

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Wednesday, June 5, 2013 – 1:00 p.m.

Present:	David Parker	Chairman (video conference)
	Susan Strickler	Vice Chair
	John A. McCarthy, Jr.	Member
	Kathleen Oster	Member
	Michael G. Sanders	Member
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	William Warren	Director, ADOSH
	Larry Gast	Asst. Director, ADOSH
	Michael Hawthorne	Chief Financial Officer
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 1:01 p.m. noting a quorum present. Also in attendance were Tanner Warnick; Rick Radobenko representing Sprayfoam Southwest; and Andrea Lewis of Snell and Wilmer.

Approval of Minutes of May 23, 2013 Meeting

The Commission unanimously approved the Minutes of the May 23, 2013 meeting on motion of Mr. McCarthy, second of Ms. Strickler with a change on page one, second line under "Appointment of Vice Chair" item, changing "has consented to" to "will".

Consent Agenda:

a. Approval of Proposed Civil Penalties Against Uninsured Employers

1. 2C11/12-2027 C Landscaping and Irrigation, Inc. dba
C Rock & Supplies aka
C Landscaping & Rock Supplies
2. 2C12/13-0027 Caliber Jet Charter, L.L.C. dba
Caliber Jet
3. 2C12/13-0567 C B & R Transport, L.L.C.
4. 2C12/13-0355 Cesar Herrera & Dalila Arenas Nunez, H/W dba
H and A Roofing Company
5. 2C12/13-1419 Christodoulos Komitis & Penelope Acosta
Komitis, Husband & Wife aka
C.P.D. Dining, L.L.C. dba Cypress Grill of Phoenix
6. 2C12/13-0420 Felix Corona Development, Inc.
7. 2C12/13-0749 Gamma Brothers, L.L.C. dba McDuffy's Grille
8. 2C12/13-0214 John Craig Chapman & Cynthia S. Chapman, H/W
dba Imprint Landscaping

9. 2C12/13-0703 LSC Williams Insurance Services, L.L.C. dba
Lowell Williams Insurance
10. 2C12/13-1833 Reef Contracting and Property Restoration, L.L.C.
11. 2C12/13-1445 Sacred Heart Nursing Services, Inc.
12. 2C12/13-1449 Stop Child Rape for Profit, Inc. dba
Streetlight USA
13. 2C12/13-1463 Troy Teague & Julie Teague, H/W, dba
Woodbridge Homes and Remodeling

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 Ms. Oster, second of Mr. McCarthy.

Discussion &/or Action regarding Legislation

There was nothing new to report.

Discussion & Action regarding ADOSH Discrimination Complaint

#12-70 Donovan Hemway vs. Metropolitan Domestic Water Improvement District – Chairman Parker stated that this agenda item is being held for additional review.

#12-63 Gary Wilson vs. Securitas Security Services, USA, Inc. – Bill Warren presented a summary of the employee's complaint, the employer's response, and the Division's investigation of the matter and responded to questions from the Commissioners. Mr. Warren 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 adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. Sanders, second of Ms. Strickler.

Discussion & Action of Proposed OSHA Citations & Penalties

MGM IV, L.L.P.
2200 N. Central Ave., Ste. 205
Phoenix, AZ 85004

Fatality/Accident
Yrs/Business – 15
Empl. Cov. by Insp. – 2

Site Location: 71 Biltmore Estates, Phoenix, AZ 85016
Inspection #: X9949/316888924
Insp. Date: 12/19/2012

SERIOUS – Citation 1 - Item 1 – The employer did not instruct each employee in the recognition and avoidance of unsafe workplace conditions and the regulations applicable to his work environment, such as, demolition hazards and roll-up garage door hazards. (1926.0021(b)(2)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1 - Item 2 – Employees were not provided protective helmets for protection against impact of falling and flying objects, such as a roll-up RV garage door. (1926.100(a)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

SERIOUS – Citation 1 - Item 3 – A Dewalt 4-1/2” angle grinder, model number 20030749, serial number 930219, was not equipped with a wheel guard when in use. (1926.300(b)(1)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

SERIOUS – Citation 1 - Item 4 – An engineering survey was not performed by a competent person to determine the conditions of the possibility of unplanned collapse of any portion of a roll-up RV garage door prior to permitting employees to start demolition operations. (1926.850(a)).

Div. Proposal - \$ 7,000.00

Formula Amt. - \$ 7,000.00

TOTAL PENALTY - \$15,500.00

TOTAL FORMULA AMT. - \$15,500.00

Mr. Warren stated that this matter had previously been presented to the Commission and the Commission requested that ADOSH and legal counsel review the evidence of the employee/employer relationship and consider whether the multi-employer doctrine would apply to this matter. He advised that, following review, he believes that there is sufficient evidence to establish an employer/employee relationship and explained why. He responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$15,500.00 on motion of Mr. Oster, second of Mr. McCarthy.

