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**COUNSEL TO THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., INDENTURE TRUSTEE FOR
THE 9 1/4% SENIOR SUBORDINATED NOTES DUE NOVEMBER 15, 2013
AND THE 8 3/8% SENIOR SUBORDINATED NOTES DUE MAY 1, 2017**

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

IN RE:	§ Chapter 11
	§
PILGRIM'S PRIDE CORPORATION,	§ Case No. 08-45664-DML-11
<i>et al.</i> ,	§
	§ Jointly Administered
Debtors.	§

**LIMITED OBJECTION OF THE BANK OF NEW YORK MELLON TRUST COMPANY,
N.A., INDENTURE TRUSTEE FOR THE SENIOR SUBORDINATED NOTES AND THE
SUBORDINATED NOTES, TO DEBTORS' AMENDED JOINT PLAN OF
REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

The Bank of New York Mellon Trust Company, N.A. ("BNY"), in its capacity as Indenture Trustee for the 9 1/4% Senior Subordinated Notes Due November 15, 2013 (the "Senior Subordinated Notes," and the holders of such Notes, the "Senior Subordinated Noteholders") and the 8 3/8% Senior Subordinated Notes Due May 1, 2017 (the "Subordinated Notes," and the holders of such Notes, the "Subordinated Noteholders") (together, the "Subordinated Debt"), by its undersigned counsel, files this limited objection (the "Limited Objection") to the Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the

Bankruptcy Code (As Modified) dated November 17, 2009 (as may be amended, modified or supplemented, the “Plan”) [Docket No. 4035].¹ In support of the Limited Objection, BNY respectfully states as follows:

I. PRELIMINARY STATEMENT

1. The Debtors amended the Original Plan (defined below) by, among other things, modifying the treatment of Classes 6(a) through 6(c) Note Claims. Currently, the Plan provides for the reinstatement of the Note Claims to the extent holders of such Claims do not choose a cash-out option. The Debtors assert that by providing for reinstatement, the Allowed Note Claims are unimpaired in accordance with section 1124 of the Bankruptcy Code by returning such holders to the same position they were in immediately prior to November 1, 2008. The Debtors further state this is so despite nonbankruptcy law that entitles the holders of Allowed Note Claims to demand or receive payment of such claims prior to the stated maturity of the Notes from and after the occurrence of a default.

2. Certain disputes and potential disputes have arisen regarding the impact of the proposed reinstatement. BNY files this limited objection to reserve all of its rights with respect to all such disputes.

3. The limited objections of BNY, as are more fully set forth below, are as follows:

a. The Plan does not clearly provide for payment of all amounts necessary to reinstate the Notes and such amounts should be determined by this Court at the earliest possible date.

¹ All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

b. Should the Court determine that the 7 5/8% Indenture Trustee and/or the holders of the Senior Notes (the “Senior Noteholders”) are entitled to payment of interest on overdue installments of interest and on the outstanding principal amounts of the Senior Notes at the Senior Notes Overdue Amount Rate (defined below) (the “Disputed Interest Amount”) in order for their Allowed Note Claims to be reinstated, then the Plan cannot be confirmed unless it provides for the same treatment to the Senior Subordinated Noteholders and the Subordinated Noteholders.

c. Should the Court determine that the Senior Noteholders are not entitled to be paid the Disputed Interest Amount in connection with reinstatement, then the Plan may not be confirmed unless the Debtors establish a cash reserve for the full amount of the Disputed Interest Amount and the Subordinated Debt Overdue Amounts (defined below) that will be maintained until the issue of the payment of the Disputed Interest Amount has been resolved by a final, non-appealable order. Such reserve is needed (i) to prevent the unequal treatment of similarly situated creditors in Classes 6(a) through 6(c), and (ii) to ensure that amounts paid by the Debtors to the Senior Subordinated Noteholders and the Subordinated Noteholders to effect reinstatement are irrevocably paid to such creditors.

d. The release, exculpation, discharge and injunctive provisions of the Plan are overly broad and must be modified to leave unaltered the rights of the Senior Subordinated Noteholders and the Subordinated Noteholders.

