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 Labor Director

Lisa Padgett Melissa Spurgeon

Labor Supervisor

Phil Murphy

Assistant ADOSH Director

Karen Schomburg Anna Maria Stonerock **ADOSH Supervisor** 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.

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. <u>Discussion and Action of Application for Self-Insured Authority</u>.
 - 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 6th 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 the 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. 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

4.5% in the "All Workers" category for calendar year ending December 2021 which falls within the statutory range of 0% to 5%. Ms. Peimani recommended setting the maximum average monthly wage at \$5,393.37 for calendar year 2023.

Commissioner Everett moved to set the maximum average monthly wage at \$5,393.37 for calendar year 2023 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 of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

A & F Crane Rigging, LLC

Unprogrammed Related

2661 N Apache Dr Kingman, AZ 86401 Years in Business:

Empl. Covered by Inspection:

1

2

Site Location:

The Ranch at Long Mt, N Old Ranch Ln and Rte 66

Kingman, AZ 86401

Inspection No:

UR-2022-F9669-0013

Inspection Date:

December 13, 2021

SERIOUS – Citation 1 - Item 1a –

a) 4672 E Old W Rd, Kingman, AZ 86401: A Grove brand crane, serial #221718 and model #TMS540, had the safety latch for the hook taped back to prevent it from closing when in use. 29 CFR 1926.753(d)(2)(ii)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS - Citation 1 - Item 1b -

a) 4672 E Old West Rd, Kingman, AZ 86401: An employee used a steel chain with bull rings, brand, model and serial numbers unknown, to rig wooden trusses for raising and lowering without being qualified. 29 CFR 1926.1404(r)(1)

Div. Proposal - \$0.00

Formula Amt. - \$0.00

SERIOUS – Citation 1 - Item 2 –

a) 4672 E. Old W Rd, Kingman, AZ 86401: Employee operated a Grove 40-ton truck mounted hydraulic crane, model #TMS540 and serial #221718, without inspection records. 29 CFR 1926.1412(e)(3)(i)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

<u>SERIOUS</u> – Citation 1 - Item 3 –

a) 4672 E. Old W Rd, Kingman, AZ 86401: Crane operator operated a Grove name brand crane, serial number 221718, and model number TMS540 without training and certification. 29 CFR 1926.1427(a)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL PENALTY - \$3,000.00

TOTAL FORMULA AMT. - \$3,000.00

Mr. Murphy discussed ADOSH's inspection, summarized the citation and proposed penalties, and reviewed the photographs. Mr. Murphy noted that Ms. Schomburg was the Compliance Officer for all three matters today and was available for questions.

Chairman Schultz checked if Mr. Spurlock would like to comment.

Mr. Spurlock commented that they have taken steps to fix the problems to keep this from happening in the future.

Chairman Schultz noted it was the intent we all have to make employees safe every day and make sure they come home safe every day.

Commissioner Everett moved to approve the citation and proposed penalties as presented and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Anderson Powersports, LLC

Complaint

1040 N Lake Havasu Ave

Years in Business:

1

10

<u>Lake Havasu City, AZ 86406</u> Site Location:

Empl. Covered by Inspection: 1040 N Lake Havasu Ave

Lake Havasu City, AZ 86406

Inspection No:

CP-2022-F9669-0007

Inspection Date:

December 14, 2021

<u>SERIOUS</u> – Citation 1 - Item 1 –

a) 1040 N Lake Havasu Ave, Lake Havasu City, AZ 86403: One employee operated a Clark brand forklift, serial #GX1272-0030-9364FB and model #GCX15E LPS, without manufacturer's approval and plates for a tow hitch attachment to the forks. 29 CFR1910.178(a)(4)

Div. Proposal - \$975.00

Formula Amt. - \$975.00

SERIOUS – Citation 1 - Item 2 –

- a) 1040 N Lake Havasu Ave, Lake Havasu City, AZ 86403: One employee operated a Yale brand forklift, serial #E993043 and model #HF2 LPS, with an aftermarket boat seat installed.
- b) 1040 N Lake Havasu Ave, Lake Havasu City, AZ 86403: One employee operated a Clark brand forklift, serial #GX1272-0030-9364FB and model #GCX15E LPS, with an aftermarket boat seat installed. 29 CFR 1910.178(q)(6)

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 3 –

a) 1040 N Lake Havasu Ave, Lake Havasu City, AZ 86403: One employee used O'Reilly name brand Brake Parts Cleaner spray without a written hazard communication program. 29CFR 1910.1200(e)(1)

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$3,975.00

TOTAL FORMULA AMT. - \$3,975.00

Mr. Murphy discussed ADOSH's inspection, summarized the citation and proposed penalties, and reviewed the photographs.

