

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington

Conference Room 308

Phoenix, Arizona 85007

Wednesday, June 10, 2009 – 1:00 p.m.

Present:	Marcia Weeks	Vice Chair
	Louis W. Lujano, Sr.	Member
	John A. McCarthy, Jr.	Member
	David Parker	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Renee Pastor	Self Insurance Manager
	Jeri McAnerny	Tax Accountant
	Gary Norem	Chief Financial Officer
	Darin Perkins	Director, ADOSH
	Teresa Hilton	Commission Secretary

Vice Chairman Marcia Weeks convened the Commission meeting at 1:00 p.m. noting a quorum present. Chairman Delfs was not able to attend. Also in attendance was Jenypher Jones of Snell & Wilmer.

Approval of Minutes of June 4, 2009 Meeting

The Commission unanimously approved the Minutes of the June 4, 2009 General Session on motion of Mr. Lujano, second of Mr. McCarthy.

The Commission unanimously approved the Minutes of the June 4, 2009 Executive Session on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion & Action of Requests for Renewal of Self Insurance Authority

Hexcel Corporation - Renee Pastor presented staff's renewal report along with current Moody's and Dunn and Bradstreet credit report ratings. Administration is recommending renewal of workers' compensation self-insurance authority based on the company's large size with total assets of \$1.2 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. Lujano.

Parker Hannifin Corporation - 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 financial stability and profitability, large size with assets exceeding \$10.3 billion, a clean audit report and an acceptable credit rating. Following discussion, the Commission unanimously granted renewal of self-insurance authority and signed a Resolution to that effect on motion of Mr. Lujano, second of Mr. McCarthy.

Textron, 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 financial stability in a very challenging economic environment, large size with worldwide assets exceeding \$20 billion, a clean audit report and an acceptable credit rating. Mrs. Weeks noted the low number of workers' compensation claims filed and asked if employees were discouraged from reporting injuries or filing claims. Ms. McGrory stated that the Commission could investigate the issue to ascertain whether there is an issue with the company's reporting. Following further discussion, the Commission unanimously approved renewal of self-insurance authority and signed a Resolution to that effect on motion of Mr. Lujano, second of Mr. Parker.

Ms. Pastor advised that she also provided Fitch and Moody's definitions for the Commissioners.

Discussion &/or Action regarding Legislation

Scot Butler congratulated Mr. Parker on his appointment to the Commission. He discussed the progress on the budget and stated that the Legislature continues to work on a series of budget topics. He described his and Ms. McGrory's recent discussions with Representative McComish and JLBC staff with regard to the Commission's budget.

Mr. Butler also described the status of certain legislative proposals. Mr. Butler described the changes being made to HB2422, and advised that if the changes address the Commission's concerns, he would recommend that the Commission take a neutral position. Mr. Butler and Ms. McGrory further explained the amendments and proposed changes to the bills. Mr. Lujano moved that the Commission take a neutral position on HB2422 on the condition that the proposed changes are completed, which was seconded by Mr. McCarthy and unanimously approved.

Mr. Butler stated that the Senate is beginning to hear bills and SB1266 has been referred to committee.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C08/09-1750	CJ's Sports Bar & Grill, LLC
2C08/09-1082	Cox Transportation Services, Inc.
2C08/09-1123	Deaton & Napier Corporation dba Fiesta Village Assisted Living Center
2C08/09-1016	Elite Delivery Service Inc.
2C08/09-1751	Townsend Sandwich, L.L.C. dba Quizno's

Mr. 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 these employers. Mr. Wade responded to questions from the Commissioners regarding the employers. Following discussion, the Commission unanimously assessed the recommended penalty of \$1,000.00 against employers #1750, 1082, 1123, 1016 and 1751 on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion & Action of Proposed OSHA Citations and Penalties

Target Stores, Inc. (FN) 50 S. 10 th Street, Ste 400 TP3-0775 Minneapolis, MN 55403	Planned Yrs/Business – 47 Empl. Cov. by Insp. – 13
Site Location: 4725 E. Mayo Blvd., Phoenix, AZ 85050	
Inspection #: R0738/313088353	
Insp. Date: 03/11/09	

GROUPED SERIOUS – The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from accident.

Citation 1, item 1a – The employer failed to ensure that a horizontal lifeline in use by an employee was designed, installed and used under the supervision of a qualified person, as part of

a complete personal fall arrest system with a safety factor of at least two.
(Two inspections with no violations in the past three years).

Citation 1, item 1b - The employer failed to ensure the employee's personal fall arrest system was rigged in such a way that the employee could not fall more than 6'.

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS - Citation 1, item 2 - One employee working at heights greater than 6' and exposed to falls was not adequately trained to recognize the hazards of falling or in the procedures to be followed in order to minimize these hazards.

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

TOTAL DIV. PROP. - \$4,500.00

TOTAL FORMULA AMT - \$4,500.00

Darin Perkins advised that he is changing the Division formula amounts and the proposed penalties to \$1,125.00 based on the employer good faith efforts at fall protection. He summarized the citations and corrected proposed penalty as listed. Following discussion and inspection of photographs 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. McCarthy.

Knotty and Nice Woods, L.L.C. dba Classic Woodcraft
37420 N. Cave Creek Road
Cave Creek, AZ 85327

Complaint
Yrs/Business - 7
Empl. Cov. by Insp. - 2

Site Location: 37420 N. Cave Creek Road, Cave Creek, AZ 85327

Inspection #: Y5457/313125767

Insp. Date: 03/25/09

SERIOUS - Citation 1, item 1 - Two employees were using a stair platform 8'3" above the ground which was lacking a 4' section of stair railings.

(Two inspections with no violations in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 2 - A table mounted router did not have an on/off switch installed that would prevent automatic restart upon restoration of power after power failure (i.e. magnetic contact switch). There were two other instances of this violation.

Div. Proposal - \$600.00

Formula Amt. - \$600.00

SERIOUS - Citation 1, item 3 - A tilting arbor saw was lacking a hood guard. There was another instance of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 4 - Cutting heads of a router were not enclosed with a cage or adjustable guard to keep the operator's hand away from the cutting edge. There were two other instances of this violation.

Div. Proposal - \$600.00

Formula Amt. - \$600.00

SERIOUS - Citation 1, item 5 - One employee was using a horizontal belt sander which was lacking a guard at each nip point.

Div. Proposal - \$ 600.00

Formula Amt. - \$ 600.00

TOTAL DIV. PROP. - \$3,300.00

TOTAL FORMULA AMT - \$3,300.00

Darin Perkins advised that he is removing Citation 1, item 1 from consideration since it should be classified as "Nonserious" with no penalty. He further advised that the division proposal for each of the remaining items was for a penalty of \$750.00 since the probability factor

Nevada Railroad Materials, Inc.
917 E. Country Hills Drive
South Ogden, UT 84403

Complaint
Yrs/Business - 3
Empl. Cov. by Insp. - 36

Site Location: 2551 S. Country Club Road, Tucson, AZ 85713
Inspection #: T3633/313125791
Insp. Date: 03/25/09

SERIOUS - Citation 1, item 1 - The company did not ensure an employee who worked preparing ties to go through the planing machine was wearing hearing protectors to reduce their exposure levels to those allowed. There was another instance of this violation.

(No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

GROUPED SERIOUS - The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from accident.

Citation 1, item 2a - Employees used foam components and the employer had not adequately evaluated the area for hazards, nor supplied the employee with appropriate personal protective equipment including chemical-resistant gloves and face shields to prevent skin exposure. There was another instance of this violation.

Citation 1, item 2b - Employees used products to include foam components and wood preservative and the employer did not develop a written hazard communication program.

Citation 1, item 2c - Employees used foams, preservatives, lubricants, oils and welding consumables and the company did not have material safety data sheets (MSDS) for all of the products they used.

Citation 1, item 2d - Employees used foam components and wood preservatives and they had not been trained concerning the hazards of the chemical used in their work areas.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1, item 3 - An employee was painting wood preservative on ties and suitable eyewash was not provided within the work area for immediate emergency use.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL DIV. PROP. - \$3,750.00

TOTAL FORMULA AMT - \$3,750.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,750.00 on motion of Mr. McCarthy, second of Mr. Lujano.

Bingham Equipment Company
1651 S. Country Club Drive
Mesa, AZ 85210

Fatality
Yrs/Business - 53
Empl. Cov. by Insp. - 4

Site Location: 4838 S. Avenue 38E, Roll, AZ 85347
Inspection #: F3875/312993900
Insp. Date: 01/15/09

SERIOUS - Citation 1, item 1 - An employee was elevated 10' above the ground on an improperly constructed platform (5x5 wooden pallet) that lacked a solid base and effective guardrails.

(No inspection history in the past three years).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1, item 2 – Employees were allowed to operate powered industrial trucks (forklifts) without being adequately trained and evaluated in the safe operation of the forklifts.

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 2, item 1 – The employer did not notify OSHA within eight (8) hours of the death of an employee in a work-related accident.

Div. Proposal - \$ 5,000.00

Formula Amt. - \$ 5,000.00

TOTAL DIV. PROP. - \$19,000.00

TOTAL FORMULA AMT - \$19,000.00

Darin Perkins summarized the citations and proposed penalty. He advised that the Division proposal for the first two citations was for the gravity-based penalties with no adjustment factors since the violations directly related to the fatality. He further advised that he is removing Citation 2, item 1 from consideration because it was incorrect. The total proposed penalty is \$14,000.00. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$14,000.00 on motion of Mrs. Weeks, second of Mr. McCarthy.

C.W.B. Carpentry, LLC

P.O. Box 718

Sonoita, AZ 85637

Site Location: 705 N. Freeway, Tucson, AZ 85745

Inspection #: P0775/313085326

Insp. Date: 03/05/09

Planned

Mos/Business – 6

Empl. Cov. by Insp. – 22

SERIOUS – Citation 1, item 1 – The employee was not trained and evaluated in the safe operation of the powered industrial truck (forklift).

(No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 2 – Employees were using a reciprocating saw that had damage to the power cord, exposing the copper bare wire on the white insulated conductor. There was another instance of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 3 – Employees working near the edge of the building cutting and installing wood floor panels on top of the sub-floor to the third level at a height of approximately 28' were not protected from falling by the use of a guardrail system, safety net or personal fall arrest system. There were two other instances of this violation.

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1, item 4 – Employees working on the second floor of the three story building had window openings measuring 6' wide x 7' high that were not protected with adequate guardrails (i.e. toprails and mid-rails) to prevent employees from falling 11.8' to the ground below.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 5 – Employees who were performing carpentry work along the edges of the building and exposed to fall hazards approximately 11'8" to 28' above the ground level were not provided training to recognize the hazards of falling or in the procedures to be followed in order to minimize fall hazards.

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

TOTAL DIV. PROP. - \$8,750.00

TOTAL FORMULA AMT - \$8,750.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$8,750.00 on motion of Mr. Lujano, second of Mr. McCarthy.

Custom & Beyond Drywall LLC
2539 N. Dunn Place
Tucson, AZ 85741

Planned
Yrs/Business - 5
Empl. Cov. by Insp. - 2

Site Location: 702 W. Irvington, Tucson, AZ 85746
Inspection #: P0775/313060865
Insp. Date: 02/23/09

SERIOUS - Citation 1, item 1 - The employer did not assure that employees were trained to operate a powder actuated tool
(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

GROUPED SERIOUS - The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from accident.

Citation 1, item 2a - Employees were working installing metal framing on the front of the building on a mobile scaffold that was 20' high, 10' long and 5' wide that was not fully planked between the uprights and the guardrail supports.

Citation 1, item 2b - The mobile scaffold was approximately 20' high, 10' long and 5' wide and was erected, altered and moved without the supervision and direction of a competent person.

Citation 1, item 2c - Employees were allowed to ride the mobile scaffold which was approximately 20' high, 10' long and 5' wide that had a height to base width ratio of 4 to 1 instead of the 2 to 1 or less required.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 3 - Employees were working on a mobile scaffold which was 20' high, 10' long and 5' wide which lacked adequate guardrails (i.e top rails and mid-rails) to prevent the employees from falling.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 4 - Employees working on a mobile scaffold approximately 20' high, 10' long and 5' wide had not been trained by the employer to recognize those hazards associated with the type of scaffold being used and to understand the procedures to control or minimize those hazards.

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$3,000.00

TOTAL FORMULA AMT - \$3,000.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,000.00 on motion of Mr. McCarthy, second of Mr. Lujano.

