

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Phoenix, Arizona 85007  
Thursday, May 26, 2022 – 1:00 p.m.

Present: Dale L. Schultz	Chairman
Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
D. Alan Everett	Commissioner
James Ashley	Director
Afshan Peimani	Assistant Chief Legal Counsel
Trevor Laky	Legislative Affairs Chief/Public Information Officer
Sylvia Simpson	Chief Financial Officer
Renee Pastor	Self Insurance
Lisa Padgett	Labor Director
Melissa Spurgeon	Labor Supervisor
Phil Murphy	Assistant ADOSH Director
Karen Schomburg	ADOSH Supervisor
Anna Maria Stonerock	ADOSH Admin
Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Roshell Lee, Lori Jundt, Ginger Schell and Tracy Foss (Securis); Kiana Lawrence (Snell & Wilmer); Anne Ryman (Arizona Republic). Attending telephonically were Suzy Braden and Lynne Lee (Encompass Health); Roy Musgrove, Kendra Whitehead, Mary DeLosReyes, David Murray and William Thomac (Summit Healthcare); John Ashton and Garrett Mahoney (Securis); Megan Dunton (Anderson Powersport); and Davy Spurlock (A & F Crane Rigging, LLC and Ant Farm Construction, Inc.).

Public Hearing to accept comments and other information regarding the assessment under A.R.S. § 23-1065(F). During this hearing, the Commission may also discuss the assessment and information relevant to the levying of the assessment.

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Ms. Simpson presented for the Assessment Hearing. Under Arizona Revised Statute § 23-1065(F), the Commission is authorized to assess a one-half percent assessment if the total annual reserved liabilities of the Special Fund for apportionment under ARS § 23-1065 (B) and (C) exceed six million dollars. The apportionment rate has not been assessed since 2015 because the Special Fund has had an actuarial surplus.

As of the most recent actuarial study dated June 30, 2021, the Special Fund liability for apportionment had a confidence level of 80%. This liability exceeds the \$6 million required to assess the one-half percent assessment.

As such, there is authority to assess the one-half percent assessment under ARS § 23-1065(F) for calendar year 2023.

The decision to set the apportionment assessment rate will be discussed at a future Commission meeting and will be based on the current and projected financial condition and

operating needs of the Special Fund. As of the most recent financial audit, June 30, 2021, the fund was operating with a surplus.

Chairman Schultz checked if anyone in person or on the phone would like to comment concerning the setting of assessment rates.

Chairman Schultz thanked Ms. Simpson for her report and was pleased to have a surplus with everything going on in the economy and stock market today.

Approval of Minutes of May 19, 2022 Regular Meeting Minutes.

Commissioner Everett moved to approve the Minutes of the May 19, 2022 regular session meeting and Chairman Schultz seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. 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.

a. Approval of Requests for Renewal of Self-Insurance Authority.

1. Encompass Health Corporation

b. Discussion and Action of Application for Self-Insured Authority.

1. Summit Healthcare Association

c. Approval of Proposed Youth Employment Penalty.

1. YL-2122-0056 Grand Junction Group, LLC, DBA McAlister's Deli \$1,000

Chairman Schultz removed Encompass Health Corporation from the Consent Agenda for further discussion.

Commissioner Everett moved to approve the remaining items on the Consent Agenda and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Approval of Requests for Renewal of Self-Insurance Authority.

1. Encompass Health Corporation

Chairman Schultz was concerned about the experience modification factor (“e-mod”) and what Encompass Health Corporation is doing to correct it.

Ms. Pastor uses NCCI rates, and those rates are based on information the carriers collect but excludes the majority of medical and other industries which are in the self-insurance program. Going forward there should be a leveling off of the e-mod. With the new Article 15, the Commission will develop new rates and should see better e-mods going forward for Encompass. Ms. Braden prepared a presentation for the Commission addressing their procedures. Ms. Pastor did not feel it was necessary to increase their deposit as they are putting the emphasis on improving their safety programs.

Chairman Schultz asked because he was wondering if it was a temporary increase in the e-mod due to the number of claims and perhaps related to COVID, and he was concerned about the pattern of their e-mod which has been consistently high and wanted to give Encompass and opportunity to address those issues.

Ms. Pastor noted there was an uptick in 2020 because there were COVID claims and the delayed treatment where the injury occurred in 2020 and treatment was not sought because of COVID restrictions.

Ms. Braden thanked the Commission for the time to talk about the program and what they are doing to continue improving. Encompass Health Corporation is an inpatient rehabilitation hospital with employees that have to do heavy patient moving which presents challenges and struggles. The wait due to COVID restrictions for services and benefits and the policy to accept COVID claims when an employee handled COVID positive patients resulted in the higher e-mod. As they evolved with the CDC guidelines, they had a very engaged COVID taskforce to make sure they were in compliance. COVID also restricted training due to social distancing and employee turnover. She talked about the STOP Program for moving patients and assessing each patient's capabilities. Education is a continuous process and they have ramped up refresher training. She commented on the incentive programs and employee engagement, along with training for workplace violence and de-escalation, needle stick prevention, and annual OSHA Regulations training. They are also working on their 6<sup>th</sup> Employee Safety Week. Going forward they have several other initiatives and enhancing best practices for the STOP program and a bridge in training for tenured staff.

Chairman Schultz thanked Ms. Braden for the presentation and commented that they have definitely upped their game and likes their "Dare to be a Super Safety Hero" and the symbol that everything revolves around the heart, and creating that kind of culture in an organization is a very difficult task. He commended her and the organization on taking that approach in dealing with employees who contracted COVID and taking those as workers' comp claims, and have gone beyond the requirements of the occupational disease statutes in the State of Arizona and the presentation shows how much they care for and take care of their employees. He noted their impressive program and dealing with a difficult patient population that requires special patient handling, and think they are on the right track and a time when the numbers do not tell you everything.

Ms. Pastor recommended approval for self-insurance renewal with a security deposit of \$223,958.

Commissioner Everett moved to accept the recommendation of staff for Encompass Health Corporation and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Discussion and Action regarding Proposed Retaliation Penalty.

1. RT-2122-0036 Pure Organic Beauty LLC, DBA Skinlab \$4,678.63

Ms. Padgett summarized the Labor Department's investigation into the Earned Paid Sick Time (EPST) Retaliation claim. Ms. Padgett recommended that the Commission approve issuance of a Penalty in the amount of \$2,678.63 for wages and \$2,000.00 to deter future violations for an EPST penalty of \$4,378.63 for violation of A.R.S. § 23-364(g) and a \$250.00 Civil Penalty for violation of A.R.S. § 23-364(f).

Chairman Schultz checked if anyone would like to comment.

Chairman Schultz complimented Ms. Pagett and her team for this investigation with the multiple opportunities offered to employers to address the issues.

Commissioner Everett moved to adopt the citation and penalty as recommended for Pure Organic Beauty LLC, DBA Skinlab. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Update Regarding Securis Insurance Pool, Inc.'s Experience Modification and Discussion of Security Requirements.

Ms. Pastor noted that the Securis Insurance Pool ("Securis") has two fatalities due to COVID claims which are driving their claims. Ashton Tiffany was here to speak on those claims. After reviewing the financial reports, security deposit on file, fund equity ratio, premiums will increase across the board next year. Ms. Pastor noted Securis has been working with ADOSH to set up additional COVID training and some on-line training along with site visits and working with the Securis risk team.

Ms. Foss thanked the Commission and noted that they have had some challenges since starting the pool with COVID and the presumptive cancer legislation. They are still 100% behind the program and think it is the right thing to do and feel members who have first responders on the front line that they are doing what is right for them. Moving forward they have an action plan prepared and they are looking at ways to help offset some costs for their members and other fire districts in Arizona.

Chairman Schultz noted that the members are bound to commit to the program for three years to have the opportunity to weather the changes in loss experience.

Ms. Foss noted they will be starting their third year in July.

Ms. Schell discussed the COVID death claims

Chairman Schultz asked Mr. Ashton to share the activity from legislative funding or other funding sources.

Mr. Ashton noted that municipal fire departments received ARCA Funding last year through the Federal Covid Program, but the rural fire districts were not recipients of any of that funding. Through both the Governor's Office and the Legislature they are seeking ARCA funding and a budget appropriation to help alleviate the premium increase. The members have been told to expect

a significant premium increase in July and to budget accordingly and they are behind the Legislation appropriation request, and still working through that and how that funding would occur.

Chairman Schultz commented that this is unusual to do quarterly reviews of programs, and this is the first time, the reason for this is that any new self-insurance pool is subject to potential early hits in loss experience which can then put them quickly into financial peril. While the Commission believed that it was important for these fire districts, most of which are very small, to be able to share resources and to share resources of their big brothers and joining together they could be more proactive in terms of their prevention activities and could be proactive in the way they treat their program fiscally from a number of perspectives to make sure they are adequately funded. He believes in the pooling of risks and funding together and having skin in the game to handle the claims and the way you work to prevent claims, especially given the existing difficulties of coverage for these small fire districts, the exposure to COVID claims and now the statutory requirements placed upon the districts to fund these cancer claims as workers' compensation claims which would normally be part of a health insurance program. This is a dramatic transfer of risk from health insurance companies over to workers' compensation pools or insurance companies. The Commission is supportive of helping the initiation of this pool and has a stewardship responsibility to make sure that this program succeeds and make sure the program is funded because the ultimate responsibility is to make sure that injured sick workers that become that way as a result of their work are compensated fairly, quickly, appropriately, and that burden is not passed on to the taxpayers of the State of Arizona.

Chairman Schultz noted it was not an item that requires a vote.

Request for Investment Committee Approval Allowing Renee Pastor to sign the Agreement and Waiver regarding the Settlement of the South Carolina Insurance Company in Liquidation and Consolidated American Insurance Company in Liquidation Estates.

Ms. Pastor noted that South Carolina is an old estate where the deposit was returned in 1995 but there was a claim incurred after the deposit was returned. South Carolina Insurance Company was consolidated with American Insurance Company in liquidation. The liquidator was seeking the return of \$147,000.00 for the consolidated estates, but when offsetting money still owed from the South Carolina Insurance Company, the amount owed was reduced to \$876.33 The Liquidator is willing to waive the \$876.33 as long as the ICA agrees to not submit any more claims because this will close both estates. She was looking for approval to sign the agreement to settle the estates.

Commissioner Everett moved to approve Ms. Pastor to sign the Agreement and Waiver regarding the Settlement with South Carolina Insurance Company in Liquidation and Consolidated American Insurance Company in Liquidates Estates. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Discussion and/or Action pursuant to A.R.S. §23-1041(E) to Adopt the Maximum Average Monthly Wage under A.R.S. §23-1041(D)(8) for Calendar Year 2023.

Ms. Peimani explained that A.R.S. § 23-1041(E) requires the Commission to annually adopt a maximum average monthly wage. Ms. Peimani provided background and explained how the maximum average monthly wage is used in the workers' compensation system, and discussed the process used for the calculation of the maximum average monthly wage. The 2022 maximum average monthly wage was \$5,161.12. The Bureau of Labor and Statistics showed an increase of











Mr. Ashley provided information on a new program that Human Resources will be working with the U.S. Department of Defense called the Skill Bridge for Service Members which is a career skills program for service members to complete career skills training within the last 180 days of their military service while receiving their military benefits. This is a great opportunity for these individuals to receive civilian work experience and complements the AZ Hires Vets initiative.

Ms. Dimas noted that the August 4, 2022 meeting date has been changed to August 12, 2022 to be held at the Claims Seminar and confirmed Commission meeting dates through August 2022.

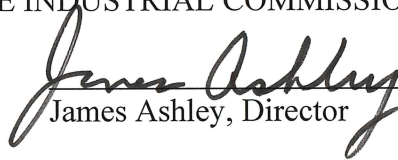
Public Comment.

There was no public comment.

Commissioner Everett moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion and the meeting was adjourned at 2:54 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
James Ashley, Director

ATTEST:

  
Kara Dimas, Commission Secretary