Teresa Wineland (Ark. Bar No. 81168) (pro hac vice)
Peter G. Kumpe (Ark. Bar No. 72073) (pro hac vice)
Williams & Anderson PLC
111 Center St., Suite 2200
Little Rock, AR 72201
Tel.: 501-372-0800
Fax: 501-372-6453

H. Clay Fulcher (Ark. Bar No. 88005) (pro hac vice)
James G. Lingle (Ark. Bar No. 76070) (pro hac vice)
Lingle Law Firm
110 S. Dixieland Road
Rogers, AR 72758
Tel.: 479-636-7899
Fax: 479-636-0095

Josephine Garrett (State Bar No. 07695400)
Josephine Garrett, P.C.
3119 West 5th Street
Fort Worth, TX 76107
Tel.: 817-335-5432
Fax: 817-338-1122

Attorneys for Certain Douglas Growers

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.	§	Case No. 08-45664 (DML)
	§	
Debtors.	§	Jointly Administered

NOTICE OF, AND MOTION FOR ALLOWANCE AND PAYMENT OF, ADMINISTRATIVE EXPENSE CLAIMS

Growers Herman Adams and Wynell Adams, Milford Anderson and Mary Alice Anderson, Fred Anderson and Jaulinda Anderson (F & J Poultry Farm), Christine Bagley (Paul Bagley), Greg Batten and Amanda McEachern, Ben Batten and Kristi G. Batten, Batten Farms, LLC, Joyce Bennett and Lawrence Bennett, Danny F. Boatright and Judy

S. Boatright (Boatright Farms), Glenda Buchek, Bruce Carter and Cecelia F. Carter (Blackwater Farms), Darrell Carter and Wanda Carter, Donnie Carber and Sandra Lynn, Circle G Farms, Inc., Elaine's Broilers, Black Gold Farm, Elaine Gilliard, Michael Gilliard, Tony Gilliard and Helen Gilliard, Collins Poultry, Inc., Estate of Billy Collins, deceased, Dexter Collins, Dexter Collins Poultry, LLC, Buddy E. Corbitt and Betty S. Corbitt, Ralph M. Courson, Daniel Davis and Becky Davis, Dumpling Farms, Inc., George Darryl Davis (Darryl Davis Farm and Christopher Davis Farm), Lester B. Davis and Becky Davis, Michael L. Davis and Debra E. Davis, Myrtle F. Davis (Myrtle Davis Farm and Harley Field Farm), Delbert Davis, Janis Davis and Edwin Davis, Timothy Dale Davis and Alphine Davis, Jeffrey Scott Day and Carmen Maria Day (Day's Poultry Farm), George Richeal Dockery and Sandy Dockery, Dockery Chickens, Inc., Walter Dockery, Dockery Farms, Inc., Jason G. Gilliard and Amy M. Gillard (Jason Gillard Farm, Loy Gilliard Farm, White Pine Farm), Logan Gillis and Ed Gillis and Simeon Gillis (17 Creek Farm and Ed Gillis Farm), Landon Kory Grantham, Van K. Grantham and Teresa Grantham, J. Cray Grantham and Greta Grantham, Leon C. Gray and Lorinda Gray (Gray Farms), Larry J. Gunn and Verlene Gunn, Harvey Bing Hamilton and Alice Hamilton (Bing Hamilton Farms and Hog Creek Farm), Vonice Harrell and Phillip Harrell, Haskins Farms, Inc., Ricky D. Hersey and Barbara J. Hersey, Jimmy Jowers and Elizabeth Jowers, Kayla Farm, Inc., Lamar Mullis and Kay Mullis, Elamb Dan Lott (E. D. Lott), Thomas R. Lott and Lavonda Lott, Ronald A. Lott and Sherri W. Lott (Bubba Farms), Matthew H. McCallum (McCallum Farm), Dwain McClellan and Rhonda McClellan, Rhonda A. McElroy and Stanley J. McElroy (Long Island Farm), Shirley McElroy, McElroy Poultry Farms, Inc., Charlton McKinnon and Amanda B. McKinnon,

Myron McKinnon and Melissa McKinnon (M&M Farms and M&J Farms), Mark McKinnon and Rose McKinnon, Elie M. Mims and Norma L. Mims (Mims Farm), Brad W. Mobley (Money Maker Farms and Powerhouse Farms), Clifford C. Mobley and Lynda Mobley (Mobley Farms), Marcus Rodney Mobley and Wanda G. Mobley (RM Farms), Kerry Van Moore and Michelle Moore, Jeffrey Murray and Cheryl Murray, Paul E. Musgrove and Mary Lynn Musgrove (Mana Farms and Bethel Farms), Musgrove Farms, LLC, David C. Nettles and Charlotte R. Nettles, Tri M. Nguyen (Conga Farms), Michael E. Nugent and Martha R. Nugent (Shamrock Farms), Reinaldo Pineda (Pineda Farm, Inc. and D&R Farm), J. M. Pridgen and Jean Pridgen, Jeffrey Pridgen and Kathy Pridgen (Pridgen Farms), Derek Pridgen and Janet Pridgen, Cloud Nine Farms, LLC, Henry D. Pridgen and Carla Pridgen (Hidden Valley Farms), John Marshall Pridgen, II and Cindy Pridgen, Paradise Farm South LLC, Judy J. Pridgen, individually and as administrator of the Estate of Marvin Pridgen, deceased (Pine Ridge Farms), Ernest David Ricketson and Debra Ricketson (D & D Farms), Jason Rish and Dawn Rish, Rish Farms LLC, Hulk Fertilizer LLC, Rocky Pond Farms, Inc., Carroll S. Roberts Farm and Roberts Egg Farm, Charles M. Rogers and Paula B. Rogers (Cherokee Ridge Farms), James Newton Sellers and Sandra S. Sellers (S&S Poultry), L. G. Smith and Betty Smith, L. G. Smith Poultry & Electric, Inc., Mackie L. Smith and Teresa Smith (Mackie Smith Farm and Teresa Smith Farm), Randall L. Smith and Teresa Smith, Timothy Wayne Smith (TWS Farms), Donnie C. Smith and Pamela M. Smith (Wiggins Creek Farm), Cecil D. Smith, Jr. and Shari W. Smith (Shari Poultry), Warren Winford Smith and Diane R. Smith (Winford Farms), Spell Farms, LLC, Thomas Elbert Spell and Nellie Jean Spell, Jason T. Spell and Tracy L. Spell (Twin Oaks), Roger Taft and Wanda Grace Taft, J.

David Tanner and Glenda Tanner (David Tanner Farm and Red Bluff Farm), Mary R. Thacker and William W. Thacker (Thacker Farms and MR Poultry), Wright Place, Inc., Kenneth M. Vickers and Claudia Ann Vickers (Vickers Still), Steve A. Vickers and Wanda Marlene Vickers, Vickers & Son Farms, Inc. d/b/a Satilla Farms, Craig Vickers and Janet H. Vickers, Richard W. Vickers and Ruth Vickers, Ruby Vickers and Sherley B. Vickers (Ira Vickers Farm), Mark Vining and Gina Vining and Charlie Vining, Sr. and Julia S. Vining (CJ&M Farms), Glenn Walker and Teresa Walker (Glenn Walker Farm and WW Farms), Judy E. Walker (Walker Farms), Frank "Butch" Wheeler (Wheeler Farms), Cindy White and Stuart White and Shirley W. Powell (Cindy White Farm and Shirley Powell Farm), Wayne Whitley, Dennis Williams and Linda Williams, James J. Wilson and Connie Wilson (J & C Poultry, Wilson Poultry), J & C Poultry, Inc., Vann Wooten and Tabatha Wooten (T.O.P. Farms and Vann Wooten Farm), Roney E. Yawn and Chester Yawn, Bruce Yawn and Dovie R. Yawn (Bry Farms), Clyde A. Bennett and Patsy D. Bennett (Bennett Farms), Maria Calas and Jose Calas, Calas Farms, Inc., Olen Lewis Carter and Sherry L. Carter (Lewis Carter Farm), Adam Carter and Lori Carter (Adam Carter Farm and Fireline Farm), Alton Covington, conservator of the estate of Patricia H. Covington and Debra Edwards (Covington Farms), Wendell Carver and Lisa Carver (Lisa Carver Farm and Wendell and Lisa Carver Farm), Nam Thanh Duong and Thiem Le (NT Farm), Christopher E. Fore and Mattisha Fore, Ed T Cor, Inc., Larry D. Davis and Betsy Davis, L&B Farms, Inc., Angela L. Harrell and Terry Paul Harrell, Wayne McKinnon, Eddie L. Miles and Julia L. Miles (Eddie Miles Poultry), Herbert R. Stone and Hilda Faye Stone, and Jack E. Strickland and Martha Strickland (collectively "Douglas Growers" or "Growers"), hereby give notice of their administrative expense

claims, and in support of their Motion for Allowance and Payment of Administrative Expense Claims ("Motion"), state:

JURISDICTION AND VENUE

1. This Court has original jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2)(A) and (B). Growers waive the right to request withdrawal of this case to the United States District Court under 28 U.S.C. § 157(d).

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a).

REQUESTED RELIEF IS PROPER PURSUANT TO 11 U.S.C. § 503(b)(1)(A)

3. The relief requested herein is authorized by 11 U.S.C. § 503(b)(1)(A), which provides that the actual, necessary costs and expenses of preserving the estate are administrative expenses. As such, they are assigned the priority set forth in 11 U.S.C. § 507(a)(2).

4. In *Reading Co. v. Brown*, 391 U.S. 471 (1968), the Supreme Court utilized what the Fifth Circuit refers to as "an expansive interpretation of what is an 'actual, necessary cost' entitled to priority," holding that damages to a third party arising out of the receiver's administration of the estate give rise to an "actual and necessary cost." *See Texas v. Lowe (In re HLS Energy Co.)*, 151 F.3d 434, 437 (5th Cir. 1998) (quoting *Reading Co. v. Brown*, 391 U.S. 471, 485 (1968)).

5. Generally, an "actual and necessary cost" must benefit the estate and its creditors. "This requirement is in keeping with the conceptual justification for administrative expense priority: that creditors must pay for those expenses necessary to produce the distribution to which they are entitled." *HLS Energy*, 151 F.3d at 437

(citation omitted); *see also In re Al Copeland*, 991 F.2d 233 (5th Cir. 1993). However, there is no independent requirement of "benefit" in the Code. The Fifth Circuit has made it clear that it will not view the concept of benefit so narrowly as to obviate an estate's obligations under other law. *See HLS Energy*, 151 F.3d at 437-38.

6. The Fifth Circuit's interpretation comports with the underlying principle of fundamental fairness in bankruptcy. *See Reading Co.*, 391 U.S. at 479 (stating "it would be inconsistent ... with the rule of fairness in bankruptcy to seek [Chapter 11] objectives at the cost of excluding tort creditors of the arrangement from its assets, or totally subordinating the claims of those on whom the arrangement is imposed to the claims of those for whose benefit it is instituted").

OVERVIEW

7. Douglas Growers bring this motion for allowance and payment of administrative expense claims based on actions taken by Pilgrim's Pride Corporation ("Pilgrim's") that constitute violations of the Packers and Stockyards Act, 7 U.S.C. §§ 192(a), (b) and (e), actual and constructive fraud, breach of fiduciary duty, negligent misrepresentation, and fraudulent concealment.

8. Growers' motion centers on the idling of Pilgrim's plant in Douglas, Georgia, which effectively put almost all of the growers in the area out of business and destroyed the value of the Growers' poultry growing assets. By this action, Pilgrim's intended to reduce the output of chicken in the United States and thereby raise the price of poultry. The damages resulting to Growers from Pilgrim's deliberate and unlawful actions constitute an actual and necessary cost and expense undertaken for the preservation of Pilgrim's estate. By keeping poultry formerly processed at Pilgrim's

Douglas facility off the market, Pilgrim's intended to produce and did in fact produce economic benefits and a competitive advantage for itself, namely the ability to emerge from Chapter 11 as a viable entity and a leading competitor in the market.

9. In addition, Pilgrim's used a variety of deceptive and unfair practices to cause Growers to spend significant capital on new poultry operations and facility construction, as well as on significant modifications to their existing poultry facilities. When Pilgrim's began to operate the Douglas complex, it provided assurances to existing growers and to individuals willing to invest in new poultry operations or new facility construction that Pilgrim's was continuing Gold Kist, Inc.'s commitment of long-term relationships sufficient to retire the long-term debt incurred for these investments. These representations and assurances continued at least through 2007, a year in which Pilgrim's was soliciting new housing. Growers were assured that Pilgrim's would continue to provide contracts as long as Growers maintained satisfactory costs and followed Pilgrim's management guidelines. From 2004 through at least 2007, Pilgrim's also represented that by continuing to invest in capital improvements to the existing facilities, Growers could be assured that Pilgrim's would maintain the Douglas complex in operation. Pilgrim's representations were fraudulent and made without the present intent to perform, or were reckless representations of facts to be true when they were not, and were made with the intent to deceive. Pilgrim's subsequently idled the Douglas complex, and Growers were left with no way to recoup the significant debt incurred in meeting Pilgrim's requirements for new and/or improved facilities. The purpose of Pilgrim's representations and assurances was to produce economic benefits and a competitive advantage for itself. Pilgrim's representations and assurances were made to induce

growers to invest in new operations, new facilities, and expensive upgrades, to improve Pilgrim's profitability, and to keep Growers economically dependent on Pilgrim's.

10. Growers seek damages in the form of lost income caused by the idling of the Douglas facilities, the return of sums Pilgrim's caused Growers to expend in making additions and improvements to their poultry facilities, and the destruction of the economic value of their investments.

11. Growers reallege, adopt by reference and incorporate herein their Proofs of Claim, which are listed on Exhibit A to this Motion, including any and all subsequent amendments thereto.

FACTS

a. Pilgrim's business operations

12. Pilgrim's, one of the largest chicken companies in the United States, controls the production, processing, and distribution of Pilgrim's Pride poultry. Within the poultry industry, Pilgrim's is known as an "integrator," which means it owns, operates, and controls the entire means of production for chicken meat, including breeder farms, pullet farms, broiler farms, hatcheries, feed mills, processing plants, and distribution centers.

13. Pilgrim's operations include producing and processing live poultry at numerous complexes. Typically, a complex includes a processing plant, a feed mill, and one or more hatcheries. A complex generally encompasses a geographic area of 50-75 miles from the processing plant, within which are located over a hundred farms, including broiler, breeder, and pullet farms, owned by growers under contract with Pilgrim's. Within each complex, Pilgrim's operates as a vertically-integrated company,

controlling the production of poultry from the egg to the grocery store. Pilgrim's raises breeding stock on grower-operated pullet farms and then places young hens and roosters on grower-operated breeder farms. Pilgrim's then collects fertilized eggs from these breeder farms and transports them to a Pilgrim's-owned hatchery. After hatching, Pilgrim's transports the day-old chicks to grower-owned broiler farms where the broilers are raised to maturity as directed by Pilgrim's. Pilgrim's controls the timing, number, and type of broiler chicks, hens, young pullets and roosters delivered to each grower and instructs growers how to raise the broilers, pullets, hens, and roosters. Pilgrim's prescribes the facilities that must be built and operated by Growers. Pilgrim's also imposes operational requirements that determine in large part Growers' activities in raising chickens. Pilgrim's manufactures its own poultry feed, determines what ingredients are included in the feed, and delivers the feed to its contract growers. When Pilgrim's determines that broilers are ready for processing, it loads the broilers onto trucks for transport to its processing facility where the broilers are slaughtered and processed into poultry products. Pilgrim's determines the formula and any adjustments for fixing Grower compensation and controls the weighing and evaluation of birds to apply applicable formulas and adjustments and determine the Growers' compensation. Pilgrim's then packages the products and distributes them to distribution centers, ultimately reaching Pilgrim's customers across the United States. Throughout the production process, Pilgrim's retains title to all feed, hens, roosters, chicks, and broilers.

b. Douglas Growers' business operations

14. Growers are former Pilgrim's contract growers who supplied Pilgrim's Douglas poultry processing plant.

c. Pilgrim's economic downturn

15. In 2003, Pilgrim's acquired ConAgra Poultry Company, making Pilgrim's the second-largest poultry producer in the United States. Beginning with this acquisition, Pilgrim's entered a period of significant expansion.

16. In 2006, Pilgrim's began aggressively acquiring stock of Gold Kist, Inc., a Georgia-based competitor in the poultry industry. In 2007, Pilgrim's completed its acquisition of Gold Kist and became the largest chicken producer in the United States. With the addition of Gold Kist, Pilgrim's consolidated over 25% of the U.S. poultry market, and over 50% of the market for "commodity poultry" specifically. In a letter to Pilgrim's contract growers announcing the acquisition dated January 12, 2007, Pilgrim's advised its growers: "Most growers will see little or no change to operations as a result of this acquisition.... we look forward to sharing ideas and best practices across both companies.... Communication will play a key role in the success of this integration. We intend to share our progress with all of our Partners and growers so that you can stay abreast of what's happening throughout the organization."

17. During 2007, Pilgrim's aggressively recruited growers to build more breeder and broiler facilities for the Douglas complex. Further, Pilgrim's continued to require or encourage facility modifications in an attempt to improve the profitability of the complex. Pilgrim's represented to the individuals willing to invest significant new capital for Pilgrim's benefit, as it had to others in the past, that Pilgrim's was guaranteeing a long-term relationship sufficient to recover the capital expenditures required to build and maintain new facilities.

18. Pilgrim's filed voluntary Chapter 11 petitions for relief in this Court on December 1, 2008. Pursuant to Sections 1107(a) and 110 of the Bankruptcy Code, Pilgrim's is authorized to continue to operate its businesses and manage its properties as a debtor in possession.

19. In a letter to Pilgrim's contract growers dated December 1, 2008, the day that Pilgrim's filed its bankruptcy petitions, Pilgrim's advised its growers: "**First and foremost, let me assure Pilgrim's Pride is continuing its operations and is not going out of business. We intend it to be 'business as usual' as we move through this process** (emphasis in original)." The letter continues: "This process should have little effect, if any, on the day-to-day responsibilities of most contract growers."

d. Pilgrim's market manipulation strategy

20. Pilgrim's filing of bankruptcy was part of a market manipulation strategy centered on the reduction of poultry production. Originally announced as a 3% production cut in 2006, Pilgrim's increased its reduction goal to 5% in April of 2007. Pilgrim's President and CEO Clint Rivers blamed Pilgrim's "tremendous financial strain" for the increased 5% reduction.

21. To effectuate the 5% cut, Pilgrim's began strategically idling Pilgrim's growers and complexes. Pilgrim's President and CEO Rivers explained that idling was necessary to correct an "oversupply of chicken in the United States" and "bring supply and demand into better balance." The intended effect of the policy was clear as evinced by one industry analyst's comment in response that "despite the slumping economy, better days are expected for the chicken industry" because "[p]oultry companies are following through on production cuts, which will boost prices." Hence, from the outset,

Pilgrim's purpose was to manipulate chicken prices through a decrease in chicken production.

22. Pilgrim's first implemented its reduction strategy in Siler City, North Carolina and Clinton, Arkansas. These locations demonstrate Pilgrim's calculated selection of plants to idle. In order to insure that Pilgrim's 5% reduction created the intended market effect, Pilgrim's intentionally idled growers and facilities that were located in regions where the growers had few opportunities to enter into contracts with competing integrators, or where no competing integrator had a complex at all. As a result of this selection process, Growers' facilities were rendered worthless and eliminated from the poultry production market. Pilgrim's elimination of this plant capacity actually owned by Growers reduced the productive capacity in the poultry market and thereby constrained output in the poultry market in the United States. This reduction in output in turn increased the price of poultry products in that market. These acts to reduce capacity in turn reduced competition. This reduction in capacity was not warranted by any commensurate decline in demand; therefore, competition was injured and consumers of poultry products were subjected to higher prices then would have been maintained by a competitive market. In addition, Pilgrim's paid certain growers to not grow poultry in order to further reduce supply. The implementation of Pilgrim's strategy prevented the maximum number of growers from sending their poultry to the market through a competing integrator. Pilgrim's continued to implement this purposeful selection policy with later idling decisions, including, but not limited to, the Douglas complex.

23. In 2006 and 2007, Pilgrim's increased pressure on its Douglas contract growers to retrofit or upgrade their existing facilities. Contract broiler growers typically

have one of two kinds of facilities: conventional or "improved" facilities. Improved facilities vary, but the addition of cool cells, tunnel ventilation, solid walls, and special heaters are typically required to meet specifications for most improved housing. Poultry integrators such as Pilgrim's prefer the much more expensive "improved" facilities since, on average, the integrator realizes better feed conversion, that is, more weight gain quicker per pound of feed consumed. Better feed conversion increases Pilgrim's profit margin on each pound of chicken produced.

24. Pilgrim's used a variety of methods to induce growers to make these expensive improvements to facilities that were already capable of producing high quality broilers. These methods included threats of termination, promises of competitive advantage over other growers, and suggestions that by investing in new capital improvements, growers would be assured that the Pilgrim's complex would remain competitive and open. Though growers were typically paid more per pound produced for investing in the expensive capital improvements, the increased costs and debt service incurred could not be recaptured unless the relationship continued for at least five to ten more years.

e. Effectuating the market manipulation strategy against the Douglas Growers

25. On February 27, 2009, Pilgrim's announced the idling of its Douglas complex for the purpose of "reducing commodity production" and "significantly [reducing] its costs in the midst of an industry-wide oversupply of chicken." Pilgrim's President and CEO Don Jackson stated "[w]e are taking decisive steps ... to restructure our business and ultimately emerge from Chapter 11 as a stronger, more efficient competitor." The idling of the Douglas complex and the two other complexes whose

idling was announced at the same time was expected to further reduce Pilgrim's production of chicken by 9 to 10 percent.

26. Prior to the idling announcement, Douglas Growers had faced increasing requirements and encouragement from Pilgrim's for significant expenditures to modify their poultry facilities. See ¶¶ 23-24, *supra*. Pilgrim's represented that by investing in new capital improvements, Growers would be assured that the Douglas complex would remain competitive and open. Pilgrim's further represented that the modifications would guarantee better performance and the right to enhanced pay, and would prevent termination of the relationship.

27. These representations were intended to induce growers to invest in new capital improvements, thereby increasing Pilgrim's profit margin and competitive advantage and increasing Pilgrim's economic leverage over Growers because of the significant debt required to retrofit poultry facilities.

GROUNDS FOR RELIEF

a. Packers and Stockyards Act, 7 U.S.C. § 181 et seq.

28. Douglas Growers restate and reallege all previous paragraphs herein.

29. The Packers and Stockyards Act ("PSA"), 7 U.S.C. §§ 181 et seq., assures "fair competition and fair trade practices" in the livestock industry. *See* H.R. Rep. No. 85-1048 (1958) (describing the PSA's "primary purpose"); *see also Wheeler v. Pilgrim's Pride Corp.*, 591 F.3d 355, 2009 U.S. App. LEXIS 27642, **4-6 (5th Cir. 2009); *Been v. O.K. Indus. Inc.*, 495 F.3d 1217, 1228 (10th Cir. 2007); *Pickett v. Tyson Fresh Meats, Inc.*, 420 F.3d 1272, 1279-80 (11th Cir. 2005); *Spencer Livestock Comm'n Co. v. Dep't of Agric.*, 841 F.2d 1451, 1455 (9th Cir. 1988). The "chief evil" confronted by the PSA

is the manipulation of prices through the monopolization of market power. *See Stafford v. Wallace*, 258 U.S. 495, 514-15 (1922) (noting that monopolistic market control allowed the packers to intentionally buy low and sell high); *see also Schumacher v. Cargill Meat Solutions Corp.*, 515 F.3d 867, 871 (8th Cir. 2008) (quoting *Stafford*); *Been*, 495 F.3d at 1228 (quoting *Stafford*); *Pickett*, 420 F.3d at 1279-80.

30. The PSA was intended to be broader than other antitrust legislation. *See Been*, 495 F.3d at 1228 (citing *De Jong Packing Co. v. USDA*, 618 F.2d 1329, 1335 n.7 (9th Cir. 1980)); *Wilson & Co. v. Benson*, 286 F.2d 891, 895 (7th Cir. 1961) (quoting 61 Cong. Rec. at H1805); *Armour & Co. v. United States*, 402 F.2d 712, 722 (7th Cir. 1968) (noting that the PSA was "broader than the Sherman, Clayton, [FTC], and Interstate Commerce Commission Acts"); *see also* Comment: Dethroning Economic Kings: The Packers and Stockyards Act of 1921 and Its Modern Awakening, 2004 Wis. L. Rev. 1497, 1513 (2004). When Congress passed the Act, it was described as a "far-reaching measure [extending] farther than any previous law in the regulation of private business, in time of peace, except possibly in the Interstate Commerce Act." 61 Cong. Rec. H1801 (1921); *see also* 61 Cong. Rec. 1805 (1921) (showing that Congress understood the PSA to be broader in scope than the antecedent legislation); Current Legislation, The Packing Industry and the Packing Act, 22 Colum. L. Rev. 68, 69-70 (1922) (quoting Senate Agricultural Comm., Rep. No. 77, 67th Cong., 1st Sess. 2 (1921)). Accordingly, the PSA "should be able … to reach any of the special mischiefs and injuries inherent in livestock and poultry traffic." *Armour & Co.*, 402 F.2d at 722.

31. The PSA was enacted to guard the public interest. The Senate Report corresponding to the PSA's passage in 1921 provides "[t]he enactment of [the PSA] is

recommended upon the ground that the great public markets in which is handled the live stock that supplies the demand for the American consumption of ... meat and meat products annually are public utilities[.]" S. Rpt. 66-429 (1921). "It is of the utmost importance to all classes and to all individuals, for it has to do with the most fundamental need of all our people namely, the food supply." *Id.* "It was felt, therefore, that the meat-packing industry is charged with a public interest that can not be adequately safeguarded otherwise than through special legislation." *Id.*

32. The PSA creates a private cause of action for violations of its provisions. Specifically, § 209 provides: "If any person subject to this Act violates any of the provisions of this Act, or of any order of the Secretary under this Act, relating to the purchase, sale, or handling of livestock, the purchase or sale of poultry, or relating to any poultry growing arrangement or swine production contract, he shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of such violation." 7 U.S.C. § 209(a).

33. Pilgrim's is a "packer" and "live poultry dealer" as defined by the PSA, 7 U.S.C. §§ 182 and 191.

34. All allegations pleaded herein are deemed "in commerce" for the purposes of the PSA as "part of that current of commerce usual in the livestock and meat-packing industries[.]" 7 U.S.C. § 183.

35. Pilgrim's unlawful actions alleged herein have affected interstate commerce. Pilgrim's slaughters and processes poultry raised by its contract growers, including Douglas Growers. These chicken products are packaged, distributed and sold throughout the United States. Pilgrim's idling of the Douglas facility was intended to

cause and has caused a decrease in the supply and an increase in the price of poultry in interstate commerce.

i. Violation of Packers and Stockyards Act, 7 U.S.C. § 192(e)

36. Douglas Growers restate and reallege all previous paragraphs herein.

37. Section (e) provides that it shall be unlawful for any packer or live poultry dealer to "[e]ngage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article, or of restraining commerce[.]" 7 U.S.C. § 192(e).

38. By idling the Douglas complex, Pilgrim's acted for the purpose and with the effect of manipulating prices. Idling the Douglas facilities was motivated by Pilgrim's market manipulation strategy.

39. Pilgrim's selected Douglas Growers' facilities because they were located in a region where no competing integrator has a complex. Pilgrim's strategic selection effectively prevented Growers from sending their poultry to the market through a competing integrator. By keeping Growers' productive capacity off the market, Pilgrim's reduced the supply and thereby raised the price of poultry in the marketplace.

40. Pilgrim's further acted for the purpose and with the effect of manipulating prices by requiring or encouraging Growers to modify their facilities at their own significant expense. Pilgrim's required or encouraged these modifications for the purpose of increasing Pilgrim's profit margin on those growers who invested in the modifications, and increasing Pilgrim's economic leverage over those same growers because of the significant debt required to retrofit the houses.

41. Pilgrim's actions resulted in an intentional decrease in the productive capacity in the United States poultry market. This reduction constrained output so that prices would increase.

42. Pilgrim's idling of the Douglas complex produced economic benefits and a competitive advantage for Pilgrim's, namely, the ability to survive its Chapter 11 bankruptcy and reemerge as a competitor in the market. However, Pilgrim's plan devastated Douglas Growers and ultimately harmed consumers, who had to pay higher prices for poultry products.

43. As a result of Pilgrim's unlawful conduct, Growers have suffered lost income caused by the idling of the Douglas facilities; have lost significant sums expended in making unnecessary capital investments for new operations, new facilities, and improvements to existing poultry facilities pursuant to Pilgrim's representations, requirements, and encouragement; and have suffered destruction of the economic value of their poultry growing facilities.

44. Growers are entitled to recover damages in the form of lost income caused by the idling of the Douglas facilities, the return of sums Pilgrim's caused Growers to expend in making unnecessary capital investments for new operations, new facilities, and improvements to existing poultry facilities, and destruction of the economic value of their poultry growing facilities.

ii. Violation of Packers and Stockyards Act, 7 U.S.C. § 192(a)

45. Section (a) of the PSA provides that it shall be unlawful for any packer or live poultry dealer to "[e]ngage in or use any unfair, unjustly discriminatory, or deceptive practice or device[.]" 7 U.S.C. § 192(a).

46. Pilgrim's idling of the Douglas complex and its representations that resulted in capital investments for new operations, new facilities, and improvements to existing poultry facilities constitute "unfair, unjustly discriminatory, or deceptive practice[s]" for the purposes of §192(a). Pilgrim's unfairly, discriminatorily and deceptively selected the Douglas complex for idling because of the ultimate market effect that would result from the expected decrease in production. See ¶¶ 38-42, *supra.* Additionally, leading up to its idling announcement, Pilgrim's issued repeated assurances to Growers, representing that new facility construction and modifications were sound investments insuring that the Douglas complex would remain open and would result in long-term economic benefits for Growers. However, Pilgrim's true purpose for the assurances and representations was to increase its profit margin and increase its economic leverage over the growers who invested in new capital improvements. *See* ¶¶ 23-24, 26-27, *supra.*

47. Pilgrim's unfair, unjustly discriminatory, and deceptive practices resulted in a significant decrease in the production of poultry products that entered the market. By keeping this supply off the market, Pilgrim's produced economic benefits and a competitive advantage for itself, namely the ability to survive its Chapter 11 proceeding and reemerge as a competitor in the market. However, Pilgrim's plan devastated Douglas Growers and ultimately harmed consumers. The reduction in productive capacity injured competition since the eliminated capacity was not "excess" as measured by demand.

48. As a result of Pilgrim's unlawful conduct, Growers have suffered lost income caused by the idling of the Douglas facilities; have lost significant sums expended in making unnecessary capital investments for new operations, new facilities,

and improvements to existing poultry facilities pursuant to Pilgrim's deceptive statements; and have suffered destruction of the economic value of their poultry growing facilities.

49. Growers are entitled to recover damages in the form of lost income caused by the idling of the Douglas facilities, the return of sums Pilgrim's caused Growers to expend in making unnecessary capital investments for new operations, new facilities, and improvements to existing poultry facilities, and destruction of the economic value of their poultry growing facilities.

iii. Violation of Packers and Stockyards Act, 7 U.S.C. § 192(b)

50. Section (b) of the PSA provides that it shall be unlawful for any packer or live poultry dealer to "[m]ake or give any undue or unreasonable preference or advantage to any particular person or locality in any respect whatsoever, or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." 7 U.S.C. § 192(b).

51. Pilgrim's idling of the Douglas complex subjects Growers to "undue or unreasonable prejudice or disadvantage" based on their "locality" for the purposes of §192(b). As stated above, Pilgrim's selected the Douglas complex for idling because of the ultimate market effect that would result from the expected decrease in production. See ¶¶ 38-42, *supra.*

52. Pilgrim's subjection of Growers to undue or unreasonable prejudice and disadvantage resulted in a significant decrease in the production of poultry products that entered the market. By keeping this supply off the market, Pilgrim's produced economic benefits and a competitive advantage for itself, namely the ability to survive its Chapter

11 proceeding and reemerge as a competitor in the market. However, Pilgrim's plan devastated Douglas Growers and ultimately harmed consumers. The reduction in productive capacity injured competition since the eliminated capacity was not "excess" as measured by demand.

53. As a result of Pilgrim's unlawful conduct, Growers have suffered lost income caused by the idling of the Douglas facilities; have lost significant sums expended in making unnecessary capital investments for new operations, new facilities, and improvements to existing poultry facilities as mandated by Pilgrim's deceptive statements; and have suffered destruction of the economic value of their poultry growing facilities.

54. Growers are entitled to recover damages in the form of lost income caused by the idling of the Douglas facilities, the return of sums Pilgrim's caused Douglas Growers to expend in making unnecessary capital investments for new operations, new facilities, and improvements to existing poultry facilities, and destruction of the economic value of their poultry growing facilities.

b. Fraud

55. Douglas Growers restate and reallege all previous paragraphs herein.

56. Pilgrim's falsely represented material facts in requiring or encouraging the Growers to invest in new poultry operations, to invest in new poultry facilities, and/or to spend significant capital to modify their poultry facilities. In the alternative, Pilgrim's recklessly represented material facts as true, when they were not, with the intent to deceive. Pilgrim's conveyed its requirements, encouragement and assurances by, among other misrepresentations, asserting that the capital invested would be recouped by the

long-term commitment; that the modifications were required; that modifications would insure that Growers and the Douglas complex stayed in business; that modifications would guarantee better performance and the right to enhanced pay; and that modifications would prevent termination of the relationship. Specific false representations made by Pilgrim's to Growers are attached hereto as Exhibit B and incorporated herein by reference.

57. At the time these representations were made, Pilgrim's knew or should have known that the long-term capital investments would not be recouped and that the modifications would not prevent the idling of the Douglas complex. Alternatively, Pilgrim's recklessly made these representations with the intention of deceiving the Douglas Growers. In addition, Pilgrim's concealed and failed to disclose to Growers its intent to idle the Douglas plant, even when specifically asked by Growers and despite the relationship between Pilgrim's and Growers which gave rise to a duty by Pilgrim's to reveal its intentions.

58. By providing representations and assurances to those growers who invested in new poultry operations or who built new facilities, by requiring or encouraging modifications, and by concealing or misrepresenting its intentions regarding the Douglas complex, Pilgrim's intended to induce Growers to act in reliance upon Pilgrim's representations.

59. In making the investments and/or modifications, Growers justifiably relied upon Pilgrim's fraudulent representations and concealment, including the specific statements indicated above which were made by Pilgrim's employees in the scope of their employment.

60. Growers did not and could not reasonably have known Pilgrim's statements were fraudulent until Pilgrim's idled the Douglas complex. Pilgrim's concealed its fraud by continuing to misrepresent to Growers and to some of its own employees that it intended to continue business as usual at the Douglas complex and by continuing to issue new contracts to growers.

61. Growers would not have made the investments and/or modifications that they did except for the false representations of Pilgrim's.

62. As a result of Pilgrim's fraud, Growers have incurred actual damages, specifically the significant debt incurred in making new capital investments for new poultry operations or new poultry facilities, and/or unnecessary improvements to existing poultry facilities. Because of the idling of the Douglas complex, Growers cannot recoup their expenditures.

63. Growers are entitled to recover damages in the form of lost income caused by the idling of the Douglas facilities, the return of sums Pilgrim's caused Growers to expend in making capital investments for new operations, new facilities, and improvements to existing poultry facilities, and destruction of the economic value of their poultry growing facilities.

c. Breach of fiduciary duty

64. Douglas Growers restate and reallege all previous paragraphs herein.

65. Pilgrim's owed a fiduciary duty to Growers because of Pilgrim's position of influence and superiority over Growers. Pilgrim's completely controls the production, processing, and distribution of Pilgrim's Pride poultry. See ¶¶ 12-13, *supra*. As contract growers, Growers' poultry farming operations and economic well-being were at the

complete discretion of Pilgrim's. Among the facts which demonstrate a fiduciary relationship between Pilgrim's and Growers are Pilgrim's vastly greater financial resources, Pilgrim's monopsony position which allowed it to fully control what it paid and provided to Growers, what terms and conditions it could impose on Growers, and whether Growers would be able to continue in business and recoup the enormous investment they were required to make to grow for Pilgrim's; the pervasiveness and the extremely high degree of control which Pilgrim's exercised over how Growers performed and carried out their role in the vertical integration of chicken production; and the complete lack of bargaining power of Growers in their dealings with Pilgrim's. Growers placed their trust in Pilgrim's when they made very heavy investments in growing facilities and equipment, taking out large loans secured by those facilities which could only be repaid if Pilgrim's lived up to their promises and commitments to provide chickens in the long term, as Pilgrim's well knows. Pilgrim's accepted that trust, assuring Growers and their lenders that the income Growers would receive from Pilgrim's would be sufficient to pay for the facilities and equipment.

66. Pilgrim's breached its fiduciary duty to Growers as its conduct did not meet the requisite standards of fair dealing, good faith, honesty, and loyalty. Pilgrim's engaged in self-dealing, putting its own interests above those of Growers. Pilgrim's unilaterally terminated Growers' ability to grow chickens for Pilgrim's for its own purposes. The idling of the Douglas complex and the capital investments made by Growers produced, and were intended to produce, economic benefits and a competitive advantage for Pilgrim's. However, Pilgrim's plan devastated Douglas Growers and ultimately harmed consumers through arbitrarily increased prices.

67. The breach of fiduciary duty by Pilgrim's was a proximate cause of Growers' damages.

68. As a result of Pilgrim's breach of fiduciary duty, Douglas Growers have suffered lost income caused by the idling of the Douglas facilities; lost significant sums expended in making unnecessary capital investments for new operations, new facilities, and improvements to existing poultry facilities pursuant to Pilgrim's fraudulent and deceptive statements; and have suffered destruction of the economic value of their poultry growing facilities.

69. Growers are entitled to recover damages in the form of lost income caused by the idling of the Douglas facilities, the return of sums Pilgrim's caused Growers to expend in making unnecessary capital investments for new operations, new facilities, and improvements to existing poultry facilities, and destruction of the economic value of their poultry growing facilities.

d. Misrepresentation

70. Douglas Growers restate and reallege all previous paragraphs herein.

71. Because of Pilgrim's position of superiority and influence over Growers, Pilgrim's owed a duty to Growers, including a duty to not provide false information. *See* ¶¶ 65-66, *supra.*

72. As demonstrated above, Pilgrim's breached that duty and negligently supplied false information to Growers. *See* ¶¶ 66, *supra.*

73. Growers relied on Pilgrim's misrepresentations, and their reliance was reasonable. *See* ¶ 59, *supra.*

74. As a result of Pilgrim's misrepresentations, Growers have suffered lost income caused by the idling of the Douglas facilities; have lost significant sums expended in making unnecessary capital investments for new operations, new facilities, and improvements to existing poultry facilities; and have suffered destruction of the economic value of their poultry growing facilities.

75. Growers are entitled to recover damages in the form of lost income caused by the idling of the Douglas facilities, the return of sums Pilgrim's caused Douglas Growers to expend in making unnecessary capital investments for new operations, new facilities, and improvements to existing poultry facilities, and destruction of the economic value of their poultry growing facilities.

e. Fraudulent concealment tolling the statute of limitations

76. Douglas Growers restate and reallege all previous paragraphs herein.

77. Pilgrim's fraudulently concealed its unlawful conduct by continuing to misrepresent to Growers and some of its own employees that it intended to continue business as usual at the Douglas complex and by continuing to issue new contracts to the growers and despite at the same time planning to reduce its poultry growing capacity.

78. Growers did not know and could not have known Pilgrim's statements were fraudulent until Pilgrim's idled the Douglas complex.

79. Growers exercised reasonable diligence to discover the facts of their claim once they learned that Pilgrim's intended to idle the Douglas complex.

RESERVATION OF PLEADING

80. Douglas Growers reserve the right to amend and supplement this Notice of, and Motion for Allowance and Payment of, Administrative Expense Claims.

WHEREFORE, Douglas Growers pray that their Notice of, and Motion for Allowance and Payment of, Administrative Expense Claims be granted in the collective estimated amount of $134,561,282.00 to $147,841,895.00 for contribution value and litter value, or such other sum as may be shown by the evidence. Contribution value is defined as revenue from the grower's production efforts less the variable costs associated with such production. The amount claimed is equivalent to the present value of the lost contribution margin plus litter value for a period of ten years from the termination of Growers' relationships with the Debtor. The methodology used to calculate the estimated amount of these claims is further explained in Exhibit C, the Affidavit of Phillip H. Taylor, Ph.D., previously filed as Docket No. 3688-2.

Alternatively, Douglas Growers pray that their Notice of, and Motion for Allowance and Payment of, Administrative Expense Claims be granted in the collective estimated amount of $79,255,000.00 to $94,780,000.00, or such other sum as may be shown by the evidence, for their losses based on the destruction of the economic value of their investments. The economic value of their investments is the value of their poultry operations (facilities and equipment) prior to the idling of the Douglas, Georgia plant and the termination of their relationships with the Debtor. This claim amount was calculated based on the following: There are approximately 566 broiler houses owned by Growers, with an estimated enterprise value of $125,000.00 to $150,000.00 per house. There are approximately 22 pullet houses owned by Growers, with an estimated enterprise value of $115,000.00 to $140,000.00 per house. There are approximately 37 breeder houses owned by Growers, with an estimated enterprise value of $175,000.00 to $200,000.00 per house.

In addition, Douglas Growers request that their administrative expense claims include their costs, attorney's fees, interest and such other amounts as may be just and equitable under the circumstances.

Respectfully submitted,

WILLIAMS & ANDERSON PLC

/s/ Teresa Wineland
Teresa Wineland (Ark. Bar No. 81168)
(pro hac vice)
Peter G. Kumpe (Ark. Bar No. 72073)
(pro hac vice)
Williams & Anderson PLC
111 Center St., Suite 2200
Little Rock, AR 72201
Tel.: 501-372-0800
Fax: 501-372-6453

H. Clay Fulcher (Ark. Bar No. 88005)
(pro hac vice)
James G. Lingle (Ark. Bar No. 76070)
(pro hac vice)
Lingle Law Firm
110 S. Dixieland Road
Rogers, AR 72758
Tel.: 479-636-7899
Fax: 479-636-0095

Josephine Garrett (State Bar No. 07695400)
Josephine Garrett, P.C.
3119 West 5th Street
Fort Worth, TX 76107
Tel.: 817-335-5432
Fax: 817-338-1122

Attorneys for Certain Douglas Growers

CERTIFICATE OF SERVICE

I, Teresa Wineland, hereby certify that a copy of the above and foregoing was served by email on the following on this 26th day of February, 2010:

COUNSEL FOR THE DEBTORS:

Martin A. Sosland
Stephen A. Youngman
WEIL, GOTSHAL & MANGES LLP
200 Crescent Court, Suite 300
Dallas, TX 75201
stephen.youngman@weil.com
martin.sosland@weil.com

Gary T. Holtzer
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153
gary.holtzer@weil.com

U. S. TRUSTEE:

Lisa L. Lambert
Erin Marie Schmidt
Office of the United States Trustee
515 Rusk Avenue, Suite 3516
Houston, TX 77002
Lisa.L.Lambert@usdoj.gov
Erin.Schmidt2@usdoj.gov

/s/ Teresa Wineland
Teresa Wineland