

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, May 12, 2011 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	David Parker	Vice Chairman (video conference)
	John A. McCarthy, Jr.	Member
	Kathleen Oster	Member
	Susan Strickler	Member (telephonic)
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Renee Pastor	Manager, Self Insurance
	Jeri McAnerny	Tax Accountant
	Kamen Kovatchev	Accounting
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Tom Chamberlin; and Eda Barolli of Snell & Wilmer.

Approval of Minutes of April 27, 2011 Meeting

The Commission unanimously approved the Minutes of April 27, 2011 on motion of Mr. McCarthy, second of Ms. Oster.

Discussion &/or Action regarding Legislation

Ms. McGrory advised that Scot Butler provided a report to the Commission summarizing the bills of interest. She stated that Mr. Butler plans on attending a Commission meeting after Memorial Day to provide a final update and discuss items the Commission may address in the next legislative session.

Discussion & Action regarding ADOSH Discrimination Complaint

#11-31 Mike Straty v Central Arizona College

Mike Straty v Sodexo - Darin Perkins, Director of the Arizona Division of Occupational Safety and Health (ADOSH), presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Straty. In his complaint, Mr. Straty alleged that his employment was terminated because he participated in an ADOSH inspection of Central Arizona College, and because he wrote a letter to his contract employer, Sodexo, which mentioned safety issues. In response to the complaint, Central Arizona College stated that they requested that Mr. Straty be removed from the Sodexo contract for lawful reasons. Sodexo stated that they removed Mr. Straty from the Central Arizona College (CAC) contract after CAC asked that he be removed.

Mr. Perkins presented a history of Mr. Straty's employment and chronology of events and responded to questions from the Commission. The Division recommendation was not to pursue the matter since there was insufficient evidence to establish a causal link between any protected activity and adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint against either employer on motion of Ms. Oster, second of Mr. Parker.

Discussion & Action of Proposed OSHA Citations and Penalties

K E & G Construction, Inc. 1601 Paseo San Luis <u>Sierra Vista, AZ 85635</u>	Fatality Yrs/Business – 39 Empl. Cov. by Insp. – 5
Site Location: Canyon de Flores Dr. & Great Basin Lane, Sierra Vista, AZ 85650	
Inspection #: A9339/315247049	
Insp. Date: 01/03/11	

SERIOUS – Citation 1, item 1 – The superintendent was working under a suspended crane load of approximately 3,500 pounds when the load fell out of the manhole clamp on the crane (1926.550(a)(19)).

(No inspection history in the past three years).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

Darin Perkins advised that this case file and the next are related and both had been presented to the Commission at a prior Commission meeting. At that meeting, the Commission requested legal counsel review the files to determine whether the citations should be classified as willful. Mr. Perkins advised that the legal review has been completed and the recommendation is to not classify the citations as willful.

He summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. The Division recommendation was for the gravity-based penalty with no adjustment factors since the violation directly contributed to the fatality. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$7,000.00 on motion of Mr. Parker, second of Mr. McCarthy.

Jensen Enterprises, Inc. dba Jensen Precast 4801 E. Wyoming Street <u>Tucson, AZ 85706</u>	Unprogram Related Yrs/Business – 9 Empl. Cov. by Insp. – 1
Site Location: Canyon de Flores Dr. & Great Basin Lane, Sierra Vista, AZ 85650	
Inspection #: A9339/315247080	
Insp. Date: 01/04/11	

SERIOUS – Citation 1, item 1 – The manhole clamp was not being inspected prior to use or daily (1926.550(a)(5)).

(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 allowed to be inside of the manhole shaft while a subsequent shaft was being lowered onto the previously placed shaft (1926.550(a)(19)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

TOTAL PENALTY - \$8,500.00

TOTAL FORMULA AMT. - \$8,500.00

Mr. Perkins summarized the citations and proposed penalty as listed. He responded to questions from the Commissioners. The Division recommendation for Citation 1, item 2 was for the gravity-based penalty with no adjustment factors since the violation directly related to the fatality. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$8,500.00 on motion of Mr. McCarthy, second of Ms. Oster.

Discussion & Action regarding Requests for Renewal of Self Insurance Authority. The Committee may move into Executive Session under A.R.S. §§38-431.03(A)(2) to discuss records exempt by law from public inspection. 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

Pima County – Vice Chairman Parker declared a conflict, recused himself from discussion and action for this agenda item, and stepped out of view of his video camera. Ms. Pastor presented staff's renewal report along with current Moody's, Fitch, and Dunn and Bradstreet bond and credit ratings and responded to question from the Commissioners. She stated that Pima County has provided a certificate from their Board of Supervisors stating that they have a fully-funded risk management fund sufficient to cover their actuarial liabilities. The County uses a confidence level of 75% and an annual discount rate of 4.5%. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the County's stable financial condition; clean audit reports; acceptable bond and credit ratings; COP ratings and approval under A.A.C. R20-5-1114 for maintaining a fully-funded risk management fund as an alternative to the posting of other securities. The Commission approved renewal of self-insurance authority on motion of Ms. Oster, second of Mr. McCarthy. Mr. Parker did not vote on this item.

QuikTrip Corporation - Ms. Pastor presented staff's renewal report along with current Dunn and Bradstreet credit ratings. She responded to questions from the Commissioners. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the company's good financial condition; an acceptable credit rating, and the meeting of all requirements for a self-insured employer in the State of Arizona. Following discussion, the Commission unanimously granted continuance of self-insurance authority on motion of Mr. McCarthy, second of Ms. Oster.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers.

2C10/11-1231	Michael T. Malve & Andrea A. Malve, Husband & Wife dba Atomic Comics, Inc. aka Atomic Comics
2C10/11-1699	Sun Horizon Specialized, LLC
2C10/11-0326	Vito Lombardo & Mary A. Lombardo, Husband & Wife dba Lombardo's Sicilian Grille

Andrew Wade advised that with regard to the above listed employers, a compliance investigation confirmed that they 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), he recommended a civil penalty of \$500.00 be assessed against employer #1231 since they have recently obtained insurance. He further recommended a civil penalty of

\$1,000.00 be assessed against employer #0326. Following discussion, the Commission unanimously assessed civil penalties of \$500.00 against employer #1231 and \$1,000.00 against employer #0326 on motion of Mr. Parker, second of Mr. McCarthy. With regard to employer #1699, Mr. Wade advised that on April 21, 2011, the Commission approved a civil penalty of \$10,000.00. He explained that the employer obtained workers' compensation coverage effective April 1, 2011, and he is recommending that the Commission reconsider its prior action and either reverse the prior decision or reduce the penalty. Mr. Wade stated that he would follow up in three months and six months to make sure the employer maintains insurance. The Commission unanimously agreed to reconsider the action on motion of Mr. Parker, second of Ms. Oster. In response to a question from Mr. Parker, Mr. Wade advised that this employer has not paid the second penalty which was for \$5,000.00 and described the collection process. Following discussion, the Commission unanimously rescinded its prior action with the understanding that Legal staff will check in three and six months to assure that the company maintains insurance coverage on motion of Mr. Parker, second of Mr. McCarthy.

Discussion &/or Action regarding Budget and Operations of the Industrial Commission

Laura McGrory stated that a cash flow report showing actual 2010 revenue will be provided when it is available. She also gave an update on the ongoing computer system updates in Claims and Accounting. In response to questions from the Commissioners, Ms. McGrory summarized the impact resulting from the mutualization of SCF Arizona and the impact of policies with deductible coverage with regard to revenue collections.

Announcements and Scheduling of Future Meetings

Ms. Hilton reminded the Commissioners that meetings are scheduled for Thursday, May 19th and Thursday, May 26th. The Commission scheduled additional meetings for Thursday, June 2nd, Thursday, June 16th, and Wednesday, June 22nd.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 1:47 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary