

DOYLE, BARLOW & MAZARD PLLC

ATTORNEYS AT LAW

1110 VERMONT AVE, N.W.
SUITE 715
WASHINGTON, D.C. 20005-3314

202-589-1834
FAX 202-589-1819
www.dbmlawgroup.com

PRESS RELEASE

FOR IMMEDIATE RELEASE

A West Virginia Poultry Grower Successfully Opposes Pilgrim's Pride Corporation's Motion to Dismiss its Packers & Stockyards Act and State Law Claims

WASHINGTON, DC - November 4, 2015 - Doyle, Barlow and Mazard PLLC and Butler Farm & Ranch Law Group, PLLC represent M&M Poultry, Inc., a West Virginia poultry grower, in a lawsuit seeking compensation for Pilgrim's wrongful, intentional, malicious, and unlawful acts in violation of federal law under the Packers and Stockyards Act, as well as state common law under breach of contract, breach of the covenant of good faith and fair dealing, and tortious interference with contract claims.

Shortly after the complaint was filed in the Northern District of West Virginia, Pilgrims filed a motion to dismiss, arguing that the complaint failed to state a claim because M&M failed to allege anticompetitive effect for violations of the Sections 192(a) and (b) of the PSA. Pilgrims even went as far as to say that the PSA is an antitrust statute and attempted to mislead the district court with the notion that eight Circuits had turned the PSA into nothing more than an antitrust statute.

Keith Lively of Doyle Barlow Mazard stated that "we opposed the motion, challenging that Pilgrims is wrong on the law. The PSA was designed to prevent large processors such as Pilgrims from abusing individual farmers such as M&M's sole owner, Dave Mongold, by engaging in exclusionary practices, discriminatory practices, and undue favoritism. When the PSA was enacted, Congress intended that the PSA would provide broader protections to farmers than the antitrust laws. Indeed, Congress recognized that the antitrust laws failed to protect farmers and that is why Congress passed the PSA as a separate statute to specifically protect them."

The parties submitted lengthy briefing to the court and in a well thought out opinion, U.S. District Judge John Preston Bailey, ruled that "anticompetitive effect is not an essential element that need be alleged to state a claim for violations of § 192(a) and (b)" of the PSA. The case will now proceed to discovery.

M&M's lawsuit alleges that Pilgrims is a vertically integrated chicken processor in the business of breeding, processing, packing, producing, selling and distributing poultry. Pilgrims controls the entire process. Pilgrims enters into poultry growing agreements with a poultry grower who provides a facility, at his/her own cost, to shelter, feed and otherwise care for the chickens on a "flock to flock" basis. Pilgrims provides feed and medication, insists that the feeding and watering equipment meet its own specifications, determines the amount, type, quality, frequency and time of delivery to and pick up from the grower's

farms of chicks, feed and medication. Under the arrangement, growers own the farm and the facility, and pay for the labor, materials and utilities necessary to care for the chickens. In this case, Pilgrims agreed to deliver flocks of chicks to M&M's facility and once a flock was delivered, M&M cared for the chickens according to Pilgrim's meticulous guidelines. When the flock matured, normally a six-week process, Pilgrims transported the flock to its processing facility in Moorefield, West Virginia.

The lawsuit explains that Pilgrims is able to exert control and enforce unconscionable arrangements over local poultry growers because it is the only supplier of poultry in West Virginia. Thus, Pilgrims has monopsony power over all poultry growers in the area. Pilgrims maintains this power through archaic, abusive and unconscionable contracts that employ a payout system, better known throughout the industry as the "tournament system." Under this system, M&M was ranked against other Pilgrims' growers whose flocks were also processed at the Moorefield facility. As alleged, Pilgrims defrauded M&M by unilaterally imposing and utilizing the tournament system which wrongfully placed M&M in competition with its fellow growers, all the while requiring M&M to accept chicks which were genetically different, chicks with varying degrees of healthiness, and feed of dissimilar quantity and quality.

Andre Barlow, an antitrust partner at Doyle Barlow & Mazard, further added that "the importance of Judge Bailey's decision cannot be overstated. Unfortunately, some other courts have mistakenly concluded that in order to prevail under the PSA, a farmer must demonstrate an anticompetitive effect. The PSA, however, is not an antitrust statute that would require proof of anticompetitive harm. This is a huge victory not only for our client but for all farmers."

M&M Poultry's case (C.A. No. 2:15-cv-32 Bailey) was filed in the United States District Court for the Northern District of West Virginia at Elkins. The case number is 2:15-cv-00032-JPB.

For more information, please contact Keith Lively at 202.589.1839 or klively@dbmlawgroup.com.

###