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

Signed August 12, 2009 **United States Bankruptcy Judge**

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

IN RE	§	
	§	CASE NO.: 08-45664-DML
PILGRIM'S PRIDE CORPORATION, *ET AL*.,	§	
	§	CHAPTER 11
DEBTORS.	§	(JOINTLY ADMINISTERED)
	§	
CITY OF CLINTON, ARKANSAS,	§	
	§	CIVIL CASE NO.: 4:09-CV-00386-Y
PLAINTIFF,	§	
	§	ADV. PROC. NO.: 09-04222-DML
V.	§	
	§	
PILGRIM'S PRIDE CORPORATION,	§	
	§	
DEFENDANT.	§	
	§	

REPORT AND RECOMMENDATION

TO HON. TERRY MEANS,
UNITED STATES DISTRICT COURT JUDGE:

Comes now the undersigned bankruptcy judge and makes this report and recommendation respecting the *Plaintiff's Motion for Withdrawal of the Reference Pursuant to 28 U.S.C. § 157(d)* (the "Motion"). [Adversary Docket No. 6]. The Motion was filed by the City of Clinton, Arkansas ("Plaintiff"), seeking withdrawal of the reference as to the above-captioned adversary proceeding (the "Adversary").[1] In support of the Motion Plaintiff filed *Plaintiff's Brief in Support of its Motion for Withdrawal of the Reference Pursuant to 28 U.S.C. § 157(d)* ("Plaintiff's Brief"). [Adversary Docket No. 7]. In response to the Motion and Plaintiff's Brief, Pilgrim's Pride Corporation ("Defendant") filed *Pilgrim's Pride Corporation's Response in Opposition to Plaintiffs'* [sic] *Motion for Withdrawal of the Reference* (the "Response"). [Adversary Docket No. 19]. I conducted a status conference on the Motion and Response on July 29, 2009 (the "Status Conference"). At the Status Conference I heard argument from counsel for Plaintiff and counsel for Defendant.

Background

Defendant filed for relief under chapter 11 of the Bankruptcy Code (the "Code")[2] on December 1, 2008. Defendant remains in possession of its property and operation of its business as provided by sections 1107(a) and 1108 of the Code. Defendant is a producer of chicken products, being one of the largest chicken integrators[3] in the world.

The Adversary was filed on June 1, 2009. Plaintiff is a municipality in the state of Arkansas where one of Defendant's production facilities is located. In the Adversary Plaintiff makes various claims including that Defendant is liable to Plaintiff for causing Plaintiff's

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1 The Adversary is related to *Adams, et al. v. Pilgrim's Pride Corp.*, Adv. No. 09-04221. A motion for withdrawal of the reference has been filed in that case as well..

2 11 U.S.C. §§ 101 *et seq.*

3 "Chicken integrator" is the industry term for an entity that, in its business, raises and slaughters chickens and markets the resulting products.

(alleged) dire economic situation by Defendant's purported violation of various provisions the Packers and Stockyard Act (the "PSA").[4]

A scheduling order has been entered in the Adversary and is attached hereto. As noted above, the Response was filed in opposition to the Motion and Plaintiff's Brief. The parties are currently not ready for trial. No party has sought to stay the Adversary pending the District Court's decision on the Motion. There is currently pending a motion to dismiss the Adversary filed by Defendant (the "MTD"). Plaintiff has demanded that the Adversary be tried to a jury and has averred that it does not consent to the bankruptcy court conducting that jury trial or entering judgment in the Adversary.

Withdrawal of the reference is not sought as to the tangential issue of Plaintiff's counsel's compliance with FED. R. BANKR. P. 2019 (the "Rule 2019 Statement") that has been raised by Defendant's motion.[5]

As of the filing of this Report and Recommendation, Plaintiff has not filed a proof of claim in the underlying bankruptcy case.[6] *See* 11 U.S.C. § 501. Defendant has stated in the Response that it assumes that Plaintiff is relying on the complaint in the Adversary as an "informal" proof of claim, for which there is no statutory basis.[7]

Recommendation

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4 7 U.S.C. §§ 201 *et seq.*

5 During a hearing held on August 4, 2009, the issues arising relating to the Rule 2019 Statement were disposed of by agreement.

6 The bar date for filing claims has passed. Thus, absent falling within one of the narrow exceptions to the requirements (see note 7 accompanying text), Plaintiff will not be entitled to receive any payment on its claims from Defendant.

7 If, in fact, Plaintiff is relying on the Adversary to function as an "informal" proof of claim, the court is troubled by the anomaly of thus asserting a claim against the estate while at the same time claiming that the bankruptcy court does not have jurisdiction over Plaintiff. Moreover, as discussed *Collier*, it is not proper to plan to file an informal proof of claim. *See* 9 COLLIER ON BANKRUPTCY ¶ 3001.05, n.10 (15th Ed. rev. 2007) ("[A]n informal proof of claim, by its very nature, cannot be planned, i.e. a party may not set out to protect its rights as a claimant by filing an informal proof of claim.").

After reviewing the pleadings and conducting the Status Conference, I recommend that the Motion be granted and the reference be withdrawn as to the Adversary. Mandatory withdrawal of the reference is sought under 28 U.S.C. § 157(d) on the basis that disposition of the Adversary requires construction of both the Code and the PSA.[8] Although Defendant contends in the Response that construction of the PSA is a straightforward matter and thus mandatory withdrawal is not required (see *Sibarium v. NCNB Texas Nat'l Bank*, 107 B.R. 108, 111 (N.D. Tex. 1989)), I concur with Plaintiff that the decision of a panel of the Court of Appeals for the Fifth Circuit[9] that applies provisions of the PSA differently than has been the case in other Circuits demonstrates enough uncertainty concerning construction of the PSA that consideration of the Adversary must properly be by an Article III court.[10]

I further recommend that withdrawal of the reference be immediate and with respect to all proceedings in the Adversary. Disposition of the MTD is likely to require interpretation of the PSA – as will any other dispositive motions. Even discovery issues may require determinations of relevance that would necessitate parsing the PSA. For all theses reasons, I

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[8] 28 U.S.C. § 157(d) provides:

> (d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court *shall*, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce. (Emphasis added).

There is no dispute that the PSA is a law "regulating organizations or activities affecting interstate commerce."

[9] *See Wheeler, et al, v. Pilgrim's Pride Corp.*, 2009 U.S. App. LEXIS 16737 (5th Cir. Tex. July 27, 2009). Although the Court of Appeals has granted Defendant's request that the panel's decision be reheard *en banc*, I believe the panel's decision still supports Plaintiff's contention that mandatory withdrawal is proper.

[10] I also believe, even if mandatory withdrawal were not called for, permissive withdrawal of the reference is appropriate under *Mirant Corp. v. The Southern Co.,* 337 B.R. 107 (N.D. Tex. 2006).

respectfully recommend that the District Court assume jurisdiction for all purposes over the Adversary.

As to matters related to the Adversary – consideration of any issues arising relating to amendment of any "informal" proof of claim (or objection thereto), for example – I do not believe withdrawal of the reference is necessary or appropriate, at least at this juncture. No party has requested that the reference be withdrawn with regard to issues addressing the viability of the Adversary as an informal proof of claim and I believe it is preferable that any issues pertaining to the participation of Plaintiff in Defendant's estate remain before the bankruptcy court.

Both because the disposition of the Adversary may affect the progress of Defendant's reorganization[11] and to ensure against forum shopping,[12] I recommend that the District Court for the Northern District of Texas retain venue of the Adversary once (and if) the reference is withdrawn.

SIGNED this the 12th day of August, 2009.

Respectfully Submitted,

/s/ D. Michael Lynn
DENNIS MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE

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[11] Defendant expects to confirm a plan of reorganization before the end of 2009. Coordination of the confirmation process with trial of the Adversary would be facilitated if the Adversary remained here.

[12] As noted by Defendant, although a case raising parallel issues is pending (though stayed pursuant to Code § 362(a)(1)) in the Eastern District of Texas, the extent of the proceedings before that court have not been such as to favor transfer there to advance judicial economy. It does not appear on the record that the Eastern District of Texas is more convenient for Plaintiff than the Northern District of Texas; rather, as argued by Defendant, Plaintiff may be seeking transfer because it expects more favorable treatment in the former district.

BTXN 090 (rev. 03/06)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In Re:	§	
Pilgrims Pride Corporation	§	
	§	Case No.: 08−45664−dml11
Debtor(s)	§	Chapter No.: 11
City of Clinton, Arkansas	§	
Plaintiff(s)	§	Adversary No.: 09−04222−dml
vs.	§	
Pilgrim's Pride Corporation	§	
Defendant(s)	§	

ORDER REGARDING ADVERSARY PROCEEDINGS TRIAL SETTING AND ALTERNATIVE SCHEDULING ORDER

An adversary complaint is set for trial routinely at the time of its filing. Special settings or pretrial conferences may be scheduled by contacting the appropriate Courtroom Deputy.

TRIAL is set before the **Honorable D. Michael Lynn** at **Room 128, US Courthouse, 501 W. Tenth Street, Fort Worth, TX 76102** the month of **December, 2009**. Docket call for this trial will be held on **November 23, 2009** at **9:00 A.M.** at **Room 128, US Courthouse, 501 W. Tenth Street, Fort Worth, TX 76102**. A pretrial conference shall be scheduled by the parties at least seven (7) calendar days prior to trial docket call in a complex adversary proceeding if the parties anticipate that trial will exceed one day or if there are preliminary matters that should be addressed by the Court prior to the commencement of trial.

PART I: INSTRUCTIONS

1. Plaintiff is responsible for ensuring that proper service is provided to each defendant. The Clerk shall issue one original summons, which shall be conformed by the plaintiff for service on multiple defendants. Federal Bankruptcy Rule 7004(e) requires you to serve the fully completed **SUMMONS** form and a copy of the **COMPLAINT** on each defendant within ten (10) days of issuance. In addition, the Court also directs that this **ORDER** ***be served with the*** **SUMMONS and COMPLAINT.**

2. Plaintiff shall file a **RETURN** on the **SUMMONS** with a **CERTIFICATE OF SERVICE** that provides the name and address of each party served and the manner of service.

3. If a trial setting is passed for settlement at trial docket call and no written request is filed to retain the case on the Court's docket, an automatic Dismissal Without Prejudice shall be entered on or after four (4) weeks. The Court's Trial Calendar is available on the court's web site at www.txnb.uscourts.gov.

PART II: GENERAL PROVISIONS GOVERNING DISCOVERY

1. Unless otherwise ordered by the Court, the disclosures required by Federal Bankruptcy Rule 7026(a) shall be made within ten (10) days of the entry of a scheduling order, including the Alternative Scheduling Order contained in Part III below (which shall become effective on the forty−sixth day following the entry of this Order.

2. Unless the parties agree or the Court orders otherwise, Federal Bankruptcy Rule 7026(f) requires that parties shall confer to consider the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by Federal Bankruptcy Rule 7026(a)(1), to develop a proposed discovery plan, and to submit a proposed scheduling order. The parties shall confer with each other regarding these matters within thirty (30) days of the service of the Summons unless the Court orders otherwise.

3. During such conference, the parties may agree to waive the requirement of submitting their own proposed scheduling order and may follow the terms and deadlines contained in the Alternative Scheduling Order set forth in Part III below (the "Alternative Scheduling Order"). If the parties do not submit a proposed scheduling order or do not schedule a status conference with the Court to discuss the provisions and deadlines of a scheduling order within forty−five days of the filing of this adversary proceeding, then the parties are deemed to have consented to the terms of the Alternative Scheduling Order.

PART III: ALTERNATIVE SCHEDULING ORDER

The Court directs compliance with the following schedule:

1. Discovery must be completed forty−five (45) days prior to Docket Call. The names and addresses of experts must be exchanged sixty (60) days prior to Docket Call.

2. A Joint Pretrial Order in compliance with Local District Court Rule 16.4 shall be filed, served, and uploaded for Court entry seven (7) days prior to Docket Call. All counsel (or a pro se party) are responsible for preparing the Joint Pretrial Order, which shall contain the following: (a) a summary of the claims and defenses of each party; (b) a statement of stipulated facts; (c) a list of the contested issues of fact; (d) a list of contested issues of law; (e) an estimate of the length of trial; (f) a list of additional matters which would aid in the disposition of the case; and (g) the signature of each attorney (or pro se party).

3. Each exhibit shall be marked with an exhibit label. Except for impeachment documents, all exhibits, along with a list of witnesses to be called, shall be exchanged with opposing counsel (or pro se party) fifteen (15) days prior to Docket Call. Each party shall also file a list of exhibits and witnesses fifteen (15) days prior to Docket Call. All exhibits not objected to in writing by Docket Call shall be admitted into evidence at trial without further proof, except for objections to relevance. Written objections to exhibits will be taken up either at the beginning or during the course of the actual trial or at any pretrial conference.

4. Written Proposed Findings of Fact and Conclusions of Law shall be filed seven (7) days prior to Docket Call. Trial briefs shall be filed addressing contested issues of law seven (7) days prior to Docket Call.

5. Unless otherwise directed by the Presiding Judge, all dispositive motions must be heard no later than fifteen (15) days prior to Docket Call. Accordingly, all dispositive motions must be filed no later than forty−five (45) days prior to Docket Call, unless the Court modifies this deadline.

6. All parties and counsel must certify to full compliance with this Order at Docket Call. If a resetting is allowed by the Court, the plaintiff or plaintiff's attorney shall notify all other parties and shall file with the Clerk a certificate of service indicating the manner, date, and to whom notice was given.

7. If the case is reset, all the deadlines in Part III nos. 1 through 5 will be shifted to the newly scheduled Docket Call date in the absence of a contrary Court order.

8. Sanctions may be imposed for failure to comply with this Order.

DATED: 6/2/09

FOR THE COURT:
Tawana C. Marshall, Clerk of Court

by: /s/S Maben, Deputy Clerk