



**IT IS ORDERED as set forth below:**

**Date: October 22, 2010**

*James E. Massey*

James E. Massey  
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

\_\_\_\_\_  
IN RE:

Pilgrim's Pride Corporation, Debtor.

Pending in the U.S. Bankruptcy Court for the  
Northern District of Texas under Case No.  
08-45664

Chapter 11

Motions to Quash (MISC. NO. 10-609 as to  
Karla Harvill and MISC. NO. 10-610 as to  
John Bekkers)

\_\_\_\_\_  
Pilgrim's Pride Corporation,

Movant,

v.

CONTESTED MATTER

Certain Alabama, Arkansas, Georgia and North  
Carolina Growers,

Respondents.  
\_\_\_\_\_

ORDER DENYING MOTIONS TO QUASH SUBPOENAS

Pilgrim's Pride Corporation moves in Miscellaneous Matters 10-609 and 10-610 to quash subpoenas duces tecum obtained by certain poultry growers from various states ("Growers") in connection with litigation pending between Movant and Growers in the United States Bankruptcy Court for the Northern District of Texas. One of the subpoenas is directed to Karla Harvell, a former public relations manager for Gold Kist, Inc. and the former director of internal communications for Movant. The other subpoena is directed to John Bekkers, the former president and chief executive officer of Gold Kist, Inc. until it was acquired by Movant in January 2007. Neither Ms. Harvell nor Mr. Bekkers is a party to the motions or to the litigation between Movant and Growers. Moreover, there is no contention that either witness objected to testifying or to having to produce documents as they might have done pursuant to Civil Rule 45(c)(2)(B). Fed. R. Civ. P. 45(c)(2)(B). The Growers oppose the motions.

A motion to quash, or for a protective order, should be made by the person from whom the documents, things, or electronically stored information are requested. Numerous cases have held that a party lacks standing to challenge a subpoena absent a showing that the objecting party has a personal right or privilege regarding the subject matter of the subpoena.

9AWright & Miller, FEDERAL PRACTICE AND PROCEDURE (3<sup>rd</sup> Ed.) § 2463.1 (footnote omitted.)

As the Growers point out, Movant lacks standing to bring the motions because it does not assert that any of the subpoenaed documents is privileged and has otherwise failed to show that it has any personal right or privilege with regard to the information or documents that either witness might provide. Instead, it asserts that Ms. Harvill and Mr. Bekkers have no personal knowledge relevant to the litigation.

Movant has failed, however, to satisfy any of the conditions for quashing or modifying a subpoena required by Civil Rule 45(c)(3). Fed. R. Civ. P. 45(c).

Movant cites Civil Rule 26(b)(2)(C), Fed. R. Civ. P. 26(b)(2)(C), for the proposition that this Court should issue a protective order because the Growers could obtain the same discovery “from some other source that is more convenient, less burdensome, or less expensive” and “has ample opportunity to obtain the information by discovery in the action,” but it failed to present any evidence to that effect or even to contend that it needs protection from “annoyance, embarrassment, oppression or undue burden or expense.” Fed. R. Civ. P. 26(c)(1). The sworn declaration of Ms. Harvill submitted by Movant in support of the motion to quash her subpoena does not eliminate the possibility that she might have possession or control of subpoenaed documents relevant to the dispute that might not be obtainable from another source or at less expense if otherwise available. Her statement that she has no information cannot be tested without cross-examination and is not independently verified by any other source. Movant failed to submit any declaration or affidavit of Mr. Bekkers. (The first page of a declaration purportedly of Mr. Bekkers is attached to the motion (Misc. No. 10-610, document no. 1, p. 52) is attached as Exhibit C to the motion, but there is no signature page.)

For these reasons, the motions to quash the subpoenas duces tecum served on Ms. Harvell and Mr. Bekker are DENIED.

\*\*\*END OF ORDER\*\*\*