

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, April 30, 2009 – 1:00 p.m.

Present:	Brian Delfs	Chairman (telephonic)
	Louis W. Lujano, Sr.	Member (telephonic)
	Marcia Weeks	Member
	John A. McCarthy, Jr.	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Noreen Thorsen	Claims Manager
	Renee Pastor	Self Insurance Manager
	Jeri McAnerny	Tax Accountant
	Darin Perkins	Director, ADOSH
	Gary Norem	Chief Financial Officer
	Teresa Hilton	Commission Secretary

Commissioner Weeks convened the Commission meeting at 1:00 p.m. noting a quorum present. Vice Chairman Gosiger was not able to attend. Also in attendance were Scot Butler, the agency's lobbyist, Larry S. Nagaki of Nagaki Design Build. Assoc.; Bobbie Kimilton, Nancy Franthson, Deborah Card and Kent Meredith of City of Peoria; Ann Mitchel, Esq. attorney for Nagaki Design, and Jason Weber of Snell & Wilmer.

Approval of Minutes of April 16, 2009 Meeting

The Commission approved the Minutes of the April 16, 2009 meeting on motion of Mr. McCarthy, second of Mr. Delfs. Mrs. Weeks abstained.

Discussion & Action of Lump Sum Commutation Requests

Robert Padilla #88172-056774 - Noreen Thorsen presented this lump sum petition. She advised that Mr. Padilla requested a lump sum commutation of his unscheduled award of \$190.91 per month (present value \$39,972.74) in order to purchase a vehicle, pay for dental treatment and deposit the balance in the bank. Mr. Padilla is unemployed. He receives social security disability in the amount of \$503.09 per month.

Ms. Thorsen advised that the Claims Department is recommending approval of the lump sum commutation since it will allow Mr. Padilla to get his dental work done, purchase a better car and have some money in savings. Following discussion, the Commission unanimously approved the lump sum commutation on motion of Mr. Lujano, second of Mr. McCarthy.

Juan Zambrano #20062-160185 - Noreen Thorsen presented this lump sum petition. She advised that Mr. Zambrano requested a lump sum commutation of his scheduled award of \$1,800.00 per month (present value \$17,784.00) in order to purchase a truck to return to Mexico. He would also purchase fertilizer and seed to assist his father in operating his ranch. Ms. Thorsen advised that after subtracting the additional payment made by the carrier and the

attorney fees, he would receive \$11,988.00. Mr. Zambrano is unemployed at this time with no other income.

Ms. Thorsen advised that the Claims Department is recommending approval of the lump sum commutation since it will allow Mr. Zambrano to return to his family in Mexico. Following discussion, the Commission unanimously approved the lump sum commutation on motion of Mr. Delfs, second of Mr. McCarthy.

#### Discussion & Action regarding Appointment of Physician pursuant to A.R.S. §23-901.03

Irvin Belzer, M.D. – Ms. Thorsen advised that Dr. Belzer has been certified by the Arizona Board of Medical Examiners as qualified as required in A.R.S. §23-901.03 with regard to occupational disease evaluations and examinations. She provided copies of his Curriculum Vitae as well as confirmation of his license from the Arizona State Board of Medical Examiners. Ms. Thorsen requested that the Commission approve the appointment of Dr. Belzer pursuant to A.R.S. §23-901.03 so that he may take part in an occupational disease consultation currently pending. Following discussion, the Commission unanimously approved the appointment on motion of Mr. Delfs, second of Mr. Lujano.

#### Discussion & Action of Application for Self Insurance Authorization

City of Peoria – Renee Pastor presented staff's report, which included an analysis of financial information and current credit rating. Mrs. Weeks asked about the City's request for an exemption from posting a security bond under Rule 20-5-1114. Ms. Pastor explained the rule. Ms. Pastor stated that the City has provided a certificate from the City of Peoria City Council verifying that the City has a fully-funded risk management fund sufficient to cover its actuarial liabilities. The City also had an actuarial study performed and that study projected that there would be 145 claims filed in 2009. The actuarial report also projected that the unpaid total liability would be \$711,632. The City's total unpaid liability multiplied by 125% totals \$889,540. The City's Certified Annual Financial Report shows that the City's internal service fund has, as of June 30, 2008, current and total assets of \$9.275 million and net assets totaling \$6.051 million. In addition, the City's total liability as stated in its June 30, 2008 CAFR was \$3.224 million, which included property and casualty as well as workers' compensation. Ms. Pastor responded to questions from Mrs. Weeks regarding the claims and loss projections for 2009. Ms. McGrory explained that the claims reported for prior years were incurred while insured by SCF Arizona.