4. Unless the Plan is modified as set forth in this Limited Objection, the Plan cannot be confirmed.

II. BACKGROUND

A. The Subordinated Debt

5. On December 1, 2008 (the “Petition Date”), Pilgrim’s Pride Corporation and certain of its affiliates commenced these cases under chapter 11 of title 11 of the United State Code (the “Bankruptcy Code”).

6. The Bank of New York Mellon Trust Company, N.A. is the successor indenture trustee under: (i) an Indenture dated as of November 21, 2003 (as supplemented, the “Senior Subordinated Indenture”), by and between PPC Escrow Corp.,² as Issuer and The Bank of New York, as Indenture Trustee, pursuant to which Pilgrim’s Pride Corporation (“PPC”) issued \$6.996 million aggregate principal amount of the 9 1/4% Senior Subordinated Notes due November 15, 2013; and (ii) an Indenture dated as of January 24, 2007 and First Supplemental Indenture dated as of January 24, 2007 (the “Subordinated Indenture,” and, together with the Senior Subordinated Indenture, the “Subordinated Indentures”), by and between PPC, as Issuer, and Wells Fargo Bank, National Association, as Indenture Trustee, pursuant to which PPC issued \$250 million aggregate principal amount of the 8 3/8% Senior Subordinated Notes due May 1, 2017.

7. Section 1 of the Senior Subordinated Notes provides, in relevant part, that (a) interest accrues on the principal amount of the Senior Subordinated Notes at a rate of 9 1/4% per annum, and (b) additional interest accrues on any overdue principal and on overdue installments of interest at the 9 1/4% rate, plus an additional 1.0% (the “Senior Subordinated Notes Overdue”).

² PPC Escrow Corp. is now known as Pilgrim’s Pride Corporation.

Amount Rate”). Interest is payable on May 15 and November 15 of each year. Section 1 of the Senior Subordinated Notes states:

[PPC] . . . promises to pay interest on the principal amount of this Note at the rate per annum shown above [9 1/4%] [PPC] will pay interest semiannually on May 15 and November 15 of each year commencing May 15, 2004. Interest on the Notes will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from November 21, 2003. Interest will be computed on the basis of a 360-day year of twelve 30-day months. The Company will pay interest on overdue principal at the rate borne by this Note plus 1.0% per annum, and it will pay interest on overdue installments of interest at the same rate to the extent lawful.

8. Section 1 of the Subordinated Notes provides, in relevant part, that (a) interest accrues on the principal amount of the Subordinated Notes at a rate of 8 3/8% per annum, and (b) additional interest accrues on any overdue principal and on overdue installments of interest at the 8 3/8% rate, plus an additional 2.0% (the “Subordinated Notes Overdue Amount Rate” and, together with the Senior Subordinated Notes Overdue Amount Rate, the “Overdue Amount Rates”). Interest is payable on May 1 and November 1 of each year. Section 1 of the Subordinated Notes states:

[PPC] . . . promises to pay interest on the principal amount of this Note at the rate per annum shown above [8 3/8%] [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, an “***Interest Payment Date***”), commencing November 1, 2007. Interest on the 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 this Note. Interest will be computed on the basis of a 360-day year of twelve 30-day months. The Company will pay interest on overdue principal at the rate borne by this Note plus 2.0% per annum, and it will pay interest on overdue installments of interest at the same rate to the extent lawful.

9. Sections 6.01(a) and 6.01(i) of the Senior Subordinated Indenture and sections 7.01(2) and 7.01(i) of the Subordinated Indenture provide that the filing of a chapter 11 petition and the failure of PPC timely to pay any installment of interest, when due, under the Indentures constitute events of default. Events of default have occurred with respect to the Subordinated Debt, including the filing of the Debtors' chapter 11 petitions on December 1, 2008 and the failure of PPC to pay interest on the Subordinated Debt in November 2008 and May 2009.

B. The Senior Debt

10. Filings in these cases have set forth as follows:

a. HSBC is the successor indenture trustee under an Indenture dated as of January 24, 2007, supplemented by a First Supplemental Indenture dated as of January 24, 2007 (as supplemented, the "Senior Indenture" and, together with the Subordinated Indentures, the "Indentures"), by and between PPC, as Issuer, and Wells Fargo Bank, National Association, as Indenture Trustee, pursuant to which PPC issued \$400 million aggregate principal amount of 7 5/8% Senior Notes due 2015;

b. Section 1 of the Senior Notes provides that interest accrues on the principal amount of the Senior Notes at the 7 5/8% rate, and that additional interest accrues on any amounts of overdue principal and overdue installments of interest at the 7 5/8% rate plus an additional 2.0% (the "Senior Notes Overdue Amount Rate");

c. Interest on the Senior Notes is payable on May 1 and November 1 of each year;

d. Under sections 7.01(i) and 7.02 of the Senior Indenture, the filing of a chapter 11 petition constitutes an event of default, as does the failure of PPC to pay any installment of interest, when due;

e. The 7 5/8% Indenture Trustee has asserted that (i) events of default have occurred under the Senior Indenture and the Senior Notes, including the filing of the Debtors' chapter 11 petitions and the failure of PPC to make payments of interest that were due on November 3, 2008 and May 1, 2009, and (ii) interest at the rate of 7 5/8% plus 2.0% is due and owing on (x) the principal amount of the Senior Notes, and (y) all unpaid installments of interest; and

f. The 7 5/8% Indenture Trustee timely-filed proofs of claim on account of the Senior Notes asserting claims for: (a) outstanding principal in the amount of \$400,000,000; (b) accrued and unpaid prepetition interest in the amount of \$15,372,317.71; (c) accrued and unpaid postpetition interest at the full rates of interest set forth in the Senior Notes; (d) trustee's fees and expenses; and (e) all additional amounts which were or might become due and owing to the 7 5/8% Indenture Trustee.

C. BNY'S Proofs of Claim

11. BNY timely filed proofs of claim in these cases asserting claims on behalf of each of the Senior Subordinated Noteholders and the Subordinated Noteholders.

12. The proof of claim on account of the Senior Subordinated Notes includes claims for: (a) outstanding principal in the amount of \$6,996,000; (b) accrued and unpaid prepetition interest in the amount of \$368,729.28; (c) accrued and unpaid postpetition interest at the rates of

interest set forth in the Senior Subordinated Notes; (d) BNY's fees and expenses; and (e) all additional amounts which were or might become due and owing to BNY.

13. The proof of claim on account of the Subordinated Notes includes claims for: (a) outstanding principal in the amount of \$250,000,000; (b) accrued and unpaid prepetition interest in the amount of \$12,818,402.78; (c) accrued and unpaid postpetition interest at the rates of interest set forth in the Subordinated Notes; (d) BNY's fees and expenses; and (e) all additional amounts which were or might become due and owing to BNY.

D. The Plan and Disclosure Statement and the Disputes Relating Thereto

14. On September 17, 2009, the Debtors filed their Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "Original Plan") [Docket No. 3366] and the Disclosure Statement related to the Original Plan (the "Disclosure Statement") Docket No. 3365]. Under the Original Plan, the Debtors purported to leave the Note Claims "unimpaired." Section 4.6 of the Original Plan provides, in pertinent part:

- (b) ...[each] holder of an Allowed Note Claim shall receive Cash in an amount equal to (i) the principal amount of such Allowed Note Claim plus (ii) accrued and unpaid postpetition interest at the non-default, contract rate as soon as reasonable practicable after the later of (a) the Effective Date, and (b) the date the Note Claim becomes Allowed.

15. BNY objected to the approval of the Disclosure Statement on the basis that there was inadequate disclosure regarding the treatment proposed for the Senior Subordinated Noteholders and the Subordinated Noteholders as such treatment altered such noteholders' contractual rights by not paying such noteholders in full in accordance with the terms of the Subordinated Indentures. Ultimately, the Court approved the Disclosure Statement with language

that was appropriate on the interest and subordination issues and set a litigation schedule with respect to same.

16. Prior to the date briefs were due to be filed with the Court on the interest and subordination issues in connection with the Original Plan, BNY was notified that the Debtors would be modifying the Original Plan by altering the treatment of Allowed Note Claims. Specifically, the Debtors would seek to reinstate the Senior Notes and the Subordinated Notes and provide a cash-out option for the all of the Noteholders.

17. On November 10, 2009, the Debtors filed a motion to establish certain procedures for holders of Allowed Note Claims to make the cash-out election under the Plan (the “Election Motion”) [Docket No. 3953].

18. The Court entered its Order authorizing the relief requested in the Election Motion and required the Debtors to mail cash-out election packages within five days of the date of entry of the Order to all the Noteholders [Docket No. 4033]. The deadline for making the election is December 14, 2009. To the extent a holder elects the cash-out option, such holder will be deemed to have waived all subordination rights under the applicable indenture or applicable law.

19. The Debtors have asserted that upon reinstatement, the Senior Noteholders will no longer be entitled to interest on overdue installments of interest or on the outstanding principal amount of the Senior Notes at the Senior Notes Overdue Amount Rate (defined above as the Disputed Interest Amount). The 7 5/8% Indenture Trustee and certain Senior Noteholders have asserted that, even in a reinstatement scenario, the Debtors must pay the Disputed Interest Amount.

20. Moreover, the 7 5/8% Indenture Trustee appears to have taken the position that even if the Debtors are not required to pay the Disputed Interest Amount to the Senior Noteholders in connection with a reinstatement, the Senior Noteholders may recover the Disputed Interest Amount from the Subordinated Noteholders in accordance with the subordination provisions of the applicable indentures and applicable law. BNY disagrees with this view and believes that the Senior Noteholders are not entitled to recover the Disputed Interest Amount from the Subordinated Noteholders if the Debtors are not required to pay such amount. The Debtors have indicated that they agree with BNY on this point.

III. LIMITED OBJECTION

A. The Plan Must Provide For Reinstatement Consistent With Section 1124(2) Of The Bankruptcy Code

21. Section 1124(2) of the Bankruptcy Code provides for the reinstatement of claims and interests. Reinstatement consists of curing any default (other than a default under an ipso facto or bankruptcy clause), reinstating the maturity of the claim or interest, and compensating the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default. See 11 U.S.C § 1124(2). Further, in a reinstatement scenario, the plan may not otherwise alter any legal, equitable or contractual right to which the claim or interest entitles its holder. Id.

22. As set forth above, the parties in interest in these cases have asserted conflicting positions regarding the amounts necessary to be paid to the Noteholders in order to reinstate the Notes. This Court should determine such amounts pursuant to the applicable non-bankruptcy

law governing the Indentures, which in the case of the Subordinated Notes, is New York law. BNY urges the Court to make findings of fact and conclusions of law consistent with the foregoing when it determines the amount to be paid to support reinstatement.

B. The Plan Cannot Be Confirmed If It Fails To Provide Equal Treatment For All Class 6 Claims (Sections 1123(a)(4) and 1129(a)(1))

23. Section 1123(a)(4) of the Bankruptcy Code expresses a fundamental premise of the bankruptcy process, namely, the equal treatment of similarly-situated creditors. See e.g., In re B&W Enters., Inc., 19 B.R. 421 (Bankr. D. Idaho 1982). In relevant part, Section 1123(a)(4) states that a plan shall “provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest.” 11 U.S.C. §1123(a)(4).

24. Under sections 1123(a)(4) and 1129(a)(1) of the Bankruptcy Code, the Plan cannot be confirmed unless the Subordinated Noteholders are afforded the same treatment as the Senior Noteholders. To the extent a court determines that the Senior Noteholders are entitled to the Disputed Interest Amount upon reinstatement, the Subordinated Debt is entitled to interest on overdue installments of interest and on the outstanding principal amount of the Senior Subordinated Notes and the Subordinated Notes at the Senior Subordinated Notes Overdue Amount Rate and the Subordinated Notes Overdue Amount Rate, respectively (the “Subordinated Debt Overdue Amounts”).

25. Unequal treatment of claims for interest within a single class has been found to violate section 1123(a)(4) of the Bankruptcy Code. In In re The Finova Group, Inc., the United States District Court for the District of Delaware determined that a plan offering to pay interest to some members of the class, but not to pay utilization fees to other members, violated section

1123(a)(4), finding that the credit agreements' utilization fees and interest payments were essentially the same. The issue is even more compelling in this case as the Subordinated Indentures and the Senior Indenture contain identical provisions (except that the Senior Subordinated Notes Indenture provides that missed payments accrue interest at 1%, not 2%).

26. BNY expressly reserves all of its rights and the rights of the Senior Subordinated Noteholders and the Subordinated Noteholders with respect to this issue and does not agree to less favorable treatment than that which may be afforded to the Senior Noteholders. The Debtors must show that the Plan complies with the applicable provisions of the Bankruptcy Code, including section 1123(a)(4). 11 U.S.C. §1129(a)(1). Thus, to the extent it is determined that the Debtors are required to pay the Disputed Interest Amount to the Senior Noteholders in order to reinstate the Senior Notes, the Plan must provide that the Senior Subordinated Noteholders and the Subordinated Noteholders are entitled to be paid the Subordinated Debt Overdue Amounts.

C. The Court Should Require That The Debtors Establish A Cash Reserve For The Full Disputed Interest Amount, As Well As The Subordinated Debt Overdue Amounts, Until The Interest And Subordination Issues That Have Been Raised Have Been Resolved By Final, Non-Appealable Order (Sections 1124(2) and 1129(a)(1))

27. The Court should require the Debtors to establish a cash reserve for the benefit of the Senior Noteholders, the Senior Subordinated Noteholders and the Subordinated Noteholders equal to the full amount of the Disputed Interest Amount³ and the Subordinated Debt Overdue

³ To the extent the 7 5/8% Indenture Trustee and/or any of the Senior Noteholders have asserted or may assert additional claims against the Debtors that they believe may be recovered from the Subordinated Noteholders pursuant to the subordination provisions in the Indentures or applicable law, such additional amounts should also be included in the Reserve. This Court has jurisdiction over these matters as the claims resolution process is part of the Court's core jurisdiction under 28 U.S.C. § 157(b)(2)(A), (B) and (O).

Amounts, as well as for any fees and costs (including attorneys' fees) incurred by BNY and the 7 5/8% Indenture Trustee in enforcing rights under their respective Indentures (the "Reserve").⁴

28. It is commonplace in the context of chapter 11 plans of reorganization for a debtor to establish a reserve in respect of all claims that have not yet become "allowed." It is unclear whether the Debtors intend to create such a reserve for the Disputed Interest Amount, the Subordinated Debt Overdue Amounts, and fees and costs.

29. A reserve would ensure that the Noteholders can recover the Disputed Interest Amount and the Subordinated Debt Overdue Amounts if and when such amounts are found to be payable in connection with reinstatement and also to preserve the Noteholders' statutory rights of appeal with respect to such matters. An adverse decision from the Court on this issue could frustrate any meaningful appeal of an adverse ruling from this Court on the interest and subordination issues because it is unclear from what *res*, if any, the Noteholders would be paid. See Bank of New York Trust Co., NA v. Official Unsecured Creditors' Comm. (In re Pacific Lumber Co.), -F.3d-, Case No. 08-40746 (5th Cir. Sept. 29, 2009).

