

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 W. Washington
Conference Room 308
Phoenix, Arizona 85007
Thursday, January 15, 2009 – 1:00 p.m.

Present:	Joe Gosiger	Vice Chairman
	Louis W. Lujano, Sr.	Member
	Marcia Weeks	Member
	John A. McCarthy, Jr.	Member
	Laura McGrory	Director
	Andrew Wade	Acting Chief Legal Counsel
	Gary Norem	Chief Accountant
	Darin Perkins	Director, ADOSH
	Harriet Turney	Chief ALJ
	Kara Dimas	Office Manager, Legal Div.
	Teresa Hilton	Commission Secretary

Vice Chairman Gosiger convened the Commission meeting at 1:00 p.m. noting a quorum present. Chairman Delfs was not able to attend. Also in attendance were Scot Butler, the agency's lobbyist, Jeremy Bethancourt of LeBlanc Building Co., Jenypher Jones of Snell & Wilmer, and John Soza of CST Risk Management.

Approval of Minutes of January 7, 2009 Meeting

The Commission unanimously approved the Minutes of the January 7, 2009 meeting on motion of Mr. McCarthy, second of Mr. Lujano with a correction on page 8 changing "Ms. Lujano" to "Mr. Lujano".

Discussion & Action regarding Establishment of Discount Rate for Calculating Lump Sum Commutations under A.A.C. R20-5-121(B)

Gary Norem advised that, in compliance with the Commission approval on June 21, 2007 to amend A.A.C. R20-5-121, the final rule filing was accepted on November 6, 2007. The Administrative Division is recommending that the Commission approve a 2.89% discount rate for calculating fixed period and permanent lump sum settlements. Under this current rule, the following formula was used to calculate the 2.89% discount rate and is based on the annual 3-month Treasury Bill rate average reported on December 31 (or last closing date of the year) of each of the five years prior to July 1st of the current year: the close of business on December 31, 2004 (2.18); the close of business on December 30, 2005 (3.99); the close of business on December 29, 2006 (4.89); the close of business on December 31, 2007 (3.29); and the close of business on December 31, 2008 (0.11). The proposed discount rate of 2.89% will replace the current discount rate of 3.06 and will remain in effect for one year. Following discussion, the Commission unanimously approved the establishment of the discount rate for calculating lump sum commutations effective immediately to be 2.89% on motion of Mrs. Weeks, second of Mr. Lujano.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C05/06-0769	DAVID WAYNE CADE, A SINGLE MAN DBA DAVE CADE LANDSCAPING
2C06/07-1636	DELORES L. PRETZER, A SINGLE WOMAN DBA GLENDALE EXTERMINATING, INC.
2C08/09-0813	DREAGER DEVELOPMENT, INC.
2C07/08-1061	ERNEST F. HAYNES III, A SINGLE MAN & SUSAN E. MASON, A SINGLE WOMAN DBA EARN-DAY TRANSPORTATION (R.E.D.) AKA TRANSPORTATION SERVICES
2C07/08-2359	LOS PORTALES RESTAURANT LLC DBA LOS PORTALES MEXICAN FOOD
2C07/08-2629	NU U OF CHICAGO, LLC DBA NU U MED SPA AKA NU U MED SPA OF ARROWHEAD AKA NU U OF ARROWHEAD, LLC AKA NU U ARROWHEAD LLC
2C08/09-0935	MAGIC TOUCH CARPET CLEANING, L.L.C.
2C07/08-2630	NU U OF CHICAGO, LLC DBA NU U MED SPA OF PARADISE VALLEY AKA NU U OF PARADISE CITY LLC AKA NU U OF PARADISE VALLEY, LLC

Andrew Wade advised that a compliance investigation confirmed that the above listed employers were operating (or had operated) a business with employees, but without workers' compensation insurance. Giving consideration to the factors of A.R.S. §23-907(K), Mr. Wade recommended that no penalty be assessed against employer #0813 since they have obtained worker's compensation insurance coverage and this would be their second penalty. He further recommended a civil penalty of \$500.00 be assessed against employer #2359 since they recently obtained workers' compensation insurance coverage and this is their first civil penalty. Mr. Wade also recommended civil penalties of \$1,000.00 be assessed against each of the remaining above listed employers. Following discussion, the Commission unanimously approved no civil penalty against employer #0813, a \$500.00 civil penalty against employer #2359, and civil penalties of \$1,000.00 against employers #0769, 1636, 1061, 2629, 0935 and 2630 on motion of Mr. McCarthy, second of Mr. Lujano.

Discussion & Action of Proposed OSHA Citations and Penalties

Atlantis Construction & Development Corp.
2705 S. Hwy 89
Chino Valley, AZ 86323

Accident
Yrs/Business – 6
Empl. Cov. by Insp. – 1

Site Location: 509 Cooper Basin Rd., Prescott Valley, AZ 86323
Inspection #: A7717/312737885
Insp. Date: 10/22/08

GROUPED SERIOUS – The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

Citation 1, item 1a – Three (3) employees were using a special custom made lifting device that

was not marked to indicate the safe working loads and was not proof-tested to 125 percent prior to use.

Citation 1, item 1b - Three (3) employees were using rigging equipment that was not inspected before each shift to lift material (i.e. concrete manhole rings).

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 2 - Two (2) employees were working in an excavation that was approximately 11' deep, 12' wide and 20' long without a protective system installed to preclude a cave-in or collapse.

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL DIV. PROP. - \$2,250.00

TOTAL FORMULA AMT - \$2,250.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$2,250.00 on motion of Mr. McCarthy, second of Mrs. Weeks.

AVDB Group LC
9830 S. 51st Street, Suite B101
Phoenix, AZ 85044

Complaint
Yrs/Business - 2
Empl. Cov. by Insp. - 9

Site Location: 1955 N. 59th Avenue, Glendale, AZ 85308

Inspection #: R0738-312672256

Insp. Date: 10/03/08

SERIOUS - Citation 1, item 1 - One employee was working from an aluminum rolling tower scaffold 12'6" high, 4'4" wide and 8'4" long, and a guardrail system was not installed. There were two other instances of this violation.

(No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1, item 2 - The employer did not ensure that each employee was trained in the recognition and avoidance of hazards associated with rolling tower mobile scaffold systems.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL DIV. PROP. - \$2,500.00

TOTAL FORMULA AMT - \$2,500.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$2,500.00 on motion of Mr. Lujano, second of Mr. McCarthy.

Chanen Construction Company, Inc.
P.O. Box 33967
Phoenix, AZ 85067

Unprogram Related
Yrs/Business - 53
Empl. Cov. by Insp. - 2

Site Location: 1955 N. 59th Avenue, Glendale, AZ 85308

Inspection #: R0738/312672264

Insp. Date: 10/03/08

SERIOUS - Citation 1, item 1 - One employee was working from an aluminum rolling tower

scaffold 12'6" high, 4'4" wide and 8'4" long, and a guardrail system was not installed. There were two other instances of this violation.

(Three inspections in the past three years with no violations).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

Darin Perkins summarized the citation and proposed penalty as listed. Following discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$1,250.00 on motion of Mr. McCarthy, second of Mrs. Weeks.

Barkley Seed, Inc.

P.O. Box 5540

Yuma, AZ 85366

Planned

Yrs/Business - 50

Empl. Cov. by Insp. - 30

Site Location: 1818 S. Letvin Avenue, Yuma, AZ 85306

Inspection #: T3633/312757321

Insp. Date: 10/31/08

SERIOUS - Citation 1, item 1 - A cover section of the SES A panel was missing, exposing electrical wiring. There were five other instances of this violation.

(No inspection history in the past three years).

Div. Proposal - \$875.00

Formula Amt. - \$875.00

SERIOUS - Citation 1, item 2 - The motor belt and pulleys, which powered the trash elevator, located approximately one foot above the upper work platform, were not guarded. There were seven other instances of this violation.

Div. Proposal - \$ 875.00

Formula Amt. - \$ 875.00

TOTAL DIV. PROP. - \$1,750.00

TOTAL FORMULA AMT - \$1,750.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$1,750.00 on motion of Mr. Lujano, second of Mr. McCarthy.

SA Recycling LLC dba Phoenix Metal Recycling

3210 S. 19th Avenue

Phoenix, AZ 85009

Fatality

Yrs/Bus. -

Empl. Cov. by Insp. - 66

Site Location: 3210 S. 19th Avenue, Phoenix, AZ 85009

Inspection #: Q7984/312443138

Insp. Date: 07/21/08

WILLFUL SERIOUS - Citation 1, item 1 - Employees are exposed to the hazard of moving equipment and vehicles (i.e. tractor-trailers, wheel loader, material handlers, etc.) and effective measures have not been implemented to reduce or eliminate the hazard.

(No inspection history in the past three years).

Div. Proposal - \$70,000.00

Formula Amt. - \$70,000.00

SERIOUS - Citation 2, item 1 - The employer did not post any caution signs to identify areas of unsafe practices.

Div. Proposal - \$ 7,000.00

Formula Amt. - \$ 7,000.00

TOTAL DIV. PROP. - \$77,000.00

TOTAL FORMULA AMT - \$77,000.00

Darin Perkins summarized the citations and proposed penalty as listed. In response to a question from Mr. Lujano, Mr. Perkins described the applicable OSHA Standards. The Commission discussed the willful classification and Mr. Perkins explained that the company did not follow their own policy of inspection and repair and that there was sufficient evidence to establish that the employer was aware of the problems with the equipment and the employer recognized the hazards related to traffic on the job site. Following further discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$77,000.00 on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion &/or Action regarding Legislation

Scot Butler presented an initial legislative report and advised that the session started Monday and that Jan Brewer would be sworn in as Governor on January 21, 2009. The House has indicated that they may hold committee meetings next week since there are a couple of bills they need to work on including the retirement system. The Senate has indicated that they will not have any committees hear any bills until they get the current fiscal year deficit fixed. Mr. Butler stated that he and Ms. McGrory are continuing to meet with legislators and recently met with representatives of the Joint Legislative Budget Committee.

Mr. Butler and Ms. McGrory described the SCF Arizona legislative agenda packet and discussed those proposals that would affect the agency. One proposal would allow for full and final settlements of claims and this represents a fundamental change to existing policy and law. Mr. Butler described this change. As drafted, the proposal also raises concerns from an operational standpoint in that imposing burdens and liability upon the agency. He described those burdens and liabilities. He stated that he will be obtaining more information regarding this proposal and will report back to the Commissioners, but that as written the Commission should oppose the bill.

Mr. Butler described the second proposal that addresses misrepresentation of payroll, noting that it did not appear to be an issue that the agency would be involved with. He also described the third proposal, which is to change the NCCI rate filing date. As this is a function of the rating bureau and insurance companies, he did not believe that it would not affect the agency.

The fourth SCF proposal adds ambulatory surgical centers under the fee schedule. Mr. Butler described this proposal stating that he did not believe that it would find much support. Ms. McGrory stated that SCF has recently presented an alternative that addresses the issue using a "fair and reasonable/usual and customary" standard for services rendered by providers not covered by the fee schedule or a separate contract. The new alternative also provides for a dispute resolution process that does not impose costs on the agency, but requires the agency to adopt through rulemaking the process to be used. Ms. McGrory stated that this newer proposal is moving in the right direction on the issue by providing a reasonable standard and an alternative for dispute resolution. Mr. Butler stated the proposal may also help the Special Fund by providing a standard to evaluate medical costs. The Commission discussed the proposal and the role of the Commission in the arbitration process.

Ms. McGrory stated that she was told that Senator Leff is interested in knowing the Commission position on the "fair and reasonable/usual and customary" proposal. Mr. Butler provided his recommendation. The Commissioners expressed support for the proposal noting that it looks like it is going in the right direction.

Mr. Butler described the next proposal which seems to allow SCF to write coverage for any employer in the United States. He described their current authority and his understanding of where they want to go. He stated that he needs to obtain additional information on this proposal as it seems to raise significant issues regarding how it would be administered. In response to questions from Ms. Weeks, Mr. Butler and Ms. McGrory answered questions regarding the authority of insurance carriers to write insurance policies in the Arizona.

Mr. Butler described the final proposal from the SCF, which deals with off label, schedule 2, controlled substances prescribed to workers' compensation claimants. Mr. Butler and Ms. McGrory described the apparent reasons behind the proposal noting that it is an attempt to deal with the cost and utilization of certain drugs. Mr. Butler stated that there are a number of issues and concerns that need to be addressed and answered regarding the proposal. As written, he did not believe that the Commission should support the proposal.

Mr. Butler described a proposal received from Lowe & Childers which appears to allow small businesses under a certain threshold to have monthly direct payments made for workers' compensation policies rather than to have to pay for a year at a time. There are technical questions regarding how this would work and he plans to meet with staff and representatives from Lowe and Childers to discuss the proposal.

Ms. McGrory provided the Commissioners with a copy of a letter from JLBC scheduling the agency's Appropriation's Hearings for March 3rd and 4th.

Public Comment

Jeremy Bethancourt presented framed documentation to the Commission recognizing Ernest Miller, a recently retired ADOSH consultant, as the National Association of Home Builder's 2008 NAHB Safety Award for Excellence first place winner. This was awarded for his efforts in promoting safety in the home building industry and will be awarded in Las Vegas on January 22, 2009. Mr. Bethancourt offered to provide tickets if any of the Commissioners could attend and stated that he will be meeting with NIOSH on the fall protection issue.

Executive Session pursuant to A.R.S. §38-431.02(B) and A.R.S. §§38-431.03(A)(1) and (2) for consideration of appointment of applicant to administrative law judge position of the Industrial Commission. The name of the applicant is confidential pursuant to A.A.C. R2-5-202

The Commission unanimously voted to go into Executive Session on motion of Mr. Lujano, second of Mr. McCarthy. Executive Session Minutes are kept separately.

General Session – Discussion and, if made, Appointment, of Administrative Law Judge

The Commission unanimously approved the appointment of the applicant that Judge Turney recommended on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion &/or Action regarding Operations of the Industrial Commission

Ms. McGrory stated that she did not have anything to present at this time. Mr. McCarthy asked if the Commission had looked at the security operations for the building as a potential source of cost savings. The Commissioners briefly discussed the security provided at the agency. Ms. McGrory described the agency's use of security and that she is looking into all options, including security.

Announcements

Ms. McGrory advised that she has received information from NCCI regarding web based training that deals with workers' compensation and is available to the agency at no cost. The Commissioners expressed interest in finding out more and getting the link to the web site.

Mr. Lujano stated that the Commission should schedule a meeting in Tucson since it has been quite some time since we have had a meeting there. It was agreed that the Commissioners could also have a "meet and greet" with Tucson employees.

Ms. Hilton reminded the Commissioners that the next meeting will be held on Thursday, January 22nd at 1:00 p.m.

There being no further business to come before the Commission, Vice Chairman Gosiger adjourned the meeting at 2:45 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By _____
Chairman

By Joseph A. Gosiger
Vice Chairman

By Heino W. Lujano, Sr.
Member

ATTEST:

By Ronnie Welch
Member

Teresa Hilton
Commission Secretary

By John A. McGrory
Member