

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Auditorium
Phoenix, Arizona 85007
Wednesday, November 28, 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 McGrory	Director
	Andrew Wade	Chief Counsel
	Chris Anderson	Legal Counsel
	Darin Perkins	Director, ADOSH
	Karen Axsom	Director, Labor Department
	Renee Pastor	Manager, Self-Insurance
	Michael Hawthorne	CFO
	David Sosa	Special Fund Monitor
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were David Ouimett of Mariscal Weeks; Scot Butler, the agency's lobbyist; and Eda Barolli of Snell & Wilmer. Additional attendees who chose to sign in were Trey Gillespie of PCI, Craig Jamerson of Division 3 Structures, James Stabler of SCF Arizona, Tom Whitley of Taylor & Associates, Amy Cronkhite of IIAB of AZ, Lisa Anne Forsythe of Coventry Workers' Comp Services, Ryan Harper of Triadvocates, Heather Wilker of Dorn Policy Group, and Sara Sparman of Kutak Rock.

Chairman Parker announced that the meeting will recess prior to the Executive Sessions listed on the Agenda and will reconvene in the 3rd floor conference room.

Legislative Stakeholders' Meeting

Chairman Parker welcomed interested parties to the Commission's 2012 Stakeholders' Meeting and advised that at this time the Commission has not taken any action to have legislation introduced on its behalf in the upcoming legislative session. He explained that the purpose of the meeting is to provide stakeholders with an additional opportunity to comment on issues or to recommend the introduction of legislation regarding any aspect of the Industrial Commission's operations. Mr. Parker stated that information can be provided to the Commission after the hearing, preferably before the legislative session.

Tom Whitley addressed the Commission. He stated that he was an attorney and has represented injured workers for 34 years in addition to being an Administrative Law Judge in the past. He asked that a committee be set up under the Director to evaluate a different process for resolving medical treatment disputes. He stated that currently, an ALJ, who is not medically trained, has to make the determination as to what kind of treatment is appropriate. He stated he would like to see a method established, for example, to have a medical panel make the

determination rather than an ALJ because he did not think it was fair to ask ALJ's to make this type of decision. Mr. Parker commented that some states have prequalified physicians and asked Mr. Whitley if he thought that would work or if arbitrators would be needed to determine medical treatment. Mr. Whitley stated that the ongoing committee on evidence based medicine guidelines may address and have some impact on the issue, but a committee under the Director's leadership could investigate various methods and make recommendations to the Commission on whether something could be done along those lines.

Jim Stabler, Chief Counsel for SCF Arizona, stated that he agreed with Mr. Whitley in some respects but felt that this may be a natural part to roll into the ongoing committee work on evidence based treatment standards. He stated that SCF Arizona, the Arizona Self Insured Association, and others have explored how various states approach medical disputes that require medical expertise. One of the issues that was not addressed in the evidence based treatment legislation but was discussed was how to resolve disputes if there is a disagreement as to appropriate medical treatment. He agreed that rather than clog up the judicial system with these issues, it makes sense to have a dispute resolution process with an appointed medical panel, and other states have adopted this method of resolving disputes. Given the time line of 2014 he stated he would urge the Commission to include dispute resolution in terms of medical treatment to be addressed in that process. Ms. Strickler asked Mr. Stabler if he felt if the Commission were to open the door to the medical panel issue, did he foresee this as part of the hearing process or would legislation be required. Mr. Stabler stated that in promulgating evidence based medical treatment standards, a dispute resolution mechanism with a trained medical dispute panel is needed rather than an ALJ. He stated he believes that would be within the rulemaking authority of the Commission, but may require legislation.

There being no further requests to speak, Chairman Parker announced that the stakeholders meeting was completed and the Commission would proceed with the remaining agenda items.

Approval of Minutes of November 14, 2012 Meeting

The Commission unanimously approved the Minutes of the November 14, 2012 meeting on motion of Ms. Oster, second of Ms. Strickler.

Consent Agenda:

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C11/12-0271 1st Providers Choice, Inc.
2. 2C11/12-0293 ATG Transport, L.L.C.
3. 2C11/12-1430 A Place For Mom and Dad, L.L.C.
4. 2C11/12-1554 Hale Accounting and Employment Service, L.L.C.
5. 2C11/12-1222 The Cleanest Clean, L.L.C.
6. 2C11/12-0940 Umma, L.L.C. dba Thunderbird Cleaners

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

SERIOUS – Citation 1 - Item 2 – Three employees were allowed to work in an excavation that measured six feet deep, eight feet wide and eight feet long, and were not provided with a safe means of egress out of the excavation (1926.651(c)(2)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3 – Daily inspections of the excavation that measured six feet deep, eight feet wide and eight feet long were not being conducted by the competent person (1926.651(k)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4 – Three employees conducting work inside of the excavation that measured six feet deep, eight feet wide and eight feet long, were not protected with an adequate protective system to prevent a trench collapse (1926.652(a)(1)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$3,000.00

TOTAL FORMULA AMT. - \$3,000.00

Darin Perkins summarized the citations and proposed penalty as listed. Mr. Sanders stated that the photos speak for themselves. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,000.00 on motion of Mr. Sanders, second of Ms. Oster.

The Jacobson Companies, Inc.,
dba Yuma Valley Contractors, Inc.
1334 South 5th Avenue
Yuma, AZ 85364

Planned
Yrs/Business – 40
Empl. Cov. by Insp. - 7

Site Location: 6390 East 26th Street, Yuma, AZ 85365

Inspection #: F3875/316684968

Insp. Date: 09/05/12

SERIOUS – Citation 1 - Item 1 – Employees were allowed to operate the forklift without receiving training or evaluation in the safe operation of the forklift (1910.178(I)(1)(i)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 2 – An angle grinder that was being used by an employee was not equipped with a safety guard (1926.300(b)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 3 – Employees had not been trained in the safe operation of the powder actuated tool (1926.302(e)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$3,750.00

TOTAL FORMULA AMT. - \$3,750.00

Darin Perkins summarized the citations and proposed penalty as listed. In response to a question, Mr. Perkins described a powder actuated tool. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,750.00 on motion of Mr. McCarthy, second of Ms. Strickler.

Creative Precision, Inc.
2640 East Rose Garden Lane #6
Phoenix, AZ 85040-4612

Planned
Yrs/Business - 15
Empl. Cov. by Insp. - 9

Site Location: 2640 East Rose Garden Lane #6, Phoenix, AZ 85040-4612
Inspection #: H1793/316739051
Insp. Date: 09/20/12

SERIOUS - Citation 1 - Item 1 - A mezzanine area approximately 15' wide, 40' long and 10' high was lacking standard guardrails or other equivalent means to prevent a fall (1910.023(c)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1 - Item 2 - A vertical band saw did not have the unused portion of the saw blade guarded (1910.212(a)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1 - Item 3 - The work rest was not properly adjusted closely to the wheel with a maximum opening of one-eighth inch to prevent the work from being jammed between the wheel and the rest (1910.215(a)(4)). There was another instance of this violation.

Div. Proposal - \$100.00

Formula Amt. - \$100.00

SERIOUS - Citation 1 - Item 4 - The motor powered bench grinder was unguarded (1910.215(b)(3)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1 - Item 5 - The angular exposure of the grinding wheel periphery and sides exceeded 150 degrees (1910.215(b)(5)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

GROUPED SERIOUS - Citation 1 - Item 6(a) - A vertical band saw did not have the drive belt guarded (1910.219(d)(1)).

Citation 1 - Item 6(b) - A vertical band saw did not have the gears guarded by a complete enclosure (1910.219(f)(1)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$3,850.00

TOTAL FORMULA AMT. - \$3,850.00

Darin Perkins summarized the citations and proposed penalty as listed. Mr. Parker commented on the presence of mezzanines like the one in the photos and the fall risk. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,850.00 on motion of Ms. Oster, second of Mr. McCarthy.

The Carioca Company
2601 West Dunlap Avenue, Suite 110
Phoenix, AZ 85021

Fatality/Accident
Yrs/Business - 40
Empl. Cov. by Insp. - 2

Site Location: 1325 Iron Springs Road, Prescott, AZ 86305
Inspection #: I6950/316653401
Insp. Date: 08/21/12

SERIOUS – Citation 1 - Item 1 – The employer did not establish an energy control program (lock out/tag out) for the maintenance department which is responsible for the maintenance of thirty five locations throughout Arizona (1910.147(c)(1)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1 - Item 2 – There are two cooling units on the roof of the facility which operate at 200/230 volts, three Phase, 60Hz and were missing covers exposing personnel on the roof to live electrical parts (1910.303(g)(2)(i)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

TOTAL PENALTY - \$3,500.00

TOTAL FORMULA AMT. - \$3,500.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,500.00 on motion of Mr. McCarthy, second of Ms. Strickler.

All R.V. Service Center, Inc.

537 West Grant Road

Tucson, AZ 85705

Complaint

Yrs/Business – 38

Empl. Cov. by Insp. - 4

Site Location: 537 West Grant Road, Tucson, AZ 85705

Inspection #: A9339/316653096

Insp. Date: 08/09/12

SERIOUS – Citation 1 - Item 1 – Polyvinyl Chloride pipe was used to transport compressed air above ground (A.A.C R20-5-628).

Div. Proposal - \$300.00

Formula Amt. - \$300.00

GROUPED SERIOUS – Citation 1 - Item 2(a) – Gasoline and other flammable liquids were stored in an unapproved wooden cabinet (1910.106(d)(3)(ii)).

Citation 1 - Item 2(b) – Flammable liquids were stored in the parts room that did not have a self-closing fire door, raised floor sill, or liquid tight walls at the floor joints (1910.106(d)(4)(i)). There was another instance of this violation.

Citation 1 - Item 2(c) – A stored oxygen cylinder was not separated from propane cylinders by at least 20 feet or a five foot high wall with a 30 minute fire resistance (1910.101(b)).

Div. Proposal - \$600.00

Formula Amt. - \$600.00

SERIOUS – Citation 1 - Item 3 – The left and right spindle nut covers were missing from the bench grinder (1910.215(a)(2)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4 – The belt and pulleys of the air compressor were not guarded (1910.219(d)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 5 – The switch on the 220 volt/50 ampere electrical fuse box for the compressor was broken (1910.303(b)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 6 – the bare wires without a plug, of the electrical power supply cord were inserted into an outlet to supply electrical power for the drill press (1910.303(c)). There was another instance of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 7 – An energized 220 volt junction box did not have a face plate installed, thereby exposing live electrical wires (1910.305(b)(2)). There were five other instances of this violation.

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$4,650.00

TOTAL FORMULA AMT. - \$4,650.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Parker asked if Citation 1 Item 5 should be a willful based on how obvious the violation was just looking at photograph number nine. Mr. Perkins responded that he had considered whether the citation could be considered willful and he explained why he was not recommending a willful designation. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$4,650.00 on motion of Mr. Sanders, second of Ms. Oster.

M&P Contracting, Inc.
3425 North 29th Avenue
Phoenix, AZ 85017

Fatality/Accident
Yrs/Business – 27
Empl. Cov. by Insp. - 3

Site Location: 3425 North 29th Avenue, Phoenix, AZ 85017

Inspection #: J9925/316569516

Insp. Date: 06/08/12

SERIOUS – Citation 1 - Item 1 – The employer did not ensure that PPE such as welding leathers, welding gloves and/or welding helmets were worn during welding operations (1910.132(d)(1)(i)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1 - Item 2 – The individual responsible for authorizing cutting or welding did not designate the precautions to be followed (1910.252(a)(2)(iv)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

GROUPED SERIOUS – Citation 1 - Item 3(a) –Welding was performed on an unclean or improperly prepared diesel fuel tank (1910.252(a)(2)(vi)(C)).

Citation 1 - Item 3(b) – Welding was performed on an aluminum 100 gallon diesel fuel tank without ensuring that all potential flammable materials were removed (1910.252(a)(3)(i)).

Div. Proposal - \$ 7,000.00

Formula Amt. - \$ 7,000.00

TOTAL PENALTY - \$21,000.00

TOTAL FORMULA AMT. - \$21,000.00

Darin Perkins stated that this file was previously presented to the Commission and the Commission had requested a willful review. He explained that the Legal Department has completed its review and he described the outcome of that review. He summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Sanders stated that he viewed the video of the accident and that the tank did not explode but ruptured, causing diesel fuel to leak out, which is what burned. He observed that it appeared the employee

used the wrong welding machine, did not disconnect the electrical from the truck, and that mounting straps were touching the floor. Following further discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$21,000.00 on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion & Action of Proposed Youth Employment Penalty

#1213-0004 B & B Blinds and Builder Services, LLC – Karen Axsom advised this matter involved a 15 year old youth whose finger was cut off when working with a power-driven saw and the Labor Department is recommending a penalty of \$1,300.00 be assessed against the employer. Mr. Parker questioned when the penalty structure had last been updated, since the amount of the penalty seemed low. Ms. McGrory stated she believed the last time was about five years ago and explained the statute and that it would require legislation to increase the penalty amount. Following further discussion regarding the statute, the Commission unanimously assessed the recommended penalty of \$1,300.00 on motion of Ms. Oster, second of Mr. McCarthy. Mr. Parker stated that there were outdated areas in the statute and this is something the Commission could work on updating.

Discussion & Action of Application for Renewal of Self Insurance Authority

Hyatt Corporation - Ms. 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 Commission. Administration is recommending renewal of workers' compensation self-insurance authority based on continued profitability, financial strength with assets of just over \$7.5 billion, a clean audit report, and acceptable bond and credit ratings. The Commission unanimously approved renewal of self-insurance authority on motion of Mr. Sanders, second of Ms. Strickler.

Public Comment

Chairman Parker explained that the Commission had several items to address that would likely involve the Commission meeting in executive session. Before moving the meeting to Room 308, Mr. Parker asked those in attendance if anyone wished to address the Commission. There was no public comment. Chairman Parker recessed the meeting at 2:14 p.m. to be reconvened in 10 minutes in room 308. Teresa Hilton posted signs on the doors to the auditorium as well as adjacent to the notice of today's meeting explaining that the meeting had been moved to Conference Room 308.

Chairman Parker reconvened the meeting at 2:25 p.m. in Room 308.

Discussion &/or Action regarding ADOSH Discrimination Complaint number 12-02, Raymon Handy vs. Loomis Armored U.S. L.L.C. The Commission may move into executive session under A.R.S. §§ 38-431.03(A)(3) and (A)(4) for discussion and consultation with Commission attorneys for legal advice and in order to consider its position and instruct its attorneys regarding the Commission's position regarding pending or contemplated litigation or settlement discussions conducted in order to avoid or 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

Mr. Wade stated that staff is requesting discussion of this agenda item be postponed until the next meeting to allow staff the opportunity to provide the Commission with additional information.

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 Commission attorneys for legal advice and in order to consider its position and instruct its attorneys regarding the Commission's position regarding pending or contemplated litigation or settlement discussions conducted in order to avoid or 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

The Commission unanimously voted to go into Executive Session on motion of Mr. McCarthy, second of Mr. Sanders. Executive Session Minutes are kept separately.

Upon return to General Session, the Commission unanimously voted to proceed with Counsel's recommended course of action on motion of Ms. Oster, second of Ms. Strickler.

Discussion &/or Action regarding ADOSH Citation and Penalty, Superior Equipment Sales and Service, Inc., inspection number N9589/316452762. The Commission may move into executive session under A.R.S. §§ 38-431.03(A)(3) and (A)(4) for discussion and consultation with Commission attorneys for legal advice and in order to consider its position and instruct its attorneys regarding the Commission's position regarding pending or contemplated litigation or settlement discussions conducted in order to avoid or 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

The Commission unanimously voted to go into Executive Session on motion of Mr. Sanders, second of Mr. McCarthy. Executive Session Minutes are kept separately.

Upon return to General Session, the Commission unanimously agreed to proceed with Option B on motion of Mr. McCarthy, second of Ms. Oster.

Public Comment

Noting that there were members from the public, Chairman Parker asked if any one wished to address the Commission. There was no public comment.


Announcements and Scheduling of Future Meetings

The Commissioners confirmed the previously scheduled meetings for December 5, 12, and 19, 2012 and January 9, 2013. Additional meetings were scheduled for January 23 and 30, 2013.

There being no further business to come before the Commission, Chairman Parker adjourned the meeting at 4:13 p.m.

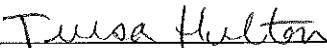
THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary