

Mark Brodeur
TBN 03052020
BRODEUR LAW FIRM
900 Jackson
Suite 120
Dallas, Texas 75202
Telephone: (214) 742-8900
Facsimile: (214) 742-5106

Chris Moser
TBN: 14572500
**QUILLING, SELANDER,
CUMMISKEY LOWNDS, P.C.**
2001 Bryan Street, Suite 1800
Dallas, TX 75201
Telephone: (214) 871-2100
Facsimile: (214) 871-2111

I. Richard Levy
TBN: 12265020
I. RICHARD LEVY, P.C.
17304 Preston Road
Suite 800
Dallas, Texas 75379-6935
Telephone (214) 438-3753
Facsimile (214) 242-3754

COUNSEL FOR CERTAIN POULTRY GROWERS IN TEXAS,
LOUISIANA, ARKANSAS AND OKLAHOMA

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

IN RE:	§	
PILGRIM'S PRIDE CORP., ET AL.,	§	CASE NO. 08-45664-dml-11
DEBTORS.	§	JOINTLY ADMINISTERED
	§	

OBJECTIONS TO DEBTORS' PROPOSED PLAN

All Claimants represented by the undersigned—as identified by the Amended Rule 2019 Disclosure Statement filed by the undersigned on August 18, 2009—(“Claimants”) object as follows to the Debtors’ Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (As Modified) filed by Pilgrim’s Pride Corporation (“PPC”):

I. PROCEDURAL HISTORY

On June 1, 2009, Claimants filed proofs of claim and an adversary proceeding in this Court (the “*Adams Case*”) and immediately filed a motion to withdraw the reference. On August 7, 2009, this Court issued its Report and Recommendation [Docket No. 26 in Adversary Proceeding No. 09-04221-dml] on Claimants’ motion and recommended that the reference be withdrawn on both permissive and mandatory withdrawal grounds, and that the claims be removed to the United States District Court for the Northern District of Texas, Fort Worth Division, “in their entirety.” Thereafter, by order of August 25, 2009 [Docket No. 18 in 4:09-

CV-386-Y] the Honorable Judge Terry Means granted Claimants' motion and withdrew the reference in the *Adams Case*.

As an independent matter, on July 10, 2009, PPC filed motions to retroactively reject Claimants' grower contracts. Thereafter, PPC and the Claimants began negotiating this issue and eventually reached a Stipulation And Agreement Resolving Certain Grower Claims [Docket No. 3342-1 filed September 15, 2009]. Upon motion by PPC under Rule 9019 for approval of this Stipulation And Agreement [Docket No. 3342 filed September 15, 2009], this Court approved the Stipulation And Agreement [Docket No. 3450 entered September 23, 2009].

Under the Stipulation And Agreement, Claimants expressly reserved and did not release their claims asserted in the *Adams Case*, certain post-petition claims to be added to the *Adams Case*, and the claims pending against certain of PPC's officers, directors and managers before Judge Ward in the United States District Court for the Eastern District of Texas, Marshall Division, in *White et al. v. Pilgrim's Pride Corporation, et al.*, Civil Action No. 2:07-CV-00522-TJW (the "*White Case*"). See Stipulation And Agreement [Docket No. 3342-1] at pp.3-4.

Two days after Claimants signed the Stipulation And Agreement and reached an agreement with PPC to reserve their claims in the *Adams Case* and the *White Case*, PPC filed their Plan of Reorganization and Proposed Disclosure Statement. Since its original filing with the Proposed Disclosure Statement, the proposed plan has been revised and modified, most recently on November 17, 2009 as Docket No. 4035 ("the Proposed Plan").

The Proposed Plan is highly objectionable because, as set forth below, it contains provisions that are contrary to applicable precedent and because it conflicts with this Court's September 23, 2009 Order [Docket No. 3450] approving the Stipulation And Agreement. As a result, the Proposed Plan cannot be confirmed.

II. OBJECTIONS TO THE PROPOSED PLAN

First Objection – Section 4.7 of the Proposed Plan

The first major flaw in the Proposed Plan is that it categorizes Claimants as “unimpaired,” and thereby deprived Claimants of the right to vote on the Proposed Plan. Clearly, however, under the terms of the Proposed Plan, Claimants are “impaired.”

Under 11 U.S.C. §1124(1), a class of claims or interests is “impaired” under a plan “unless, with respect to each claim or interest of such class, the plan . . . leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest.” Under this statutory provision, any alteration of Claimants’ rights “impaired” their claims, and any such impairment created for Claimants the right to vote to accept or reject the Proposed Plan. Debtor’s failure to have provided Claimants the right to vote to accept or reject the Proposed Plan now precludes its confirmation by this Court.

Section 4.7 of the Proposed Plan reveals some of the important respects in which Claimants are “impaired” under its terms. That Section states, in pertinent part, as follows:

4.7 *Classes 7(a)-(g): General Unsecured Claims against the Debtors.*

*[E]ach holder of an Allowed General Unsecured Claims shall receive, in full satisfaction of such Claim, Cash equal to (i) the full amount of such Allowed General Unsecured Claim plus (ii) **postpetition interest** on such Allowed Unsecured Claim from the Commencement Date through the Effective Date and the date such General Unsecured Claim becomes Allowed at either the federal judgment rate, the contract rate, or the post-judgment rate, as applicable, or such other rate **as determined by the Bankruptcy Court** (all emphasis added).*

This provision is objectionable for three independent reasons. First, the provision does not permit Claimants to recover pre-judgment, **pre-petition** interest, as they would be entitled to recover under their PSA, statutory and common-law claims currently before the District Court in the *Adams Case*. Second, the provision does not permit Claimants to recover attorneys’ fees, as

they would be entitled to recover under their DTPA claims before the District Court in the *Adams Case*. Third, the provision incorrectly permits this Court, rather than the District Court trying the *Adams Case*, to set the pre-judgment, postpetition interest rate.

Thus, the Proposed Plan fails to “leave[] unaltered the legal, equitable, and contractual rights” to which Claimants, as the holders of claims, are entitled; and Claimants are thus “impaired.” The Proposed Plan’s treatment of Claimants as “unimpaired,” and its provisions that they are “conclusively presumed to have accepted the Plan and [that they are] not entitled to vote to accept or reject the Plan,”¹ are improper and make the plan unconfirmable as written.

Clearly, PPC intends to simultaneously classify Claimants as “unimpaired” and assert impairments as to Claimants’ rights. Less than a month ago, on November 2, 2009, PPC filed with the District Court in the *Adams Case* a motion for leave to file (which Judge Means denied) a proposed sur-reply to Claimants’ motion to transfer venue, asserting that there were numerous remaining bankruptcy issues to be coordinated between Judge Means and this Court, including Claimants’ entitlement to attorneys’ fees and pre-judgment interest. After asserting that “[o]ne of the issues concerns Plaintiffs’ request for attorneys’ fees,” PPC argued that since Claimants are unsecured creditors, they “*are not entitled to post-petition attorneys’ fees* even when allowed under a pre-petition agreement or state statute.” Docket No. 50, Case No. 4:09-cv-00386-Y, filed November 2, 2009 (citations omitted)(emphasis added). PPC’s sur-reply also asserted that

¹ Section 4.7(a) states: “Impairment and Voting. Classes 8(a) through (g) are unimpaired by the Plan. Each holder of an Allowed General Unsecured Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.” This provision erroneously refers to Classes 8(a) through (g) as the class of ‘General Unsecured Claims,’ the class that would include Claimants’ claims. However, as the chart in Article III of the Proposed Plan makes clear, “General Unsecured Claims against PPC” constitute classes “7(a)–(g)” not “8(a)–(g).” Class 8 is “Intercompany Claims.” Proposed Plan, Article III, p.14. Because it erroneously asserted that Claimants were “unimpaired” under the Proposed Plan, PPC wrongfully failed to provide voting disclosures and a right to vote to Claimants.

the issue of Claimants' right to "*the recovery of interest . . . will arise in this litigation.*" *Id.* (emphasis added). It is thus clear that PPC is contesting Claimants' right to recovery attorneys' fees and pre-petition interest. PPC clearly intends to assert in the *Adams Case* that Claimants' claims against PPC are "impaired," as defined in 11 U.S.C. §1124(1).

