mkbp
Miller Keffer Bullock Pedigo
Attorneys and Counselors

May 2, 2006

A. Scott McDaniel
Joyce Paul & McDaniel PC
1717 S Boulder Ste 200
Tulsa OK 74119-4833

Via email to: smcdaniel@jpm-law.com

Jay Thomas Jorgensen
Sidley Austin Brown & Wood LLP
1501 K Street NW
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Via email to: jjorgensen@sidley.com

Re: *State of Oklahoma v. Tyson et al.*,
No. 05-CV-0329-JOE-SAJ

Dear Scott and Jay:

In light of the two of you having taken the lead in proposing modifications to Plaintiff's Biosecurity Guidelines, this letter is addressed to the two of you and copied to counsel for the other Defendants concerning the procedures that will govern sampling under court issued subpoenas.

At the April 25 meeting, Plaintiff proposed that the parties work together so as to minimize occasions when our scientists and technicians come into contact with live poultry while sampling in the poultry barns. It is our recommendation that the companies let us know when they are scheduled to pick up a flock. With the cooperation of the growers, we can also be told which of the facilities is slated for an annual clean out or a cake out. With such cooperation we can collect waste samples after the birds have been taken for slaughter and before the waste leaves the barn to be disposed of on a field. By working together in this manner, we can increase biosecurity for this project.

As was mentioned by the Integrators during our meeting, the biosecurity concerns regarding the catching operation are significantly different than they are during other times in the growing cycle. It was acknowledged that since the birds are slated for slaughter at that point, the concerns that the catchers might contaminate them were not substantial. Our proposal is designed to limit occasions when it is necessary for us to enter a poultry barn to gather samples while there are birds in the barn. Since under such circumstances our scientist would not enter the barn until the birds were gone and would then be sampling waste that was itself slated to be disposed of by being spread on fields, contamination of the birds is remote.

EXHIBIT
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Miller Keffer Bullock Pedigo LLC • Licensed in OK: J. Randall Miller • Louis W. Bullock • Licensed in TX: William R
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This proposal is made to enhance the biosecurity procedures to which the parties have agreed. Attached you will find the biosecurity protocol agreed to at our April 26th meeting. These protocols, coupled with our working together to make it possible to do the sampling when the birds are out of the houses, will provide a level of biosecurity beyond anything practiced in the industry. It is our hope that we can work together on this and meet the reasonable needs of all parties. Please let us know if the Integrators are interested in cooperating in this manner. There was some suggestion that the Integrators might have additional procedures that they may seek to impose. If any of the companies have additional procedures, we need to see them now. Such procedures should be accompanied by copies of the actual procedures and the date that they were issued.

I have attached the Work Plan for the soil and litter sampling. Since the Work Plan contains information about the testing program which is being conducted by the lawyers for the State, it is attorney work product and is therefore privileged. But for that fact that the State previously produced an earlier version of this plan as part of the discovery in the State court action, we would not be providing this to you at this time. Consistent with this, we reserve the right at any time to change, without notice to you, what we test the samples for and the method or manner in which we handle our part of the sample once the split is made. On the other hand, since we have offered to split samples with you, should we at anytime decide that it is important that we change the manner in which the samples are collected or handled before your portion of the split is delivered to you, you will be informed of such a change.

Regarding splitting soil and litter samples, we have reviewed your request that a split be made in the field. In light of our procedures for collecting the samples and the importance of all samples being fully composited prior to being split, it will not be possible for us to make a split in the field. If in fact you need a sample at the time of the sampling, you will need to bring your own team and collect your own samples.

You have inquired concerning how many teams will be dispatched to take samples. It is our present plan to field two teams of three scientists/technicians each to take the samples. They will be accompanied by a photographer and videographer, as well as a lawyer. The number of teams dispatched may be changed depending on how we arrange the schedule.

We were also asked to share with the Defendants our procedures for preserving and analyzing any water samples which might be taken. I have reviewed this, and it remains our view that it is not our task to direct your scientific investigation. Our decision concerning how and what to test for and how to preserve the water for testing are our attorney work product and the decisions are therefore privileged. Consistent with this, the Integrators will need to determine how large a water sample they need and how to preserve that sample for later testing.

If you have any questions concerning these matters, please let us know.

Sincerely,

Louis W. Bullock

Attachments
(1) Agreed Biosecurity Guidelines
(2) Sampling Protocol

Electronic copies: Counsel of record
Ken Williams
Michael Graves

AGREED BIOSECURITY GUIDELINES

IT IS STRONGLY RECOMMENDED THAT ALL PERSONS VISITING POULTRY FACILITIES FOR SOIL AND LITTER TESTING UNDERGO TRAINING ON BIOSECURITY PROTOCOLS AND PROPER USE OF PERSONAL PROTECTION EQUIPMENT

The steps you take entering a premise makes a difference and can have a significant impact on the well being of the operation. It is important to follow proper Biosecurity measures because poultry, animal and plant diseases are spread in numerous ways between farms and ranches including through human contact and vehicle movement.

1) Contact farm owner or their lawyer prior to visit – review recent disease/bird loss/vaccination, review and follow their biosecurity guidelines.

2) Prepare your supplies, clothing, equipment and vehicle before your visit.

   -Commercial car wash your vehicle before the farm visit
   -Disposable coveralls (TYVEK).
   -Disposable boot covers (2 pair) and rubber boots.
   -Task suitable disposable gloves.
   -Hair cover and facemask.
   -Long handled scrub brush and foot bath to clean/disinfect boots.
   -Suitable disinfectant (10% Bleach, Vircon) mixed as directed.
   -Bucket or container to mix disinfectant solutions.
   -Water for mixing
   -Hand held sprayers to clean/disinfect vehicle tires.
   -Trash bags and ties.
   -Waterless disinfectant hand wash

3) Keep samples, used equipment, etc. separate from clean supplies in your vehicle (double trash bagged).

4) DO NOT DRIVE ONTO POULTRY PREMISE IF AT ALL POSSIBLE.

5) Park at gate or facility entrance if at all possible. (100 feet from poultry house)

6) Wear TYVEK coveralls, rubber boots, 2 pair disposable boot covers, disposable gloves, facemask, and hair cover.
   *REMEMBER ALL MUD AND ORGANIC MATERIAL MUST BE CLEANED FROM TIRES AND BOOTS FOR DISINFECTANTS TO WORK.

7) Carry/use the minimum amount of equipment/supplies required to do the job.

8) When finished – Clean and disinfect equipment, clipboards, etc.

9) Double bag samples to prevent contamination of vehicle/equipment/other farms.

10) Place all used TYVEK, boot covers, gloves, and trash in a trash bag when finished, double bag, and leave for disposal on the premise.

11) Clean all mud and organic material from your vehicle and tires, then properly spray with disinfectant.

12) Wash hands with waterless disinfectant.

13) If multiple operations of a single Defendant are to take place in succession, sequence the visits to all of the operations under contract with a single Defendant in the following order: (1) any breeder pullet operations; (2) any breeder hen operations; (3) then broiler operations.

14) Provide a minimum of 48 hour delay between moving from any operation owned, leased by, or under contract with one Defendant to the operation owned, leased by, or under contract with another Defendant.

15) Provide a minimum of 48 hour delay between exposure to any live fowl, including any operation owned, leased by, or under contract with any Defendant, and any operation under contract with Willow Brook Foods.

16) Provide a minimum of a 7 day delay between contact with any live fowl, including any operation owned by or under contract with any Defendant, and any operation owned, leased by, or under contract with Cobb-Vantress, Inc.

17) Defendants may have their own representatives on site at the facility any time a visit occurs pursuant to the service of process. This includes client representatives, attorneys and/or technical consultants.

JP&M

Joyce, Paul & McDaniel, PLLC
Attorneys & Counselors

1717 S. Boulder Ave., Ste. 200
Tulsa, Oklahoma 74119-4833

April 27, 2006

(Via Facsimile and E-Mail)
M. David Riggs
Riggs, Abney, Neal Turpen, Orbison & Lewis
502 West Fifth Street
Tulsa, Oklahoma 74119

Re: *Oklahoma, et al. v. Tyson, et al.*, Case No. 05-CV-329-TCK-SAJ, Pending in the United States District Court for the Northern District of Oklahoma
Defendants' Amended Response to Proposed Biosecurity Protocols, and Requirements for Sampling

Dear David:

As a follow up to our meeting Tuesday, you requested that the defense counsel provide you with clarification of their clients' biosecurity requirements and an enumeration of their expectations with regard to the sampling you contemplate performing on the private lands, which are the subject of Plaintiffs' subpoenas.[1]

1. Biosecurity

The Defendants offer this response to the Plaintiffs' proposed biosecurity protocols to be employed if and when representatives of the Plaintiffs are afforded access to any facility upon which any poultry owned by any of the Defendants is housed or raised. This response is tendered without prejudice to their rights to request and seek the enforcement of additional biosecurity protocols in the event of disease breakout, a change in circumstances, or incidences of protocol violations. The Defendants also offer their response in recognition that prior to the grant of any access to any of the aforementioned

[1] It is noteworthy that the Defendants provided you their response to the Plaintiffs' proposed biosecurity protocols on March 31, 2006 as required by Judge Joyner, yet you never responded, nor did you express any concerns or disagreement with the Defendants' response until our meeting on April 26.

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facilities that are owned by non-parties to the litigation, those non-parties may request that the Court impose additional or alternative procedures, which cannot be raised until such time as the farms to be entered have been identified and the owners have the opportunity to be heard.

Initially, we note that Item No. 1 of Plaintiffs' proposed protocols provides that all persons entering the operation will adhere to the biosecurity protocols currently in effect. Plaintiffs' adoption of and agreement to comply with existing protocols at each operation addresses many of the Defendants' concerns. Therefore, we propose that if the Court grants the right of access to any specifically-identified operation, the Defendant who owns the poultry at the operation may elect to provide you with the applicable biosecurity policies and procedures. If the property owner has additional procedures in place, we assume those will be shared with you in advance as well.

The Defendants request that the Plaintiffs and their representatives agree to the following additional provisions:

- The sequencing of the farm sampling should be structured so that a sampling team will visit all of the growing operations under contract with a single Defendant before moving to the next. For example, if a sampling team commences with an operation under contract with Defendant A, any additional operations under contract with Defendant A will be completed before moving to an operation under contract with Defendant B. The intent of this requirement is to prevent a single sampling team from moving back and forth between farmers' facilities housing poultry owned by different Defendants, which markedly increases the risk of disease transmission. Under the prior example, if a situation were to arise requiring the sampling team to return to an operation under contract with Defendant A, it will simply need to adhere to the 48-hour waiting period described below.

- Sequence the visits of a sampling team to all of the operations under contract with a single Defendant in the following order: (1) any breeder pullet operations; (2) any breeder hen operations; then (3) any broiler operations. If a situation were to arise requiring the team to visit a farm out of the preferred sequence, it will simply need to adhere to the 48-hour waiting period described below.

- Each sampling team must wait a minimum of 48 hours between moving from any operation under contract with one Defendant to the operation under contract with another Defendant.

- Each sampling team must wait a minimum of 48 hours between exposure to any live fowl, including any operation under contract with any Defendant, and any operation under contract with Willow Brook Foods.

Again, this response is intended to comply with the Court's Order of March 24, 2006, and cannot be deemed as a waiver of the right of any property owner who is the subject of the Plaintiffs' proposed sampling to appear and assert additional objections or seek compliance with additional procedures.

2. Sampling Requirements

As we discussed on Tuesday, the Defendants' expect any sampling permitted by the Court pursuant to Plaintiffs' subpoenas to be conducted openly, fairly, and with their full observation and participation. Our discussion left me with the impression that Plaintiffs agree in principle with some of Defendants' requirements, but take issue with other protocols the Defendants deem necessary. In order to avoid confusion, and in keeping with your request, the following sets forth the Defendants' expectations:

- Plaintiffs will provide Defendants with the sampling protocols and work plan a minimum of 96 hours prior to the first sampling event. Plaintiffs will advise Defendants of any modifications of such protocols or plans as quickly as feasible.

- Defendants and their consultants will accompany Plaintiffs' sampling teams during all sampling activities.

- Defendants will be provided a minimum of 72-hours notice for routine (non-storm related) sampling, which will require the establishment of off-site rendezvous points to facilitate the personnel from both sides joining to enter the subject property together.

- For storm-related sampling, Defendants must be provided the maximum amount of notice feasible that Plaintiffs intend to conduct sampling. As described above, an off-site rendezvous location will need to be designated. If the Plaintiffs fail to provide the Defendants a minimum of 3-hours notice, and such lack of notice prohibits Defendants' consultants from meeting at the rendezvous point and observing the entire sampling event, samples shall not be taken.

- Defendants shall be provided split samples in the field of all media collected for analysis. Plaintiffs will ensure that a sufficient sample size is

collected to provide Defendants with adequate splits to perform all necessary analyses.

- In the event Plaintiffs intend to composite any samples at any location other than in the field, they will also provide Defendants with split samples of such composites in sufficient quantities to perform all necessary analyses.

- Prior to initiating any sampling activity, Plaintiffs will provide Defendants with a definitive list of all analytes/constituents they intend to sample and analyze for each media collected, including the laboratory methods that will be employed for each test. Plaintiffs will not conduct any analysis for any analytes/constituents or employ any methods not previously disclosed to Defendants. Should Plaintiffs conduct any analyses or employ methods not disclosed to Defendants, any such resulting data will not be admissible in any forum for any purpose.

- In order for Defendants' consultants to be adequately prepared to receive split samples, Plaintiffs will provide Defendants as part of the notice requirements definitive information regarding the number of samples of each type that will be collected for each type of media, including the number, size and type of sample containers that will be required, as well as any preservatives that will be utilized. In the event that Plaintiffs fail to make this disclosure within the required notice period, or the disclosure is erroneous resulting in Defendants not being equipped on site to receive proper split samples, Plaintiffs will either provide Defendants' consultants with the appropriate number and type of sample containers, or no samples requiring the missing containers will be collected.

- Plaintiffs will advise Defendants of the number of sampling teams it will deploy to the field, including a description for each team of the number of personnel who will be present, and their function (*i.e.* soil sample collector, surveyor, well driller). Plaintiffs will employ no greater number of teams than initially disclosed to Defendants, and will advise Defendants as part of the advance notice requirement of any personnel changes.

- Plaintiffs' sampling teams will maintain a log book, certified to by the team leader, identifying the date, time and property location for all sampling activities, which shall be open for inspection and copying by representatives of Defendants. By signing the log book each day, the sampling team leader will certify that the team has complied with all applicable biosecurity protocols, including any waiting periods.

- Defendants may record the sampling activities and presence of the sampling teams on the subject properties by photographic and/or videographic means, except and unless restricted by the landowner.

- Plaintiffs and Defendants will exchange the raw data from the sampling activities, including QA/QC documentation, site sampling location maps and/or GPS data, and photographs or video recordings of sampling within ten days of receipt by such party or its consultants at no cost.

- Plaintiffs, their attorneys and/or their consultants will provide adequate security to ensure their ability to promptly respond and compensate Defendants for any injury to their poultry (or real property in the case of company owned/managed farms) resulting from any acts or omissions of Plaintiffs, their consultants or contractors. Such security may take the form of an enforceable indemnity agreement, a bond, escrowed funds in a sufficient amount, or an insurance contract identifying the Defendants as additional insured parties.

- Non-compliance with the aforestated protocols will render any resulting data inadmissible and not available for consideration by any expert. Compliance with these protocols does not preclude Defendants from asserting any challenge or objection to the admissibility, reliability or correctness of any data or result.

Given your delay in providing the Defendants with copies of the subpoenas and the running of our time for asserting objections, it is vital that Plaintiffs advise Defendants by no later than the close of business Friday of their agreement or objection to these requirements. If your clients agree, we will require that these terms be memorialized in an enforceable document. I look forward to your response.

Best regards,

JOYCE, PAUL & McDANIEL, PLLC

A. Scott McDaniel

A. Scott McDaniel

ASM:jlw
cc: Defense Counsel of Record (*via e-mail*)
Ken Williams, Esq. (*via e-mail*)
Michael Graves, Esq. (*via e-mail*)

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April 28, 2006

Mr. M. David Riggs
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Tulsa, Oklahoma 74419-1010

Re: ***State of Oklahoma et al. v. Tyson Foods, Inc., et al.***
U.S.D.C. N.D. Okla. Case No. 05-CV-329-TCK-SAJ
Our File No. 4009.001

Dear David:

This letter is being sent to correct an omission from my earlier correspondence of today's date regarding the supplemental biosecurity protocols applicable to our clients, Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., and Cobb-Vantress, Inc., (collectively, "Tyson Entities" and singularly, "Tyson Entity"). I have underlined the revised language below and ask that you please accept this letter as a replacement and/or supplement to my original letter of today's date.

As stated in my original correspondence, the Tyson Entities adopt Mr. McDaniel's April 27, 2006 correspondence, with the following exceptions:

- It is our understanding that Plaintiffs will visit growers under contract with Cobb-Vantress, Inc., first, and complete their sampling activities at such growers' operations before proceeding to other operations or properties.

- For all Tyson Entities, except Cobb-Vantress, Inc., each sampling team must wait a minimum of 72 hours between moving from any <u>other poultry operation to an operation under contract with a Tyson Entity. Any visitor to a farm under contract with a Tyson Entity must not have had contact with any other poultry within the previous 72 hours.</u>

- The relevant waiting time period for operations under contract with Cobb-Vantress, Inc. shall be 7 days.

Please call should you have any questions or comments. Thank you.

Sincerely,

Paul Berkold, for

STEPHEN L. JANTZEN
For the Firm

cc: Defense Counsel of Record (via e-mail)
Ken Williams, Esq. (via e-mail)
Michael Graves, Esq. (via e-mail)