MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Wednesday, December 19, 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
Darin Perkins Director, ADOSH
Renee Pastor Self-Insurance Manager

Jesse Atencio Assistant Director, ADOSH – Tucson Larry Gast Assistant Director, ADOSH - Phoenix

Michael Hawthorne Chief Financial Officer

Kamen Kovatchev Self-Insurance

Teresa Hilton Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance was Scot Butler, the agency's lobbyist; Jason Weber of Snell & Wilmer; Stephanie Coulter of the Cavanagh Law Firm; and Jeff Homer of General Dynamics.

Chairman Parker requested that a moment of silence be observed in remembrance of those who lost their lives and their families in the recent school shooting in Connecticut.

Approval of Minutes of December 5, 2012 Meeting

The Commission unanimously approved the Minutes of December 5, 2012 on motion of Mr. Sanders, second of Mr. McCarthy.

Consent Agenda:

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C11/12-2921 Limberlost Investment Properties, L.L.C. dba Meineke Econo Lube N Tune

2. 2C11/12-2255 Newsparkle Stone & Beads Import, L.L.C.

3. 2C12/13-0275 Park Avenue Jewelers, Inc.

4. 2C12/13-0313 Shady Pines Care Home, L.L.C.

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. McCarthy, second of Ms. Oster.

Discussion &/or Action regarding Legislation

Discussion &/or Action regarding Residential Fall Protection

Scot Butler stated that the first or second week of January he will provide a list of proposed legislation. He explained several significant issues affecting Arizona including healthcare and AHCCCS and the funding impacts on education. He described his expectations and recommendations regarding the residential fall protection issue, which included plans to meet with some Legislative leadership and committee chairs.

Ms. McGrory stated that Darin Perkins had provided the Commissioners with a memorandum that describes Federal OSHA's findings and ADOSH's proposed response to federal OSHA regarding the Complaint Against State Program Administration. She summarized staff's recommendations. She also advised that Mr. Perkins has contacted some of his counterparts in other states to ascertain what other states are doing to address OSHA's expectations regarding the trigger height for residential conventional fall protection. Mr. Perkins presented a summary of the Oregon and Kentucky standards and his discussions with his counterparts in those states. The Commission discussed the use of outcome measures as a means of determining whether Arizona's plan is "at least as effective." Mr. Parker asked if the 30 day deadline to respond to OSHA could be extended and he commented on how to establish that Arizona's program is at least as effective. The outcome of the discussion was that staff will continue to work on a draft that will be submitted for the Commissioner's review and comment.

Mr. Butler and Ms. McGrory will continue to meet with other groups regarding the deductible policy issue. Mr. Butler summarized other potential workers' compensation legislation that has come to his attention, including a proposal that restructures the insolvent carrier function of the Special Fund. Ms. McGrory and Chairman Parker summarized a recent discussion with Mr. Jim Stabler on the insolvent carrier issue and discussion followed.

Discussion & Action of Proposed OSHA Citations & Penalties

BAE Systems, Inc. dba BAE Systems Aerospace & Defense Group, Inc.

7822 S. 46th St.

Phoenix, AZ 85044

Site Location: 7822 S. 46th St., Phoenix, AZ 85044

Inspection #: 316801919 Insp. Date: 10/22/12

<u>SERIOUS</u> – Citation 1 - Item 1 – Employee exposure to hexavalent chromium exceeded the maximum use concentration for the supplied respirator. (1910.134(d)(3)(i)(B)(1))

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

Complaint

Yrs/Business - 37

Empl. Cov. by Insp. -20

<u>SERIOUS</u> – Citation 1 - Item 2 – Employees were exposed to hexavalent chromium at levels up to 62 times the permissible exposure limit. (1910.1026(c))

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

<u>SERIOUS</u> – Citation 1 - Item 3 – Employees exposed to hexavalent chromium were not monitored to determine their time-weighted average exposure. (1910.1026(d)(1))

Div. Proposal - \$1,875.00

<u>SERIOUS</u> – Citation 1 - Item 4 — When monitoring revealed exposures above the PEL, periodic monitoring was not repeated every three months. (1910.1026(d)(2)(iv))

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

<u>SERIOUS</u> – Citation 1 - Item 5 – All feasible engineering controls were not used to reduce employee exposure to hexavalent chromium to the lowest achievable levels. (1910.1026(f)(1)(i))

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

TOTAL PENALTY - \$9,375.00

TOTAL FORMULA AMT. - \$9,375.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Kathy Oster questioned whether it was appropriate to apply the adjustment factor for good faith. Michael Sanders questioned why the employer did not have additional monitoring done when it was discovered they were over the PEL in the initial monitoring and asked if this matter had a willful aspect. Mr. Perkins responded to the questions. Following further discussion, the Commission removed the adjustment factor for good faith which resulted in penalties of \$2,250.00 for each item and a total penalty of \$11,250.00 on motion of Ms. Oster, second of Mr. McCarthy.

Lincolnshire Management, Inc., dba Paddock Pools & Spas Complaint Yrs/Business – 57

6525 E. Thomas Rd.

Empl. Cov. by Insp. – 25

Scottsdale, AZ 85251

Site Location: 6525 E. Thomas Rd., Scottsdale, AZ 85251

Inspection #: 316853282 Insp. Date: 10/22/12

<u>GROUPED SERIOUS</u> – Citation 1 – Item 1a – An inappropriate apron was selected as PPE for exposure to hydrochloric acid. (1910.132(a))

Citation 1 – Item 1b – The employer did not conduct a hazard assessment to determine what PPE was necessary to protect employees from exposure to corrosive chemicals. (1910.132(d)(1))

Citation 1 – Item 1c – The employer did not provide training in the proper use of personal protective equipment. (1910.132(f)(1))

Citation 1 – Item 1d – Protective face and eye equipment was not selected and required for employees exposed to acids. (1910.133(a)(1))

Citation 1 – Item 1e – Protective hand equipment was not selected and required for employees exposed to acids. (1910.138(a))

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

<u>SERIOUS</u> – Citation 1 - Item 2 – A 220 volt outlet was improperly installed, with a cover missing, such that live parts could be contacted. (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

Mr. Perkins summarized the citations and proposed penalty as listed. Chairman Parker asked if there was an industry association for the pool and spa business and if so, requested that ADOSH attempt an outreach effort on the dangers of chlorine. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,500.00 on motion of Mr. McCarthy, second of Ms. Oster.

Town of Thatcher Fire Department

Complaint

P.O. Box 670

Yrs/Business - 62

Thatcher, AZ 85552

Empl. Cov. by Insp. -30

Site Location: 1150 N. College Ave., Thatcher, AZ 85552

Inspection #: 316801752 Insp. Date: 10/15/12

<u>SERIOUS</u> – Citation 1 – Item 1 – The department did not follow National Fire Protection Association standards for conducting live fire training exercises. The incident command system procedures were not followed, more than one interior fire was lit at one time, and firefighters entered the structure without a safety monitor posted to account for all entrants. (A.R.S. § 23-403(A))

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

<u>SERIOUS</u> – Citation 1 - Item 2 – A written exposure control plan was not established to eliminate or minimize employee exposure to blood or other potentially infectious materials. (1910.1030(c)(1)(i))

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$3,750.00

TOTAL FORMULA AMT. - \$3,750.00

Mr. Perkins summarized the citations and proposed penalty as listed and explained why the description of the first citation should be amended. Mr. McCarthy commended ADOSH staff for catching up with a quicker turn-around time. The Commission unanimously approved issuing the citations, as amended, and assessed the recommended penalty of \$3,750.00 on motion of Ms. Oster, second of Mr. McCarthy.

Citation 1 – Item 1 was amended as follows: The employer failed to provide a safe working environment in that employees were exposed to fire and burn hazards due to their participation in a live fire training exercise which was inadequately planned and carried out.

Discussion & Action regarding Request for Renewal of Self-Insurance Authority

<u>Parker Hannifin Corporation</u> - Ms. Pastor presented staff's renewal report along with current Standard & Poors', Moody's, Fitch, and Dunn and Bradstreet bond and credit ratings and responded to questions from the Commissioners. Administration is recommending renewal of workers' compensation self-insurance authority based on the company's financial stability and profitability, large size with assets exceeding \$11.1 billion, a clean audit report and a good credit rating. The Commission unanimously approved renewal of self-insurance authority on motion of Mr. Sanders, second of Mr. McCarthy.

Discussion &/or Action regarding the Development and Implementation of a Process for the Use of Evidence-Based Medical Treatment Guidelines under HB 2368

Ms. McGrory advised that under A.R.S. §23-1062.03, the Commission is required to provide a progress report to the Governor's House and Legislative leadership regarding the development and implementation of a process for the use of evidence-based medical treatment guidelines, where appropriate, to treat injured workers. This year, the progress report is required to be provided no later than December 31, 2012. Ms. McGrory provided the Commissioners a copy of the progress report and summarized that report.

In response to a question from Ms. Oster, Ms. McGrory explained her plan to address the recent decisions by two committee members to withdraw from the committee. She also explained that the Committee is in the information gathering stage, which will include review of the NCCI medical call data report that was recently provided to the Commission.

Announcements and Scheduling of Future Meetings

Ms. McGrory announced that Darin Perkins has accepted a position with the Central Arizona Project. Chairman Parker and the Commissioners congratulated Mr. Perkins on a job well done.

The next Commission meeting will be held on Wednesday, January 9, 2013. The Commission also scheduled meetings for February 6, 13, and 20. The meeting scheduled for the 20th may be moved to the 27th at a later date.

There being no further business to come before the Commission and no public comment, Chairman Parker adjourned the meeting at 2:55 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

Laura L. McGrory, Director

ATTEST:

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Teresa Hilton, Commission Secretary