D.J. Williamson Enterprises Inc.
12441 E. Camino Del Garanon
Tucson, AZ 85747

Planned
Yrs/Business - 30
Empl. Cov. by Insp. - 2

Site Location: 705 N. Freeway, Tucson, AZ 85745
Inspection #: P0775/313085334
Insp. Date: 03/05/09

SERIOUS - Citation 1, item 1 - Employees working near the edge of the building cutting and installing wood floor panels on top of the sub-floor to the third level at a height of approximately 28' were not protected from falling by the use of a guardrail system, a safety net or personal fall arrest system. There were two other instances of this violation.

(One inspection with 4 nonserious violations 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 photographs of this violation, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$1,500.00 on motion of Mr. Lujano, second of Mr. McCarthy.

AZ Block 2000, LLC
9311 N. Casa Grande Highway
Tucson, AZ 85743

Planned
Yrs/Business - 25
Empl. Cov. by Insp. - 25

Site Location: 9311 N. Casa Grande Highway, Tucson, AZ 85743
Inspection #: T3633/313088403
Insp. Date: 03/17/09

SERIOUS - Citation 1, item 1 - The block machine was not guarded to protect operators from point of operation, rotating part and pinch points hazards. There were 6 other instances of this violation.

(Three inspections with 4 serious and 15 nonserious violations in the past three years).

Div. Proposal - \$3,000.00

Formula Amt. - \$3,000.00

SERIOUS - Citation 1, item 2 - The sprocket wheel and chain drive powering the rack conveyor section of the rack loader/unloader machine was not guarded. There was another instance of this violation.

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS - Citation 1, item 3 - A two inch by 4 inch junction box on the unloader section of the rack loader/unloader did not have a cover in place. There were 5 other instances of this violation.

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL DIV. PROP. - \$6,000.00

TOTAL FORMULA AMT - \$6,000.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$6,000.00 on motion of Mr. Lujano, second of Mr. McCarthy.

Dolphin, Inc.
P.O. Box 6514
Phoenix, AZ 85005

Planned
Yrs/Business - 27
Empl. Cov. by Insp. - 85

Site Location: 740 S. 59th Avenue, Phoenix, AZ 85043
Inspection #: A7717/313160418
Insp. Date: 04/16/09

SERIOUS – Citation 1, item 1 – One employee was operating a conveyor belt which was lacking a guard. There was another instance of this violation.
(No inspection history in the past three years).

Div. Proposal - \$1,375.00

Formula Amt. - \$1,375.00

SERIOUS – Citation 1, item 2 – One employee was utilizing a pneumatic 6 1/2" right angle grinder which was lacking a guard.

Div. Proposal - \$1,375.00

Formula Amt. - \$1,375.00

TOTAL DIV. PROP. - \$2,750.00

TOTAL FORMULA AMT - \$2,750.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$2,750.00 on motion of Mr. Lujano, second of Mr. McCarthy.

Mr. Perkins stated that he is holding consideration of the final file on the agenda, Tenecor, since not all citations were listed.

Discussion &/or Action regarding Operations of the Industrial Commission

Ms. McGrory stated there was nothing new to report.

Discussion &/or Action regarding Industrial Commission of Arizona, for Itself and as Trustee for the Special Fund of the Industrial Commission of Arizona; and the Special Fund of the Industrial Commission of Arizona, Petitioners, v. Dean Martin, Arizona State Treasurer, in his official capacity; Janice K. Brewer, Governor of the State of Arizona, in her official capacity, Respondents. 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 Pending Litigation or Settlement Discussions in order to resolve Litigation. 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

Andrew Wade advised that outside counsel is preparing the lawsuit to be filed in Superior Court and it is anticipated that it will be filed later this week.

Announcements

Ms. Hilton reminded the Commissioners that the next meeting will be held on Wednesday, June 17, 2009.

Public Comment

Jenypher Jones congratulated David Parker on his appointment to the Commission.

There being no further business to come before the Commission and no public comment, Vice Chairman Mrs. Weeks adjourned the meeting at 2:25 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By _____
Chairman

By _____
Vice Chair

By *Karen Weeks*
Member

ATTEST:

By *John A. Mc Coy*
Member

Teresa Hilton
Commission Secretary

By *James W. Higgins, Sr.*
Member