Ms. Pastor described the City's financial ratios, stating that the City's cash ratios and equity ratios for the general fund are outstanding. Total revenues in the general fund have increased, as have ending fund balances. Chairman Delfs questioned the excess of revenues over expenditures and whether there were sufficient reserves. Ms. Pastor stated that the numbers include transfers, and the City does have sufficient reserves. She described the nature of the transfers. In response to a question from Chairman Delfs regarding the risks included in the internal service fund, Kent Meredith, from the City of Peoria Finance Department, responded that the fund includes workers' compensation liability, general liability and auto and property casualty liability. Mr. Delfs expressed his concern that cities around the country are pooling their risk and not reserving enough. Ms. Pastor responded that the City did have an independent actuarial study done and that it appears the City has sufficient revenue and net assets to cover liabilities. In response to a question from Ms. McGrory, Ms. Pastor stated that the City is planning to purchase excess insurance at a level of \$500,000 per accident. Mrs.

Weeks questioned whether they would be hiring a third party administrator to process their claims. Ms. Pastor advised that the City will issue a request for proposals and the costs of a third party administrator are included in projected expenses.

Mrs. Weeks asked about the premium tax rate that a self insurer pays. Ms. Pastor and Ms. McGrory explained that the premium tax rate is the same for employers, and further explained how the resulting tax paid may be different. Ms. Pastor explained that the City has chosen Tax plan C.

Ms. Pastor stated that Administration is recommending approval of workers' compensation self-insurance authority based on the City's good financial condition and the meeting of all requirements required for a self-insured employer in the State of Arizona. Following further discussion, the Commission unanimously granted self-insurance authority effective July 1, 2009 and signed a Resolution to that effect on motion of Mr. Lujano, second of Mr. McCarthy.

#### Discussion & Action of Requests for Renewal of Self Insurance Authorization

Conagra Foods, Inc. - Renee Pastor presented staff's renewal report along with current Moody's, Fitch and Dunn and Bradstreet credit report ratings. Administration is recommending renewal of workers' compensation self-insurance authority based on the company's excellent financial condition with total assets of \$13.7 billion, a clean audit report and an acceptable credit rating. Following discussion, the Commission unanimously approved continuance of self-insurance authority and signed a Resolution to that effect on motion of Mr. McCarthy, second of Mr. Delfs.

The Procter & Gamble Company - Renee Pastor presented staff's renewal report along with a current Dunn and Bradstreet credit report rating. Administration is recommending renewal of workers' compensation self-insurance authority based on the company's solid financial condition with worldwide assets of just under \$144 billion, continued profitability record, a clean audit report and an acceptable credit rating. Following discussion, the Commission unanimously approved continuance of self-insurance authority and signed a Resolution to that effect on motion of Mr. McCarthy, second of Mr. Lujano.

Target Corporation dba Target Stores, Inc. - Renee Pastor presented staff's renewal report along with current Moody's, Fitch and Dunn and Bradstreet credit report ratings. Administration is recommending continuance of workers' compensation self-insurance authority based on the company's overall financial stability and continued profitability with total assets of \$44.1 billion, a clean audit report and an acceptable credit rating. Following discussion, the Commission unanimously approved continuance of self-insurance authority and signed a Resolution to that effect on motion of Mr. Lujano, second of Mr. McCarthy.

#### Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C08/09-0608	AIR SAFETY FLIGHT ACADEMY, LLC
2C07/08-2452	NEW WORLD FINANCIAL, LLC DBA HOME LOAN EXECUTIVES
2C08/09-1128	RODRIGUEZ SILVA, L.L.C. DBA PANCHO'S & BEER
2C08/09-1132	UT, INC. DBA ARCO AM/PM STORE

Andrew Wade advised that a compliance investigation confirmed that the above listed employers were operating (or had operated) a business with employees, but without workers' compensation insurance. Giving consideration to the factors of A.R.S. §23-907(K), Mr. Wade recommended civil penalties of \$1,000.00 be assessed against each of these employers. The Commission unanimously assessed the recommended penalty of \$1,000.00 against employers #0608, 2452, 1128 and 1132 on motion of Mr. Lujano, second of Mr. McCarthy. Mrs. Weeks questioned why the penalty is the same for employers regardless of whether an employer has one employee or 60, as in the case of employer #0608. Mr. Wade explained the statute that authorizes the assessment of a penalty. Ms. Weeks requested that Mr. Wade report back to the Commission regarding this employer and whether they obtain workers' compensation insurance coverage.

Discussion & Action of Proposed OSHA Citations and Penalties

Arizona Bridge & Iron Inc.  
731 N. 19<sup>th</sup> Avenue  
Phoenix, AZ 85009

Fatality  
Yrs/Business – 13  
Empl. Cov. by Insp. – 9

Site Location: 41650 W. Maricopa Casa Grande Hwy, Maricopa, AZ 85238

Inspection #: P0775/312757404

Insp. Date: 11/03/08

SERIOUS – Citation 1, item 1 – The twin leg shock absorbing lanyard that was 4.5' long had snags and seams that were coming apart, and one snap hook did not automatically close as designed, indicating that it had not been inspected or removed from service prior to use. (Two inspections with two serious violations in the past three years).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 2 – Employees were using the steel joists as anchorage points for fall arrest without the written approval to do so by a qualified person.

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 3 – The employer did not provide training relating to the requirements for the use of steel joists and steel joist girders as the anchorage point for a personal fall arrest system.

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL DIV. PROP. - \$4,500.00

TOTAL FORMULA AMT - \$4,500.00

Darin Perkins summarized the citations and proposed penalty as listed. Mr. Perkins responded to questions concerning whether the fatality was related to the citations or whether the employer should have known that the employee was not tied off. Following further discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$4,500.00 on motion of Mr. Lujano, second of Mr. McCarthy.

The Club Company, LLC  
dba Copperwynd Resort & Club  
13225 N. Eagle Ridge Drive  
Fountain Hills, AZ 85268

Fatality  
Yrs/Business – 10  
Empl. Cov. by Insp. – 5

Site Location: 13225 N. Eagle Ridge Drive, Fountain Hills, AZ 85268  
Inspection #: L3419/313060949  
Insp. Date: 02/24/09

**SERIOUS** – Citation 1, item 1 – A lead engineer in the process of diagnosing the failure of an air conditioning unit failed to deenergize power running to the primary side of the air conditioning disconnect unit.

(No inspection history in the past three years).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

**SERIOUS** – Citation 1, item 2 – Facility engineers who were at an increased risk of electrical shock due to their job assignments were not trained in and familiar with the safety-related work practices required.

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

**SERIOUS** – Citation 1, item 3 – The disconnect switch for the men's locker room air conditioning unit was put in the off position but not locked out or tagged or both when performing diagnostic procedures to the unit. There was another instance of this violation.

Div. Proposal - \$ 7,000.00

Formula Amt. - \$ 7,000.00

TOTAL DIV. PROP. - \$21,000.00

TOTAL FORMULA AMT - \$21,000.00

Darin Perkins summarized the citations and proposed penalty as listed. The Division proposal was for the gravity-based penalties with no adjustment factors since the violations directly related to the fatality. Following discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$21,000.00 on motion of Mr. McCarthy, second of Mr. Lujano.

Advanced Plastering Systems LLC  
2010 N. 22<sup>nd</sup> Avenue  
Phoenix, AZ 85009

Complaint  
Yrs/Business – 10  
Empl. Cov. by Insp. – 13

Site Location: 28481 N. 122<sup>nd</sup> Street, Scottsdale, AZ 85262  
Inspection #: Q7984/313048720  
Insp. Date: 01/29/09

**SERIOUS** – Citation 1, item 1 – The employer did not ensure that clearances between the scaffold and power line met the minimum distance required.

(4 inspections with 4 serious inspections in the past three years).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

Darin Perkins summarized the citation and proposed penalty as listed. Following discussion and inspection of photos of this violation, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$1,500.00 on motion of Mr. McCarthy, second of Mr. Lujano.

Nagaki Design Build Associates Inc.  
4601 N. Black Canyon Highway  
Phoenix, AZ 85015

Unprogram Related  
Yrs/Business – 11  
Empl. Cov. by Insp. – 1

Site Location: 28481 N. 122<sup>nd</sup> Street, Scottsdale, AZ 85252  
Inspection #: Q7984/313048712  
Insp. Date: 01/29/09

SERIOUS – Citation 1, item 1 – The prime contractor did not ensure that clearances between the scaffold and power line met the minimum distance required.

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – A 2-phase 240 volt electrical panel was not protected by a cover from accidental contact with live electrical parts.

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$1,500.00

TOTAL FORMULA AMT - \$1,500.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$1,500.00 on motion of Mr. Lujano, second of Mr. McCarthy.

Vic Gunby dba Gunby Roofing  
6140 Napa Avenue  
Alta Loma, CA 91701

Planned  
Yrs/Business – 20  
Empl. Cov. by Insp. – 6

Site Location: 1342 S. Alma School Road, Mesa, AZ 85210  
Inspection #: Y5457/313085144  
Insp. Date: 03/03/09

SERIOUS – Citation 1, item 1 – Five employees were working on two patio roofs, 12' above the lower level and were not protected from falling by the use of a fall protection system.

(One inspection with no violations in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – Five employees were working on two patio roofs 12' above the lower level and had not received training to recognize the hazards of falling and the procedures to follow to minimize those hazards.

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$1,500.00

TOTAL FORMULA AMT - \$1,500.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$1,500.00 on motion of Mr. McCarthy, second of Mr. Lujano.

Desert Fire Industries Inc.  
720 W. Illini  
Phoenix, AZ 85041

Planned  
Yrs/Business – 22  
Empl. Cov. by Insp. – 10

Site Location: 720 W. Illini, Phoenix, AZ 85041  
Inspection #: A7717/313085201

Insp. Date: 03/03/09

SERIOUS – Citation 1, item 1 – The employer failed to proof test a chain sling manufactured by the maintenance department.

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – Three swamp coolers were lacking a guard to prevent accidental contact with rotating squirrel cages.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – A secondary compressor had an inadequate guard installed over the rotating horizontal belt and pulleys to prevent accidental contact.

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$2,250.00

TOTAL FORMULA AMT - \$2,250.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$2,250.00 on motion of Mr. Lujano, second of Mr. Delfs.

Sealy Mattress Manufacturing Company Inc.  
4802 W. Van Buren Street  
Phoenix, AZ 85043

Complaint  
Yrs/Business – 100+  
Empl. Cov. by Insp. – 99

Site Location: 4802 W. Van Buren Street, Phoenix, AZ 85043

Inspection #: A7717/313125874

Insp. Date: 03/25/09

SERIOUS – Citation 1, item 1 – A packaging machine did not have the in-going nip points guarded between the rollers and conveyor belts. There was another instance of this violation.

(One inspection with two serious violations in the past three years).

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

SERIOUS – Citation 1, item 2 – One employee was operating a sewing machine which was lacking an arm shaft guard enclosing the rotating arm shaft. There was another instance of this violation.

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

SERIOUS – Citation 1, item 3 – A sewing machine vertical drive belt was not fully enclosed and pulleys guarded.

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

TOTAL DIV. PROP. - \$5,625.00

TOTAL FORMULA AMT - \$5,625.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$5,625.00 on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion &/or Action regarding Execution of Leases Between the Industrial Commission of Arizona as Trustee for the Special Fund ("Landlord") and the Industrial Commission of Arizona ("Tenant") and Procedure for Payment of Special Fund Expenses

Andrew Wade stated that the Commissioners have been provided with staff counsel's opinion memos related to Special Fund liability. Concluding that certain liability legally belongs to the Special Fund, staff counsel also examined how such liability should be accounted for. Mr. Wade described staff counsel's recommendation for offsets and credits and provided to the Commission proposed new leases between the Special Fund and the Commission (for both the Phoenix and Tucson properties) that includes language permitting the parties to agree to offsets and credits against the rent that is owed.

Mr. Wade advised that the Special Fund Investment Committee has reviewed and approved the execution of the leases, and staff is recommending that the Commission approve the amendments to the leases between the ICA and the Special Fund. Following discussion, the Commission unanimously approved the execution of the amended lease for the real property located in Maricopa County (the Phoenix property) and the execution of the lease for the real property located in Pima County (the Tucson property) on motion of Mr. Lujano, second of Mr. McCarthy.

Ms. McGrory explained how this procedure will assist the agency in coping with budget cuts. Chairman Delfs stated that Director McGrory, along with Scot Butler, Gary Norem and other staff have done an outstanding job in finding ways to cut expenses and save jobs and deserve accolades. The other Commissioners agreed and also expressed their appreciation. Ms. McGrory thanked the Commissioners and stated that it has been a team effort.

Discussion &/or Action regarding Operations of the Industrial Commission

Ms. McGrory stated that in an effort to reduce Special Fund expenditures, changes are being made to the interagency agreement with Capitol Police. She described those changes. She also described processes that are being implemented to improve Special Fund claims processing, which should also decrease expenditures. Ms. McGrory advised that she recently held the first employee roundtable in Phoenix. She will be having another session next week with the Commission's Tucson employees.

In response to a question from Mrs. Weeks regarding the status of the Petition for Special Action, Mr. Wade advised that the Assistant Attorney General working on the case has until May 1<sup>st</sup> to file their response. Ms. McGrory and Mr. Butler provided information regarding the status of amicus briefs.

Discussion &/or Action regarding Legislation. The Commission may move into Executive Session under A.R.S. §§38-431.03(A)(3) and (A)(4) for Discussion and Consultation with the Attorneys of the Public Body regarding Contemplated Litigation or Settlement Discussions in order to avoid Litigation arising out of Bills passed in the Forty-Ninth Legislature, First Special Session (2009). Legal action involving a final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session

Scot Butler gave an update on legislation and advised that the Senate is continuing to concentrate on the budget and has no bills assigned. Four House bills passed out of the Committee of the Whole – 2057, 2146, 2199 and 2200. HB2422 has been amended to take out



references to misconduct and overrule the two cases that are causing problems. Mr. Butler and Ms. McGrory are reviewing the new language, and if it is satisfactory would recommend that the Commission remain neutral.

The Republican leadership released their FY10 budget proposal this week and that information has been provided to the Commissioners. Mr. Butler and Ms. McGrory described the budget proposal and the impact on the Commission. They described their discussions with OSPB staff and the implications of reducing the Commission's base budget. Mr. Butler and Ms. McGrory responded to Ms. Weeks' questions about projected revenues, the administrative premium tax, and the ability to make the proposed cash transfer. Mr. Butler stated that he will communicate the Commission's position that the Commission expects it can make the proposed cash transfer if its base budget is not reduced.

#### Announcements

Ms. McGrory reminded the Commissioners that the next meeting will be held on Wednesday, May 6, 2009 in the Commission's Auditorium and will begin with the A.R.S. §23-1065(F) assessment hearing. Staff has provided financial information to the Commissioners for that hearing.

Ms. McGrory advised that the Governor has appointed David Parker from Tucson to replace Joe Gosiger on the Commission. She stated that it is expected that an appointment will also be made within the next month to replace Mr. Lujano. Members were also appointed to the OSHA Review Board. Chairman Delfs stated that he spoke with Mr. Gosiger and he is willing to continue to serve until Mr. Parker's confirmation. Mr. Delfs also stated that the Special Fund Investment Committee is still in need of an appointment for a member from the self insured community.

Ms. McGrory also advised that the Claims' Seminar, which is scheduled for August 13 and 14 at the Wigwam Resort, may have some issues since the Wigwam is facing a foreclosure action. Although it is expected that the Wigwam will remain open for business, if it does not, the Seminar may be cancelled for this year.

There being no further business to come before the Commission and no public comment, Mrs. Weeks adjourned the meeting at 2:40 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By *Erwin C. Delp*  
Chairman

By *Joseph C. [unclear]* *signed in error*  
Vice Chairman

By *Herwin W. [unclear], Sr.*  
Member

ATTEST:

By *Mrs. Weeks*  
Member

*Teresa Hilton*  
Commission Secretary

By *John A. Mc [unclear]*  
Member