

UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,

Complainant

v.

GOLD KIST, INC.,

Respondent

OSHRC Docket No. 06-1449

REGION IV

ANSWER TO COMPLAINT

COMES NOW, Gold Kist, Inc., Respondent in the above-captioned matter, and hereby files this Answer in accordance with Rule 34 of the Review Commission's Rules of Procedure, 29 CFR Section 2200.34 (b).

1.

Regarding the unnumbered and untitled introductory paragraph of the Complaint, Gold Kist, Inc. (hereinafter "Gold Kist", "the Company" or "the Respondent") expressly denies that the provisions of the Occupational Safety and Health Act (hereinafter "the Act") (29 U.S.C. Section 651, *et. seq.*) or any regulations under the Act have been violated as alleged by the Secretary of Labor. Respondent denies any remaining allegations in this paragraph.

2.

Respondent admits the allegations of Paragraph I of the Complaint.

3.

Respondent admits the allegations of Paragraph II of the Complaint.

4.

Respondent admits the allegations in Paragraph III of the Complaint to the extent that it identifies the principal place of business and the location of the workplace for purposes of identification but Respondent expressly denies that the provisions of the Act or any regulations under the Act have been violated as alleged by the Secretary of Labor. Respondent denies any remaining allegations in this paragraph.

5.

With regard to the allegations of Paragraph IV of the Complaint, Respondent admits only that an inspection occurred at its workplace located at 2045 County Road 244, Russellville, Alabama, and that three Citations were issued. Respondent denies the remaining allegations of Paragraph IV of the Complaint, including that the Act was violated in any way.

6.

With regard to the allegations of Paragraph V of the Complaint, Respondent admits only that an inspection occurred at its workplace and that three Citations were issued. Respondent denies the remaining allegations of Paragraph V of the Complaint, including that the Act was violated in any way.

7.

With regard to the allegations of Paragraph VI of the Complaint, Respondent admits only that the Citations attached to the Complaint as Exhibit A were issued to Respondent, but Respondent specifically denies that such Citations have merit or that it has violated the Act in any way. Respondent denies the remaining allegations of Paragraph VI of the Complaint.

8.

With regard to the allegations of Paragraph VII of the Complaint, Respondent admits that it timely notified the Complainant that it intended to contest the Citations.

9.

With regard to the allegations in Paragraph VIII of the Complaint, Respondent denies that any penalties or abatement is necessary because it did not violate the Act. Therefore, Respondent denies the allegations in Paragraph VIII of the Complaint.

10.

Respondent denies the allegations in the "WHEREFORE" provision of the Complaint.

11.

All allegations of the Complaint not specifically admitted or otherwise specifically addressed are denied.

#### **ADDITIONAL DEFENSES**

Respondent hereby asserts the following additional defenses, including its affirmative defenses.

##### **First Additional Defense**

The Complaint fails to state a claim upon which relief can be granted.

##### **Second Additional Defense**

All or some of the alleged violative conditions were the result of isolated incidents of unpreventable employee misconduct.

##### **Third Additional Defense**

The Citations do not describe with reasonable particularity the nature of the alleged violations.

**Fourth Additional Defense**

Citation One is improperly classified as a "serious" violation.

**Fifth Additional Defense**

The standards cited are inapplicable to the alleged violation.

**Sixth Additional Defense**

Respondent did not create or control any actual condition alleged as a violation of a standard and took reasonable steps under the circumstances to protect its employees against the alleged hazard.

**Seventh Additional Defense**

The alleged violations are de minimis.

**Eighth Additional Defense**

Citation Two is improperly classified as a "repeat" violation.

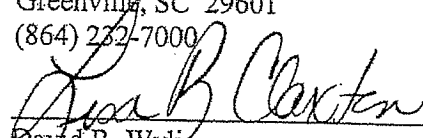
Respondent reserves the right to amend its Answer to assert such other affirmative defenses in this action as may be developed through discovery.

WHEREFORE, Respondent requests that the Citations, abatement dates, Notification of Penalty and the Complaint be dismissed in their entirety and with prejudice, and that it is awarded such relief to which Respondent may be entitled.

Respectfully submitted,

JACKSON LEWIS LLP  
One Liberty Square  
55 Beattie Place, Suite 800  
Greenville, SC 29601  
(864) 232-7000

By:

  
David R. Wylie  
Lisa R. Claxton

ATTORNEYS FOR RESPONDENT  
GOLD KIST, INC.

This 3<sup>rd</sup> day of November, 2006

DECLARATION PURSUANT TO RULE 35

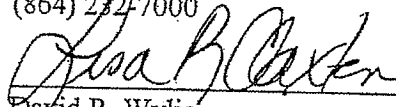
Pursuant to the requirements of Rule 35 of the Review Commission's Rules of Procedure 29 C.F.R. Section 2200.35, Respondent, Gold Kist, Inc. states:

Gold Kist, Inc. does not have any parent, subsidiary, and affiliate corporations.

Respectfully submitted,

JACKSON LEWIS LLP  
One Liberty Square  
55 Beattie Place, Suite 800  
Greenville, SC 29601  
(864) 232-7000

By:

  
David R. Wylie  
Lisa R. Claxton

ATTORNEYS FOR RESPONDENT  
GOLD KIST, INC.

This 3<sup>rd</sup> day of November, 2006

CERTIFICATE OF SERVICE

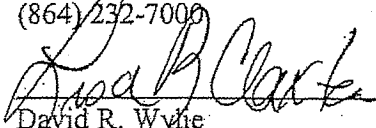
This is to certify that one copy of Respondent's Answer has been served on the below-named individual this 3<sup>rd</sup> day of November, 2006, by sending said copy via facsimile and U.S. Mail, postage pre-paid to:

Stanley E. Keen, Esquire  
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By:

  
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Lisa R. Claxton

ATTORNEYS FOR RESPONDENT  
GOLD KIST, INC.

This 3<sup>rd</sup> day of November, 2006