

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, April 13, 2017 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Robin S. Orchard	Commissioner
	James Ashley	Director
	Jason M. Porter	Chief Legal Counsel
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Self-Insurance
	Larry Gast	ADOSH Assistant Director
	Afshan Peimani	Staff Attorney
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:02 p.m. Also in attendance were Kevin King and Agustin Galindo with Honeywell International Inc.; Everett Smith and Frank Blue with Hunter Douglas; Erica Melendez with Snow, Carpio & Weekley, PLC; and Clawson Williams with Snell & Wilmer.

Approval of Minutes of April 6, 2017 Regular Meeting and April 6, 2017 Executive Session Minutes.

Chairman Schultz postponed this agenda item to the April 27, 2017 Regular Meeting.

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.

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a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C16/17-0827 Arizona Aviation Trading LLC
2. 2C16/17-0739 DML Designs Build, LLC
3. 2C16/17-2606 Konix Logistics LLC

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

1. Empire Southwest, LLC
2. Maricopa County Community College District

Chairman Shultz removed item (a)(2) and (a)(3) from the Consent Agenda and discussed the improved experience modification factors for both Empire Southwest, LLC, and Maricopa County Community College District.

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

Chairman Schultz stated that DML Designs Build, LLC, and Konix Logistics, LLC, had obtained workers' compensation insurance and staff is recommending a reduced penalty of \$500.00 (instead of staff's previous recommendation of a \$1,000.00 civil penalty).

Vice Chair Hennelly moved to approve issuance of \$500.00 civil penalties against DML Designs Build, LLC, and Konix Logistics, LLC. Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard voted in favor of the motion. The motion passed.

Discussion and Action of Attorney Fee Petition. This agenda item may include discussion concerning the processing of attorney fee petitions and the reasonable hourly rates used in analyzing fee petitions.

Stephen Weiss Law Firm and James Robertson

Ms. Peimani discussed the Petition for Attorney's Fees submitted by Mr. Stephen Weiss. Ms. Peimani recommended that the Commission award Mr. Weiss 25% of Mr. Robertson's LEC benefits for a period of 5 years, unless Mr. Robertson retains another workers' compensation attorney (in which case Mr. Weiss would receive 12.5% of the LEC benefits).

Chairman Schultz and Ms. Peimani discussed the impact of Mr. Weiss retaining another attorney.

Commissioner Orchard, Ms. Peimani, and Mr. Porter discussed whether an award of the requested fees would interfere with Mr. Robertson's ability to obtain counsel to represent him in non-workers' compensation matters.

Vice Chair Hennelly moved to approve staff's recommendation and Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard 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.

Honeywell International Inc.	Referral
11100 N. Oracle Road	Years in Business: 32
<u>Oro Valley, AZ 85737</u>	Empl. Covered by inspection: 3
Site Location: 11100 N. Oracle Road	
Oro Valley, AZ 85737	
Inspection No: T3633-1210912	
Inspection Date: 02/16/2017	

SERIOUS – Citation 1 - Item 1 – ME-1, Diaphragm Area: The point of operation between the stripping knife and the front roller of the Rubber Equipment Inc. brand rubber mill, serial number NLM10-20 114, was not adequately guarded. (29 CFR 1910.212(a)(3)(ii)).

Div. Proposal - \$5,000.00  
TOTAL PENALTY - \$5,000.00

Formula Amt. - \$5,000.00  
TOTAL FORMULA AMT. - \$5,000.00

Mr. Gast summarized the citation and proposed penalty and reviewed the photographs.

Vice Chair Hennelly and Mr. Gast discussed the status of the injured employee and the prompt abatement actions taken by the employer.

Commissioner Orchard, Chairman Schultz, and Mr. Gast discussed Honeywell's commitment to workplace safety and participation in the Voluntary Protection Program ("VPP"). Chairman Schultz commented on prior Commission visits to Honeywell sites. Mr. Gast discussed the impact of VPP participation on the inspection process.

Mr. King discussed Honeywell's VPP participation and strong commitment to workplace safety. He detailed Honeywell's comprehensive response to the incident, including a full site safety stand down, a complete site inspection with correction of all identified safety concerns, a third-party guarding assessment, upgraded personal protective equipment and written procedures for blade cleaning, training for all employees who use the subject machine, and employee involvement in developing a robust safety solution for the subject machine. He discussed the status of the injured employee and the company's commitment to providing high quality medical care for the injured employee.

Chairman Schultz noted that Honeywell's response is exactly the type of response the Commission expects from its VPP partners. He praised Honeywell on its excellent and thorough response, including the safety stand down. He highlighted the company's actions in addressing training, leadership, process, and equipment concerns following the incident. Mr. Gast seconded the Chairman's sentiments, and commended Honeywell on its response to the incident, commitment of company leadership towards workplace safety, and involvement of employees in the safety process.

Commissioner Orchard noted Honeywell's immediate, timely, and aggressive abatement efforts. She moved to reduce the proposed penalty for Citation 1, Item 1 by 30%, for a total penalty of \$3,500.00. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard voted in favor of the motion. The motion passed.

Hunter Douglas  
601 S 65<sup>th</sup> Ave  
Phoenix, AZ 85043

Referral  
Years in Business: 15  
Empl. Covered by inspection: 85

Site Location: 601 S 65th Ave  
Phoenix, AZ 85043  
Inspection No: W0250-1203709  
Inspection Date: 01/19/2017

SERIOUS – Citation 1 - Item 1 – Warehouse: One employee was working on a Weinig Router model M22 serial unknown and was not protected from rotating parts while performing his daily duties. (29 CFR 1910.212(a)(1)).

Div. Proposal - \$5,000.00  
TOTAL PENALTY - \$5,000.00

Formula Amt. - \$5,000.00  
TOTAL FORMULA AMT. - \$5,000.00

Mr. Gast noted that the correct legal name for this company is Hunter Douglas Window Coverings, Inc. dba Hunter Douglas. Mr. Gast summarized the citation and proposed penalty and reviewed the photographs.

Commissioner Orchard, Mr. Gast, and Chairman Schultz confirmed the date of injury and inspection date.

Mr. Smith discussed Hunter Douglas's VPP participation, the subject machine, immediate corrective actions taken to lock out the machine and add temporary machine guarding, fabrication of permanent machine guarding, implementation and training on a warning light system, update of written safety procedures relating to the machine and the warning light system, replacement of the machine in March 2017 (with a machine with an automatic braking system and extensive guarding), addition of barrier chains to prevent unauthorized use of the machine and associated training, completion of a wall-to-wall inspection with an emphasis on machine guarding, and update to training checklists and orientation process.

Commissioner Orchard and Mr. Smith discussed the employment status and job duties of the injured employee.

Mr. Gast praised Hunter Douglas on its response to the incident, noting the exemplary abatement efforts taken by the company.

Vice Chair Hennelly praised both Honeywell and Hunter Douglas for exemplary abatement and commitment to workplace safety. He moved to reduce the proposed penalty for Citation 1, Item 1 by 30%, for a total penalty of \$3,500.00. Commissioner Orchard seconded the motion.

Chairman Schultz noted the exemplary commitment to workplace safety demonstrated by VPP partners. He discussed Commission efforts to establish an Arizona-specific VPP group to continue to grow a safety culture among Arizona employers. He discussed the Commission's intent in reducing the proposed penalty.

Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard voted in favor of the motion. The motion passed.

Price Industries, Inc. 1290 Barrow Industrial Pkwy Winder, GA 30680	Referral Years in Business: 60 Empl. Covered by inspection: 5
Site Location: 999 N. Thorton Road Casa Grande, AZ 85222	
Inspection No: E5149-1191042	
Inspection Date: 11/14/2016	

SERIOUS – Citation 1 - Item 1 – Production Line: The safety guards to the Pistorius (Model MN 200, Serial Number unknown) Pivot Type Double Miter Saw were not properly adjusted in position and when the employee attempted to unjam an aluminium part, the employee's left index finger was amputated by the saw blade. (29 CFR 1910.212(a)(3)(ii)).

Div. Proposal - \$5,000.00	Formula Amt. - \$5,000.00
TOTAL PENALTY - \$5,000.00	TOTAL FORMULA AMT. - \$5,000.00

Mr. Gast summarized the citation and proposed penalty and reviewed the photographs.

Commissioner Orchard, Mr. Gast, and Mr. Porter discussed whether ADOSH was provided any evidence of abatement and whether the employer was notified about the Commission meeting.

Vice Chair Hennelly and Mr. Gast discussed the status of the injured employee.

Commissioner Orchard moved to approve the citation and proposed penalty as presented and Vice Chair Hennelly seconded the motion.

Commissioner Orchard noted that abatement could be addressed by ADOSH after the citation is issued. Mr. Gast discussed ADOSH's process for ensuring employer abatement and documentation required to demonstrate abatement.

Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard voted in favor of the motion. The motion passed.

Simons D Roofing LLC 2403 County 16 Yuma, AZ 85364	Planned Years in Business: 12 Empl. Covered by inspection: 3
Site Location:	Near the corner of Marquez and Heredia San Luis, AZ 85349
Inspection No:	E5149-1199578
Inspection Date:	12/14/2016

SERIOUS – Citation 1 - Item 1 – Residential Home, near the corner of Marquez Avenue and Heredia Street, San Luis, AZ: An employee cutting concrete tiles with a saw on the roof-top of a single story house was generating respirable silica dust and was not wearing any proper respiratory protection. (29 CFR 1926.95(a)).

Div. Proposal - \$1,000.00	Formula Amt. - \$1,000.00
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SERIOUS – Citation 1 - Item 2 – Residential Home, near corner of Marquez Avenue and Heredia Street, San Luis, AZ: Three employees were observed installing concrete tiles on the roof-top of a single story house at a height that was approximately nine to sixteen feet above the ground level without any fall protection. (29 CFR 1926.501(b)(13)).

Div. Proposal - \$2,000.00	Formula Amt. - \$2,000.00
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SERIOUS – Citation 1 - Item 3 – Residential Home, near the corner of Marquez Avenue and Heredia Street, San Luis, AZ: Three employees were observed installing concrete tiles on the roof-top of a single story house at a height that was approximately nine to sixteen feet above the ground level without adequate training that would enable employees to recognize the hazards of falling and in procedures to be followed to minimize those fall hazards. (29 CFR 1926.503(a)(1)).

Div. Proposal - \$2,000.00	Formula Amt. - \$2,000.00
TOTAL PENALTY - \$5,000.00	TOTAL FORMULA AMT. - \$5,000.00

Mr. Gast summarized the citations and proposed penalties and reviewed the photographs.

Vice Chair Hennelly and Mr. Gast discussed the number of employees involved during the inspection.

Commissioner Orchard and Vice Chair Hennelly commended ADOSH for the good photographs.

Commissioner Orchard moved to approve the citations and proposed penalties as presented and Vice Chair Hennelly seconded the motion.

Chairman Schultz discussed usage of N95 masks, efforts to help employers develop comprehensive safety programs, efforts of the Chairman's Roofer's Alliance to address the industry's safety issues, and the excellent collaboration among members of the Alliance to identify and develop solutions to safety issues.

Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard voted in favor of the motion. The motion passed.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2017. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

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Mr. Ashley, Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard commended Mr. Gast on his service at the Commission and wished him well in his new endeavors.

Mr. Ashley discussed a recent visit from a consulting group, referred by the state, to see the progress of the agency in deploying the Arizona Management System ("AMS"). He noted that there would be development of success stories of AMS deployment.

Chairman Schultz and Mr. Ashley discussed the Commissioner Gemba Walks and efforts of staff to deploy AMS.

Mr. Ashley reviewed the agency's performance on its four breakthrough goals.

Chairman Schultz discussed his attendance at an Arizona Workers' Compensation Claims Association meeting and a presentation by Molly Jones about Commission improvements.

Mr. Ashley noted that he will provide an update on the usage of on-line forms at the next meeting.

Chairman Schultz and Mr. Ashley discussed usage of the MRO and ALJ Portals. Chairman Schultz discussed the tracking of AMS metrics throughout the agency. Chairman Schultz commended Mr. Ashley for the great progress. Mr. Ashley praised the work being performed by Division Managers, Supervisors, and staff. Commissioner Orchard noted that the engagement was impressive.

#### Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas reviewed planned Commission meeting dates through May 2017. She proposed meeting dates for June 2017.

#### Public Comment.

Mr. King discussed the implementation of lean management practices in state government and commended the agency for its work. Mr. Ashley noted that the Commission was impressed with the Honeywell Aerospace facility in Kingman, Arizona.

Chairman Schultz noted that the Commission is pursuing VPP designation as a state agency and discussed efforts being taken to go through the standard VPP process.

There was no other public comment.

Vice Chair Hennelly moved to adjourn and Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard voted in favor of the motion and the meeting was adjourned at 2:39 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley  
James Ashley, Director

ATTEST:

Kara Dimas  
Kara Dimas, Commission Secretary