

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street

Conference Room 308

Phoenix, Arizona 85007

Wednesday, March 27, 2013 – 1:00 p.m.

Present:	David Parker	Chairman (video conference)
	Kathleen Oster	Vice Chair
	John A. McCarthy, Jr.	Member (telephonic)
	Susan Strickler	Member
	Michael G. Sanders	Member
	Laura McGrory	Director
	Rachel Morgan	Legal Counsel
	Larry Gast	Acting Director, ADOSH
	Melinda Poppe	Claims Manager
	Jacqueline Kurth	Claims
	Renee Pastor	Self Insurance Manager
	Michael Hawthorne	Chief Financial Officer
	Kamen Kovatchev	Self Insurance
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 1:05 p.m. noting a quorum present. Also in attendance were Scot Butler, the agency's lobbyist; Matt Saxe of Lang, Bake & Klain, PLC; Jeff Horner of General Dynamics; and Andrea Lewis of Snell and Wilmer.

Approval of Minutes of March 13, 2013 Meeting

The Commission unanimously approved the Minutes of March 13, 2013 on motion of Mr. Sanders, second of Ms. Oster.

Consent Agenda:

a. Approval of Proposed Civil Penalties Against Uninsured Employers

1. 2C11/12-1317 DAUTREMONT CONSTRUCTION, INC.
2. 2C12/13-0017 ELLIPTICAL MOBILE SOLUTIONS, L.L.C.
3. 2C11/12-2505 FREIGHT MATE LOGISTICS, L.L.C.
4. 2C11/12-2507 HUDSON AND ASSOCIATES ATTORNEYS AT LAW, L.L.C.
5. 2C11/12-1265 J.C. XPRESS, L.L.C. DBA CRUZ FREIGHT XPRESS
6. 2C12/13-0700 JOYCE STEWART, A SINGLE WOMAN, DBA BADLANDS LAWN SERVICE
7. 2C11/12-2890 THE GALLOPIN GOOSE SALOON, INC. DBA GALLOPIN GOOSE SALOON
8. 2C12/13-0727 MANGUM CIVIL CONSTRUCTORS, INC. (A UTAH CORPORATION)
9. 2C12/13-0194 RICARDO MUNOZ, A SINGLE MAN, DBA BUDGET TOWING 24 HOUR SERVICE

10. 2C12/13-0543 SHOWBIZ ACADEMY OF DANCE, L.L.C.
11. 2C12/13-0733 STARSHINE ACADEMY
12. 2C12/13-0634 THERESA D. FERNANDEZ, A SINGLE WOMAN,  
DBA CASA THERESITA II, AKA CASA  
THERESITA
13. 2C11/12-2919 TOP NOTCH TRANSPORT, INC.
14. 2C11/12-1725 WALLACE DRYWALL, INC.

Chairman Parker asked whether any items needed to be removed from the consent agenda. Secretary Hilton stated that items No. (a)(2) – Elliptical Mobile Solutions, and No. (a)(12) – Theresa D. Fernandez, needed to be removed from the agenda. The Commission unanimously approved the remaining items on the consent agenda on motion of Ms. Oster, second of Mr. McCarthy.

Rachel Morgan advised that with regard to employer 2C12/13-0017 Elliptical Mobile Solutions, L.L.C., staff is recommending that a \$500.00 civil penalty be assessed since they have recently obtained workers' compensation insurance. The Commission unanimously assessed the recommended penalty of \$500.00 on motion of Mr. Sanders, second of Ms. Strickler.

Ms. Morgan advised that with regard to employer 2C12/13-0634 Theresa D. Fernandez, a Single Woman, dba Casa Theresita II, aka Casa Theresita, staff is recommending that a \$500.00 civil penalty be assessed since they have recently obtained workers' compensation insurance. The Commission unanimously assessed the recommended penalty of \$500.00 on motion of Ms. Strickler, second of Mr. McCarthy.

#### Discussion &/or Action regarding Legislation

Scot Butler provided an updated report of current legislative activity, including HB 2485, SB 1148, and SB 1310 and responded to questions from the Commissioners.

#### Discussion & Action of ADOSH Discrimination Complaints

#13-3633-07 David McElyea vs. Arizona Medical Transport LLC dba Arizona Medical Transit – Larry Gast presented a summary of the employee's complaint, the employer's response, and the Division's investigation of the matter. Mr. Gast recommended that the Commission decline to pursue the matter because the investigation did not find sufficient evidence to support a causal link between the exercise of protected activity and the adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. Sanders, second of Ms. Oster.

#13-3633-03 Lindsey Emerson vs. Crystal Reflections Int., Inc. – This agenda item was held.

Discussion & Action of Proposed OSHA Citations & Penalties

Action Lighting Inc. dba Action Sign & Lighting  
2660 E. Mohawk #17  
Phoenix, AZ 85050

Fatality/Accident  
Yrs/Business - 11  
Empl. Cov. by Insp. - 16

Site Location: 310 E. Oak St., Phoenix, AZ 85004  
Inspection #: H1793/0042/316801869  
Insp. Date: 10/22/2012

SERIOUS - Citation 1 - Item 1 - A Lift-All Webmaster 20' sling, Type EE2-802D, with tears, cuts, broken and worn stitches was used to lift a scoreboard and not removed from service. (1926.0251(e)(8)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

GROUPED SERIOUS - Citation 1 - Item 2 (a) - Monthly inspection records were not documented and maintained for a Skyhook Model 85HD truck crane as required. (1926.1412(e)(3)).

Citation 1 - Item 2 (b) - Annual inspections of a Skyhook Model 85HD truck crane were not conducted by a qualified person, documented, or the records maintained for a minimum of 12 months. (1926.1412(f)(7)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1 - Item 3 - The operator's manual was not readily available in the cab for use by the operator for a Skyhook Model 85HD truck crane as required. (1926.1417(c)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1 - Item 4 - The crane operator left the crane equipment controls to conduct work under the suspended scoreboard load without meeting all elements of 1926.1417(e)(1)(i) through 1926.1417(e)(1)(iv).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS - Citation 1 - Item 5 - A scoreboard was rigged and hoisted into place by crane without a qualified rigger resulting in a rigging failure and the injury of two employees. (1926.1425(c)(3)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS - Citation 1 - Item 6 - Two employees were working directly under the load when the rigging failed causing the scoreboard to fall to the ground pinning both employees underneath. (1926.1425(e)(1)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS - Citation 1 - Item 7 - One employee operated a Skyhook Model 85HD truck crane without being certified, qualified, or trained in accordance with the requirements of 1926.1427(j).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$18,000.00

TOTAL FORMULA AMT. - \$18,000.00



GROUPED SERIOUS – Citation 1 - Item 2 (a) – Asbestos waste was not deposited into leak tight containers as required by 1926.1101(g)(1)(iii).

Citation 1 - Item 2 (b) – Wet methods were not used during a Class II asbestos removal activity. (1926.1101(g)(1)(ii)).

Citation 1 - Item 2 (c) – Employees performed Class II removal of asbestos and performed dry sweeping of the area, a work practice that is prohibited by 1926.1101(g)(3)(iii).

Citation 1 - Item 2 (d) – Vinyl asbestos floor tiles (VAT) were not removed intact in accordance with 1926.1101(g)(8)(1)(G).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3 – Employees who performed Class II asbestos removal were not provided with appropriate respirators. (1926.1101(h) (1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4 – The employer failed to identify existing asbestos containing materials prior to the start of work. (1926.1101(k)(2)(i)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 5 – Employees removed vinyl floor tile containing 5-10% asbestos, but were not trained to perform Class II work. (1926.1101(k)(9)(iv)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$3,750.00

TOTAL FORMULA AMT. - \$3,750.00

Larry Gast summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Commission approved issuing the citations and assessed the recommended penalty of \$3,750.00 on motion of Mr. Sanders, second of Ms. Strickler with a vote of 4 to 0. Mr. Parker recused himself and did not participate in the discussion or vote.

#### Discussion & Action regarding Application for Lump Sum Commutation

Zola Shaul #20061-180518 – Melinda Poppe presented this lump sum petition with a recommendation to deny the petition. Ms. Poppe explained the reasons for her recommendation and responded to questions from the Commissioners. Following discussion, the Commission tabled consideration pending receipt of additional information.

#### Discussion & Action regarding Appointment of Special Assistant to the Industrial Commission of Arizona

Jacqueline Kurth – Melinda Poppe introduced Ms. Kurth to the Commissioners and provided a brief summary of Ms. Kurth's education and experience in the area of vocational rehabilitation. Ms. Poppe recommended that Ms. Kurth be appointed as Special Assistant as reflected in the resolution. Following discussion, the Commission unanimously appointed Ms. Kurth as a Special Assistant on motion of Mr. Sanders, second of Ms. Strickler.

## Discussion & Action of Requests for Renewal of Self-Insurance Authority

Arizona School Alliance for Workers' Compensation, Inc. – Ms. Strickler and Mr. Sanders abstained from this agenda item. Renee Pastor presented staff's renewal report along with a current Experian credit rating and responded to questions from the Commissioners. She recommended renewal of the Alliance's workers' compensation self-insurance authority based on their consistent record of profitability and growth, large size with total assets of just under \$50.3 million, a clean audit report and an acceptable credit rating. Following discussion, the Commission approved renewal of self-insurance authority on motion of Mr. McCarthy, second of Ms. Oster with a vote of 3 to 0.

Chairman Parker asked a question regarding admission of members into a pool and asked that this issue be included as a future agenda item for discussion purposes.

Roman Catholic Church – Diocese of Tucson - Ms. Pastor presented staff's renewal report along with a current Experian credit rating and responded to questions from the Commissioners. She renewal of the Church's workers' compensation self-insurance authority based on its financial stability, large size with assets just under \$277.8 million, and a clean audit report. Following discussion, the Commission unanimously granted continuance of self-insurance authority on motion of Mr. Sanders, second of Ms. Strickler.

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) for Legal Advice and Discussion and Drafting of Interview Questions

Laura McGrory advised that the Screening Committee completed its interviews of the candidates referred by the Commissioners and selected six candidates to refer for second interviews. The Commissioners were provided the employment applications and resumes of those individuals being referred. They discussed the scheduling of the interviews and agreed that the interviews would be scheduled for the meeting of April 3<sup>rd</sup>, with the exception of one candidate who is not available on that date. The Commissioners agreed that the sixth interview would be conducted at the meeting held on April 17<sup>th</sup> along with discussion and possible action of the appointment. Following further discussion on the interview process, the Commissioners agreed that each candidate should be asked to provide a writing sample and references. The Commissioners also agreed that they would like to receive input from the former Director of ADOSH, Darin Perkins, regarding the candidates and that he be included in future discussions regarding the appointment. In response to a question from Ms. Oster, Ms. McGrory stated that the salary range for the position is \$65,160 to \$112, 373, with a mid-point of \$88,766. She also advised that this information was provided to each candidate that was interviewed by the screening committee.

The Commission unanimously voted to go into Executive Session on motion of Ms. Strickler, second of Mr. Sanders to discuss the interview questions. Executive Session Minutes are kept separately.

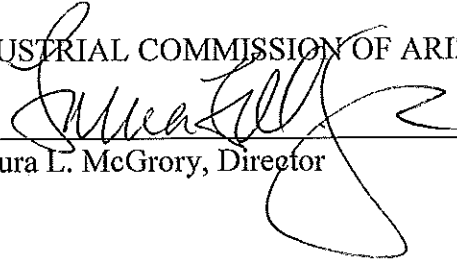
## Announcements and Scheduling of Future Meetings

Ms. McGrory advised that the Evidence Based Medicine survey will be put up on the website and the results will be provided to the Commissioners.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 3:45 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
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Laura L. McGrory, Director

ATTEST:

  
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Teresa Hilton, Commission Secretary