MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street Conference Room 308 Phoenix, Arizona 85007 Thursday, May 19, 2011 – 1:00 p.m.

Present:

Brian Delfs

Chairman (telephonic)

David Parker

Vice Chairman (video conference)

John A. McCarthy, Jr.

Member

Laura McGrory

Director

Andrew Wade Kathy Harris Darin Perkins Chief Legal Counsel Legal Counsel

Darin Perkins
Noreen Thorsen

Director, ADOSH Claims Manager

Mike Hawthorne Teresa Hilton Chief Financial Officer Commission Secretary

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Ms. Oster and Ms. Strickler were not able to attend. Also in attendance was Eda Barolli of Snell & Wilmer.

Approval of Minutes of May 12, 2011 Meeting

The Commission unanimously approved the Minutes of May 12, 2011 on motion of Mr. McCarthy, second of Mr. Parker.

Discussion &/or Action regarding Legislation

Laura McGrory stated there was nothing new to report.

Discussion & Action of ADOSH Discrimination Complaint

#10-64 Sergio Alvarez v. Rutherford Diversified Industries, Inc. - Darin Perkins advised that this file was previously presented to the Commission and that the Commission approved the filing of a complaint in Superior Court, subject to additional investigation being conducted. At that time, the Commission requested that additional investigation be conducted regarding the treatment of other employees who filed workers' compensation claims, and asked that the file be brought back to the Commission, if necessary, for reconsideration. Mr. Perkins described the additional investigation that was conducted. He stated that four other employees filed workers' compensation claims. Staff was able to contact two of these employees. Mr. Perkins described that neither employee suffered any negative or adverse action from the employer as a result of their industrial injury. Based upon this new information, Mr. Perkins stated that he and Rachel Morgan, staff attorney, believe that the complainant has not met his burden of proof and that if the Commission continues to move forward with this case, it will be more difficult to prevail. Mr. Perkins recommended that the Commission reconsider its prior action and not pursue the case. Following discussion, the Commission unanimously agreed to reconsider its prior decision on motion of Mr. Parker, second of Mr. McCarthy. The Commission unanimously voted to not pursue the complaint on motion of Mr. Parker, second of Mr. McCarthy.

Discussion & Action of Proposed OSHA Citations and Penalties

ALC of Arizona LLC dba American Laser Skincare

Complaint

24555 Hallwood Court

Yrs/Business – 4+

Farmington Hills, MI 48335

Empl. Cov. by Insp. -5

Site Location: 5310 W. Thunderbird Rd., #203, Glendale, AZ 85358

Inspection #: A7746/315297796

Insp. Date:

02/15/11

SERIOUS - Citation 1 Item 1 - Employees did not wear eye protection while handling glutaraldehyde, a corrosive liquid. (1910.133(a)(1)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS - Citation 1 Item 2 - Eye wash facilities were not provided for employees who handle glutaraldehyde, a corrosive liquid. (1910.151(c)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$4,500.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to Following discussion, the Commission unanimously questions from the Commissioners. approved issuing the citations and assessed the recommended penalty of \$4,500.00 on motion of Mr. McCarthy, second of Mr. Parker.

Refrigeration Systems Construction and

Complaint

Service Company, Inc.

Yrs/Business - 12

2135 E. University Dr., Ste. 108

Empl. Cov. by Insp. -4

Mesa, AZ 85213

Site Location: 6529 W. Glendale Ave., Glendale, AZ 85301

Inspection #: N4762/315489401

Insp. Date:

04/20/11

SERIOUS - Citation 1, item 1 - Four employees were working on flat roofs, 18' above the ground, without the use of a fall protection system. (1926.501(b)(1)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

GROUPED SERIOUS - Citation 1, Item 2a - Employees were utilizing a 16' extension ladder which did not extend at least three feet above the landing. (1926.1053(b)(1)).

Citation 1, Item 2b - Employees climbed and descended a 16' extension ladder while carrying objects that could result in loss of balance (1926.1053(b)(22)).

Citation 1, Item 2c - Employees were using the top ("top step") of an 8' step ladder to gain access to the roof approximately 10' high. (1926.1053(b)(13)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$3,000.00

TOTAL FORMULA AMT. - \$3,000.00

Mr. Perkins summarized the citations and proposed penalty as listed. He responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,000.00 on motion of Mr. Parker, second of Mr. McCarthy.

Discussion & Action of Request for Lump Sum Commutation

Michael George #20102-220591 — Noreen Thorsen presented this lump sum petition with a recommendation to approve the petition. In support of this recommendation, Ms. Thorsen explained how commuting the scheduled award would result in the financial betterment or rehabilitation of the claimant as the lump sum proceeds will allow Mr. George to pay off his debts and repair his vehicle, which will help him in his search for employment. Following discussion, the Commission unanimously approved the lump sum request on motion of Mr. McCarthy, second of Mr. Parker.

Discussion & Action of Applications for New Employment Agency Licenses

Connie J. Mableson on behalf of Brooks Creative Management, LLC William L. Jeffries on behalf of Career Solutions of Southern Arizona, LLC

Ms. McGrory advised that these applicants have been investigated by the Labor Department as required by the Revised Statutes and Rules governing Private Employment Agencies. The Employment Advisory Council has recommended approval of these licenses. Following discussion, the Commission unanimously approved the licenses on motion of Mr. McCarthy, second of Mr. Parker.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers.

2C10/11-1585	Aesthetic Family Dental Care, P.L.C.
2C10/11-1579	Eat A Pita, L.L.C.
2C10/11-1794	The J.R. Tuttle Co.

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 civil penalties of \$1,000.00 be assessed against employers #1585, 1579 and 1794. Following discussion, the Commission unanimously assessed civil penalties of \$1,000.00 against employers #1585, 1579 and 1794 on motion of Mr. Parker, second of Mr. McCarthy.

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

Laura McGrory updated the Commission on cash flow and revenue projections stating that staff is still working on final numbers.

Announcements and Scheduling of Future Meetings

Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Thursday, May 26th and will begin with the annual fee schedule public hearing.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 1:45 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

Ву

Laura L. McGropy, Director

ATTEST:

Teresa Hilton, Commission Secretary