MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, April 6, 2017 – 1:00 p.m.

Present:

Dale L. Schultz Chairman
Joseph M. Hennelly, Jr. Vice Chair
Scott P. LeMarr Commissioner
Robin S. Orchard Commissioner

James Ashley Director
Jason M. Porter Chief Legal Counsel
Bob Charles Legislative Affairs Chief / Public Information Officer
Sylvia Simpson Chief Financial Officer
Renee Pastor Self-Insured
Molly Jones Claims Manager
Steven Welker Labor Director
Jonathan Hauer Assistant Chief Legal Counsel
William Warren ADOSH Director
Brian Downen Compliance Officer
Michelle Rassi Compliance Officer
Michael Mosesso Chief Administrative Law Judge
Jamie Stacy HR Manager
Kara Dimas Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Terry Fox with Arizona Association Lawyers for Injured Workers (“AALIW”); Brandon Dodds and Kerry Leib with the City of Scottsdale; Brian Carmichael and Edith Paltieriez with the City of Surprise; Stephanie Coulter with the Cavanagh Law Firm; and Clawson Williams with Snell & Wilmer.

Approval of Minutes of March 31, 2017 Regular Meetings Minutes.

Commissioner Orchard moved to approve the Minutes of the March 31, 2017 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard 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 Proposed Civil Penalties Against Uninsured Employers.

1. 2C16/17-0605 Arizona Cheer & Dance Academy, LLC
2. 2C16/17-1228 Carla Vista Sober Living, LLC
3. 2C16/17-1879 Daniel Sexton, a single man, dba Arizona RV Salvage
4. 2C15/16-1117 Euro Moving and Storage LLC
5. 2C16/17-0926 Nowell Tree Farms, LLC
6. 2C16/17-1100 Save On Services, dba Affordable Garage Door

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

1. City of Tucson

Chairman Schultz discussed the large number of employees left uncovered by employers on the Consent Agenda who had not secured workers’ compensation insurance and noted that one uninsured employer was brought to the Commission’s attention following a fatality.

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

Discussion and Action of Application for Self-Insurance Authority.

1. City of Surprise

Chairman Schultz discussed the City’s application for self-insurance authority.

Brian Carmichael discussed his background with self-insurance programs, the City’s planned self-insurance program, and the importance of a self-insured, self-administered model. Chairman Schultz noted that Mr. Carmichael had been effective in testifying on behalf of legislation that would allow public entities to direct medical care. Chairman Schultz discussed how directing care improves treatment of injured workers.

Ms. Pastor discussed the speed, quality, and efficiency with which the City assembled its application.

Commissioner LeMarr moved to grant self-insurance authority to the City of Surprise and Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Ms. Pastor discussed the City’s experience modification rating.

Presentation from and/or discussion with the Industrial Commission’s Public Information Officer. This agenda item may include discussion regarding the operations of the Industrial Commission.

Mr. Charles discussed media coverage concerning a Town of Paradise Valley inspection.

Mr. Charles offered thoughts on the Commission’s Day at the Capitol event, including honoring Senator Steve Smith as a Legislative Champion.

Mr. Charles provided legislative updates concerning Senate Bills 1332, 1407, and 1478. Mr. Charles discussed the process for passing SB 1478 and the substance of the legislation. Chairman Schultz discussed the impact of SB 1478 and thanked Mr. Charles for his efforts. He noted that Arizona would be only the second state in the nation to codify the Voluntary Protection Program (“VPP”).

2
Discussion and Action of Resolution Appointing Custodian of Records.

Ms. Jones proposed that the Commission appoint Laverne Isames as a Custodian of Records and explained the basis for her proposal.

Vice Chair Hennelly moved to approve the appointment of Ms. Isames as a Custodian of Records and Commissioner LeMarr 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.

Commissioner Orchard recused herself from the City of Scottsdale agenda items.

