

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Wednesday, April 11, 2012 – 1:00 p.m.

Present:	David Parker	Chairman
	Kathleen Oster	Vice Chair
	John A. McCarthy, Jr.	Member
	Susan Strickler	Member
	Michael G. Sanders	Member
	Laura L. McGrory	Director
	Andrew Wade	Chief Counsel
	Renee Pastor	Self Insurance Manager
	Darin Perkins	Director, ADOSH
	Michael Hawthorne	Chief Financial Officer
	Jeri McAnerny	Tax Accountant
	Kamen Kovatchev	Self Insurance
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 1:02 p.m. noting a quorum present. Also in attendance were Scot Butler, the agency's lobbyist; Eda Barolli of Snell & Wilmer; Frances Bracamonte, Silvia Amparano and Curry C. Hale with City of Tucson; and Ruby Williams with Pinnacle Risk

Approval of Minutes of April 4, 2012 Meeting

The Commission unanimously approved the Minutes of April 4, 2012 on motion of Mr. McCarthy, second of Mr. Sanders.

Consent Agenda:

- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
1. 2C11/12-1203 Bar K Cattle, Inc.
 2. 2C11/12-1505 G.R. Taylor Enterprises, Inc.
 3. 2C11/12-1610 Howard M. Shreve, a Single Man,
dba MT's Olde Mill
 4. 2C11/12-0414 Desert Ridge Surgical Specialists, L.L.C.
 5. 2C11/12-1510 Nogales Market, L.L.C.
 6. 2C10/11-0973 The Villalpando Corporation, Inc. dba
Villalpando Custom Home Builders
 7. 2C11/12-0765 The Legalman, L.L.C. dba
Quick & Easy Legal Services
 8. 2C10/11-1797 Todd William Coyle, a Single Man,
dba Rockabye Toys
 9. 2C10/11-1887 Rental Property and Management, Inc.

Chairman Parker asked if any of the listed items needed to be removed from the consent agenda. Secretary Hilton stated that there were not. The Commission unanimously approved the items on the consent agenda on motion of Ms. Oster, second of Mr. McCarthy.

Discussion &/or Action regarding Legislation

Scot Butler provided a summary and bill status report and responded to questions from the Commissioners. He discussed House Bills 2368, 2571, 2601, and Senate Bill 1388 and stated there was nothing new to report on the budget. Laura McGrory provided a brief analysis on HB 2368 prepared by the National Council on Compensation Insurance. Mr. Butler stated that he and Ms. McGrory plan on meeting shortly after the current session adjourns to begin planning for next year's legislative agenda.

Discussion & Action of Applications for Renewal of Self Insurance Authority.

Chairman Parker noted that self-insurance renewals are being placed on the agenda for discussion and action rather than the consent agenda and explained why. Commissioner Sanders stated that he would like to see these matters remain on the discussion and action agenda. Renee Pastor provided the Commissioners with a quick reference guide regarding credit profiles and ratings agencies.

City of Peoria – Ms. Pastor presented staff's renewal report along with current Moody's, Fitch, 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 financial stability of the fund, the financial stability of the City, a clean audit report and good credit 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.

Chairman Parker gave a brief explanation including unintended consequences in shifting of renewal dates and discussed obtaining more current financial information. The Commissioners indicated that they were comfortable with the change in renewal date. Following discussion, the Commission unanimously approved continuance of self-insurance authority and approved utilizing the internal trust fund as an alternative from the requirement to post securities on motion of Mr. McCarthy, second of Ms. Strickler.

City of Tucson - Ms. Pastor noted that representatives from the City were present for today's meeting. She stated that in 2011 the Commission made the decision to increase the City of Tucson's security deposit from 125% to 135% based on several factors: The City did not have a trust in place, an actuary was not used, questions relating to reserving practices, and the City's financial condition. The City provided a summary of its response to those items and requested that the security deposit be reduced to 125% of the City's net liability. Ms. Pastor explained why staff recommends that the security deposit remain at 135%. Mr. Parker summarized the Commission's concerns from last year and stated discounting claims 8% on a per claim basis is not considered an acceptable practice. In response to a question from Mr. Parker, Ruby Williams of Pinnacle Risk Management Services explained how claims are reserved and discounted. Discounting of claims and the Commission's concerns were discussed. Sylvia Amparano stated she believed the City was a lesser risk than in the past and would ask the Commission to consider reducing the security deposit to 125%. Ms. Oster and Mr. Parker stated

that they appreciated what the City has done since last year and that they have come a long way. Following further discussion, the Commission unanimously approved renewal of self-insurance authority with security at 135% on motion of Mr. Parker, second of Mr. McCarthy. The motion included a provision that authorized the City to renew its request for a reduction in the security deposit if the City can demonstrate that the use of more appropriate reserving practices would result in a lower reserve than provided.

City of Yuma - Ms. Pastor presented staff's renewal report along with current Fitch, Moody's, Standard & Poor, and Dunn and Bradstreet bond and credit ratings. She stated that the City is working on creating a trust for workers' compensation liabilities and is exploring having an actuarial report prepared. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the City's financial stability and clean audit report. The Commission unanimously granted renewal of self-insurance authority on motion of Mr. Sanders, second of Ms. Oster.

Walgreen Co. - Ms. Pastor presented staff's renewal report along with current Moody's, Standard & Poor, 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 company's strong financial position with a consistent record of profitability, growing size with total assets of just over \$27.4 billion, a clean audit report and acceptable credit ratings. Mr. Parker commented on reports that Walgreens no longer has an arrangement with Express Scripts and the potential impact on revenues. Mr. Parker directed staff to perform certain follow up work. Ms. Pastor commented on Walgreen and Rite-Aid merger speculation. Following discussion, the Commission unanimously approved continuance of self-insurance authority on motion of Ms. Oster, second of Ms. Strickler.

Discussion & Action of Proposed OSHA Citations & Penalties

Dillon Aero, Inc.
8009 E. Dillons Way
Scottsdale, AZ 85260

Planned
Yrs/Business - 12
Empl. Cov. by Insp. - 49

Site Location: 8009 E. Dillons Way, Scottsdale, AZ 85260
Inspection #: N4762/316370196
Insp. Date: 2/8/12

SERIOUS - Citation 1, Item 1 - The employer had not established and implemented a written lockout/tagout program and procedures for the maintenance or servicing on a machine or equipment where the unexpected energizing, start up or release of stored energy could occur and cause injury (1910.147(c)(1)).

(No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1, Item 2 - The west facing lathe did not have the chuck guarded to protect the operator from placing any part of his body into the danger zone during the operating cycle (1910.212(a)(1)). There were six other instances of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

NONSERIOUS - Citation 2, Item 1 - The employer did not maintain and retain a log and

summary of the recordable occupational injuries and illnesses for the establishment for 2009 (1904.029(a)).

Div. Proposal - \$ 500.00
TOTAL PENALTY - \$3,000.00

Formula Amt. - \$ 500.00
TOTAL FORMULA AMT. - \$3,000.00

Darin Perkins summarized the citation 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 \$3,000.00 on motion of Mr. Sanders, second of Mr. McCarthy.

Stone Burg Marble & Granite, Inc.
7805 S. Hardy Drive, #101
Tempe, AZ 85284

Fatality/Accident
Yrs/Business - 12
Empl. Cov. by Insp. - 4

Site Location: 7805 S. Hardy Drive, #101, Tempe, AZ 85284
Inspection #: N9589/316280684
Insp. Date: 12/22/11

GROUPED SERIOUS – Citation 1, Item 1(a) – The employer attached a boom device to the subject forklift without the manufacturer’s prior written approval. The boom device was used to lift stone slab bundles (1910.178(a)(4)). There were two other instances of this violation.

Item 1(b) – The subject forklift was not marked to identify the attachments and show the approximate weight of the truck and attachment combination at maximum elevation with load laterally centered (1910.178(a)(5)). There were two other instances of this violation.

Item 1(c) – The nameplate including the load ratings was not in place (1910.178(a)(6)). There were two other instances of this violation.

Item 1(d) – The subject forklift was not examined before being placed in service (1910.178(q)(7)) There were two other instances of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, Item 2 - The employer did not certify that each forklift operator had been trained and evaluated as required by this paragraph (1) (1910.178(I)(1)(i)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, Item 3 –The employer did not ensure that employees kept clear of loads suspended or about to be lifted by slings (1910.184(c)(9)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

GROUPED SERIOUS – Citation 1, Item 4(a) – Wire rope slings were used that did not have fixed and legible identification markings (1910.184(c)(1)). There were two other instances of this violation.

Item 4(b) – Slings were not padded or protected from sharp edges of their loads when used to lift some slab bundles (1910.184(c)(7)).

Item 4(c) – Wire rope slings were not inspected each day or during use (1910.184(d)).

Item 4(d) – The eyes of wire rope slings that had kinking, crushing, and worn exterior wires were not immediately removed from service. The subject wire rope sling eyes were rigged in a basket hitch configuration directly to forklift forks. The damage was caused by direct contact with the edges of forklift forks during the unloading of stone slab bundles from trucks/trailers (1910.184(f)(5)(iii)). There was one other instance of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, Item 5 – The miter saw was operated without the lower blade guard (1910.213(r)(4)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$10,000.00

TOTAL FORMULA AMT. - \$10,000.00

Mr. Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Division proposal for Citation 1, item 3 was for the gravity based penalty with no adjustment factors since it directly related to the fatality. Following discussion, the Commission unanimously increased the penalty for Citation 1, item 2 to the gravity based penalty of \$7,000.00 with no adjustment factors since this violation also directly related to the fatality for a total penalty of \$16,250.00 on motion of Mr. Parker, second of Mr. Sanders.

Announcements and Scheduling of Future Meetings

Chairman Parker noted that an information update regarding Schuck & Sons Construction has been provided to the Commissioners. Ms. Hilton reminded the Commissioners that the next meeting was scheduled for April 25th, 2012 and will begin with the annual fee schedule hearing in the Auditorium. Rulemaking relating to SB 1441 will also be an agenda item for the 25th.

There being no further business to come before the Commission and no public comment, Chairman Parker adjourned the meeting at 2:41 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary