MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street Phoenix, Arizona 85007 Thursday, November 3, 2022 – 1:00 p.m.

Present:

Dale L. Schultz

Chairman

Joseph M. Hennelly, Jr.

Vice Chair (Telephonic)

Scott P. LeMarr

Commissioner

D. Alan Everett

Commissioner

James Ashley

Director

Gaetano Testini

Chief Legal Counsel

Trevor Laky

Legislative Affairs Chief/Public Information Officer

Sylvia Simpson

Chief Financial Officer

Renee Pastor

Self-Insurance (Telephonic)

Jessie Atencio Chuck Thompson ADOSH Director

Taryn North

ADOSH Compliance ADOSH Compliance

Taryn North Tom Martz ADOSH Compliance

Andrew Dimas
Jonathan Wright

ADOSH Compliance ADOSH Compliance

James Reitmeier

ADOSH Compliance

Anna Maria Stonerock

ADOSH Admin

Kara Dimas

Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. In attendance, confirmed by roll call were Anne Ryman (Arizona Republic); Kaila Hopkins (Snell & Wilmer); John Gombos and Lisa Stiles (The Gombos Company LLC); Jay Zweig (Ballard Spahr representing the Gombos Company); Joe Locke and Rafael Quiroya (Roofsavers Locke Roofing).

Approval of Minutes of October 27, 2022 Regular Meeting Minutes.

Commissioner LeMarr moved to approve the Minutes of the October 27, 2022 regular session meeting and Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Discussion and Action regarding the Setting of Assessments under A.R.S. §§ 23-961(G), 23-1065(A), and 23-1065(F) for Calendar Year 2023.

Ms. Simpson discussed the Commission's authority to levy assessments pursuant to A.R.S. §§ 23-961(G), 23-1065(A), and 23-1065(F) and set forth the maximum and current assessment rates. The Commission is authorized under § 23-961(G) to levy an assessment to fund the Administrative Fund. The maximum allowed is 3% and the current Administrative Fund rate for calendar year 2022 is 1.75%. In fiscal year 2022 the total assessment revenue for the Administrative Fund was \$18.7 million and total expenses were \$20 million resulting in a change to the operating cash balance of \$1.3 million. The Commission is authorized under § 23-1065(A) and 23-1065(F) to levy assessments to fund the obligations of the Special Fund. The maximum assessments allowed are 1% for 1065(A) for general Special Fund liabilities and 1/2% under 1065(F) for Apportionment for

a combined maximum rate of 1.5%. For calendar year 2022 the assessment rate is 0% under both statutes.

Ms. Simpson reviewed the four premium options for calendar year 2023 of 2%, 1%, no change and decrease of 1% from the current 1.75% in premium projections along with the cash balance, operating budget and expenditures. If the Commission wishes to maintain at least \$5 million operating cash in the Administrative Fund Account, which is a goal and not a rule, Ms. Simpson recommends increasing the rate by .25% bringing the rate to 2%. This would provide sufficient funds and an operating cushion.

Ms. Simpson reviewed the options for 2023 for §§ 23-1065(A) and 1065(F), noting the fund is actuarially sound as of June 30, 2022 with a healthy unrestricted balance. A number of large term gains that have helped offset short term losses and the Fund is strong so it has maintained a strong balance. Ms. Simpson recommended maintaining the 0% rate for both §§ 23-1065(A) and 1065(F) for CY 2023.

Chairman Schultz noted the decrease for self-insured employers and did not see any information behind the decrease and asked if it was due to a loss of self-insurers because he did not think we lost anybody or if it is lower employment among self-insurers with decreased payroll or the result of the calculation of their taxes based upon the standard rate classifications.

Ms. Simpson noted the self-insureds have improved their risk programs which means bringing in a little less but agrees with the points made by Chairman Shultz.

Ms. Pastor noted we are in the process of getting the rates ready to present and did a rate evaluation last year and noted municipals have been undervalued and seen decrease after decrease in regards to the NCCI rates. Over the next couple years there will be a lot of leveling out of the rates and we should have a good grasp going forward.

Chairman Schultz followed up to see if Ms. Pastor anticipated any impact on the tax revenues from the change in the self-insurance rules.

Ms. Pastor noted it was hard to tell, it will be data driven. She anticipates a slight increase but we will see clear emods starting in 2023 and going forward will have a good grasp of the injuries, payroll and premiums will be better than where they are now.

Ms. Simpson noted they have worked with the actuaries as much as possible to figure out a revenue neutral position and did not want to overly burden anyone and wanted everyone to pay what they should be paying based on their trends, but its too early to tell.

Ms. Pastor noted the neutrality will depend on the emods and for those that have high emods which are artificially high considering the rates were too low to begin with it will help make it more revenue neutral. It will also provide incentives for safety, the better the emods, the better the discount and hopefully see leveling of revenue and predictability and also create a safer work environment.

Chairman Schultz thought it would also create better equity between employers who purchase insurance and the options they have for adjustable rates and the self-insurers and will be very positive.

Chairman Schultz asked if there were any comments. Hearing none asked for a motion.

Commissioner Everett moved to increase the assessment rate under § 23-961(G) to 2%; under § 23-1065(A) at 0%; and under § 23-1065(F) 0% for CY 2023. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr 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.

Fatality

Fatality

Years in Business:

Empl. Covered by Inspection:

Years in Business:

Empl. Covered by Inspection:

47

1

3

Tec Auto Collision LLC

9236 N 12th Ave

Phoenix, AZ 85021
Site Location:

9236 N 12th Ave

Phoenix, AZ 85021 FC-2022-F9669-0019

Inspection No: Inspection Date:

July 19, 2022

Mr. Atencio noted this file was previously remanded to ADOSH for further review. The Medical Examiners report reflected this was not a heat related fatality and the cause of death was natural causes. He noted that ADOSH did consider the individual was an employee and had one non-serious penalty with no penalty amount. ADOSH was not recommending a citation for Tec Auto Collision LLC.

The Commission took no action.

The Gombos Company LLC

5315 W. Pretzer Rd

Eloy, AZ 85131

Site Location: 5315 W Pretzer Rd

Eloy, AZ 85131

Inspection No:

FC-2022-RS480-0007

Inspection Date:

July 25, 2022

SERIOUS – Citation 1 - Item 1 –

a) Warehouse: A 6' A-frame ladder, brand, model, and serial numbers unknown, was used to enter and exit a press machine was not erected per manufacturer's recommendations and limitations. 29 CFR 1910.23(b)(8)

Div. Proposal - \$975.00

Formula Amt. - \$900.00

SERIOUS – Citation 1 - Item 2 –

a) 5315 W Pretzer Rd. Eloy, AZ 85131: The employer did not conduct a written hazard assessment for personal protective equipment (PPE) in the workplace. 29 CFR 1910.132(d)(2)

Div. Proposal - \$975.00

Formula Amt. - \$900.00

SERIOUS – Citation 1 - Item 3a –

- a) Warehouse: Two authorized employees were conducting service on the MJB340 mobile natural hay bale press SN: 10NV0509 and failed to have a Lockout/Tagout program in place to prevent injury.
- b) Warehouse: One affected employee had access to an area where stored gravitational energy was present and did not have Lockout/Tagout program in place to prevent an injury or in this case, death. 29 CFR 1910.1417(c)(1)

Div. Proposal - \$4,200.00

Formula Amt. - \$4,200.00

SERIOUS – Citation 1 - Item 3b –

a) 5315 W Pretzer Rd Eloy, AZ 85131: Two employees were conducting maintenance on the hay press with no established lock out procedures. 29 CFR 1910.147(c)(7)(i)
 Div. Proposal - \$0.00
 Formula Amt. - \$4,200.00

SERIOUS – Citation 1 - Item 4 –

- a) Warehouse: Three employees operated an orange straight mast Cat brand forklift, model and serial numbers unknown, without training.
- b) Warehouse: Three employees operated a white straight mast forklift, brand, model, and serial numbers unknown, without training. 29 CFR 1910.178(l)(2)(ii)

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$7,650.00

TOTAL FORMULA AMT. - \$11,700.00

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

Commissioner LeMarr asked if there was a requirement for hard hats because he did not see any in the photographs.

Mr. Atencio noted it was part of the 29 CFR 1910.132(d)(2) citation for PPE, there has to be some initial PPE assessment done for the location. Whenever you have something that is overhead and has the potential to fall, you will see a lot in the industry, they will not use a hard hat necessarily but will use a bunk cap, and will provide the same type of support in the event something does fall. The employer would have to consider that if they would have done the actual assessment.

Chairman Schultz checked if anyone would like to comment. Mr. Zweig declined to make any comments.

Chairman Schultz thanked everyone for joining the meeting.

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

AMMA Investment Group, LLC 2935 E. Frontage Rd

Complaint Years in Business:

6

Amado, AZ 85645

Empl. Covered by Inspection:

176

Site Location: 2935 E. Frontage Rd

Amado, AZ 85645

Inspection No:

CP-2022-RS480-0005

Inspection Date:

July 20, 2022

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

a) The Extraction Lab: Six lab employees were exposed to hazards in the event of a fire due to a five pound, ABC, First Alert, fire extinguisher that was blocked by boxes and equipment, restricting access in case of emergency. 29 CFR 1910.157(c)(1)

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 1b –

a) Outside grow area: One discharged, First Alert, five pound, ABC fire extinguisher was available for use in case of emergency and did not have a monthly inspection.

b) Grow house two, zone three: One First Alert, five pound, ABC fire extinguisher was available for use in case of emergency and did not have a monthly inspection.

c) Grow house two, atrium: One First Alert, five pound, ABC fire extinguisher was available for use in case of emergency and did not have a monthly inspection.

d) Grow house one, grow area: One First Alert, five pound, ABC fire extinguisher was available for use in case of emergency and did not have a monthly inspection.

e) Extraction Lab: Two First Alert, five pound ABC fire extinguisher was available for use in case of emergency and did not have a monthly inspection.

f) Packaging Area: One First Alert, five pound ABC fire extinguisher was available for use in case of emergency and did not have a monthly inspection. 29 CFR 1910.157(e)(1)

Div. Proposal - \$0.00 Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 2a –

a) Outdoor grow area: Up to 31 employees worked in an area where grow lights were hung between 5' and 6' high and did not have a protective cover over the florescent light bulb. 29 CFR 1910.305(a)(2)(ix)

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 2b –

a) Outdoor grow area: Up to 31 employees worked in an area where strands of florescent grow lights were hung between 5' and 6' and had live parts exposed. 29 CFR 1910.305(j)(1)(i)

Div. Proposal - \$0.00

Formula Amt. - \$2,000.00

TOTAL PENALTY - \$3,500.00

TOTAL FORMULA AMT. - \$7,000.00

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

Commissioner LeMarr asked about the relationship with this employer and one cited about a month ago.

Mr. Atencio noted this entity controls the facility and the location, the owner of the property and what they do.

Chairman Schultz noted there were no representatives and commented that it was a shame they lost their safety person, because this stuff is really basic and if they had someone devoted to safety he was sure it would have been taken care of and it's disappointing the number of issues that were found.

Mr. Atencio noted he is currently working with the President of the Association for Cannabis to put some stuff together for them to send out to the employers with basic steps on how to develop a program. What is really going to get them in trouble are the programs, there is a high turnover rate in this industry, so it's the constant hazcom, lockout/tagout program and things like that people migrate in and out of.

Chairman Schultz thanked Mr. Atencio for his work, and noted he was surprised and was looking for issues to exposures to chemicals, solvents and fertilizers and sort of surprised it was just housekeeping.

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

Roofsavers Locke Roofing, L.L.C. 3561 E. Sunrise Drive Ste 201

Site Location:

Tucson, AZ 85718

4144 E. Broadway Blvd

Tucson, AZ 85711

Inspection No: PP-2022-E7721-0061 Inspection Date: September 27, 2022 Programed Planned

Years in Business:

25

Empl. Covered by Inspection: 5

SERIOUS – Citation 1 - Item 1 –

a) 5566 E Broadway Blvd Tucson, AZ 85711: Five roofers were working on a flat roof approximately 10'6" applying Kool Kote roof coating, without proper personal protective equipment. 29 CFR 1926.95(a)

Div. Proposal - \$2,486.00

Formula Amt. - \$2,486.00

SERIOUS – Citation 1 - Item 2 –

- a) 5566 E Broadway Blvd, Tucson, AZ 85711: Five roofers were installing Kool Kote brand roof coating to an existing, residential home, with a flat roof approximately 10'6" high without a fall protection system installed.
- b) East side of home: Five roofers walked and worked on a lower level roof of an existing residential home approximately 9' above the ground without a fall protection system installed. 29 CFR 1926.501(b)(10)

Div. Proposal - \$3,108.00

Formula Amt. - \$3,108.00

SERIOUS – Citation 1 - Item 3 –

a) 5566 E Broadway Blvd Tucson, AZ 85711: Five roofers were installing Kool Kote brand roof coating to an existing, residential home, with a flat roof approximately 10'6" high without initial fall protection training. 29 CFR 1926.503(a)(2)

Div. Proposal - \$3,108.00

Formula Amt. - \$3,108.00

SERIOUS – Citation 1 - Item 4a –

a) 5566 E Broadway Blvd Tucson, AZ 85711: Five roofers applied Kool Kote brand coating on a 10' 6" roof without access to this product's safety data sheet. 29 CFR 1910.1200(g)(8) Div. Proposal - \$2,486.00 Formula Amt. - \$2,486.00

SERIOUS – Citation 1 - Item 4b –

a) 5566 E Broadway Blvd Tucson, AZ 85711: Five roofers applied Kool Kote brand coating on a 10' 6" roof without having been trained on the hazard associated with the material they were applying. 29 CFR 1910.1200(h)(1)

Div. Proposal - \$0.00

Formula Amt. - \$2,486.00

TOTAL PENALTY - \$11,188.00

TOTAL FORMULA AMT. - \$13,674.00

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

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

Mr. Locke noted he had never been through this process before and introduced Mr. Quiroya his General Manager. Mr. Locke noted that four years ago he began the process of giving his company to his employees and this is a learning curve and apparently the guy in charge of safety meetings is not taking it as seriously as one might wish. He does have some contention with some of this and understands this is not the place or time to discuss these issues. They do have MSDS sheets available at the work place and every employee since 2005 is required to have fall protection and they are inspected once a month and everyone puts it on and they talk about in their regular safety meetings, but he cannot control what an employee might say when he is caught not doing it.

Chairman Schultz commented that the Commission understands very well the issues and particularly within the industry and recognized that in 2016 and started a roofer's alliance and started this because it is a very high risk industry and a huge amount of turnover and a lot of movement amongst employees from one roofing company to another. They started this particular program to give roofers the opportunity to share best practices, share information on equipment that works, fall protection equipment or roofing related equipment, but also an important part was to establish a means for sharing of information concerning employees, we found a huge number of employees that were bad actors at one employer would move to the next and put the employers, fellow workers and themselves at risk time after time. That group is available and meets monthly as a group and just share best practices. Chairman Shultz encouraged him to talk to Mr. Atencio or Mr. Ashley about the roofer's alliance.

Mr. Locke talked to his employer who handles their workers' compensation and they have a compliance division and they have a meeting on Wednesday so they can become compliant very quickly and has to push it.

Mr. Atencio commented that Jennifer George, the President of ARCA had already advised him that Nat Carrol with Insure Compliance will be helping them and have training classes to reemphasize safety and believed they had training and that can be looked at during the informal conference. They have been reactive and seem to be on the right path.

Commissioner LeMarr moved to amend based on Mr. Locke stating that they do have MSDS sheets available and employees have access to that and explanations, it seems that Item 4a conflicts with what Mr. Locke said and suggested a 25% Good Faith Discount for Item 4a based on the fact that the employer does have regular safety meetings and fall protection issued to every employee with instructions how to use it. For a total penalty of \$10,566.50. Mr. Locke noted that they have to teach them the difference of what is required and what they think is safe, and the unfortunate part for the personal fall protection, they have it with them every day but they do not want to wear it because they think it is a danger. Chairman Schultz noted they might think differently if they hear the fatalities that the Commission sees for roofers every year. Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Discussion, Action, and Potential Resolution regarding Final Rulemaking to Title 20, Chapter 5, Article 5 Elevator Safety.

Mr. Testini noted we would like to enter into final rulemaking process for Article 5. He summarized the steps taken so far and requested authorization to move forward with the final rulemaking process.

Commissioner LeMarr moved to approve final rulemaking for Title 20, Chapter 5, Article 5: Elevator Safety. Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Chairman Schultz thanked Mr. Testini and his team and Mr. Atencio and the elevator team that worked hard on proposing the amendments, which are a step forward.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley made additional comments regarding the rulemaking packet with the elevator rulemaking and the good clean up and updates and making sure the most recent safety standards are adopted.

Chairman Schultz noted this is the internal business that the Commission does to improve our processes so we are able to keep the assessments as low as possible for insurers and self-insures in the State of Arizona and maintain a very fiscally sound administrative fund and fiscally sound Special Fund and all part of managing the workers' comp system in Arizona.

Mr. Ashley noted the introduction to AMS for the new ADOSH compliance team and the online huddles.

Mr. Ashley noted that other agencies would visit the ICA to have a chance to tour our huddle boards and a chance to listen to our AMS journey as they work toward their own AMS journey and it was not uncommon for those agencies to incorporate our best practices.

Mr. Ashley updated the Commissioners with the AMS scorecard metrics for the Legal Division metrics starting with workers' compensation coverage obtained as a result of our efforts which has been one of our initial metrics and are exceeding our goals. The next was the number of Special Fund cases resolved prior to a hearing and the metric is in the green. Mr. Testini noted the focus on this metric is to try to get to the cases quicker and see which ones could be resolved to not put a burden on the ALJ Division and is a new focus.

Mr. Ashley noted the workers' compensation system can be defined by observers as very complex and multi layered with a lot on intricacy. For the public and unrepresented workers it is a lot to maneuver and we want to make sure to promptly answer procedural questions about the process. We are making some changes to the Ombudsman position and expanding the scope of the Ombudsman function and expanding the scope by creating a team which will be housed in the Legal Division. The new head of the Ombudsman unit reporting to Mr. Testini will be Allen Shayo, a former ALJ Judge in the ALJ division. This will continue to improve customer service for all stakeholders.

Mr. Ashley also noted that the 23G and 21D Federal grant funds were successfully utilized for FFY 2022.

Mr. Ashley invited the Commissioners to a Thanksgiving lunch hosted by ADOSH on November 17 in the ADOSH Division prior to the Commission Meeting.

Ms. Dimas confirmed Commission meeting dates through December 2022.

Mr. Ashley thanked the Commissioners for accommodating the meeting on December 19th for the next step in the rulemaking process for Article 12 to proceed.

Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion and the meeting was adjourned at 2:32 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

Ву

James Ashley, Director

ATTEST:

Kara Dimas, Commission Secretary