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

City of Scottsdale – Chaparral Water Treatment Plant
8111 E McDonald Dr
Scottsdale, AZ 85250

<table>
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<tr>
<th>Site Location:</th>
<th>Planned</th>
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<tbody>
<tr>
<td>8111 E McDonald Dr</td>
<td>Years in Business: 41</td>
</tr>
<tr>
<td>Scottsdale, AZ 85250</td>
<td>Empl. Covered by inspection: 12</td>
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<tr>
<td>Inspection No:</td>
<td>H9685-1203305</td>
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<td>Inspection Date:</td>
<td>01/13/2017</td>
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SERIOUS – Citation 1 - Item 1 – GAC Building Basement South Side: Employees who worked on the basement level were not protected from falling approximately 15 feet to the ground below through two ladderway openings by a swinging gate or by offsetting the opening to the ladderway. (29 CFR 1910.23(a)(2)).

- Div. Proposal - $2,250.00
- Formula Amt. - $2,250.00

SERIOUS – Citation 1 - Item 2 –

a) GAC Building South Stairs: The exit stairs that served three different levels of the GAC building which lead from the second story to the first story and then to the basement level were not interrupted at the first story level on which the exit discharge was located by doors, partitions, or other effective means that clearly indicated the direction of travel leading to the exit discharge. (29 CFR 1910.36(e)(3)).

b) MF Building: A marked exit door that lead from the MF portion of the building into the administration building's exit route was locked with a keyed door handle. (29 CFR 1910.36(d)(1)).

c) Administration Hallway: The ceiling of an exit route reached a point less than six feet eight inches from the floor as an HVAC duct projected into the exit route which created a point that measured 5 feet 6-1/2 inches tall. (29 CFR 1910.36(g)(1)).
d) Administration Hallway: Twelve vertical storage racks containing combustible items which included approximately 300 paper filled binders and multiple storage boxes with miscellaneous combustible materials inside them were being stored along the west wall of the exit route that lead to the south emergency exit door. (29 CFR 1910.37(a)(3)).

e) MF West Wall: A retractable stanchion system and cone were placed in front of the emergency exit door obstructing employee access to the door. (29 CFR 1910.37(a)(3)).

f) GAC Building South Side: The emergency exit door located on the south side of the building next to the exit stairs was not marked by a sign reading "Exit." (29 CFR 1910.37(b)(2)).

g) South Walled Exit Discharge Area: The exit door on the south side of the exit discharge area that lead to the public way was not marked by a sign reading "Exit." (29 CFR 1910.37(b)(2)).

Div. Proposal - $2,250.00  
Formula Amt. - $2,250.00

SERIOUS – Citation 1 - Item 3 – 8111 E McDonald Rd, Scottsdale, AZ 85250: A Ballymore personnel platform, model FD-48-C, was attached to the mast of a Komatsu forklift, model FG25C11 and serial number 458046A, without the manufacturer's prior written approval. (29 CFR 1910.178(a)(4)).

Div. Proposal - $2,250.00  
Formula Amt. - $2,250.00

SERIOUS – Citation 1 - Item 4 – Solids Storage Room: One or more methods of machine guarding, such as safety interlocks, were not provided to protect employees from the hazardous rotating parts when the covers were opened on Screw Conveyor number 6, model 16 and serial number 65031513, while it was still operating. (29 CFR 1910.212(a)(1)).

Div. Proposal - $2,250.00  
Formula Amt. - $2,250.00

TOTAL PENALTY - $9,000.00  
TOTAL FORMULA AMT. - $9,000.00

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

Commissioner LeMarr, Chairman Schultz, Mr. Warren and Mr. Downen discussed abatement, the forklift basket, and the manufacturer requirements for specific forklifts ratings.

Chairman Schultz, Mr. Downen, and Mr. Warren discussed photographs 1 and 2, the higher/lesser classification, how often the stairs are used for egress, and the exit door key. They also discussed the duct work, the storage of items depicted in photograph 9, egress width requirements, and the egress depicted in photograph 10.

Chairman Schultz and Vice Chair Hennelly echoed Commissioner LeMarr’s concerns concerning lift usage and design. Chairman Schultz and Mr. Downen discussed the auger process, the emergency stop, lock out/tag out, abatement, and photograph 21.

Vice Chair Hennelly and Mr. Downen discussed photograph 3 and the depicted exit door.

Mr. Dodds noted that the representative for the facility had retired the day of the meeting and that he did not know the abatement status.

Vice Chair Hennelly moved to approve the citations and proposed penalties as presented and Commissioner LeMarr seconded the motion. Chairman Schultz noted that the settlement and hearing process offers an opportunity to discuss abatement and fully discuss the citations and penalties.
Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion. The motion passed.

City of Scottsdale – McCormick-Stillman Railroad Park
7301 E Indian Bend Rd
Scottsdale, AZ 85250

<table>
<thead>
<tr>
<th>Planned</th>
<th>Years in Business: 41</th>
</tr>
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<tbody>
<tr>
<td>Empl. Covered by inspection: 55</td>
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Site Location: 7301 E Indian Bend Rd
Scottsdale, AZ 85250

Inspection No: H9685-1195977
Inspection Date: 11/30/2016

**SERIOUS** – Citation 1 - Item 1 – Machine Shop: Intermediate rails were not installed at the entrance and exit side of a train maintenance pit exposing employees to falls approximately 5 feet 11 inches into the pit. (29 CFR 1910.23(e)(1)).

Div. Proposal - $2,250.00

Formula Amt. - $2,250.00

**SERIOUS** – Citation 1 - Item 2 – Train Shed: One exit was available for employees in the south portion of the building which was located approximately 190 feet away through multiple rooms from the farthest occupied point. (29 CFR 1910.36(b)(1)).

Div. Proposal - $2,250.00

Formula Amt. - $2,250.00

**SERIOUS** – Citation 1 - Item 3 – Birthday Party Railroad Car: The emergency exit door located inside the Birthday Party Railroad Car did not lead directly outside or to a street, walkway, refuge area, public way, or open space with access to the outside as the exit discharge ended on a platform. (29 CFR 1910.36(c)(1)).

Div. Proposal - $2,250.00

Formula Amt. - $2,250.00

**SERIOUS** – Citation 1 - Item 4 –

a) Stillman Station Multi-Use Room: The emergency exit door on the east side of the building was locked with a deadbolt lock. (29 CFR 1910.36(d)(1)).

b) Birthday Party Railroad Car: The emergency exit door inside the Birthday Party Railroad Car was locked with a hasp and staple lock with a clasp and chain. (29 CFR 1910.36(d)(1)).

Div. Proposal - $2,250.00

Formula Amt. - $2,250.00

**SERIOUS** – Citation 1 - Item 5 – Bunkhouse: The exit access dividing the north and south rooms in the bunkhouse was only 25-1/4 inches wide. (29 CFR 1910.36(g)(2)).

Div. Proposal - $1,800.00

Formula Amt. - $1,800.00

**SERIOUS** – Citation 1 - Item 6 –

a) Bunkhouse: A door to a utility closet was placed in the main exit route of the building obstructing the width of the exit route to approximately 14 inches. (29 CFR 1910.37(a)(3)).

b) Train Shed: Debris was placed within the exit route that lead from the south room to the north exit. (29 CFR 1910.37(a)(3)).

Div. Proposal - $1,800.00

Formula Amt. - $1,800.00
SERIOUS – Citation 1 - Item 7 – Train Shed: The direction of travel to the nearest exit was not immediately apparent and exit signs were not posted along the exit access to indicate to employees the direction of travel in the southern portion of the building. (29 CFR 1910.37(b)(4)).

Div. Proposal - $1,800.00
Formula Amt. - $1,800.00

SERIOUS – Citation 1 - Item 8 –

a) Train Shed: One or more methods of machine guarding was not provided to protect the operator and other employees in the machine area from contact with the unused portion of the saw blade on a W.F. Wells and Sons horizontal band saw, model A-7 and serial number 745337. (29 CFR 1910.212(a)(1)).

b) Train Shed: One or more methods of machine guarding was not provided to protect the operator and other employees in the machine area from accidental contact with the rotating chuck on an Acra turn model 17 x 55 lathe, model LS-430 and serial number 817058. (29 CFR 1910.212(a)(1)).

c) Train Shed: One or more methods of machine guarding was not provided to protect the operator and other employees in the machine area from accidental contact with the rotating chuck on an Enco model lathe, model 110-1340 and serial number 931770. (29 CFR 1910.212(a)(1)).

d) Train Shed: One or more methods of machine guarding was not provided to protect the operator and other employees in the machine area from accidental contact with the rotating chuck on a 12 speed Enco milling and drilling machine, model 105-1100 and serial number 1070. (29 CFR 1910.212(a)(1)).

e) Train Shed: One or more methods of machine guarding was not provided to protect the operator and other employees in the machine area from accidental contact with the rotating chuck on a Craftsman drill press, model and serial number unknown. (29 CFR 1910.212(a)(1)).

f) Train Shed: One or more methods of machine guarding was not provided to protect the operator and other employees in the machine area from accidental contact with the exposed and rotating nut and spindle ends on a custom fabricated wire wheel machine, model and serial number unknown. (29 CFR 1910.212(a)(1)).

g) Train Shed Machine Shop: A Patton brand wall mounted fan where the periphery of the blades were located 5 feet 7 inches from the floor did not have blade guards smaller than ½ inch as the openings were approximately 1-3/4 inches wide. (29 CFR 1910.212(a)(5)).

h) Train Shed Entrance: A Dayton fan forced heater where the periphery of the blades were located approximately 5 feet 5 inches from the floor did not have blade guards smaller than ½ inch as the openings were approximately 7/8 inches wide. (29 CFR 1910.212(a)(5)).

i) Train Shed: Employees were exposed to the hazardous rotating spindle end, nut, and flange projections while operating an MSC 6 inch Carbide Grinder, model 09011602 and serial number unknown, without safety guards. (29 CFR 1910.215(a)(2)).

Div. Proposal - $2,250.00
Formula Amt. - $2,250.00

SERIOUS – Citation 1 - Item 9 – Bunkhouse: Listed and labelled equipment which consisted of approximately 16 power taps and 16 extension cords were not being used or installed in accordance
with any instructions included in the listing or labelling as they were all serially connected to one another to power miniature displays. (29 CFR 1910.303(b)(2)).

Div. Proposal - $1,800.00  Formula Amt. - $1,800.00

SERIOUS  – Citation 1 - Item 10 – Railroad Museum Train: Two employees who were engaged in decorating a train with holiday lights were not protected from falling approximately 14 feet to the ground below by the use of guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(1)).

Div. Proposal - $2,250.00  Formula Amt. - $2,250.00
TOTAL PENALTY - $20,700.00  TOTAL FORMULA AMT. - $20,700.00

Mr. Warren and Mr. Downen summarized the citations and proposed penalties and reviewed the photographs.

Chairman Schultz, Mr. Downen, and Commissioner LeMarr discussed combustibles, flammables, and the use of sprinklers.

Chairman Schultz and Mr. Downen discussed the narrow hallway in the bunkhouse.

Vice Chair Hennelly and Mr. Downen discussed the birthday party car, its use, the car’s exits, photographs 7, 10, 15, and 16, and Citation 1, Items 2 and 7.

Commissioner LeMarr, Mr. Warren, and Mr. Downen discussed violation classification due to a lack of an exit sign and reviewed photograph 5.

Vice Chair Hennelly and Mr. Downen discussed abatement.

Mr. Dodds noted some additional items had been abated and indicated that he would discuss them at the informal conference.

Vice Chair Hennelly moved to approve the citations and proposed penalties as presented and voiced concerns about the aggregated penalties.

Commissioner LeMarr seconded the motion, echoed Vice Chair Hennelly’s sentiments, encouraged the City of Scottsdale to abate the subject issues, and requested that ADOSH take abatement costs into consideration during settlement conferences. Chairman Schultz complimented ADOSH on the inspection and called attention to the impact of penalties. Commissioner LeMarr discussed issues related to abatement.

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

City of Scottsdale – McDowell Mountain Ranch  Planned
Park & Aquatic Center  Years in Business: 10
15525 N Thompson Peak Pkwy  Empl. Covered by inspection: 6
Scottsdale, AZ 85260

Site Location: 15525 N Thompson Peak Pkwy
Scottsdale, AZ 85260

Inspection No: Q6169-1203434
Inspection Date: 01/09/2017
SERIOUS – Citation 1 - Item 1 –

a) 15525 N Thompson Peak Pkwy., Scottsdale, AZ: One employee utilized a North Full-Face Respirator and had not been medically evaluated to determine the employee's ability to use the respirator. (29 CFR 1910.134(e)(1)).

b) 15525 N Thompson Peak Pkwy., Scottsdale, AZ: One employee utilized a North Full-Face Respirator that was not properly fit-tested. (29 CFR 1910.134(f)(1)).

c) 15525 N Thompson Peak Pkwy., Scottsdale, AZ: One employee utilized a North Full-Face Respirator and had not been provided proper training on how improper fit and usage can compromise the protective effect of the respirator. (29 CFR 1910.134(k)(1)(i)).

Div. Proposal - $1,350.00  Formula Amt. - $1,350.00

SERIOUS – Citation 1 - Item 2 – 15525 N Thompson Peak Pkwy., Scottsdale, AZ: Employees working with injurious corrosive materials, (Clor Mor Blackout Granular 90) and suitable facilities for flushing of the eyes and body was not provided within the work area for immediate emergency use. (29 CFR 1910.151(c)).

Div. Proposal - $2,250.00  Formula Amt. - $2,250.00
TOTAL PENALTY - $3,600.00  TOTAL FORMULA AMT. - $3,600.00

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

Chairman Schultz and Mr. Warren discussed the aquatic manager's presence during the inspection.

Commissioner LeMarr and Mr. Dodds discussed successfully performed abatement, new respirators that do not require fit tests, scheduled training, and the current respirators.

Commissioner LeMarr moved to amend the proposed penalties, as follows: reduce the proposed penalty for Citation 1, Item 1 to $350.00, for a total penalty of $2,600.00. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion. The motion passed.

City of Scottsdale – WestWorld
16601 N Pima Rd
Scottsdale, AZ 85260

Site Location: 16601 N Pima Rd
Scottsdale, AZ 85260

Inspection No: H9685-1192704
Inspection Date: 11/21/2016

Planned
Years in Business: 29
Empl. Covered by inspection: 24

SERIOUS – Citation 1 - Item 1 – Tony Nelssen Equestrian Center Southwest Roof: Employees who worked on the roof of the building to service HVAC equipment were not protected from falling approximately 18 feet to the ground below through a ladderway opening by a swinging gate or by offsetting the opening to the ladderway. (29 CFR 1910.23(a)(2)).

Div. Proposal - $2,250.00  Formula Amt. - $2,250.00
a) Administration Building: The emergency exit door and the security door behind it on the northwest side of the building was locked with deadbolt locks.  (29 CFR 1910.36(d)(1)).

b) Operations and RV Check in Building: The emergency exit door and the security door behind it on the north side of the building was locked with deadbolt locks.  ((29 CFR 1910.36(d)(1)).

c) Administration Building Storage Room: The emergency exit door located in the northwest side of the building was not marked by a sign reading "Exit."  (29 CFR 1910.37(b)(2)).

Div. Proposal – $1,350.00  
Formula Amt. - $1,350.00

SERIOUS – Citation 1 - Item 3 – RV Lot H: A Gehl brand telescopic handler, model RS5-19 and number 800-04-0278, was not taken out of service when it was found to be in need of repair because of a damaged rear tail light, missing steering wheel cap, and fork shaft bar that was jury-rigged back together.  (29 CFR 1910.178(p)(1)).

Div. Proposal – $1,350.00  
Formula Amt. - $1,350.00

SERIOUS – Citation 1 - Item 4 –

a) RV Lot H: One employee used two 18 foot Dayton synthetic web slings, model 2MJU2, that had damaged identification tags which resulted in the marked rated capacities for each type of hitch illegible.  (29 CFR 1910.184(i)(1)).

b) RV Lot H: Two 18 foot Dayton synthetic web slings, model 2MJU2, were not immediately removed from service after one employee identified they were worn and in need of replacement and continued to use them to lift 700 pound bleachers.  
(29 CFR 1910.184(i)(9)(iv)).

Div. Proposal – $1,350.00  
Formula Amt. - $1,350.00
TOTAL PENALTY - $6,300.00  
TOTAL FORMULA AMT. - $6,300.00

Mr. Warren summarized the citations and proposed penalties and reviewed the photographs. Mr. Downen explained the issues depicted in photographs 1 and 2 concerning roof access. Mr. Warren reviewed issues depicted in the remaining photographs. Mr. Downen discussed the “tele-handler” inspection, the status of a forklift, and the inadequacy of the utilized equipment and straps.

Vice Chair Hennelly and Mr. Downen discussed photograph 1.

Commissioner LeMarr and Mr. Warren discussed forklift training and recertification.

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

Commissioner LeMarr and Mr. Dodds discussed the City’s abatement protocol. Mr. Dodds noted that some items have been abated. He indicated that the City had hired a new City Manager and an independent consultant.

Commissioner LeMarr discussed the City’s safety culture, fire and safety exits, and recognized the City’s commitment to improvement. He noted that the Commission hopes to see public entities
become safer places to work. Chairman Schultz indicated that he would like to see the City work with the ADOSH Consultation Division to join the Public Entities Partnership Program ("PEPP").

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

Umbria Builders, LLC
2222 E Indian School Rd
Phoenix, AZ 85016

Referral
Years in Business: 4
Empl. Covered by inspection: 4

Site Location: 14753 W Alexandria Way
Surprise, AZ 85374
Inspection No: H9685-1186985
Inspection Date: 10/27/2016

WILLFUL-SERIOUS – Citation 1 - Item 1 – 14753 W Alexandria Way, Surprise, AZ 85379: Three employees engaged in residential framing activities were not protected from falling 10 feet 10 inches to 11 feet 8 inches to the ground below by guardrail systems, safety net systems, or personal fall arrest systems, nor were employee(s) provided with an alternative fall protection measure under another provision of paragraph 1926.501(b). (29 CFR 1926.501(b)(13)).
Div. Proposal - $55,000.00
Formula Amt. - $55,000.00

SERIOUS – Citation 1 - Item 2 – 14753 W Alexandria Way, Surprise, AZ 85379: The employer did not provide a training program for three employees who were exposed to a fall of 10 feet 10 inches to 11 feet 8 inches to the ground below while engaged in framing activities on a residential home to enable each employee to recognize the hazards of falling and the procedures to be followed in order to minimize these hazards. (29 CFR 1926.503(a)(1)).
Div. Proposal - $55,000.00
Formula Amt. - $55,000.00

TOTAL PENALTY - $110,000.00
TOTAL FORMULA AMT. - $110,000.00

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

Commissioner Orchard and Mr. Warren discussed the review process before bringing this matter before the Commissioners.

Commissioner Orchard and Mr. Downen discussed whether the subject employer’s managing partner and general superintendent were the same person.

Commissioner Orchard and Mr. Warren discussed the subject employer’s settlement options.

Commissioner Orchard and Mr. Downen discussed the inspection, whether there was an attempt at abatement, and whether employees were instructed to return to an unsafe condition.

Commissioner Orchard, Mr. Ashley, Mr. Porter, Mr. Warren, and Mr. Downen discussed law enforcement involvement and resulting jurisdictional issues.

Commissioner Orchard, Mr. Warren, and Mr. Downen discussed the subject employer’s knowledge of a prior inspection.
Commissioner Orchard moved to approve the citations and proposed penalties as presented and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Mr. Warren stated that he appreciated Mr. Downen and Mr. Levy's professionalism during the subject inspection. Chairman Schultz commended Mr. Downen on his de-escalation skills.

Discussion, Action, and Potential Resolution regarding Proposed Rulemaking to A.A.C. R20-5-602 to adopt the revised Federal Occupational Safety and Health standards included in Final Rule titled "Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems)."

