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

In re:	§	
	§	**Case No. 08-45664 (DML)**
Pilgrim's Pride Corporation, *et al.* [1]	§	
	§	**Chapter 11**
Debtors.	§	
	§	**Jointly Administered**
	§	

RESPONSE TO DEBTOR'S MOTION TO RECONSIDER OR, IN THE ALTERNATIVE, TO CLARIFY AND/OR ENFORCE (I) THE AGREED ORDER GRANTING FIRST AMENDED MOTION TO DETERMINE AND TO ORDER PAID REMAINING INTEREST AND PENALTIES OWING ON TAX CLAIMS OF TITUS COUNTY TAXING ENTITIES AND (II) THE DISCHARGE INJUNCTION

NOW COMES, Mount Pleasant Independent School District ("MPISD"), City of Mount Pleasant, Titus County, Titus County Hospital District, and Chapel Hill Independent School District ("CHISD") (collectively, the "Titus County Taxing Entities" or the "Taxing Entities") and hereby files this their Response to Debtor's Motion to Reconsider or, in the Alternative, to Clarify and/or Enforce (i) the Agreed Order Granting First Amended Motion to Determine and to Order Paid Remaining Interest and Penalties Owing on Tax Claims of Titus County Taxing Entities and (ii) the Discharge Injunction (the "Response") and would show the Court as follows:

Background

1. Beginning in March of 2009, the Taxing Entities broached discussions with Debtor to work out an amicable agreement without court intervention.

2. On June 22, 2009, MPISD and Pilgrim's Pride Corporation (the "Parties") executed that certain Stipulation whereby Debtors agreed to pay MPISD, for all taxes owed for 2008, save and except for interest and penalties for 2008. The payment allotted to the Titus

[1] The Debtors are Pilgrim's Pride Corporation, PFS Distribution Company, PPC Transportation Company, To-Ricos Ltd, To-Ricos Distribution, Ltd., Pilgrim's Pride Corporation of West Virginia, Inc., and PPC Marketing, Ltd.

County Taxing Entities of $1,782,770.80 was paid on June 30, 2009. No interest or penalties owing to the Titus County Taxing Entities was included in this sum.

3. Therefore, the Taxing Entities filed their Motion to Determine and to Order Paid Remaining Interest and Penalties Owing on Tax Claims of Titus County Taxing Entities on September 24, 2009, as amended on October 1, 2009, (the "Motion") to request the Court order Debtor to pay the interest and penalties that remained outstanding.

4. On October 22, 2009, Debtor filed an Objection to same. A hearing held on the Motion on October 27, 2009 at which time this Court took the matter under advisement.

5. On December 10, 2009, the Court entered an Order confirming the Debtor's Amended Joint Plan of Reorganization.

6. The Court issued its letter ruling on the Taxing Entities' Motion on December 28, 2009 directing the parties to submit an agreed order reflecting the Court's decision (the "Letter Ruling"). A true and correct copy of the Letter Ruling is attached hereto as Exhibit "A" and is incorporated by reference as if set out verbatim. In compliance with the Letter Ruling, the parties submitted an agreed order on January 21, 2010 which was signed and entered by the Court on January 28, 2010 [DE #4685] (the "Agreed Order"). A true and correct copy of the Agreed Order is attached hereto as Exhibit "B" and is incorporated by reference as if set out verbatim.

Argument

7. This Court issued its Letter Ruling on December 28, 2009 with regard to the claims asserted by the Taxing Entities and the defenses thereto offered by Debtor. Such a ruling was not issued lightly. Rather the letter was issued after the Court held a hearing on the Motion, heard arguments from counsel and took the matter under advisement for two months.

Specifically the Court states:

> I have carefully reviewed the Motion and Debtor's objection thereto (the "Objection"). In addition, I reread the transcript of oral argument on the Motion and the Objection. Finally I have studied the authorities cited by the parties as well as other cases I considered relevant.

8. Despite this thorough review by the Court, the Debtors are seeking a second bite at the apple. Rather than seek to reconsider the Court's ruling within 10 days of receiving the same or within 10 days of the Court signing the Agreed Order submitted by the parties in January, Debtors have waited nearly four months when negotiations have not turned out to their liking to forum shop. Faced with a state court forum where this Court found the tax matter ought to be heard, the Debtors are making a last ditch effort to request that this Court retain jurisdiction. However, the Agreed Order is final. The Court has ruled on the issues of the underlying Motion and the Debtors should be estopped from asserting otherwise.

9. It has now been over a year since the Taxing Entities first approached the Debtors to negotiate payment without court intervention. Yet, despite this Court's ruling and the Taxing Entities attempt to engage in good faith negations since such ruling in December of 2009 and for the year prior thereto, Debtors are once again wasting the Court's time and resources on the backs of the taxpayers of the Taxing Entities by forum shopping.

10. Debtors arguments are spurious. Not only is the Agreed Order final, the Debtor's argument that the discharge injunction should be enforced is meritless. This Court has addressed that issue as well. The Court stated in its letter ruling that

> [b]ased on my understanding of the law, I do not find sufficient warrant in the facts and circumstances of Debtors' chapter 11 cases to hold that the claims of Titus County should be dealt with differently by this court than they would be absent an intervening bankruptcy case. This is especially true as Debtors' confirmed plan of reorganization treats all creditors as unimpaired, thus

> requiring that Titus County retain all its legal and equitable rights vis-à-vis Debtors. *See* 11 U.S.C. § 1124(1).

The Court goes on to state that:

> While Debtors are authorized to pay Titus County those amounts (or any other amount they and Titus County may agree to), I therefore, in response to the Motion, will ***modify the stay of 11 U.S.C. §§ 524(a)(2) and (to the extent applicable) 362(a) to permit Titus County to pursue its remedies as it would had Debtors not filed chapter 11 cases***. (emphasis added).

The Court specifically modified the very discharge injunction Debtors claim has been violated. The Debtors even agreed to such modification in the Agreed Order that this Court approved on January 27, 2010 after plan confirmation. Such Agreed Order states as follows:

> IT IS FURTHER ORDERED ADJUDGED AND DECREED that ***the stay of 11 USC §§ 524(a)(2) and (to the extent applicable) 362(a) are hereby modified to permit the Taxing Entities to pursue their remedies as they would have had the Debtors not filed chapter 11 cases.*** (emphasis added).

The Agreed Order is a final order and Debtors should be estopped from arguing otherwise.

11. The Plan, proposed by the Debtors and confirmed by this Court, provides that Debtors shall pay all creditors in full. The Taxing Entities are unimpaired and should retain all their legal and equitable rights as though the Debtors had not filed for bankruptcy protection. This is a two party dispute where the sole beneficiary of the Debtor's challenge to the Taxing Entities will be the shareholders of the Debtors. The beneficiary of the Taxing Entities efforts are the people in taxing jurisdictions, including Debtor's employees. It is hard to fathom why the Debtors want to punish its own employees. There is no discharge injunction in place that applies to the Taxing Entities.

12. Debtors also assert that the Taxing Entities are claiming they are owed more than

originally sought in their Motion as if that was somehow relevant. The Taxing Entities filed their Amended Motion back in October of 2009. It is now April 2010; additional penalties, interest and attorneys fees have accrued. Moreover, as the Taxing Entities explained to Debtors' counsel, the Amended Motion dealt only with the payment made by the Debtors in June of 2009 and did not include the figures for the airplanes which at that time Debtors were denying they owned. In October of 2009, the Taxing Entities were not seeking the full tax code penalties which it is now able to do based on the Court's ruling.

13. Regardless, the Agreed Order states that

> "the Debtors are authorized to pay the Taxing Entities the full amount sought in the underlying motion (or any other amount they and the Taxing Entities may agree to) should the state court determine the Taxing Entities are Entitled to such amounts." [2]

This provision memorialized the Court's ruling and the parties agreed to the same back in January of 2010. The Debtors should not now whine that because of their very own tardiness, additional indebtedness has accrued. In addition, by ruling that the Taxing Entities should "pursue [its] remedies as if the Debtor had not filed chapter 11 cases", the Taxing Entities are now free to collect the amounts authorized under Texas statutory law that they may not have been able to pursue with an intervening bankruptcy.

14. Debtors' Motion is sought to delay the resolution of these issues and to harass the Taxing Entities. Debtor's Motion is spurious and has not been filed in good faith.[3]

15. Referring to the Taxing Entities attempts to negotiate with the Debtors as a "constant shakedown" is not only misleading and untrue but is refuted by Debtor's own Exhibits.

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[2] In paragraph 15 of Debtors' Motion, Debtors conveniently leave out a central part of this quotation, namely that the Taxing Entities are entitled to the full amount sought in the underlying motion "(or any other amount they and the Taxing Entities may agree to)" should the state court determine the Taxing Entities are Entitled to such amounts.

[3] As an aside, the Debtors use incomplete emails between the undersigned and Debtors' counsel as Exhibits that were intended as settlement negotiations and therefore inadmissible. The Taxing Entities have additional emails that

The Taxing Entities used such egregious language as "I haven't seen your proposed motion or revised order....Please let me know" (Debtor's Exhibit B); "If you have evidence to the contrary, please let me know. The taxing entities are willing to seek payment of these taxes from a third party if you can tell us who is liable for the debt." (*Id.*); "Please let me know if we can work something out. Thank you in advance" (*Id.*); " In order to avoid the costs of litigation and come to a faster resolution, however, we are willing to attempt an out of court agreement. I look forward to hearing from you." (Debtor's Exh. D). Additional emails can be provided, should the Court reopen the Motion for further reconsideration, that show the tenor of the Taxing Entities' negotiations with the Debtors and that portray both sides of the negotiations. Such emails reflect the actual amounts proposed by the Taxing Entities to be a fair resolution of the dispute with the Debtors which are substantially less than the Debtors are portraying to the Court.

16. The Taxing Entities request the Court deny Debtors' untimely request for reconsideration and/or Debtors' request that the Court clarify and/or enforce the Agreed Order and the discharge injunction and allow the parties to proceed in state court as the Court originally ruled four months ago.

WHEREFORE, the Titus County Taxing Entities request that this Court deny Debtor's Motion for Reconsideration in its entirety, and for such other relief as is just and equitable.

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will be provided to the Court that tell the full story of negotiations should the Court entertain the merits of the Amended Motion including the one sided nature of concessions in an attempt to resolve the issues.

Respectfully submitted,

By: */s/ Kelle K. Masters*

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ATTORNEYS FOR TITUS COUNTY TAXING ENTITIES

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing pleading was electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to e-filing participants and I also certify that I mailed by United States first class mail to those parties appearing below on this the 4th day of May, 2010.

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UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF TEXAS
501 WEST TENTH STREET, ROOM 128
FORT WORTH, TX 76102-3643

CHAMBERS OF
DENNIS MICHAEL LYNN
U.S. BANKRUPTCY JUDGE

Telephone: (817) 333-6020
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December 28, 2009

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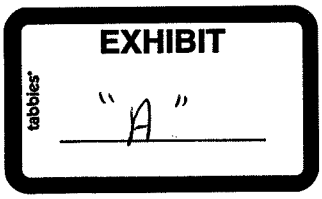
Re: *Pilgrim's Pride Corporation, et al.* Case No. 08-45664; Motion to Determine and to Order Paid Remaining Interest and Penalties Owing on Tax Claims of Titus County Taxing Entities (the "Motion") filed by Mount Pleasant Independent School District, City of Mount Pleasant, Titus County, Titus County Hospital District, and Chapel Hill Independent School District (collectively "Titus County")

Gentlemen:

I have carefully reviewed the Motion and Debtors' objection thereto (the "Objection"). In addition, I reread the transcript of oral argument on the Motion and the Objection. Finally I have studied the authorities cited by the parties as well as other cases I considered relevant.

Based on my understanding of the law, I do not find sufficient warrant in the facts and circumstances of Debtors' chapter 11 cases to hold that the claims of Titus County should be dealt with differently by this court than they would be absent an intervening bankruptcy case. This is especially true as Debtors' confirmed plan of reorganization treats all creditors as unimpaired, thus requiring that Titus County retain all its legal and equitable rights vis-à-vis Debtors. *See* 11 U.S.C. § 1124(1).



Having considered granting the relief specifically sought by the Motion, however, I have concluded that it is preferable to allow Titus County to pursue collection of its claims in the state courts, which may or may not determine Titus County is entitled to the full amount alleged in the Motion. While Debtors are authorized the pay Titus County those amounts (or any other amount they and Titus County may agree to), I therefore, in response to the Motion, will modify the stay of 11 U.S.C. §§ 524(a)(2) and (to the extent applicable) 362(a) to permit Titus County to pursue its remedies as it would had Debtors not filed chapter 11 cases.

As and to the extent discussed above, the Motion will accordingly be granted and the Objection overruled. Counsel are directed to submit an agreed order reflecting this decision.

Sincerely,

D. Michael Lynn

DML:bt

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U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 27, 2010

United States Bankruptcy Judge

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

In re:	§	
	§	**Case No. 08-45664 (DML)**
Pilgrim's Pride Corporation, *et al.* [1]	§	
	§	**Chapter 11**
Debtors.	§	
	§	**Jointly Administered**
	§	

AGREED ORDER GRANTING FIRST AMENDED MOTION TO DETERMINE AND TO ORDER PAID REMAINING INTEREST AND PENALTIES OWING ON TAX CLAIMS OF TITUS COUNTY TAXING ENTITIES (#3556)

CAME ON TO BE CONSIDERED the First Amended Motion to Determine and to Order Paid Remaining Interest and Penalties Owing on Tax Claims filed by Mount Pleasant Independent School District ("MPISD"), City of Mount Pleasant, Titus County, Titus County Hospital District, and Chapel Hill Independent School District ("CHISD") (collectively, the "Titus County Taxing Entities" or the "Taxing Entities") (the "Motion"). The Court having

[1] The Debtors are Pilgrim's Pride Corporation, PFS Distribution Company, PPC Transportation Company, To-Ricos Ltd, To-Ricos Distribution, Ltd., Pilgrim's Pride Corporation of West Virginia, Inc., and PPC Marketing, Ltd.

EXHIBIT
tabbies
"B"

considering the pleadings and arguments of counsel find that the Motion shall be and is hereby GRANTED to the extent set out herein.

THE COURT FINDS that the Debtor's confirmed plan of reorganization treats all creditors as unimpaired, thus requiring that the Titus County Taxing Entities retain all their legal and equitable rights under state law vis-à-vis the Debtors pursuant to 11 USC § 1124(1) as though the intervening bankruptcy had not occurred.

THE COURT FURTHER FINDS that it is preferable to allow the Taxing Entities to pursue collection of its claims in the state courts, which may or may not determine the Taxing Entities are entitled to the full amount alleged in the Motion.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that the Taxing Entities are entitled to prosecute and pursue any and all rights of collection of their claims against Debtors in the state court of appropriate jurisdiction including but not limited to obtaining, executing, and collecting upon a judgment.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the Debtors are authorized to pay the Taxing Entities the full amount sought in the underlying motion (or any other amount they and the Taxing Entities may agree to) should the state court determine the Taxing Entities are entitled to such amounts.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the stay of 11 USC §§ 524(a)(2) and (to the extent applicable) 362(a) are hereby modified to permit the Taxing Entities to pursue their remedies as they would have had the Debtors not filed chapter 11 cases.

###END OF ORDER###

Approved as to form by:

/s/ Stephen Youngman

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