

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, August 25, 2011 – 1:00 p.m.

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

Chairman Delfs convened the Commission meeting at 1:05 p.m. noting a quorum present. Ms. Oster was not able to attend. Also in attendance was Eda Barolli of Snell & Wilmer.

Approval of Minutes of August 12, 2011 Meeting

The Commission unanimously approved the Minutes of the August 12, 2011 General Session and Executive Session on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion & Action of ADOSH Discrimination Complaints

#11-02 Craig Cress vs Tri-City Property Management Service, Inc. - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Cress. In his complaint, Mr. Cress alleges that he was terminated for refusing to go onto the roofs of the condominium buildings where he worked to inspect and remove leaves and debris from the roofs and rain gutters. In response to the complaint, the employer presented its position with respect to Mr. Cress' separation from employment.

Mr. Perkins presented a history of Mr. Cress' 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 support a causal link between protected activity and adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. Parker, second of Mr. McCarthy.

#11-55 Greg Faulkner vs Carondelet St. Mary's Hospital - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Faulkner. In his complaint, Mr. Faulkner stated that he was laid off from work after he was hurt at work and reported his injury to his supervisor and HR. In response to the complaint, the employer presented its position with respect to Mr. Faulkner's separation from employment.

Mr. Perkins presented a history of Mr. Faulkner'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 support a causal link between protected activity and adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion & Action of Proposed OSHA Citations and Penalties

Coyote Portable Storage, L.L.C.
860 W. Carver Road, Ste. 101
Tempe, AZ 85284

Accident
Yrs/Business - 8
Empl. Cov. by Insp. - 18

Site Location: 4463 S. Wildflower Place, Chandler, AZ 85284
Inspection #: R0738/315489245
Insp. Date: 04/12/11

SERIOUS - Citation 1, item 1 - Employees operating a hydraulic lifting device were not effectively protected through adequate training and operating procedures from unexpected movement of the unit to prevent being struck or crushed (23.403(A)).

(No inspection history in the past three years).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

Darin Perkins summarized the citation and proposed penalty as listed. The Division recommendation was for the gravity based penalty with no adjustment factors since the violation directly related to a serious injury. He responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$5,000.00 on motion of Mr. Parker, second of Mr. McCarthy.

Caliber Construction, Inc.
2410 E. Osborne Road
Phoenix, AZ 85016

Planned
Yrs/Business - 20
Empl. Cov. by Insp. - 2

Site Location: 5031 E. Washington St., Phoenix, AZ 85034
Inspection #: N4762/315442251
Insp. Date: 03/28/11

WILLFUL SERIOUS - Citation 1 - Item 1 - A pan stairway, approximately 5' wide, consisting of approximately two and a half flights of stairs of approximately 8 to 13 risers each, did not have the temporary stairway treads installed the full width of the stair pan (1926.1052(b)(3)).

There was another instance of this violation.

(2 inspections with no violations in the past three years)

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS - Citation 2 - Item 1 - The employer did not instruct each employee in the recognition and avoidance of unsafe conditions associated with working with wire rope and wire rope clips for rigging purposes, as an employee had installed three wire rope clips to form eyes on each end of a job-made wire rope sling that was used to lift sheet metal cylinder-style sky light frames (1926.21(b)(2)). There was another instance of this violation.

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 2 - Item 2a – The employer used a special custom designed lifting accessory, consisting of two tension ties, two 5/8” eye bolts, six sheet metal screws and a length of PHD channel to lift 350 lb. sheet metal cylinder-style skylight frames from the floor onto the basket of the aerial lift, that had not been proof-tested prior to use to 125 percent of the load or marked to indicate the safe working load (1926.251(a)(4)).

Item 2b – The employer used wire rope clips to form the eyes in a job-made wire rope sling that was being used to lift 250 lb. sheet metal cylinder-style skylight frames from the floor onto the basket of an aerial lift (1926.251(c)(4)(iii)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 2 - Item 3 – The employer modified the basket of an aerial lift by adding 4” x 4” x 8’ long wood lengths across the two sides of the top guardrail of the basket to extend the area of the basket to lift the sheet metal cylinder-style skylight frames to the roof, without the modification being certified in writing by the manufacturer or by any other equivalent entity (1926.453(a)(2)). There was another instance of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 2 - Item 4 - One employee was installing a sheet metal cylinder-style skylight frame while standing on the mid rail of the basket guardrail system, at a height of approximately 40’ above the ground in an aerial lift (1926.453(b)(2)(iv)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 2 - Item 5 – One employee was performing work, approximately 40’ above the ground while on an aerial lift without being trained in the hazards associated with the type of scaffold being used and understanding the procedures to control or minimize those hazards (1926.454(a)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 2 - Item 6 – Two employees were not trained to recognize the hazards of falling and in the procedures to minimize fall hazards as they had installed a wire rope guardrail system that had the wire rope U-Bolt clips attached so the saddle of the wire rope U-Bolt clips were against the dead end of the wire rope (1926.503(a)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 2 - Item 7 - Two employees were not trained in the recognition and avoidance of unsafe conditions associated with the use of stairways, as they had installed temporary treads that were not installed the full width of the pan stair (1926.1060(a)). There was another instance of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

NONSERIOUS – Citation 3 - Item 1 – The employer did not record the work-related recordable injury incurred by an employee on 12/16/2008 on the OSHA 300 Log for calendar year 2008, which resulted in stiches, a broken finger, 5 days away from work, and 10 days of job transfer or restriction (1904.29(b)(3)).

Div. Proposal - \$ 300.00

Formula Amt. - \$ 300.00

TOTAL PENALTY - \$12,550.00

TOTAL FORMULA AMT. - \$12,550.00

been removed, so that the operator and other employees were not protected from pinch points and moving parts (1910.212(a)(1)). There were two other instances of this violation.

Div. Proposal - \$1,750.00	Formula Amt. - \$1,750.00
TOTAL PENALTY - \$5,250.00	TOTAL FORMULA AMT. - \$5,250.00

Mr. Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$5,250.00 on motion of Mr. McCarthy, second of Ms. Strickler.

Maax Spas Industries Corp.
25605 S. Arizona Avenue
Chandler, AZ 85248

Planned
Yrs/Business - 4
Empl. Cov. by Insp. - 105

Site Location: 25605 S. Arizona Avenue, Chandler, AZ 85248
Inspection #: N9589/315442236
Insp. Date: 03/24/11

SERIOUS – Citation 1, item 1 – Open sided floors and/or platforms 4’ or more above adjacent floor or ground level were not guarded with standard railings (or equivalent) and toeboards. One employee working from the top of a transfer container 6’ above the ground was not protected by standard railings or equivalent (1910.23(c)(1)). There was another instance of this violation. (No inspections in the past three years).

Div. Proposal - \$1,750.00	Formula Amt. - \$1,750.00
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SERIOUS – Citation 1 - Item 2 – Employee noise monitoring in the trim area and the trim/cut area resulted in 8-hour time-weighted averages (TW) of 96.4 and 98.6 decibels respectfully. The employer had not instituted appropriate administrative or engineering controls (1910.95(b)(1)).

Div. Proposal - \$3,500.00	Formula Amt. - \$3,500.00
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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 3a - The air velocity over the face of the spray booth(s) was less than 100 linear feet per minute. Spray booths were not equipped with visible gauge(s), audible alarms or pressure activated device(s) to indicate or insure that the required air velocity was maintained (1910.107(b)(5)(i)).

Item 3b – Spray booths were constructed of metal stud framing with gypsum board covering (1910.107(b)(1)).

Item 3c – The floor surface of the spray booths were covered with combustible roofing felt (1910.107(b)(3)).

Item 3d – “No Smoking” signs were not prominently displayed in areas where organic peroxides were applied (1910.107(m)(2)).

Div. Proposal - \$1,750.00	Formula Amt. - \$1,750.00
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SERIOUS – Citation 1 - Item 4 – Drying areas adjacent to spray booths were not equipped with mechanical ventilation to control emission of flammable and toxic styrene vapors from freshly applied fiberglass coatings (1910.107(d)(2)).

Div. Proposal - \$1,225.00

Formula Amt. - \$1,225.00

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 5a – Machine guarding was not provided to protect operators and other employees from hazards created by the pinch point between the mold lift and the machine frame at the lowest position (1910.212(a)(1)). There were 3 other instances of this violation.

Item 5b – Sprocket wheels and chains located below the lift table and exposed when the lift extends above the level of the machine frame were not enclosed or otherwise guarded (1910.219(f)(3)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS - Citation 1 - Item 6 - A portable pneumatic circular saw having a blade diameter of greater than two inches was not equipped with guards below the base plate (1910.243(a)(1)(i)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1 - Item 7 - Feasible administrative or engineering controls were not determined and implemented to achieve compliance with the limits prescribed in 29 CFR 1910.1000(a) through (d). Exposure monitoring conducted by ADOSH on April 2011 and May 5, 2011, indicated employee exposure to 40 mg/m³ respirable dust and between 16 and 173 mg/m³ total dust which were above the applicable permissible exposure limits of 5 mg/m³ and 15 mg/m³ respectively (1910.1000(c)).

Div. Proposal - \$ 1,750.00

Formula Amt. - \$ 1,750.00

TOTAL PENALTY - \$13,475.00

TOTAL FORMULA AMT. - \$13,475.00

Mr. Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$13,475.00 on motion of Ms. Strickler, second of Mr. McCarthy.

Discussion & Action of Request for Lump Sum Commutation

Francelia Barragan #20093-290156 - Noreen Thorsen presented this lump sum petition with a recommendation to approve the petition. In support of this recommendation, Ms. Thorsen explained how approving the lump sum commutation would be expected to result in a financial betterment to Ms. Barragan by allowing her to purchase a home. Ms. Thorsen responded to questions from the Commissioners. Following discussion, the Commission unanimously approved the lump sum request on motion of Mr. Parker, second of Ms. Strickler. Ms. Thorsen will advise the attorney of possible assistance available to Ms. Barragan from the mobile home park landlord and tenant act.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers.

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| 2C10/11-1917 | A Sober Way Home, Inc. |
| 2C10/11-1603 | Bill Spence, Ltd. |
| 2C10/11-1546 | E Merchant-Direct, Inc. |
| 2C10/11-1271 | Enviroscape of Leisure World, L.L.C. |

2C11/12-0085	Manuel G. Lafarga, a Single Man, dba Prensa Hispana
2C10/11-1839	NV Fitness Management, LLC (A Nevada Limited Liability Company) dba Xpress Fitness
2C10/11-1835	Ramon Terriquez & Yolanda Terriquez, Husband & Wife, dba US Xpress Logistics Group

Mr. Parker recused himself from consideration of a civil penalty for employer #1917. 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 #1917 since they have recently obtained coverage. Mr. Wade further recommended civil penalties of \$1,000.00 be assessed against each of the remaining employers. Mr. Wade provided information regarding each of the employers and responded to questions from the Commission. Following discussion, the Commission assessed a civil penalty of \$500.00 against employer #1917 and civil penalties of \$1,000.00 against employers #1603, 1546, 1271, 0085, 1839 and 1835 on motion of Mr. McCarthy, second of Ms. Strickler. Mr. Delfs, Mr. McCarthy, and Ms. Strickler voted in favor of the motion.

Discussion &/or Action regarding Legislation

Ms. McGrory advised that there was nothing new to report.

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

Ms. McGrory described some of the upcoming changes taking place in the ADOSH Division, including the filling of six compliance officer positions.

Announcements and Scheduling of Future Meetings

Ms. McGrory suggested that next week's agenda include an item regarding the upcoming residential fall protection hearings so that staff could brief the Commissioners on the process. Mr. Delfs requested that Mr. Perkins also provide an historical briefing on the issue.

Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Wednesday, August 31st.

Discussion & Action of Application for Self-Insurance Authority

DG Retail, LLC - Renee Pastor presented staff's report, which included an analysis of financial information and current credit rating and responded to questions from the Commissioners. Ms. Pastor stated that Administration is recommending approval of workers' compensation self-insurance authority based on the submission of a complete and satisfactory application, a clean audit report, the company's stability and profitability with total assets at January 28, 2011 posting at just over \$8.8 billion, and acceptable bond and credit ratings. The company will post a continuous surety bond in the amount of \$195,645 once approved. Following discussion, the Commission unanimously granted self-insurance authority effective September 1, 2011, on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion & Action regarding Requests for Renewal of Self Insurance Authority. The Commission 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

Empire Southwest LLC - Ms. Pastor presented staff's renewal report along with a current Dunn and Bradstreet credit report and responded to question from the Commissioners. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the company's financial soundness, a clean audit report and good credit ratings. The Commission unanimously approved renewal of self-insurance authority on motion of Mr. Parker, second of Mr. McCarthy.

Truly Nolen of America, Inc. - Ms. Pastor presented staff's renewal report along with current Dunn and Bradstreet credit rating. 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 record of profitability, a clean audit report, the meeting of all requirements for a self-insured employer in the State of Arizona, and an acceptable credit rating. Following discussion, the Commission unanimously granted continuance of self-insurance authority on motion of Mr. Parker, second of Ms. Strickler.

Discussion & Action of Applications for Renewal of Self Insurance Authority

Healthsouth Corporation -- Renee Pastor presented staff's renewal report along with current Moody's and Dunn and Bradstreet bond and credit ratings and responded to questions from the Commissioners. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority with a statutory deposit of \$950,084 due to a clean audit report and improved credit ratings despite impact uncertainties of the Healthcare Reform Act and new Medicare laws and rule. Mr. Delfs expressed concern regarding the future financial stability of this company stating that although there has been a small turn around in profitability, the ratios do not look healthy. Ms. Pastor agreed with that assessment and explained the formula used to calculate the statutory deposit. Ms. Strickler and Mr. Parker asked additional questions about the formula and Mr. Parker explained the use of a captive company. Mr. Delfs suggested that the formula be reviewed and asked if Ms. Strickler and Mr. Parker would be willing to do this and report back to the Commission regarding their evaluation. They agreed to do so and this agenda item was tabled.

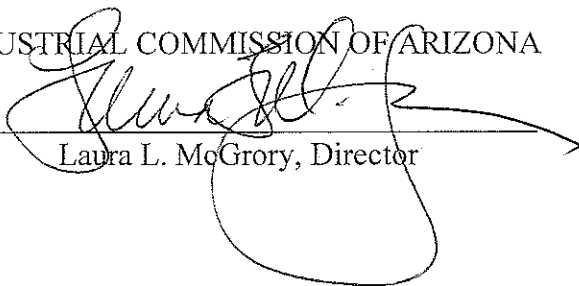
Salt River Project Agricultural Improvement and Power District and the Salt River Valley Water Users' Association (SRP) - Renee Pastor presented staff's renewal report along with current Moody's and Dunn and Bradstreet bond and credit ratings and responded to questions from the Commissioners. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority due to the excellent financial strength of the parent company with total worldwide assets now standing at just under \$10.2 billion, receipt of a clean audit report and good credit ratings. The Commission unanimously approved continuance of self-insurance authority on motion of Mr. Parker, second of Ms. Strickler.

YRC, Inc. – Ms. Pastor held consideration of this renewal for further information.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:23 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary