MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Wednesday, March 6, 2013 – 1:00 p.m.

Present:	David Parker	Chairman (video conference)
	Kathleen Oster	Vice Chair
	John A. McCarthy, Jr.	Member
	Susan Strickler	Member
	Michael G. Sanders	Member
	Laura McGrory	Director
	Kathryn Harris	Legal Counsel
	Renee Pastor	Manager, Self-Insurance
	Larry Gast	Acting Director, ADOSH
	Marshall Kronenberg	Compliance Officer
	Rosanne Oropeza	Acting Manager Human Resources
	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 were Scot Butler, the agency's lobbyist; Eda Barolli and Andrea Lewis of Snell and Wilmer; Lorena Sanchez, Sherry Schurhammer, and Dianne Shoemake of City of Glendale; Curry C. Hale, Frances Bracamonte and Cindy Eiserman of City of Tucson; Ruby Williams of Pinnacle Risk; and Jeff Homer from General Dynamics.

Approval of Minutes of February 20, 2013 Meeting

The Commission unanimously approved the Minutes of February 20, 2013 on motion of Ms. Oster, second of Mr. Sanders.

Consent Agenda:

a. Approval of Proposed Civil Penalties Against Uninsured Employers

1.	2C11/12-1770	19th Street Builders, L.L.C.
2.	2C11/12-1671	Assisted Living America, L.L.C. dba Camelback Manor House
3.	2C12/13-0691	CDMG, L.L.C. (A Delaware Corporation) dba CRM Solutions
4.	2C11/12-1828	Garcia Express, L.L.C.
5.	2C12/13-0344	Hambicki's Truck & Container Sales, Inc.
6.	2C12/13-0593	Hybritech Medical Group Corporation dba MYMD-Now
7.	2C12/13-0667	Joan Gilmour, a Single Woman, dba Posh Pet Boutique and Spaw
8.	2C12/13-0423	Maya's Farm, L.L.C.
9.	2C11/12-1716	Scott Davis & Lisa Davis, Husband & Wife, dba Pro-Tech Small Engine & Equip. Repair Sales and Service

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. Strickler.

Discussion &/or Action regarding Legislation

Scot Butler provided an updated report of current legislative activity along with the status of bills of interest to the Commission. Mr. Butler discussed specific bills that had activity: SB 1148, 1310, 1182 and 1380 and HB 2485 and responded to questions from the Commissioners.

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

City of Glendale – Renee Pastor presented staff's renewal report. She stated that under the provisions of R20-5-1114, the City has requested an alternative to posting securities. Staff reviewed the request and determined that the retained earnings in the City's Workers' Compensation Trust was insufficient at the end of the year with negative net earnings of $707,000 due to several large losses. She advised that the City conducts an annual actuarial report using a confidence level of 55%. As of December 31, 2012, the City moved $1.4 million from the Risk Management Trust Fund to the Workers' Compensation Trust Fund. Because of the financial state of the City's General Fund, staff also looked at closed claims with a potential to reopen and determined that the City should add an additional $560,670 to its Workers' Compensation Trust to cover those claims. She provided additional financial and credit information and responded to questions from the Commissioners. Based on the information presented, she recommended renewal of the City's workers' compensation self-insurance authority based on the City's prior financial stability, a plan for economic recovery, receipt of a clean audit report, and the posting of alternative security in the amount of $4,476,502 to cover existing liabilities (which includes unpaid liabilities at 125% totaling $3,915,832). Ms. Pastor then provided written comments from the City and stated that representatives from the City were present to answer questions.

Chairman Parker stated the question is whether it is appropriate to approve the request under R20-5-1114. Mr. Parker summarized the criteria required to grant the City's request. He stated that the Commission encourages self-insureds to fully fund their trusts and asked the City representatives what the balance of the fund is today, how are they funding this coming year, and are they confident that the cash flow will stay at a level to be able to pay their obligations.

Diane Shoemake, Interim Risk Manager, Sherry Schurhammer, Executive Director of Financial Services, and Lorena Sanchez addressed the Commissioners. Ms. Shoemake stated that the City is undergoing a lot of change. She explained that the fund is run by the Board of Trustees and that they are committed to funding the trust to keep it successful. She stated that the goal of the Trustees is to increase the confidence level of the fund to the 80 to 90% level. She stated that the fund itself is functioning well and meets all of the required criteria. In response to a question from Mr. Parker, Ms. Shoemake stated that she is confident, notwithstanding the unforeseen large loss that might occur, that the cash flow will be such that they are likely to make it through the year without falling below the actuarially determined outstanding liability.

In response to a question from Chairman Parker regarding whether the Workers' Compensation Trust fund is an individual trust or combined with other trust moneys, and the

controls that are in place regarding the transfer of money between the trusts, Ms. Schurhammer stated that the Workers' Compensation Trust is now managed as a separate trust and that any transfer of money would have to be approved by the Board of Trustees and the City Council. Mr. Parker expressed an interest in addressing such controls but for today was satisfied that additional controls are not necessary. Following further discussion, the Commission unanimously approved renewal of self-insurance authority and granted the City's request under R20-5-1114 on motion of Mr. Sanders, second of Ms. Strickler.

City of Tucson – Ms. Pastor reviewed the prior action and concerns raised by the Commissioners during the last renewal of the City's authority to self-insure, which included the reserving methodology of Pinnacle Risk Management, the claims servicing agent for the City and the lack of a trust. In view of those concerns, the Commission previously required the City to post securities at 135% of their unpaid liabilities and the City agreed that it would move forward with establishing a trust. Ms. Pastor then presented staff's renewal report along with current bond and credit ratings and responded to questions from the Commissioners. She recommended renewal of the City's workers' compensation self-insurance authority with the calculation of its statutory deposit based on 125% of their unpaid liabilities, based on the City's strategic effort and plan to maintain long-term financial stability, protections afforded it as a governmental entity, and a clean audit report.

Chairman Parker noted that representatives from the City were present to respond to questions. He stated that the City has strong leadership in the finance area and acknowledged that they had taken the Commission's recommendations seriously, putting together a trust, hiring a new Risk Manager, and are appointing Trustees. He stated he is still very concerned about Pinnacle's continuing discount of individual claim reserves. He explained his concern that this practice is not considered a best practice and is not considered an acceptable practice. He stated that the City retained an excellent actuary, who found the same issue of under-reserving claims, which was addressed in the actuarial report. Mr. Parker asked that representatives of the City or Pinnacle address the practice.

Ruby Williams, Assistant Branch Manager of Pinnacle Risk Management, stated that Pinnacle's reserving considers life expectancy and certain criteria and they reserve at full exposure. She stated, however, that some clients ask them to discount claims, so that is what they do. Francis Bracamonte, with the City of Tucson, stated that they continue to discount certain claims. She explained the process stating that the claims are reviewed annually on an individual basis and that the discount has been reduced from 8% to 5%. She stated that the City is looking at alternate methods for the future. Mr. Parker questioned the basis for discounting claims at 5%. Ms. Bracamonte responded to the question stating that the City has used this practice for several years based upon anticipation of interest return. She stated that the claims are appropriately reserved. Mr. Parker questioned whether the money was put aside to earn interest so that they are fully funded on each claim. Ms. Bracamonte responded that they are not fully funded in the trust, but that they have their security deposit funded. She explained that the trust has a ten year plan to become fully funded. Mr. Parker explained the problem of discounting at the claim level and at the actuarial level. He reiterated that it is not appropriate to do both. Ms. Oster and Ms. Strickler agreed that they did not think discounting at the claim level was appropriate. Mr. Sanders also stated he was not comfortable with the City's method of reserving. Mr. Parker stated that while he has confidence in the City's ability to process and pay claims appropriately, he is troubled by the discounting piece. He questioned Ms. Pastor's recommendation to reduce the calculation of the statutory deposit from 135% to 125%. Ms.

Cindy Eiserman, Risk Manager for the City of Tucson, stated that the trust is moving forward quickly and this is something that they are taking seriously. They have been researching "best practices" for all their funds, not just workers' compensation and will be continuing to work on this issue this year. Following further discussion regarding the discounting practices and funding levels, the Commissioners unanimously approved renewal of the City's self-insurance authority with the understanding that if the City is still discounting at the claims level at the time of the next renewal, the statutory deposit will be set at 135% of outstanding liabilities, if not more, on motion of Mr. Parker, second of Mr. Sanders.

Discussion & Action of Proposed OSHA Citations & Penalties

Thorobred Framing, Inc.
3950 E. Presidio St.
Mesa, AZ 85215

Unprogrammed Related
Yrs/Business – 29
Empl. Cov. by Insp. – 2

Site Location: 4727 E. Red Oak Ln., Gilbert, AZ 85297
Inspection #: Y5457/316876648
Insp. Date: 11/28/12

SERIOUS – Citation 1 - Item 1 – Employees installing roof sheathing 20' above lower levels were not protected from falling. (23.0492(04)(G)(1)(a)).

Div. Proposal - $2,500.00 Formula Amt. - $2,500.00

SERIOUS – Citation 1 - Item 2 – Interior staircase: An unprotected wall eight feet long and five feet above the staircase and lower level with studs twenty-four inches on center presented a fall hazard with openings greater than eighteen inches wide. (23.0492(03)(I)(1)).

Div. Proposal - $1,000.00 Formula Amt. - $1,000.00
TOTAL PENALTY - $3,500.00 TOTAL FORMULA AMT. - $3,500.00

Larry Gast summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, which included the Commission's penalty calculation policy in cases involving the issuance of citations under the multi-employer worksite doctrine, the Commission unanimously approved issuing the citations and assessed a penalty of $1,500.00 for item 1 and $600.00 for item 2 for a total penalty of $2,100.00 on motion of Mr. Sanders, second of Mr. McCarthy.

2 X G Framing, Inc.
2733 N. Power Rd., Suite 102, #416
Mesa, AZ 85215

Complaint
Yrs/Business – 12
Empl. Cov. by Insp. – 9

Site Location: 4727 E. Red Oak Ln., Gilbert, AZ 85297
Inspection #: Y5457/316876655
Insp. Date: 11/28/12

SERIOUS – Citation 1 - Item 1 – Employees installing roof sheathing 20' above lower levels were not protected from falling. (23.0492(04)(G)(1)(a)).

Div. Proposal - $1,500.00 Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 2 – Interior staircase: An unprotected wall eight feet long and five feet above the staircase and lower level with studs twenty-four inches on center presented a fall hazard with openings greater than eighteen inches wide. (23.0492(03)(I)(1)).

Div. Proposal - $600.00 Formula Amt. - $600.00

SERIOUS – Citation 1 - Item 3 – Two employees were working on a roof, approximately twenty feet above the lower level, and one employee was working on the second floor of the house, and had not received training to recognize the hazards of falling and the procedures to follow to minimize these hazards. (1926.0503(a)(2)).

Div. Proposal - $ 750.00 Formula Amt. - $ 750.00

TOTAL PENALTY - $2,850.00 TOTAL FORMULA AMT. - $2,850.00

Mr. Gast 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 $2,850.00 on motion of Mr. Sanders, second of Mr. McCarthy.

Discussion &/or Action regarding the Selection and Hiring Process for ADOSH Director. The Commission may move into Executive Session under A.R.S. §§38-431.03(A)(1) and (A)(3) to Discuss Selection of Candidates

Ms. McGrory explained that a hiring list has been established based on the first review of resumes. The resumes of the individuals who made it onto the hiring list were provided to the Commissioners. Ms. McGrory explained that the Commission needed to decide the interview process and select the individuals to interview. She explained the options to the Commissioners. They need to decide whether they will conduct the interviews or assign the task to an interview panel. She explained the options, including having the panel refer a smaller number of applicants to the Commission for a second interview. Mr. Sanders stated that the Commissioners should select the candidates to interview and conduct the interviews without an intervening panel. Ms. Strickler stated she preferred to have a panel interview the applicants first, referring the top selections for a second interview by the Commissioners. Mr. McCarthy agreed. In response to a question from Ms. Strickler, Ms. McGrory stated that if a panel was used to conduct the first round of interviews, the panel would consist of herself, the Commission's Chief Legal Counsel, and the former ADOSH Director. Ms. McGrory suggested that before the Commissioners decided the process to interview the candidates, that the Commissioners select the individuals that they wanted to see interviewed. That decision may assist in making the process decision.

The Commission unanimously voted to go into Executive Session on motion of Ms. Strickler, second of Mr. McCarthy to select the candidates to interview.

Upon return to General Session, Mr. Sanders made a motion that the Commissioners interview the selected applicants, which died for lack of a second. Following further discussion, which included whether Mr. Sanders could participate on the panel to conduct the first interviews, the Commission agreed that a panel should conduct the interviews of the selected candidates, referring to the Commission a minimum of five candidates on motion of Ms. Oster, second of Mr. McCarthy. The motion passed with three in approval and Mr. Sanders voting nay. Ms. Strickler had left the meeting by this time and did not participate in the vote.

The Commission unanimously appointed Director Laura McGrory, Chief Counsel Andrew Wade, former ADOSH Director Darin Perkins, and Commissioner Michael Sanders as members of the interview panel on motion of Mr. Parker, second of Mr. McCarthy. The Commission tentatively scheduled all day April 3 and after Commission Meeting on April 17 for its interviews. The Commission unanimously voted that the candidates selected by the Commission in Executive Session be interviewed by the panel on motion of Mr. Sanders, second of Ms. Oster.

Discussion & Action of Appointment of Pro Tem Administrative Law Judge. The Commission may move into Executive Session under A.R.S. §§38-431.03(A)(1) and (A)(3) to Discuss Appointment of Candidate

Ms. McGrory summarized the recommendation to appoint a Pro Tem Administration Law Judge and that the Pro Tem would report directly to her. She explained that in the event that reporting to her created a conflict, that the pro tem would report directly to the Chairman of the Commission. She recommended that Robert Mounts be appointed for this purpose and stated that he was provided written notice of this agenda item as required by law. The Commission unanimously appointed Robert Mounts to the Pro Tem Administrative Law Judge position on motion of Ms. Oster, second of Mr. Sanders.

Discussion &/or Action regarding Physicians' and Pharmaceutical Fee Schedule pursuant to A.R.S. §23-908(B)

Ms. McGrory provided the staff report of recommendations to the Commissioners, which will be posted on the agency's website along with the Notice of Hearing on March 8, 2013. She briefly explained the methodology used to calculate the proposed fees, noting that no specific recommendations were being made at this point with respect to any specific issues. She stated that the proposed values in the report were provided to NCCI for analysis.

Announcements and Scheduling of Future Meetings

Secretary Hilton reminded the Commissioners that the next meeting is scheduled for Wednesday, March 13, 2013.

There being no further business to come before the Commission and no public comment, Chairman Parker adjourned the meeting at 3:27 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By _____
Laura L. McGrory, Director

ATTEST:
Teresa Hilton
Teresa Hilton, Commission Secretary