Pilgrim's faces crucial deadline Monday

Bankruptcy does not mean closure, says expert

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With Pilgrim's Pride facing a deadline Monday on extending its credit lines, Titus County residents are concerned over the prospect the area's largest industry might shut down.

"Absolutely not," says Jeff Carruth, a Dallas attorney with a law firm that specializes in bankruptcies, when asked if there's a possibility the company would close.

Even if the so-called "worst case scenario" came to pass – that Pilgrim's were to file for bankruptcy – Carruth said it would be under Chapter 11 of the bankruptcy code, which allows for a business to reorganize.

He said there's no reason a company such as Pilgrim's - whose assets far exceed its liabilities - would need to liquidate. Chapter 11 has proven its worth over the years by saving companies "that are worth more as going concerns," he said.

But he said because of what the word "bankruptcy" means to most people, he said he understands "there's a huge perception problem" of what a Chapter 11 bankruptcy means.

"I would say that in 95 out of 100 cases, a company in Chapter 11 stays in the same management control," he said.

A company that enters Chapter 11 usually leaves "much stronger than when it went in there," he said. "They almost always come out stronger than they went it, in a much healthier situation financially."

Carruth

A company that files for Chapter 11 gets 18 months of court-supervised protection from its creditors while it reorganizes, he noted.

A number of large companies in the past 30 years since Chapter 11 was incorporated into the bankruptcy code, such as K-Mart and Texaco, and many U.S. airlines – such as United - have used the provisions of the law to reorganize and emerge in better business shape than before.

Chapter 11 does not mean closure, said Carruth, and some large retailers, such as Linens 'n Things and Mervyns, are working through the process now with their stores open.

Carruth, who works with the Curtis law firm in Dallas, has been following the Pilgrim's situation closely because his firm has been retained by poultry producers to protect their payment rights if Pilgrim's goes to court with a Chapter 11 filing.

Chapter 11 "stops collection efforts," said Carruth, and gives a company such as Pilgrim's the breathing room, for example, to identify non-performing assets which would be sold.

In the meantime committees are formed to represent people and groups before the court with interests in the reorganization, said Carruth. For example, there is almost always a group of unsecured creditors.

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In his case, if Pilgrim's to file for Chapter 11 protection, his firm would work for a poultry growers committee, said Carruth.

Carruth said he has no indication or idea whether Pilgrim's will need Chapter 11, but the appointment of William K. Snyder as Chief Restructuring Officer Nov. 10 is a sign the company that accomplish its goal of restructuring either with or without Chapter 11.

On Friday Pilgrim's filed a formal Notification of Late Filing with the Securities and Exchange Commission (SEC) that its annual 10-K report will be late.

The 10-K is a comprehensive summary report of a company's performance that must be submitted annually to SEC.

Typically, the 10-K contains much more detail than the annual report. It includes information such as company history, organizational structure, equity, holdings, earnings per share, subsidiaries, etc.

The 10-K must be filed within 60 days after the end of the fiscal year.

In its statement to the SEC, the company explained: "Due to the ongoing discussions with its lenders regarding temporary waivers under its credit facilities and related financial uncertainties, Pilgrim's Pride Corporation (the "Company") was unable to file its Annual Report on Form 10-K for the fiscal year ended September 27, 2008 (the "Report") by the prescribed date of November 26, 2008 without unreasonable effort or expense. The Company intends to file its Report on or prior to the fifteenth calendar day following the prescribed due date.

The document goes on to state: "The Company anticipates reporting a net loss of $802.0 million, or $10.83 per share, on sales of $2.17 billion for the fourth fiscal quarter ended September 27, 2008. These results are anticipated to include a non-cash charge of $501.4 million, or $6.77 per share, primarily related to the impairment of goodwill acquired in connection with the Company's acquisition of Gold Kist Inc. and an income tax valuation allowance of $35.0 million, or $0.47 per share, against net operating losses generated by the Company. Excluding these items, the Company's anticipated net loss would have been $265.6 million, or $3.59 per share.

"Also anticipated to be included in the fourth fiscal quarter ended September 27, 2008 are losses on feed ingredient derivative contracts of approximately $155.7 million, which are anticipated to be $96.9 million, or $1.31 per share, net of tax.

"The Company anticipates recognizing losses on feed ingredient derivative contracts for the first quarter of fiscal 2009 of $21.8 million, which are anticipated to be $13.4 million, or $0.18 per share, net of tax, with respect to feed ingredient derivative contracts that remained open at September 27, 2008.

"These feed ingredient derivative contracts were closed in October 2008. For the fiscal year ended September 27, 2008, the Company anticipates reporting losses on feed ingredient derivative contracts of approximately $38.3 million, which are anticipated to be $23.8 million, or $0.34 per share, net of tax, which represents less than 1% of the Company's $3.4 billion total feed ingredient spend for fiscal 2008. For the fourth quarter of fiscal 2007, the Company reported a net profit of $33.2 million, or $0.50 per share, on total sales of $2.11 billion.

"For the full 2008 fiscal year, Pilgrim's Pride anticipates reporting a net loss of $998.6 million, or $14.40 per share, on net sales of $8.5 billion. These results are anticipated to include a non-cash charge of $501.4 million, or $7.23 per share, primarily related to goodwill impairment from the Gold Kist acquisition and an income tax valuation allowance of approximately $60.0 million, or $0.87 per share, against net operating losses generated by the Company.

"Excluding these items, the Company's anticipated net loss would have been $437.2 million, or $6.31 per share. In fiscal 2007, the Company reported net income of $47.0 million, or $0.71 per share, on sales of $7.50 billion."