30. Moreover, a reserve must be established to preserve the rights of the Senior Subordinated Noteholders and the Subordinated Noteholders to contest any allegations made by the Senior Noteholders that to the extent the Debtors are not required to pay the Disputed Interest Amount in connection with reinstatement, then the Senior Noteholders can recover the Disputed

⁴ The Indenture Trustee Fee Claims and fees for services related to distributions made pursuant to the Plan will be paid in Cash on the Effective Date by Reorganized PCC as Administrative Expense Claims, without the need for application to, or approval of, any court. See Plan at Section 2.3. It is BNY's contention that its fees and expenses (including its attorneys' fees) incurred in connection with the disputes referenced in this Limited Objection will be paid in Cash by the Debtors and/or Reorganized PPC upon the submission of invoices to the Debtors (prior to the Effective Date) and to Reorganized PPC (on and after the Effective Date). To the extent the Debtors dispute BNY's entitlement to payment of such fees and expenses, then it is BNY's position that an appropriate reserve must be established for such fees and expenses and such reserve must remain in place until this issue is resolved by a final, non-appealable order.

Interest Amount from the Subordinated Noteholders in accordance with the subordination provisions of the applicable indentures and applicable law.⁵

D. The Plan Cannot Be Confirmed Unless The Release, Exculpation, Discharge And Injunctive Provisions Are Modified To Leave Unaltered The Rights Of The Subordinated Noteholders Under Applicable Fifth Circuit Jurisprudence

31. The Plan must leave unaltered, as a condition to reinstatement, the legal and equitable rights of the Subordinated Noteholders. See 11U.S.C. § 1124(2)(e). Under the terms of the Plan, all holders of claims, *including holders of debt to be reinstated* – are deemed to provide a full discharge and release to, among other parties, the Debtors, the Reorganized Debtors and such parties’ present and former directors, officers, employees, affiliates, agents, financial advisors, investment bankers, attorneys, and representatives of each of the foregoing from any and all claims or causes of action that exist as of the Effective Date of the Plan, including prepetition claims. See Plan at Section 10.8. As such, Section 10.8 of the Plan must be modified to leave unaltered the rights of the Senior Subordinated Noteholders and the Subordinated Noteholders. Sections 10.2 – 10.4 and 10.6 – 10.7 must also be modified accordingly. See Bank of New York Trust Co., NA v. Official Unsecured Creditors’ Comm. (In re Pacific Lumber Co.), -F.3d-, Case No. 08-40746 (5th Cir. Sept. 29, 2009).

⁵ It is BNY’s position that this Court should resolve the Senior Noteholders’ issues as to all parties, not just the Debtors. To the extent the Court establishes a litigation schedule regarding the Senior Noteholders’ potential dispute with the Senior Subordinated Noteholders and the Subordinated Noteholders that extends beyond the anticipated Effective Date of the Plan, then it is BNY’s position that the Reserve must be established to protect the Subordinated Debt.

WHEREFORE, BNY respectfully requests that this Court condition its approval of the Plan upon the modifications described above and grant BNY and the Subordinated Noteholders such other, further and different relief as this Court deems just and proper.

Dated: December 1, 2009
Dallas, Texas

Respectfully submitted,

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**COUNSEL TO THE BANK OF NEW YORK
MELLON TRUST COMPANY, N.A.,
INDENTURE TRUSTEE FOR THE 9 1/4% SENIOR
SUBORDINATED NOTES DUE NOVEMBER 15, 2013
AND THE 8 3/8% SENIOR SUBORDINATED NOTES
DUE MAY 1, 2017**

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of December, 2009, a true and correct copy of the foregoing *Limited Objection of The Bank of New York Mellon Trust Company, N.A., Indenture Trustee for the Senior Subordinated Notes and the Subordinated Notes, to Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* was served electronically via the Court's ECF Noticing System on all parties appearing in this case as of December 1, 2009 and was also served via facsimile or email, as indicated below, on the following parties:

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