Moreover, because the Plan purports to require holders to make an election between reinstatement and the Cash-Out Election, holders should be informed what they will be entitled to receive if their debt is reinstated before they are required to make that election.

3. For the foregoing reasons, the Court should determine, and the Plan should provide, that the holders of the Senior Notes whose debt is to be reinstated are entitled to receive (i) post-petition interest at the Additional Interest rate specified in the Senior Notes and (ii) interest at the Additional Interest rate on defaulted pre-and post-petition interest payments.

THE FACTS

A. The Indentures and Subordination Provisions

4. On December 1, 2008 (the “**Petition Date**”), the Debtors commenced these cases under chapter 11 of the Bankruptcy Code.

5. Pursuant to the Senior Indenture between Debtor Pilgrim’s Pride Corporation (“**PPC**”), as Issuer, and Wells Fargo Bank, National Association (“**Wells Fargo**”), as the

original Indenture Trustee, PPC issued the \$400 million principal amount of Senior Notes due 2015. (Copies of the Senior Notes and the Senior Indenture are annexed as **Exhibit A.**) HSBC is the successor Indenture Trustee to Wells Fargo under the Senior Indenture.

6. Section 1 of the Senior Notes provides that interest accrues on the principal amount of the Senior Notes at a non-default rate of 7 5/8% per annum payable on May 1 and November 1 of each year, and that additional interest accrues on any amounts of principal which are overdue and on overdue installments of interest at the foregoing rate plus an additional 2.0% (hereafter, the “**Additional Interest**”). Specifically, section 1 of the Senior Notes states:

[PPC] will pay interest semi-annually in arrears on May 1 and November 1 of each year, or if such date is not a Business Day, on the next succeeding Business Day (each, on “Interest Payment Date”), commencing November 1, 2007. Interest on the [Senior Notes] will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance of [the Senior Notes]. Interest will be computed on the basis of a 360-day year of twelve 30-day months. *[PPC] will pay interest on overdue principal at the rate borne by [the Senior Notes] plus 2.0% per annum, and it will pay interest on overdue installments of interest at the same rate to the extent lawful.* (Emphasis added)

7. Under sections 7.01(i) and 7.02 of the Senior Indenture, the filing of a chapter 11 petition constitutes an event of default which automatically accelerates the outstanding principal amount of the Senior Notes and renders such amount immediately due and payable.³ As set forth in the accompanying Memorandum of Law, the cases establish that such acceleration provisions in notes and other credit agreements are enforceable and do not constitute invalid *ipso facto*

³ Section 7.01(i) of the Senior Indenture provides that an “Event of Default” occurs if, among other things “[PPC] or any Restricted Subsidiary, pursuant to or within the meaning of Bankruptcy Law . . . commences a voluntary case . . .” Section 7.02 of the Senior Indenture provides that:

[I]f an Event of Default specified in clause (i) or (j) of Section 7.01 hereof occurs with respect to [PPC] or any Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, all outstanding [Senior Notes] shall become due and payable without further action or notice.

provisions. Moreover, under section 7.01(a) of the Senior Indenture, the failure of PPC to pay the installments of its interest when due, including its default on the November, 2008, installment of interest, was an additional event of default which caused an acceleration of the outstanding debt.⁴

8. Accordingly, under the terms of the Senior Indenture, holders of the Senior Notes (the “**Senior Noteholders**”) are entitled to be paid (i) interest accrued at the Additional Interest rate of 7 5/8% plus 2.0% on the outstanding principal of their debt, from the Petition Date until the date of payment, and (ii) interest at the Additional Interest rate of 7 5/8% plus 2.0% on the unpaid installments of interest due in November, 2008, and May, 2009, until paid.⁵

9. As the Court is aware, in addition to the Senior Notes, the Debtors have outstanding approximately \$250 million aggregate principal amount outstanding of 8 3/8% Senior Subordinated Notes due 2017 (the “**Subordinated Notes**”) and approximately \$6.996 million aggregate principal amount outstanding of 9 1/4% Senior Subordinated Notes, due November 15, 2013 (the “**Senior Subordinated Notes**” and, together with the Subordinated Notes, the “**Subordinated Debt**”). Those notes are contractually subordinated to the Senior Notes, and the subordination provisions expressly provide that the holders of Subordinated Debts are obligated to holders of the Senior Notes for all post-petition interest and other amounts contractually set forth in the Senior Notes and the Senior Indenture if any such amounts are not

⁴ Although the acceleration provisions set forth in section 7.02 of the Senior Indenture require the giving of notice for an acceleration resulting from the failure to make a payment of interest, the giving of such notice is not required for an acceleration of the debt where, as here, the noteholders were automatically stayed under section 362 of the Bankruptcy Code from giving such notice. *See, e.g., In re Southland Corp.*, 160 F.3d 1054, 1057-58 (5th Cir. 1998) (stating that where default provision required giving of notice for acceleration of debt, such notice was excused and the debt was deemed accelerated without such notice where the giving of notice was automatically stayed pursuant to section 362).

⁵ On May 22, 2009, the Indenture Trustee filed separate proofs of claim against each of the Debtors in which the Indenture Trustee asserted claims for all amounts which were or might become due under the Senior Notes or Senior Indenture, including principal, interest and Additional Interest, the trustee’s fees and expenses, and any other amounts which might be or become due.

paid by the Debtors, *whether or not such amounts are allowable or allowed as claims against the Debtors*. Accordingly, to the extent that any amounts owed by the Debtors under the terms of the Senior Notes or the Senior Indenture are not paid to the holders of the Senior Notes, the Indenture Trustee will have a claim against the indenture trustees for the Senior Subordinated Notes and the Subordinated Notes, and those trustees will, in turn, have claims against the Debtors for reimbursement of such amounts under their indentures. However, the issue of the Senior Noteholders' subordination rights and claims against holders of the Subordinated and Senior Subordinated Notes for any amounts not paid by the Debtors will be determined at a later time and are not the subject of this Objection.

B. The Revised Chapter 11 Plan

10. On September 17, 2009, the Debtors filed their Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "**Original Plan**") and a corresponding Disclosure Statement. The Original Plan provided that creditors would be paid in full (including post-petition interest) and for substantial distributions to be paid to holders of equity interests. Notwithstanding the Debtors' solvency, the Original Plan provided that the Senior Noteholders, like holders of the Subordinated Debt, would receive payment of principal and interest at non-default rates only, with no payment of interest at the Additional Interest rates and no payment of interest on the defaulted interest payments that were not made when due.

11. Recognizing that a solvent debtor which proposes to make distributions to equity must first pay noteholders default or additional interest at their contractual rates, the Debtors have now proposed a revised Plan to attempt to avoid payment of such interest. The revised Plan provides that the claims of the Senior Noteholders, as well as the claims of the holders of Subordinated Debt, will be reinstated pursuant to section 1124 of the Bankruptcy Code. Plan,

§4.6(b)(i). The Plan states that the holders of the Senior Notes whose debt is to be reinstated will be deemed to be “unimpaired” and not entitled to vote on the Plan. *Id.* However, the Plan fails to provide that such holders will receive post-petition interest at the Additional Interest rate set forth in the Senior Notes or interest on the defaulted payments of interest that were not made pre- and post-petition. *Id.* In lieu of reinstatement, a noteholder may elect (the “**Cash-Out Election**”) to receive Cash in an amount equal to (i) the principal amount of its Notes, *plus* (ii) unpaid post-petition interest at the non-default contract rate, *plus* (iii) the unpaid installments of prepetition interest with interest accruing at the Additional Interest rate on such defaulted interest payments only. Plan, §4.6(b)(i).

OBJECTIONS

12. The Indenture Trustee objects to the Plan on each of the grounds set forth below. The legal bases for each of the objections is set forth in the accompanying Memorandum of Law submitted in support of this Objection. Specifically, the Indenture Trustee asserts the following objections:

13. In a solvent chapter 11 case, holders of notes are entitled to receive default or additional interest on their debt, and debtors are not permitted to make distributions to holders of equity before paying holders of notes the full amount of their contractually-provided for interest.

14. Where debt is reinstated pursuant to section 1124 of the Bankruptcy Code, holders of such debt are entitled to receive interest on their debt from the petition date to the date of reinstatement at the default or additional rate of interest provided for in their credit agreements or notes, and interest at such default or additional rates of interest on all defaulted interest payments not paid when due.

15. As a condition for reinstatement under section 1124 of the Bankruptcy Code, the Debtors are required to “cure” all defaults on the Senior Notes. Section 1123(d) of the Bankruptcy Code requires that defaults must be cured by paying holders of the Senior Notes the Additional Interest set forth in the Senior Notes. Under section 1123(d), defaults must be “cured” by paying noteholders *all* amounts due as determined by reference to the terms of the notes or other credit agreement and by the provisions of applicable non-bankruptcy law. Specifically, section 1123(d) provides that,

Notwithstanding subsection (a) of this section and sections 506(b), 1129(a)(7), and 1129(b) of this title, if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

Accordingly, section 1123(d) requires, as a condition for any reinstatement of debt, that the payment defaults under the Senior Notes be “cured” by paying noteholders for all default or additional interest due through the date of reinstatement.

16. Regardless of the obligation of a debtor to pay default or additional interest to reinstated debt in an *insolvent* chapter 11 case, where the debtor is solvent and proposes to make distributions to holders of equity, a debtor is obligated to pay such default or additional interest to holders of notes whether it reinstates the debt or not, and a debtor’s failure to do so violates the absolute priority rule.

17. For the foregoing reasons, the Senior Noteholders whose debt is to be reinstated are entitled to be paid (i) Additional Interest at the rate set forth in the Senior Notes on the outstanding principal amount of the Senior Notes from the Petition Date to the date of reinstatement, and (ii) interest at the Additional Interest rate on the unpaid installments of interest that were due on November 3, 2008, May 1, 2009, and November 2, 2009. Unless the

Plan provides for such payments, the holders of the Senior Notes to be reinstated are not “unimpaired.”

RESERVATION OF RIGHTS

The Indenture Trustee reserves all rights, including without limitation, (i) the right to amend or supplement this Objection, (ii) the right to enforce the subordination provisions pursuant to the indentures governing the Debtors’ junior notes and section 510 of the Bankruptcy Code, and (iii) all other rights pursuant to the Senior Indenture, the Senior Notes, and any related documents or instruments.

CONCLUSION

WHEREFORE, for the reasons set forth above and in the accompanying Memorandum of Law, the Senior Noteholders whose debt is to be reinstated are entitled to be paid (i) interest on the outstanding principal amount of the Senior Notes from the Petition Date to the date of payment at the contract rate of 7 5/8% plus 2.0% per annum, properly compounded; and (ii) interest on the unpaid installments of interest that were due on November 3, 2008, May 1, 2009, and November 2, 2009, from the dates the installments were and become due to the date of payment at the contract rate of 7 5/8% plus 2.0% per annum, properly compounded; together with all other amounts due under the Senior Notes or the Senior Indenture.

Dated: Dallas, Texas
December 1, 2009

AKIN GUMP STRAUSS HAUER & FELD LLP

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Attorneys for HSBC Bank USA, National Association,
in its capacity as Indenture Trustee

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of December, 2009, a true and correct copy of the foregoing *Objection of HSBC Bank USA, National Association, as Indenture Trustee to Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (as Modified)* was served via email and via first class, U.S. Mail and was also served electronically via the Court's ECF Noticing System on all parties appearing in this case as of October 15, 2009:

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Exhibit A