Chairman Schultz and Mr. Warren discussed postponing this matter to a future agenda. The Commissioners agreed to postpone the matter.

Discussion, Action, and Potential Resolution regarding Proposed Rulemaking to Title 20, Chapter 5, Article 12 of the Arizona Administrative Code relating to the Fair Wages and Healthy Families Act (Proposition 206), including proposed rulemaking to R20-5-1201; 20-5-1202; R20-5-1205; R20-5-1206; R20-5-1208; R20-5-1209; R20-5-1210; R20-5-1211; R20-5-1213; and R20-5-1218.

Mr. Welker summarized the proposed rulemaking related to Title 20, Chapter 5, Article 12 of the Arizona Administrative Code arising out of the Fair Wages and Healthy Families Act (Proposition 206) and requested that the Commissioners permit the Labor Department to proceed with proposed rulemaking.

Commissioner LeMarr, Mr. Porter, and Mr. Hauer discussed the proposed rulemaking, earned paid sick time, and the rulemaking process.

Commissioner LeMarr, Mr. Ashley, Mr. Welker, and Mr. Hauer discussed inquiries from employers, frequently asked questions about Proposition 206, and the nature of the proposed rulemaking.

Chairman Schultz commended the staff on getting the rules together in an expedient manner.

Vice Chair Hennelly, Mr. Ashley, and Mr. Hauer discussed Rule 1208(B)'s definition of a small employer.

Commissioner LeMarr moved to authorize the Labor Division to proceed with the proposed rulemaking to Title 20, Chapter 5, Article 12 of the Arizona Administrative Code and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Discussion and/or Action regarding the Consideration of Candidates for the Administrative Law Judge position, discussion regarding interview questions, second interviews, and the salary. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(1), (A)(2), and (A)(3) to obtain legal advice and to discuss the candidates and the salary.

Commissioner Orchard moved to enter executive session. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed. Chairman Schultz announced the Commission would move into executive session.
The Commission returned to regular session at 3:18 p.m.

Chairman Schultz thanked the attendees for their patience and noted the importance of the work being performed in the Commission’s ALJ Division.

Commissioner LeMarr moved to accept the recommendation of Judge Mosesso to extend offers to the top three candidates interviewed. Vice Chair Hennelly and Commissioner Orchard seconded. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Judge Mosesso thanked the Commissioners for their consideration and participation in the hiring process.

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.

Mr. Ashley discussed attending and giving opening remarks to the College of Workers’ Compensation Conference, and congratulated Melinda Poppe for becoming a new member of the fellowship. Chairman Schultz congratulated Ms. Poppe.

Mr. Ashley provided an update regarding pending federal regulations and noted recent legislation concerning the Volks Rule.

Mr. Ashley discussed a planned Commission meeting in Sierra Vista on May 25 and noted that Jenny Mandeville will be hosting a Safety Summit on May 24.

Chairman Schultz, Mr. Ashley, and Mr. Porter discussed Arizona Management System progress.

Chairman Schultz discussed the Region 9 VPP Conference and noted a compliment concerning the Industrial Commission’s efficiency and customer service. He discussed SHARP and VPP program applicants and compared Arizona’s application completion time (within six months) to those who apply under Federal jurisdictions and have been waiting two to three years for completion.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas presented a retirement resolution for Judge Anthony Halas for 18 years of service and Judge Deborah Nye for 15 years of service in the Administrative Law Judge Division. Judge Mosesso stated that both are experienced judges and will be missed.

Ms. Dimas confirmed meeting dates through May 2017, the April 27 Fee Schedule Hearing, the May 11 Assessment Hearing, and the May 25 meeting in Sierra Vista. Chairman Schultz and Commissioner Orchard discussed the proposed Fee Schedule.

Public Comment.

There was no public comment.
Commissioner LeMarr moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion and the meeting was adjourned at 3:33 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By [Signature]
James Ashley, Director

ATTEST:

[Signature]
Kara Dimas, Commission Secretary