DS Waters of America, Inc. dba Sparkletts
2770 East 13th Street
Yuma, AZ 85635

Fatality/Accident
Yrs/Business – 7
Empl. Cov. by Insp. – 8

Site Location: 2770 East 13th Street, Yuma, AZ 85635

Inspection #: A9339-316914860

Insp. Date: 02/05/2013

SERIOUS – Citation 1 - Item 1 – Employees working on walking-working surfaces that were nine feet above the ground level were not trained in fall protection. (A.R.S. § 23-403(A)). There was one other instance of this violation.

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1 - Item 2 – Employees who service water tanks on the roof-tops of private homes at nine feet above ground level were not provided with any fall protection. (1910.23(c)(1)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS – Citation 1 - Item 3 – Warehouse: The operator had not received refresher training in 13 years and was continuing to operate a forklift. (1910.178(l)(4)(iii)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS – Citation 1 - Item 4 – Southside of Warehouse near refrigerator: The ends of the energized romex wires were not covered with an insulation equivalent to that of the conductors or with an insulating device suitable for the purpose; the wires only had nuts on the uninsulated ends of the energized wires. (1910.303(c)).

Div. Proposal - \$ 1,800.00

Formula Amt. - \$ 1,800.00

TOTAL PENALTY - \$13,300.00

TOTAL FORMULA AMT. - \$13,300.00

Mr. Warren summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Division proposal for Citation 1, Item 1 was for the gravity based penalty with no adjustment factors since the violation directly related to the fatality. Staff is also proposing an amendment to the language in Item 2 to focus on fall protection. Amended wording for Citation 1, item 2 will read as follows:

SERIOUS – Citation 1 - Item 2 – Employees who service water tanks on the roof-tops of private homes at nine feet above ground level were not provided with any fall protection. (1910.23(c)(1)).

Or in the alternative:

29 CFR 1910.132(a): Protective equipment was not used when necessary whenever hazards capable of causing injury and impairment were encountered. (1910.132(a)):

Following further discussion, the Commission unanimously approved issuing the citations with staff's amendment and assessed the recommended penalty of \$13,300.00 on motion of Mr. Sanders, second of Ms. Oster.

Sprayfoam Southwest, Inc.
2401 E. Magnolia
Phoenix, AZ 85034

Planned
Yrs/Business – 42
Empl. Cov. by Insp. – 6

Site Location: 4445 S. 12th Street, Phoenix, AZ 85040

Inspection #: F3189-317023430

Insp. Date: 03/14/2013

REPEAT SERIOUS – Citation 1 - Item 1 – Three employees were not protected from falling through a 48" x 48" skylight, approximately fourteen feet (14') to the concrete floor below, by a guardrail system, by use of a personal fall arrest system, or by a cover secured over the skylight. (1926.501(b)(4)(i)).

Div. Proposal - \$4,000.00

Formula Amt. - \$4,000.00

SERIOUS – Citation 1 - Item 2 – Two employees were working beyond the warning line system on the roof of a building under construction where they were exposed to a fall of approximately 14' 6". (1926.501(b)(10))

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

TOTAL PENALTY - \$6,000.00

TOTAL FORMULA AMT. - \$6,000.00

Mr. Warren advised that this file had previously been presented to the Commission at which time the Commission requested further review for possible repeat or willful classification. Mr. Warren advised that staff is now recommending that Citation 1, Item 1 be classified as repeat serious and explained why. Chairman Parker asked Mr. Radobenko if he had any comments and Mr. Radobenko stated that he had provided information to ADOSH regarding the skylight covers and that the specifications stated they held over 600 lbs. Mr. Warren read from the file regarding Velux construction limits that stated the structural integrity was for 200 lbs. Mr. Radobenko stated that his company did not install the skylights but believed that they had been installed as specified. Chairman Parker stated that the matter would be tabled and directed staff to obtain additional information from the employer.

Announcements and Scheduling of Future Meetings

Laura McGrory announced the sad news that Dr. Jim Beauchene and his wife were recently killed in a small plane crash. She stated that Dr. Beauchene was a wonderful and valuable asset to the workers' compensation community.

Ms. McGrory announced the retirement of Chief ALJ Harriet Turney. She stated that an agenda item for next week will be discussion and action regarding the selection process for Ms. Turney's replacement.

The next meeting of the Commission is scheduled for Thursday, June 13, 2013.

There being no further business to come before the Commission and no further public comment, the meeting was adjourned at 1:55 p.m.


THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary