

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Auditorium and Conference Room 308  
Phoenix, Arizona 85007  
Thursday, November 3, 2016 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	James Ashley	Director
	Jason M. Porter	Chief Legal Counsel
	Bob Charles	Legislative Affairs Chief / Public Information Officer
	Renee Pastor	Accounting
	Sylvia Simpson	Chief Financial Officer
	William Warren	ADOSH Director
	Jacqueline Kurth	MRO Office
	Renee Englen	MRO Office
	Chris Brandon	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Tony Cipriano with Canyon State Com Partners; Cathy Vines with CopperPoint; Julia Schrock with Williams & Associates for Arizona Police Association; Randy Wright with Albertsons; Mike and Renae Thomas with Fence Systems; Elise Kulik with the Aarons Company LLC; Pat Martin with Glendale Fire Dept.; Ellie Gibson with PTPN/Ortho Arizona; Lorena Sanchez and Dianne Shoemaker with the City of Glendale; Jeremy Basler and Robert Batty with American Woodmark; Zachary Barnett with OSHA; Stephanie Coulter with the Cavanagh Law Firm; and Jason Weber with Snell & Wilmer.

Legislative Stakeholders' Meeting.

Chairman Schultz discussed the purpose of and process for the Commission's 2016 Stakeholders' Meeting.

Mr. Cipriano addressed the Commission and discussed the impact of national and international networks on the workers' compensation industry.

Chairman Schultz recessed the meeting at 1:10 p.m.

Chairman Schultz reconvened the meeting at 1:16 p.m.

Approval of Minutes of October 13, 2016, and October 20, 2016 Meetings.

Because a quorum of Commissioners who were present at the October 13, 2016 regular session meeting were not present, the agenda item for approval of the Minutes of the October 13, 2016 regular session meeting was moved to the agenda of the next regular session meeting.

Commissioner LeMarr moved to approve the Minutes of the October 20, 2016 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion. The motion passed.

Consent Agenda:

- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
  1. 2C16/17-0375 Hybrid Electric, LLC
  2. 2C16/17-0380 Midnight Studios FX, LLC
  
- b. Approval of Requests for Renewal of Self-Insurance Authority.
  1. Arizona Municipal Risk Retention Pool
  2. Chevron U.S.A., Inc.
  3. Kroger Co.

Vice Chair Hennelly moved to approve the items on the Consent Agenda as presented. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion. The motion passed.

Presentation from and/or discussion with the Industrial Commission's Public Information Officer. This agenda item may include discussion regarding the operations of the Industrial Commission.

Mr. Charles discussed the week's SHARP recertifications and the importance of the SHARP program.

Mr. Charles discussed media requests concerning A.R.S. § 23-363, presumptions for public safety employees, and OSHA guidelines.

Mr. Charles discussed social media posts concerning the Chairman's roofers working group, Construction Career Days, and meeting with a local public relations firm.

Chairman Schultz discussed the Maricopa Integrated Health System ("MIHS") recertification. He specified that MIHS is the only healthcare-related business or system in Arizona to achieve VPP status and one of only nine in the nation to do so.

Field Operation Manual Inspection Scope (Chapter 8 - Settlements) Discussion.

Mr. Warren discussed settlement procedures and options as they relate to ADOSH matters.

Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Mr. Warren, and Mr. Porter discussed formal and informal settlement, citation issuance, and employer contest.

Vice Chair Hennelly, Mr. Warren, and Mr. Porter discussed mediation and its role in the formal settlement process.

Chairman Schultz and Mr. Warren discussed the ADOSH Leadership Summit and noted that ADOSH settlements (formal and informal) often include safety-improvement measures.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Chairman Schultz discussed the purpose of and process for the Commission's consideration of proposed ADOSH citations and proposed penalties.

American Woodmark Corporation  
4475 E Mohave Airport Dr  
Kingman, AZ 86401

Complaint  
Years in Business: 29  
Empl. Covered by inspection: 50

Site Location: 4475 E Mohave Airport Dr  
Kingman, AZ 86401  
Inspection No: J7272-1163816  
Inspection Date: 07/21/2016

SERIOUS -- Citation 1 - Item 1 --

a) Finishing room: Employees working in the finishing room were sampled on an annual basis for exposure to formaldehyde in May, 2015 and July, 2016 where the sampling results indicated exposure above the action level, but below the permissible exposure limit (PEL), which required the monitoring to be repeated every 6 months. (29 CFR 1910.1048(d)(3)(ii)).

b) Finishing room: A medical surveillance program was not implemented where employees exposed to formaldehyde levels above the action level. (29 CFR 1910.1048(l)(1)(i)).

Div. Proposal - \$2,625.00	Formula Amt. - \$2,625.00
TOTAL PENALTY - \$2,625.00	TOTAL FORMULA AMT. - \$2,625.00

Mr. Warren summarized the citation and proposed penalty as listed. Chairman Schultz, Mr. Warren, and Mr. Brandon discussed the penalty adjustment factors.

Vice Chair Hennelly, Commissioner LeMarr, Mr. Warren, and Mr. Brandon discussed the sampling procedure, annual inspections, exposure levels, and the subject report.

Chairman Schultz invited a representative of American Woodmark to address the Commission. Mr. Batty discussed his company's history, its safety record, and acknowledged that the subject exposure was an oversight. He indicated that the company has taken steps to correct the issue.

Chairman Schultz noted that, since this was a complaint, the Commission was especially concerned that the situation not be repeated.

Vice Chair Hennelly moved to approve the citation and proposed penalty as presented and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion. The motion passed.

Chairman Schultz commented on the citation and adjustment factors.

Baker Machinery, Inc.  
18302 E Nunnelley Rd  
Gilbert, AZ 85296

Complaint  
Years in Business: 30  
Empl. Covered by inspection: 8

Site Location: 18302 E Nunnelley Rd  
Gilbert, AZ 85296  
Inspection No: H0333-1166709  
Inspection Date: 08/04/2016

SERIOUS – Citation 1 - Item 1 –

a) Boring room: One employee operated a Yale 1/2-ton hoist (model and serial number unknown) that did not have a functional test inspection performed on it at the beginning of each shift. (A.R.S. 23-403.A.).

b) Boring room: One employee operated a Yale 1/2-ton hoist (model and serial number unknown) that did not have an annual maintenance inspection performed on it within the past 12 months. (A.R.S. 23-403.A.).

c) Boring room: One employee operated a Yale 1/2-ton, underhung hoist without a functioning safety latch on the hoisting hook. (A.R.S. 23-403.A.).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 2 –

a) Maintenance Shop: One Clark forklift, model C500YS60 Type D, serial number Y35502101600 was operated by employees who were not trained in the safe operation of the equipment. (29 CFR 1910.178(l)(1)(i)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3 –

a) Maintenance Shop: One Clark forklift, model C500YS60 Type D, serial number Y35502101600, was not taken out of service for the unsafe condition of a missing seat belt. (29 CFR 1910.178(p)(1)).

b) Maintenance Shop: One Clark forklift, model C500YS60 Type D, serial number Y35502101600, was not examined prior to daily use. (29 CFR 1910.178(q)(7)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4 –

a) Boring room: One bench grinder (model and, serial number unknown) did not have safety guards installed to cover the spindle ends, nuts, flange projections on its left wheel. (29 CFR 1910.215(a)(2)).

b) Boring Room: One bench grinder (model and serial number unknown) had one work rest that measured approximately 3/4in from the abrasive wheel. (29 CFR 1910.215(a)(4)).

c) Boring room: One bench grinder (model and, serial number unknown) did not have tongue guards adjusted to within 1/4 inch of the wheel. The gap measured between the guard and the wheel was approximately 3/4 inch. (29 CFR 1910.215(b)(9)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 5 –

a) Main Office Entrance: Compressed gas oxygen cylinders and compressed gas acetylene cylinders were stored next to each other and were not separated. (29 CFR 1910.253(b)(4)(iii)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 6 –

a) Cylinder room: One wall mounted junction box had exposed live electrical wiring, approximately four feet from the floor, was not guarded against accidental contact by any approved enclosure or any other approved means. (29 CFR 1910.303(g)(2)(i)).

b) Crank Room: A 120-volt electrical outlet was lacking a faceplate or cover. (29 CFR 1910.305(b)(2)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 7 – Rebuild room: One 125 volt orange, flexible electric cord, which supplied power to a green hand-held polishing machine, was not used in a continuous length without splices. (29 CFR 1910.305(g)(2)(ii)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

TOTAL PENALTY - \$5,250.00

TOTAL FORMULA AMT. - \$5,250.00

Mr. Warren summarized the citation and proposed penalties as listed.

Chairman Schultz, Vice Chair Hennelly, and Mr. Warren discussed abatement, complaint items, and the inspection report.

Commissioner LeMarr moved to approve the citation and proposed penalty as presented and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion. The motion passed.

Dollar Tree Stores, Inc.  
16815 E Shea Blvd #127  
Fountain Hills, AZ 85268

Site Location: 16815 E Shea Blvd #127  
Fountain Hills, AZ 85268  
Inspection No: H9685-1170707  
Inspection Date: 08/17/2016

Complaint  
Years in Business: 30  
Empl. Covered by inspection: 10

SERIOUS – Citation 1 - Item 1 – Warehouse: Boxes of stock, pallet jacks, shopping carts, and U-boat trolleys limited the exit access in the warehouse to as little as 11 inches wide. (29 CFR 1910.36(g)(2)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1 - Item 2 – Warehouse Exit Door: The warehouse emergency exit door was blocked from the outside with 3 sand bags and one bag of pelletized limestone weighing 40 pounds each. (29 CFR 1910.37(a)(3)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1 - Item 3 – Bathroom Area: One employee who worked with corrosive Home Store brand Bleach and The Works brand Basic Toilet Bowl Cleaner was not provided with an eyewash station for quick flushing of the eyes within the work area for immediate emergency use. (29 CFR 1910.151(c)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1 - Item 4 – Warehouse: Boxes of stock in the warehouse area were not stacked and blocked so that it was stable and secure against sliding and collapse. (29 CFR 1910.176(b))

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$9,000.00

TOTAL FORMULA AMT. - \$9,000.00

Mr. Warren summarized the citation and proposed penalties as listed, and discussed the photographs. He noted the company's December 2015 settlement agreement with the U.S. Department of Labor and the employer's awareness of the same.

Chairman Schultz, Commissioner LeMarr, and Mr. Warren discussed the subject employer's OSHA history, issues presented in the citation and proposed penalties, and the gravity of Citation 1, Item 3.

Chairman Schultz, Vice Chair Hennelly, Mr. Warren, and Mr. Barnett discussed the subject employer's prior OSHA settlement, its enforcement, and its impact on employer knowledge.

Vice Chair Hennelly and Mr. Warren discussed whether the compliance officer considered assessing a willful violation associated with Item 4.

Commissioner LeMarr moved to amend the proposed penalties, as follows: the proposed penalty for Citation 1, Item 3 be reduced to \$500.00, for a total penalty to \$7,000.00. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion. The motion passed.

Express Roof Removal, LLC  
20188 N 67<sup>th</sup> Ave Ste 300  
PMB 487  
Glendale, AZ 85308

Referral  
Years in Business: 4  
Empl. Covered by inspection: 14

Site Location: 6300 E Thomas Rd  
Scottsdale, AZ 85251  
Inspection No: H9685-1163445  
Inspection Date: 08/17/2016

SERIOUS – Citation 1 - Item 1 –

a) Building 6330: Two employees engaged in roofing activities on a 3:12 low sloped roof, were not protected from falling over 9 feet 3 ½ inches to the ground below by the use of conventional fall protection or the combination of other fall protection systems required by the standard. (29 CFR 1926.501(b)(10)).

b) Building 6350: Four employees engaged in roofing activities on a 4:12 low sloped roof, were not protected from falling over 9 feet 3 ½ inches to the ground below by the use of conventional fall protection or the combination of other fall protection systems required by the standard. (29 CFR 1926.501(b)(10)).

c) Building 6340: Five employees engaged in roofing activities on a 4:12 low sloped roof, were not protected from falling over 9 feet 3 ½ inches to the ground below by the use of conventional fall protection or the combination of other fall protection systems required by the standard. (29 CFR 1926.501(b)(10)).

Div. Proposal - \$3,000.00

Formula Amt. - \$3,000.00

SERIOUS – Citation 1 - Item 2 – 6300 E Thomas Rd Phoenix, AZ: The Company did not provide effective safety monitor training to 3 foreman who were designated as safety monitors for employees who were conducting roofing activities. (29 CFR 1926.503(a)(2)(iii)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$4,500.00

Mr. Warren summarized the citation and proposed penalties as listed and discussed the photographs.

Commissioner LeMarr moved to approve the citation and proposed penalty as presented and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion. The motion passed.

Maxwell Technologies, Inc., A Delaware Corporation  
8644 W Ludlow Dr  
Peoria, AZ 85381

Referral  
Years in Business: 51  
Empl. Covered by inspection: 9

Site Location: 8644 W Ludlow Dr  
Peoria, AZ 85381  
Inspection No: D4452-1165947  
Inspection Date: 08/01/2016

SERIOUS – Citation 1 - Item 1 –

a) Densifier platform: An employee was working on an unguarded platform approximately 20 feet above a concrete floor, without protection from falling from the platform. (29 CFR 1910.23(c)(1)).

b) Mezzanine: Production employees were working in an area approximately 22 feet above the ground floor that had a gap in the guard rail system, resulting in the lack of protection from falling off the mezzanine area. (29 CFR 1910.23(c)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 2 – 8644 W Ludlow Dr, Peoria, AZ 85381. The employer did not establish an energy control program for the location, consisting of energy control procedures for specific equipment, such as the densifier, employee training and periodic inspections in order to prevent the unexpected startup or energization of equipment that could cause injury to an employee performing service or maintenance on the equipment. (29 CFR 1910.147(c)(1)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1 - Item 3 – Film Production Area: One Saueressig Calender, model number GK700, did not have a guard to prevent the operator from placing any part of his body into the danger zone during operation. (29 CFR 1910.212(a)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$7,500.00

TOTAL FORMULA AMT. - \$7,500.00

Mr. Warren summarized the citation and proposed penalties as listed and reviewed the photographs.

Mr. Warren, Commissioner LeMarr, and Ms. Dimas discussed the proposed penalties.

Vice Chair Hennelly and Mr. Warren discussed the applicability of lock-out/tag-out procedures and training availability.

Chairman Schultz, Commissioner LeMarr, and Mr. Warren discussed abatement and whether there has been follow-up concerning a lock-out/tag-out program.

Vice Chair Hennelly moved to approve the citation and proposed penalty as presented and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion. The motion passed.

Michael A Thomas and Renae Thomas,  
Individually and as Husband and Wife  
dba Fence Systems  
3346 W Guadalupe Rd  
Apache Junction, AZ 85120

Referral  
Years in Business: 7  
Empl. Covered by inspection: 13

Site Location: 3346 W Guadalupe Rd  
Apache Junction, AZ 85120

Inspection No: H0333-1169827

Inspection Date: 08/15/2016

SERIOUS – Citation 1 - Item 1 – Main fabrication Shop: One employee was injured while moving fence panels that were stored in an unstable and hazardous condition. (29 CFR 1910.176(b)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1 - Item 2 –

a) Fabrication shop: Two employees operated one Yale forklift (model number E36L117 serial number 502135205) that were not trained in the safe operation of the equipment. (29 CFR 1910.178(l)(1)(i)).

b) Fabrication shop: Two employees operated one Yale forklift (model number E36L117 serial number 502135205) that was not examined prior to daily use. (29 CFR 1910.178(q)(7)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

TOTAL PENALTY - \$5,750.00

TOTAL FORMULA AMT. - \$5,750.00

Mr. Warren summarized the citation and proposed penalties as listed and reviewed the photographs.

Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Mr. Warren discussed the penalty calculations, adjustment factors, and the recommendation that ADOSH add a notation to adjustment factors to indicate applicability.

Vice Chair Hennelly and Mr. Warren discussed the cause of the subject incident.





Commissioner LeMarr and Mr. Warren discussed the dismantled machinery and removed safety door.

Vice Chair Hennelly moved to approve the citation and proposed penalties as presented and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion. The motion passed.

Vinyltech Corporation	Referral	
201 S 61 <sup>st</sup> Ave	Years in Business:	34
Phoenix, AZ 85043	Empl. Covered by inspection:	5
Site Location:	201 S 61st Ave	
	Phoenix, AZ 85043	
Inspection No:	H0333-1171513	
Inspection Date:	08/22/2016	

SERIOUS – Citation 1 - Item 1 – Production Area: One employee was injured when operating the PEM Belling machine (model number 608GLC HO, serial number 1720) that did not have safety guards installed to protect the operator from placing any part of his body into the in-going nip points at the mandrel/pipe point of contact during operation. (29 CFR 1910.212(a)(3)(ii)).

Div. Proposal - \$5,000.00	Formula Amt. - \$5,000.00
TOTAL PENALTY - \$5,000.00	TOTAL FORMULA AMT. - \$5,000.00

Mr. Warren summarized the citation and proposed penalty as listed.

Commissioner LeMarr and Mr. Warren discussed the photographs, the unprotected spindle, the pinch point, and the barrier added after the injury

Chairman Schultz and Mr. Warren discussed training issues, the possibility of an engineering solution, and the employer's knowledge of the subject practice.

Commissioner LeMarr moved to approve the citation and proposed penalty as presented and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion. The motion passed.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2016. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

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Mr. Ashley and Chairman Schultz discussed Arizona Construction Career Days.

Mr. Ashley provided an update regarding a meeting with the Department of Insurance ("DOI") and out of state adjustors concerning Arizona claims adjusting practices. He stated that the DOI will work with the Commission to produce an informational bulletin for the out-of-state adjustors and that the Commission will work with its stakeholders to produce the content.

Mr. Ashley discussed a GEMBA walk that included Henry Darwin, Ben Henderson, and Mike Faust. Mr. Ashley noted that the guests were impressed with the Commission's huddle board progress as a part of the Arizona Management System process and Mr. Ashley complimented the agency's staff for their hard work and commitment. Chairman Schultz indicated that he was

similarly impressed. Mr. Ashley stated that he planned to work with the Tucson office where the ALJ division has established a huddle board.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed a Commission meeting for December 15, 2016.

Chairman Schultz recognized Mr. Warren's involvement in the ADOSH Leadership Summit.

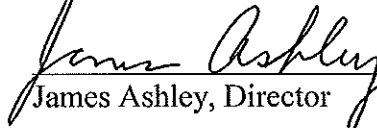
Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion and the meeting was adjourned at 3:10 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
James Ashley, Director

ATTEST:

  
Kara Dimas, Commission Secretary