Finally, Sections 4.7(a) and 4.7(b) are inconsistent. Section 4.7(a) asserts that Claimants are "unimpaired," yet, Section 4.7(b) limits Claimants' rights such that they are not entitled to recover attorneys' fees, pre-petition interest, or prejudgment interest at a rate set by any court other than the Bankruptcy Court. Section 4.7 is thus defective and internally inconsistent.

Second Objection – Sections 10.2, 10.3, 10.4, 10.7 and 10.8 of the Proposed Plan

The second major flaw in the Proposed Plan is that, through a series of inter-related provisions, it purports to release PPC from all claims brought against it, despite the fact that this Court's September 23, 2009 Order approving Claimants' and PPC's Stipulation And Agreement states that the claims brought against PPC by Claimants are not released.

Section 10.2 of the Proposed Plan states, in pertinent part, as follows:

10.2 Discharge of Claims and Termination of Equity Interests.

Except as provided in the Plan, upon the Effective Date, *all existing Claims against . . . the Debtors shall be, and shall be deemed to be, discharged, terminated, and cancelled, as applicable, and all holders of Claims . . . shall be precluded and enjoined from asserting against the Reorganized Debtors*, their successors or assignees, or any of their assets or properties, any other or further Claim based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, *whether or not such holder has filed a proof of Claim*, and whether or not the facts or legal bases therefor were known or existed prior to the Effective Date. (emphasis added).

This provision is obviously improper as applied to Claimants, since they have filed Proofs of Claim and have not agreed to discharge or relinquish their claims. Further, because this Court is not empowered to diminish or extinguish any of Claimants' withdrawn claims, the Proposed Plan cannot accomplish this end. As to other General Unsecured Claimants, the

provision is equally nonsensical. It cannot be the case that all claimants who timely filed valid proofs of claim will have their claims discharged and enjoined by the Proposed Plan on the Effective Date, since Section 4.7 of the Proposed Plan expressly states that General Unsecured Claims are “unimpaired by the Plan.”

Similarly, Section 10.3 asserts the improper legal premise that each of the Claimants shall be deemed to forever waive and release PPC from any and all claims, despite the fact that the District Court’s August 25, 2009 withdrawal order (Docket No. 18) removes these claims from this Court’s jurisdiction “in their entirety.” Section 10.3 states, in pertinent part, as follows:

10.3 *Discharge of Debtors.*

Upon the Effective Date and in consideration of the distributions to be made under the Plan, except as otherwise expressly provided in the Plan, *each holder . . . of a Claim* and any affiliate of such holder *shall be deemed to have forever waived, released and discharged the Debtors*, to the fullest extent permitted by section 1141 of the Bankruptcy Code, *of and from any and all Claims, rights, and liabilities that arose prior to the Effective Date.* (emphasis added)

This provision is improper because Claimants have not, under either the District Court’s withdrawal order or the Stipulation And Agreement, “waived, released and discharged the Debtors” of and from all of Claimants’ Claims. Rather, Claimants should retain, unaltered, all of their rights and claims not expressly released in the Stipulation And Agreement. Otherwise, Claimants are not “unimpaired” under the Proposed Plan.

Further, under Section 10.7 of the Proposed Plan, PPC improperly seeks to “exculpate” itself, its directors, officers, employees, partners, financial advisors and attorneys for any act taken or omitted to be taken since the Commencement Date relating in any way to the Chapter 11 Cases. This Section states:

10.7 *Exculpation.*

Notwithstanding anything herein to the contrary, as of the Effective Date, ***none of the Debtors***, the Reorganized Debtors, the Committees, the Chief Restructuring Officer, the agents and lenders under the Prepetition BMO Credit Agreement and the Prepetition CoBank Credit Agreement, the agents and lenders party to the DIP Credit Agreement, the Settling Unions, the Plan Sponsor, ***and their respective directors, officers, employees, partners, members, agents, representatives, accountants, financial advisors, investment bankers, or attorneys*** (but solely in their capacities as such) ***shall have or incur any liability for any claim, cause of action or other assertion of liability for any act taken or omitted to be taken since the Commencement Date in connection with, or arising out of, the Chapter 11 Cases***, the formulation, dissemination, confirmation, consummation, or administration of the Plan, property to be distributed under the Plan, ***or any other act or omission in connection with the Chapter 11 Cases, the Plan, the Disclosure Statement or any contract, instrument, document or other agreement related thereto***; provided however, that the foregoing shall not affect the liability of any person that would otherwise result from any such act or omission to the extent such act or omission is determined by a Final Order to have constituted willful misconduct, gross negligence, fraud, criminal conduct, intentional unauthorized misuse of confidential information that causes damages, or *ultra vires* act. (bold italicized emphasis added)

Through its use of the introductory language, “[n]otwithstanding anything herein to the contrary,” this provision seeks to nullify anything else in the Proposed Plan entitling Claimants to a right to proceed against PPC or its agents. However, what is thereafter asserted is clearly improper: the Proposed Plan cannot release or insulate PPC and its agents from liability for claims asserted against it in valid proofs of claim and in the withdrawn *Adams Case*. If so, the withdrawal would be ineffective because this Court, through the Proposed Plan, would be releasing and exculpating PPC and its agents from liability the District Court could otherwise impose in the unresolved *Adams Case*.

Section 10.8 of the Proposed Plan also sets forth a series of similar, invalid “releases.” That Section states in pertinent part:

10.8 *Releases by Holders of Claims and Equity Interests.*

Except as otherwise expressly provided in the Plan, on the Effective Date, and ***in consideration for the obligations of the Debtors and the Reorganized Debtors under the Plan, each holder of a Claim or an Equity Interest that votes to accept the Plan (or is***

deemed to accept the Plan) . . . shall release and discharge unconditionally and forever each of (a) the Debtors and the Reorganized Debtors, (b) the Chief Restructuring Officer, (c) the Committees, (d) the agents and lenders under the Prepetition BMO Credit Agreement, (e) the agents and lenders under the Prepetition CoBank Credit Agreement, and (f) the agents and lenders under the DIP Credit Agreement, (g) Pilgrim Interests, Ltd. (solely in its capacity as guarantor under the Guarantee Agreements), (h) the Plan Sponsor, and (i) the present and former directors, officers, employees, affiliates, agents, financial advisors, investment bankers, attorneys, and representatives of each of the foregoing, as applicable, from any and all claims or causes of action that exist as of the Effective Date and arise from or relate to, in any manner, in whole or in part, the operation of the business of the Debtors, the subject matter of, or the transaction or event giving rise to, the Claim or Equity Interest of such holder, the business or contractual arrangements between any Debtor and such holder, any restructuring of such Claim or Equity Interest prior to the Chapter 11 Cases, or any act, omission, occurrence, or event in any manner related to such subject matter, transaction or obligation, or arising out of the Chapter 11 cases . . . provided, that the foregoing shall not operate as a waiver of or release from any causes of action arising out of the willful misconduct, gross negligence, fraud, criminal conduct, intentional unauthorized misuse of confidential information that causes damages, or ultra vires acts or any such person or entity' provided further that the foregoing shall not operate as a waiver of or a release of any causes of action held by a Governmental Unit against any non-debtor existing as of the Effective Date based on any securities laws of the United States or any domestic state. (bold italicized emphasis added)

This provision is flawed for the same reasons that Sections 10.2, 10.3, 10.4 and 10.7 are defective—Claimants cannot and do not, through this Proposed Plan that purportedly leaves their claims “unimpaired,” waive, release or discharge their valid claims and causes of action properly withdrawn to the District Court.²

Third Objection – Sections 10.2, 10.3, 10.6, 10.7 and 10.8; Failure of Consideration

Furthermore, Sections 10.2, 10.3, 10.6, 10.7 and 10.8 are ineffective as to Claimants, because these Section purport to create releases without even a peppercorn of consideration flowing to Claimants. PPC has not provided anything to Claimants as consideration for the alleged release of liability set forth in these Sections. While Section 10.8 falsely states that the

² The Stipulation And Agreement entered into by PPC and Claimants on September 15, 2008 expressly provides that Claimants do not waive or release any of their claims pending in the *Adams Case* or the *White Case*. Further, the Order withdrawing the reference does not provide this Court with jurisdiction to, through a Plan of Reorganization, release unresolved claims currently pending before the District Courts.

broad releases set forth therein are purportedly given to PPC and its agents by Claimants “in consideration for the obligations of the Debtors and the Reorganized Debtors under the Plan,” PPC, however, has no obligations under the Plan to Claimants, holders of withdrawn claims. PPC has made no payments in satisfaction of Claimants’ pending claims. In fact, the Proposed Plan, as currently worded, purportedly takes away rights from Claimants rather than providing them with any benefit.

A release lacking in consideration, such as this one, is ineffective. It therefore should not and cannot be effectuated through a valid confirmation order of this Court. The purported “exculpation” “waiver” and “release” is ineffective and cannot be confirmed.

Fourth Objection – Sections 10.7 and 10.8; Release of Non-Debtor Third Parties

The fourth major flaw in the Proposed Plan is its illegal attempt to discharge and release non-debtor third-parties. The Fifth Circuit has clearly stated that, if set forth in an order confirming a plan of reorganization, such releases constitute reversible error. *In re Pacific Lumber Co.*, 584 F.3d 229, 2009 U.S. App. LEXIS 21749 *51-*55 (5th Cir. 2009). Under 11 U.S.C. §524(e), it would be improper for PPC’s co-defendant employees, officers and directors, including those named as defendants in the *White Case*, to receive releases in light of the clear holding in *In re Pacific Lumber Co.* and in light of the express provision in PPC’s Stipulation And Agreement that Claimants are expressly being permitted to continue to pursue *any and all* claims in the *White Case*. *See, e.g., In re Pacific Lumber Co.*, 584 F.3d 229, 2009 U.S. App. LEXIS 21749 *51-*55 (5th Cir. 2009); *Feld v. Zale Corp.*, 62 F.3d 746, 761 (5th Cir. 1995)(holding that nondebtor releases violated Section 524(e)).

Fifth Objection – Article XII of the Proposed Plan

Finally, Article XII of the Proposed Plan is legally defective because it states that this Court retains “exclusive jurisdiction” over Claimants’ proceedings when the District Court’s withdrawal order clearly provides a contrary result. Article XII reads, in pertinent part:

RETENTION OF JURISDICTION

On and after the Effective Date, *the Bankruptcy Court shall have exclusive jurisdiction over all matters arising out of, arising under, and related to the chapter 11 Cases and the Plan* pursuant to, and for purpose of, sections 1059a) and 1142 of the Bankruptcy Code, *including, without limitation:*

...
(b) *To determine any motion, adversary proceeding, application, contested matter, and other litigated matter* pending on or commenced after the Confirmation Date;

...
(d) *To consider Claims . . . or the allowance, classification, priority, compromise, estimation, or payment of any Claim* (emphasis added)

The District Court’s August 25, 2009 Order withdrawing “in their entirety” Claimants’ claims clearly retains in the District Court all of the authority and jurisdiction that Article XII seeks to reserve in this Court. The District Court’s Order is thus inconsistent with Article XII, and this Article cannot be applied to Claimants’s claims in the *Adams Case*.

III. REQUEST FOR RELIEF

WHEREFORE, Claimants respectfully request that the Court (1) deny Debtors’ motion to confirm the Proposed Plan in its current form, (2) order PPC to revise the Proposed Plan in accordance with Claimants’ objections set forth above, and (3) grant Claimants such other and further relief to which they may be entitled.

Dated: December 1, 2009

Respectfully submitted,

BRODEUR LAW FIRM

By: /s/ Mark C. Brodeur
Mark C. Brodeur
State Bar No. 03052020
120 Founders Square
900 Jackson Street
Dallas, Texas 75202
Telephone: (214) 742-8900
Telecopier: (214) 742-5106

Chris Moser
TBN: 14572500
Quilling, Selander, Cummiskey & Lownds, P.C.
2001 Bryan Street, Suite 1800
Dallas, TX 75201
Telephone: (214) 871-2100
Facsimile: (214) 871-2111

I. Richard Levy
TBN: 12265020
I. RICHARD LEVY, P.C.
17304 Preston Road
Suite 800
Dallas, Texas 75379-6935
Telephone (214) 438-3753
Facsimile (214) 242-3754

COUNSEL FOR THE CLAIMANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Objection has been served electronically upon counsel for the Debtors and served via electronic means or regular U.S. First Class Mail on the parties listed on the Master Service List [Docket No. 3615-2].

/s/ Mark C. Brodeur
Mark C. Brodeur