Chairman Schultz asked about the \$975 penalty for Item 1. Mr. Murphy noted it is ADOSH minimum penalty to propose is \$975.

Chairman Schultz let Mr. Murphy know he would like to figure out a way to discuss the issues of modifications of forklifts. Either through the folks that sell them or maintain them. How many dozens of times the Commission has seen the same issue of people modifying without getting manufacturer's approval and putting people at risk and the number of forklift accidents and fatalities that the Commission has seen.

Chairman Schultz checked if Ms. Dunton would like to comment.

Ms. Dunton was not going to deny any of the report but wanted to note that they were in business only 40 days having just purchased the dealership and acquired their employees and equipment. Since the visit they did fix all of this, they ordered a new appropriate hitch, ordered a new seat, having learned that with the high temperatures in Lake Havasu that these seats are much cooler and do not crack. In addition to the fixes, the employees have received training after reviewing the records. It may not look like they made progress but had done a lot prior to Ms. Schomburg being there. They have the SDS list available on-line to all employees and training like they have for their other nine dealerships. They have fixed all these things and not contesting but asked for some sort of leniency as they only owned the business for 40 days.

Vice Chair Hennelly moved to amend the citation and proposed penalties by 20% for a Quick Fix Discount of \$795.00 for the abatement efforts. Mr. Murphy recommended that if the reduction is given for abatement that is be specific to individual citations or individually for all citations instead of an overall amount. Ms. Peimani suggested \$795.00 be applied to Items 2 and 3 at \$397.50 for each and Item 1 would remain at \$975.00 for a total of \$3,180.00. Vice Chair Hennelly amended his motion to the discussion. Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Ant Farm Construction, Inc. 2661 North Apache Drive

Unprogrammed Related

Years in Business:

8 Empl. Covered by Inspection: 8

Kingman, AZ 86401

2661 North Apache Drive

Kingman, AZ 86401

Inspection No:

Site Location:

UR-2022-F9669-0003

Inspection Date:

December 13, 2021

SERIOUS – Citation 1 - Item 1 –

a) 4672 E. Old W Rd, Kingman, AZ 86401: Two employees rolled trusses on the top of a new residential home with a height measured nine and a half feet above the ground level without fall protection. 29 CFR 1926.501(b)(1)

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 2 –

a) 4672 E. Old W Rd, Kingman, AZ 86401: Two employees rolled trusses on the top of a new residential home with a height measured nine and a half feet above the ground level without fall protection. 29 CFR 1926.503(a)(1)

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 3 –

a) 4672 E. Old W Rd, Kingman, AZ 86401: One employee standing on the top step of an eight-foot A frame ladder. 29 CFR 1926.1053(b)(13)

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 4 –

a) 4672 E Old W Rd, Kingman, AZ 86401: Three subcontractor's employees were exposed to a pre-manufactured type residential Truss when the load swung directly over their heads. 29 CFR 1926.1425(e)(2)

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$6,000.00

TOTAL FORMULA AMT. - \$6,000.00

Mr. Murphy discussed ADOSH's inspection, summarized the citation and proposed penalties, and reviewed the photographs.

Chairman Schultz noted there was an element of abatement.

Chairman Schultz checked if Mr. Spurlock would like to comment.

Mr. Spurlock noted that since then, they have purchased fall protection for all of the groups and had training on fall protection and ladder safety and are actively enrolling the crews in groups for OSHA 10-Hour training as well to try to remedy this.

Chairman Schultz thanked Mr. Spurlock and noted providing equipment is definitely important and creates the opportunity to work safely, but it is really the training and monitoring and requiring folks to use that equipment that creates a safe work environment. Chairman Schultz appreciated him telling the Commission about those things and hope they are on the road to changing the culture, because folks walking those beams with no fall protection standing on top of a ladder shows obvious disregard for their own personal safety and the safety of others, the Commission sees that often that it is not even the person who violates the safety standard who gets hurt, it is somebody who happens be an innocent victim. He appreciated the efforts to buy equipment and providing training, those things are critical.

Commissioner Everett moved to approve the citation and proposed penalties as presented and Vice Chair Hennelly seconded the motion. Vice Chair Hennelly commented that any further discussion the company may have with ADOSH to encourage the company to provide any proof of remediation of these issues to the attention of ADOSH. Chairman Schultz commented that Mr. Murphy will consider that information if presented. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

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