

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

10- 1627

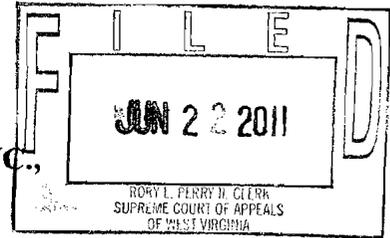
**PILGRIM'S PRIDE CORPORATION, and
PILGRIM'S PRIDE CORPORATION OF WEST VIRGINIA, INC.,**

Petitioner,

v.

**CRAIG A. GRIFFITH, State Tax Commissioner, and
JIM B. WRATCHFORD, County Assessor of Hardy County, West Virginia,**

Respondents.



**COUNTY ASSESSORS RESPONSE TO SUPPLEMENTAL BRIEF OF
PILGRIM'S PRIDE CORPORATION AND PILGRIM'S PRIDE CORPORATION
OF WEST VIRGINIA, INC.**

**JAMES O. HEISHMAN (WVSB # 10446)
HARDY COUNTY ASSISTANT PROSECUTOR
204 Washington Street, Room 104
Moorefield, West Virginia 26836
304-530-6000 Telephone**

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 10- 1627

**PILGRIM'S PRIDE CORPORATION, and
PILGRIM'S PRIDE CORPORATION OF
WEST VIRGINIA, INC**

Petitioners,

v.

**CRAIG A GRIFFITH,
State Tax Commissioner of the
State of West Virginia, and
JIM B. WRATCHFORD,
County Assessor of Hardy County,
West Virginia,**

Respondents.

**COUNTY ASSESSORS RESPONSE TO SUPPLEMENTAL BRIEF OF PILGRIM'S
PRIDE CORPORATION AND PILGRIM'S PRIDE CORPORATION OF WEST
VIRGINIA, INC.**

INTRODUCTION

This response is being filed on behalf of the Hardy County Assessor and the people of Hardy County. We, as a county, absolutely agree with the legal analysis and give our complete and full support to the Response filed by the State Tax Commissioner of the State of West Virginia. We are filing a separate response to Pilgrim's Pride's *Supplemental Brief* to give a more focused and personal argument.

ARGUMENT

In Pilgrim's¹ Supplemental brief it begins its "Argument" section with a statement that it is in the business "of producing and selling poultry meat and poultry related products."

Supplemental Brief of Pilgrim's Pride at Pg. 2. Pilgrim's goes on to argue that to qualify for the "Farm Operation" exemption, it must: (1) employ personal property exclusively in agriculture; (2) annually produce products of agriculture for sale; and (3) produce these products of agriculture on a farm or farming operation. Supplemental Brief of Pilgrim's Pride at Pg. 2 & 3. Pilgrim's Pride feels that the corporation satisfies each of these requisites. We would agree that Pilgrim's Pride may meet requisite (1), because it does own the rights to the chickens from life through processing. However, it would be a stretch at best to say (2) or (3) is even remotely satisfied.

1. Pilgrim's Pride Owns but Does Not Produce Products of Agriculture for Sale

Pilgrim's would like to believe that it annually produces products of agriculture for sale. Pilgrim's sites the definition of producer as "the person who is actually engaged in agriculture, horticulture and grazing which gives existence and fruition to products of agriculture as distinguished from the broker or middleman." W.Va. Code § 11-5-3. Pilgrim's states "the thrust of the argument is that one does not qualify as a producer by simply buying and selling agricultural products. A producer is involved with the creation of the product itself."

Supplemental Brief of Pilgrim's Pride at Pg. 7. It seems Pilgrim's main business is the processing of the chickens from slaughtering all the way through the packaging. Pilgrim's does own each chicken, throughout its lifespan, and the chickens are hatched in a hatchery owned and

¹ Pilgrim's Pride's Corporation and Pilgrim's Pride's Corporation of West Virginia, Inc. will be referred to as Pilgrim's throughout this brief for efficiency purposes.

run by Pilgrim's. After the hatching and until processing, Pilgrim's merely acts in a manner of protecting their investment and does not actually engage in the creation and agriculture part of the chickens life span.

Once the chickens hatch, Pilgrim's moves them to one of the many independent farmers who run the chicken houses. It is then up to the farmer to raise the chickens. These farmers are subcontractors and not actually employees of Pilgrim's. The farmers receive no employee benefits nor do they have any employee rights with Pilgrim's. The houses the chickens are raised in are owned by the farmers along with the land the houses are on. Pilgrim's assumes no liability if something happens to the houses or to the property surrounding the houses. Pilgrim's merely owns the rights to the chickens that are living in the houses.

Pilgrim's employees do frequent the houses to check on the health of the chickens and to make sure the houses are in standard operating condition. They then relay any changes that must be made or possible concerns about the chickens to the farmers. It is then up to the farmer to implement the changes. If the farmers do not do what Pilgrim's says, then Pilgrim's has the right to end the contract and move the chicken's on to another house. Along with overseeing the growth of the chickens, Pilgrim's supplies feed, but does not actually feed them. A Pilgrim's truck simply comes by and dumps the feed into what is referred to as a "hopper." The farmer then must remove the feed from the hopper and distribute it to the chickens on a proper feeding cycle. Once the chickens are removed from the house, it is up to the farmer to clean and prepare the house for the next set of chickens coming in.

Until the chickens are removed from the chicken houses and taken to Pilgrim's factory for the slaughter, Pilgrim's involvement is much like that of a person buying and owning stock

through a stock broker. You can call your stock broker up and tell them to buy some amount of shares in a stock. You then pay the broker, who purchases the stocks for you. At that point you own the stock. You have every right to check on your stock through your broker and to tell him to buy or sell more, but at the end of the day the broker is doing the work and caring for the stock. Just because you own the stock and check on it, that does not make you a stock broker. In Pilgrim's case, just because it owns the chickens and keeps tabs on them does not make them a farmer who is involved in the agricultural process.

Throughout the process, the independent farmers are the ones feeding the chickens, caring for the chickens and raising the chickens, which is most likely included in what Pilgrim's claims as the "grow out stage". Supplemental Brief of Pilgrim's Pride at Pg. 8. The farmers are the ones truly involved with the agriculture of the product, not Pilgrim's. Pilgrim's may oversee parts of the process, but in truth, it's merely taking steps to protect its investment.

Pilgrim's employees are not involved with the living chickens except for the moving of the chickens by truck and the slaughtering/processing of the chickens once at the Pilgrim's plant. It would be hard then to say that Pilgrim's is involved in producing products of agriculture for sale. Pilgrim's owns products of agriculture for sale, by owning the rights to the chickens, but that is where its major involvement ends. The farmers are the ones truly involved with the creation of producing a product of agriculture. Because, Pilgrim's lacks involvement in a major part in the creation of the product, it therefore should not be considered a producer of an agricultural product for sale.

2. Pilgrim's Does Not Own Farm Property Where It Can Produce Products of Agriculture

Pilgrim's claims it meets requisite (3) which is "produc[ing] these products of agriculture on a farm or farming operation." We would agree that the chickens are produced on a farm or farming operation, but none of which is owned by Pilgrim's. As stated above, once the chickens leave Pilgrim's hatchery, they are housed in chicken houses. These houses are owned by what Pilgrim's refers to as "Independent Family Farmers." Id. They are hard working farmers and land owners who are not employees of Pilgrim's, but instead independent subcontractors. As stated above, Pilgrim's has no claim to the houses or the land the houses are on. Pilgrim's does not pay property taxes on the house or the land and has no liability if something were to go wrong. Pilgrim's compares the use of the independent growers to a farmer hiring seasonal laborers to water and till their crops. Id. This comparison is faulty; due to the fact Pilgrim's seems to miss one glaring point. Pilgrim's does not own the land where the agricultural process is taking place. Usually farmers, who hire seasonal workers, own or lease the farm land their crops are on. The seasonal workers then help carry out the agricultural process on the farmer's land. In Pilgrim's situation, it does not own or lease any part of the property that is used by the independent growers who raise the chickens. The independent farmers are carrying out the agricultural process on his or her own property. Pilgrim's cannot be compared to a farmer hiring seasonal workers, because simply put, Pilgrim's does not own the farmland where the agricultural process is carried out.

Speaking from experience, what Pilgrim's does own are rather large factory style buildings which sit in the middle of the town of Moorefield. I know this, because I grew up just a block away from where the main Pilgrim's plant stands. Over the years, I have watched huge trucks hauling chickens into Pilgrim's factory. The chickens were crammed into small crates and then

killed within Pilgrim's facilities. On a hot summer day, you can smell the putrid smells the factory releases. It's a smell of processing dead chicken and not smells of manure that you would equate with a farm. The only live chickens that we ever saw were either crammed in small crates on the back of trucks or a random escapee that slips away. Pilgrim's also runs a feed mill, garage and hatchery in an industrial park on the out skirts of town, but none of this property is on what I would consider farmland or a farming operation, especially considering it is part of an industrial park.

The property Pilgrim's owns and carries out its business on is covered with large metal buildings, asphalt/gravel parking lots, fences, security guards at gates, tractor trailers and forklifts. Oh and maybe a few areas of grass to mow. Lacking is the rolling fields full of crops, farm animals grazing, barns/storage buildings full of farm equipment and tractors working the fields, which are all usually associated with farming. And why does Pilgrim's property lack these things, because Pilgrim's property is factory based and commercial, not agriculture. The growing and creation happens on the land of the independent farmers, who work the land, grow the crops, and raise the livestock. These independent farmers are the ones the "Farm Operation" exemption was meant for. Because Pilgrim's does not own a farm or farming operation to produce products of agriculture on, it fails to meet requisite number (3).

CONCLUSION

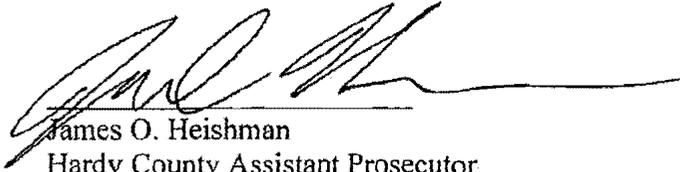
Pilgrim's is a very important business for Hardy County. The amount of jobs and business it brings to the county go unmatched. We appreciate what it does for our economy, communities and Hardy County as a whole. Without Pilgrim's our county would suffer severely. But it is still not right for Pilgrim's to try to take advantage of the "Farm Operation" exemption.

This exemption was meant to cut the independent farmers of West Virginia, who are actually the ones hard at work on the farm, a break, so that they could save money and apply it to producing the many agricultural necessities that our society depends on. The exemption was not meant for major corporations, who are loosely affiliated with farming, so it could save money and at the same time hurt the financial state of the rural counties in which the independent farmers work and live. If Pilgrim's were able to claim the "Farm Operation" exemption it would open a door for other companies who can loosely connect its business to farming to step right in and join the party. In the end, corporate America would benefit while the small communities, who depend on property taxes to survive, are left to suffer.

In summary, the independent farmers of Hardy County are involved in the major part of the agriculture process to help in the creation of the chickens. The independent farmers own the houses and the farms the houses are on. They assume the risks and costs that go along with owning this property. They are the ones who break their backs working the chickens. Pilgrim's does none of this. Pilgrim's merely over sees the operation to make sure their investment is protected. Because Pilgrim's does not take part in important stages of producing an agricultural product and, other than the hatchery, does not own any land on which the growth of the chickens take place, Pilgrim's Pride fails requisite (2) and (3) above and therefore should not be able to claim the "Farming Operation" exemption.

Respectfully submitted,

The Hardy County Assessor
By Counsel



James O. Heishman
Hardy County Assistant Prosecutor
WV Bar # 10446
204 Washington St., Room 104
Moorefield, WV 26836

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 10- 1627

**PILGRIM'S PRIDE CORPORATION, and
PILGRIM'S PRIDE CORPORATION
OF WEST VIRGINIA, INC.,**

Petitioner,

v.

**CRAIG A. GRIFFITH, State Tax Commissioner,
And JIM B. WRATCHFORD,
County Assessor of Hardy County, West Virginia,**

Respondents.

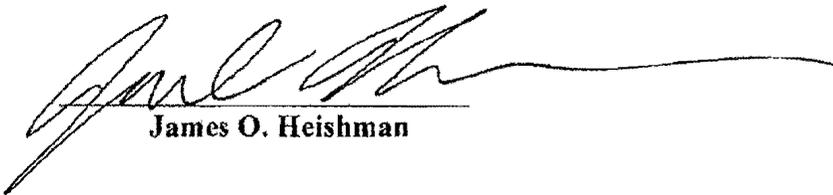
CERTIFICATE OF SERVICE

I, James O. Heishman, Assistant Prosecuting Attorney for Hardy County, West Virginia, do hereby certify that a true and exact copy of the foregoing *Tax Department's Response To Petition For Appeal* was served by United States Mail to all counsel, postage prepaid, this 22nd day of June 2011, addressed as follows:

Stephen Stockton, Esquire
Robinson & McElwee
4th Floor
Fifth Third Center
Charleston, West Virginia 25326

Robert H. Albaral, Esquire
Stephen W. Long, Esquire
Baker & McKenzie LLP
2001 Ross Avenue, Suite 2300
Dallas, Texas 75201

Scott L. Brandman, Esquire
John Paek, Esquire
Baker & McKenzie LLP
1114 Avenue of the Americas
New York, New York 10036



James O. Heishman