MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, December 12, 2019 – 1:00 p.m.

Present: Dale L. Schultz Chairman
Joseph M. Hennelly, Jr. Vice Chair
Scott P. LeMarr Commissioner
Steven J. Krenzel Commissioner (Telephonic)

James Ashley Director
Gaetano Testini Chief Legal Counsel
Trevor Laky Legislative Affairs Chief / Public Information Officer
Renee Pastor Self Insurance
Rebecca Schaar Legal Division
Ruby Tate Claims Manager
Donald Denmon Assistant Claims Manager
Jessie Atencio ADOSH Director
Riley Hill Compliance Officer (Telephonic)
Devin Wheeler Compliance Officer
Martha Zamudio Compliance Officer
Kara Dimas Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Larry Butts (Erickson Framing); Harry Baker, Maverick Black, Bret Smith, and Jeff Schmidt (Southwest Industrial); Howard Kaplan (Liberty Crane); Scot Butler (Undisclosed); and Shanlie Blair (Snell & Wilmer).

Approval of Minutes of December 5, 2019 Regular Meeting Minutes.

Approval of the Minutes of the December 5, 2019 regular meeting were postponed to a future agenda.

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. 2CLP-18/19-0947  Tree Service Men LLC  $1000
2. 2C19/20-0015  Vinall Ventures LLC dba Planet Sub  $1000

b. Approval of Requests for Renewal of Self-Insurance Authority.
1. The Proctor & Gamble Company

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

Safety Committee Update and Topic Discussion.

Ms. Schaar reviewed the Industrial Commission's 2-Minute Near Miss process from reporting to investigation.

Chairman Schultz explained for the visitors that the agency is now a VPP site and the agency constantly looks for ways to improve safety.

Commissioner LeMarr and Ms. Schaar discussed the number of near misses for the agency for the current year.

Mr. Ashley presented a plaque received from the Governor's Office for the quarterly Good Government Award for achieving VPP status at the agency.

Chairman Schultz noted that every department has two boards one board for process improvement, and one for safety.

Discussion & Action regarding Appointment of Special Assistant to the Industrial Commission of Arizona.

Ms. Tate requested that Gloria Cerda be appointed as Special Assistant to the Industrial Commission. She noted Ms. Cerda's background for the position.

Commissioner LeMarr moved to appoint Gloria Cerda as Special Assistant to the Industrial Commission of Arizona and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.


Mr. Testini noted he would like to enter into final rulemaking and explained that during the course of the rulemaking to allow pneumatic elevators there was a concern raised regarding the current rule on elevator gap clearance for residential and this rulemaking addresses that concern. He requested authorization to move forward with the final rulemaking process.

Commissioner LeMarr moved to approve final rulemaking for Title 20, Chapter 5, Rule 507 Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walkways, Material Lifts and Dumbwaiters with Automatic Transfer Devices. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Mr. Testini explained the proposed final rulemaking to Title 20, Chapter 5, Rules 601, 602 and 629. He noted one comment was received regarding Beryllium. He noted they are all required OSHA standards for state plan states to adopt. He requested authorization to move forward with the final rulemaking process.

Chairman Schultz asked Southwest Industrial Rigging if they have seen the changes proposed that will affect them as crane operators. Mr. Baker asked if it was just to adopt the Federal OSHA standard.

Commissioner Krenzel moved to approve the final rulemaking process for Title 20, Chapter 5, Rule 601, 602, 629, Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel 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.

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<tr>
<th>Erickson Framing AZ LLC</th>
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<tr>
<td>250 N Beck Ave</td>
<td>Years in Business:</td>
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<tr>
<td>36823 W Mediterranean Way, Lot #105</td>
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<td>Maricopa, AZ 85138</td>
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<td>17246 - 1413675</td>
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SERIOUS – Citation 1 - Item 1 –

a) Lot 105: Two employees were not provided with fall protection while standing on a 9’ high block wall. 29 CFR 1926.501(b)(1)      
Div. Proposal - $2,500.00                      
Formula Amt. - $2,500.00

SERIOUS – Citation 1 - Item 2 –

a) Lot 105: An employee was working approximately 16’ above the ground level without an adequate fall protection system installed. 29 CFR 1926.501(b)(13)   
Div. Proposal - $2,500.00                      
Formula Amt. - $2,500.00
SERIOUS – Citation 1 - Item 3 –

a) Lot 105: An employee used an anchor point that was not capable of supporting 5,000 lbs. 29 CFR 1926.502(d)(15)

Div. Proposal - $2,500.00  
Formula Amt. - $2,500.00

TOTAL PENALTY - $7,500.00  TOTAL FORMULA AMT. - $7,500.00

Mr. Atencio discussed ADOSH’s investigation, summarized the citation and proposed penalties, and reviewed the photographs.

Chairman Schultz and Mr. Atencio discussed the possible distance between the wall and the house and the manner in which the anchors were secured.

Commissioner LeMarr expressed concerns over the large time gap between the original inspection and the subsequent employee interviews, and about the amount of conjecture in the report.

Vice Chair Hennelly and Mr. Atencio discussed that the foreman who passed away in this incident, was aware of the tie off requirements, and that this foreman had a reputation for being safety conscious.

Commissioner LeMarr noted it is a large company and had a safety program, and asked if there was a theory on why it happened.

Mr. Butts stated it was a revelation in the follow-up interviews that the workers were on the block wall. He explained that the side setback was five feet between the wall and the house. He also noted there were four anchor points, but after the fall happened another crew was there and started storing equipment and removed two anchor points and yoyos.

Commissioner LeMarr expressed doubt that a worker could be five feet away and able to reach the house. He inquired to Mr. Butts if there was a theory on why this happened. Mr. Butts stated it was a task that was not common or normal. Commissioner LeMarr and Mr. Butts discussed whether the foreman did not follow company procedures.

Chairman Schultz and Mr. Butts discussed what the company has done to prevent an accident like this from happening again. The company has had a series of stand downs and reiterated their policy of a 100% tie off rate when over six feet and additionally stepped up cadence on inspections, stand downs and reminding everyone about this incident.

Mr. Atencio confirmed the employee interviews corroborated what Mr. Butts said.

Chairman Schultz offered to go and present at any sites during the annual fall protection stand down, with Mr. Atencio, to get the safety message out.

Vice Chair Hennelly and Mr. Atencio discussed the process of removing the truss.

Commissioner LeMarr moved to remand the file back to ADOSH for further review. Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Krenzel voted in favor of the motion. The motion passed.
H.K.B. Inc., dba Southwest Industrial Rigging  
2802 West Palm Ln.  
Phoenix, AZ 85009  

Site Location: 4705 S. 35th Ave  
Phoenix, AZ 85041  
Inspection No: E0782-1418319  
Inspection Date: 7/25/2019  

Fatality/Accident  
Years in Business: 33  
Empl. Covered by Inspection: 78  

SERIOUS – Citation 1 - Item 1 –  

a) 4705 S 35th Ave, Phoenix, AZ 85041: Specific procedures for isolating, blocking, and securing the stored kinetic energy of but not limited to the jib of crane #1526 were not implemented while five employees were erecting the jib during maintenance procedures.

b) 4705 S 35th Ave, Phoenix, AZ 85041: Specific procedures for isolating, blocking, and securing the stored kinetic energy of but not limited to the jib of crane #1526 were not implemented while five employees were stowing the jib during maintenance procedures. 29 CFR 1910.147(c)(4)(ii)(B)  
Div. Proposal - $4,000.00  
Formula Amt. - $4,000.00  

SERIOUS – Citation 1 - Item 2 –  

a) 4705 S 35th Ave, Phoenix, AZ 85041: An employee, assigned to perform maintenance and servicing operations on the angle sensor of the jib on crane #1526, had not been provided training to ensure that he acquired the knowledge and skills required for the safe application, usage and removal of energy control devices. 29 CFR 1910.147(c)(7)(i)  
Div. Proposal - $2,000.00  
Formula Amt. - $2,000.00  
TOTAL PENALTY - $6,000.00  
TOTAL FORMULA AMT. - $6,000.00  

Mr. Atencio discussed ADOSH’s investigation, summarized the citation and proposed penalty, and reviewed the photographs.

Vice Chair Hennelly and Mr. Atencio discussed the correction to Item 1, the amount should have been $4,000.00.

Commissioner LeMarr wanted to clarify that the victim was the Assembly Director. Commissioner LeMarr and Mr. Atencio discussed the Assembly/Disassembly Director. They also discussed dealing with something this size if there is a possibility of using another crane to lift the job.

Chairman Schultz and Mr. Atencio discussed that the locking pins have to be put in place manually and do not automatically go into place.

Mr. Baker, the owner, stated that on this piece of equipment, if you follow the procedure of installing the locking pin before taking out the last two pins on the tip of the jib to do the final position of the stowing, there is not stored energy, and it cannot fall off the crane. The book was there, and the victim was trained on it having been on the crane for eight years would require the victim to have done this procedure hundreds of times, so it is unknown why that day he elected not to do that, or why he was standing inside the jib or why the step ladders were there. There is no lock out/tag out procedure that you could put in place on this type of equipment and perform this operation, because the engine
has to be running to provide hydraulic pressure to do this motion to put it away, so there is stored energy in the hydraulic system, but not necessarily stored energy inside the mechanical aspect of the jib. He noted ADOSH has been really great and appreciate how things have gone, but was surprised at the issuance of citations because they feel like they have done everything they could do. In ten years they have five million man hours and nothing like this. His training was CCO licensed and accredited, he gets evaluated by supervision as a formal program and eight years on the crane. In addition to the owner’s manual they have a companywide jib policy that has other areas and JSA before any other procedure, and refresher training of the entire company.

Commissioner LeMarr and Mr. Baker discussed photograph #8.

Compliance Office Wheeler explained the photograph and the drag mark shown in the picture. Mr. Baker noted it could have been a misalignment causing the scratch.

Chairman Schultz noted it looked like a substantial crew participating in the process and if the victim was personally responsible for the locking pins in place. Mr. Baker explained that not all of the employees that were in the pictures were their employees, the maintenance work was being done by another company, and they were putting the jib back.

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

Deluxe Technology Group Co., LTD. dba Deluxe
No 1 Duahua Rd
Daitou Industrial Zone, Jiangsu Province
China

<table>
<thead>
<tr>
<th>Site Location:</th>
<th>250 E Germann Rd</th>
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<tr>
<td></td>
<td>Gilbert, AZ 85233</td>
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SERIOUS – Citation 1 - Item 1a –

a) Manufacturing Area: An energy control program consisting of energy control procedures and employee training to ensure that the DG-01 machine would be de-energized was not developed or implemented. 29 CFR 1910.147(c)(1)

Div. Proposal - $2,000.00

Formula Amt. - $2,000.00

SERIOUS – Citation 1 - Item 1b –

a) Machine Area: A procedure to control potentially hazardous energy, including mechanical, kinetic, and thermal energy, on the DG-01 machine was not developed for employees engaged in set-up and calibration work on that machine which required them to place part of their body into the point of operation. 29 CFR 1910.147(c)(4)(i)

Div. Proposal - $0.00

Formula Amt. - $2,000.00

SERIOUS – Citation 1 - Item 1c –
a) Manufacturing Area: Employees were performing calibration and set-up work on the DSG-01 machine without having first been trained in the recognition, type, and magnitude of hazardous energy sources and the methods to control and isolate that energy. 29 CFR 1910.147(c)(7)(i)(A) Div. Proposal - $0.00 Formula Amt. - $2,000.00

TOTAL PENALTY - $2,000.00  TOTAL FORMULA AMT. - $6,000.00

Mr. Atencio noted this matter was initially a referral but the employee has since passed away from his injuries. He discussed ADOSH’s investigation, summarized the citation and proposed penalty, and noted the photographs were marked as trade secrets.

Commissioner LeMarr commented that it boils down to the manufacturer not having a manual for the safety of its own equipment for set up and asked if there was a manual in English for the operation of this equipment now that they have left and the equipment is here. Mr. Atencio and Compliance Officer Hill discussed that a manual had not been developed and it is the duty of the employer to develop a procedures manual. The employer has to do two things for this piece of equipment for maintenance: determine whether or not lock out /tag out procedures are implemented and assess what PPE will be required for using, and maintaining the machine.

Mr. Atencio and Mr. Hill discussed if Foot Print, who purchased the equipment, has a job safety analysis for their employees. At the time of the incident, the guarding had not been installed. Before it was to be put into production guarding would be installed and this type of accident would not be likely.

Mr. Atencio noted there was a file associated with this incident and a citation was issued to Foot Print for lock out / tag out procedures. He noted they received their lock out / tag out program and it is basic. He noted it is not uncommon to find one-offs out there.

Vice Chair Hennelly sees responsibility of the company purchasing the machine to install guards and implement their lock out / tag out with respect to the machine and would like to check that the guarding is in place since it is a one-off. Vice Chair Hennelly queried how often this occurs and how familiar with our standards of safety would they be, since they are a Chinese company. Mr. Atencio responded it was not much and very generic and will need to provide more awareness to someone coming out, that this is multi-employer and why Foot Print will receive a citation as well on the lock out / tag out.

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

Commissioner Krenzel asked whether ADOSH has purview to review new technologies before the come online.

Mr. Atencio responded yes and no. They are learning with VPP partners and associations and have been invited to look as some things, but there is no OSHA standard. He can put something in the ADOSH Advocate and look at other associations if they know something is a one-off or new to contact Consultation or Compliance before it goes into use to prevent any type of injury before it happens. Mr. Atencio described a couple of possible options for learning new technology as it appears in the industry and let people know ADOSH services that are available so it does not go without notice.

Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.
Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley noted the annual Food Marketing Alliance reception on January 15, 2020. If the Commissioners are interested in attending to let Ms. Dimas know in the event of a quorum.

Ms. Dimas confirmed Commission meeting dates through February 2020.

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 Krenzel voted in favor of the motion and the meeting was adjourned at 2:45 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By (signature)
James Ashley, Director

ATTEST:

(Kara Dimas, Commission Secretary)