

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Telephonic Meeting

Held at 800 West Washington Street

Phoenix, Arizona 85007

Thursday, February 11, 2021 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman (Telephonic)
	Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
	Scott P. LeMarr	Commissioner (Telephonic)
	Steven J. Krenzel	Commissioner (Telephonic)
	James Ashley	Director (Telephonic)
	Gaetano Testini	Chief Legal Counsel (Telephonic)
	Jason M. Porter	Deputy Director (Telephonic)
	Trevor Laky	Legislative Affairs Chief/Public Information Officer (Telephonic)
	Renee Pastor	Self-Insurance (Telephonic)
	Jessie Atencio	ADOSH Director (Telephonic)
	Ron Mills	ADOSH Compliance (Telephonic)
	Chandler Everett	ADOSH Compliance (Telephonic)
	Anna Maria Stonerock	ADOSH Admin (Telephonic)
	Renee Pastor	Self Insurance (Telephonic)
	Kara Dimas	Commission Secretary (Telephonic)

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance on the telephone, confirmed by roll call were Ryan Cole and Marijon Anderson (The Arizona School Alliance for Workers' Compensation, Inc.) and Roshell Lee (Ashton Tiffany); Roger LaBrash and Jason LaBrash (Grizzly Iron, Inc.); and Savannah Scharnhorst (Snell & Wilmer).

Approval of Minutes of January 28, 2021 Regular Meeting Minutes and February 4, 2021 Regular Meeting Minutes.

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Commissioner Krenzel moved to approve the Minutes of the January 28, 2021 regular session meeting 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.

Commissioner Krenzel moved to approve the Minutes of the February 4, 2021 regular session meeting 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.

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 Requests for Renewal of Self-Insurance Authority.

- 1. The Arizona School Alliance for Workers' Compensation, Inc.
- 2. Mesa Unified School District No. 4

Chairman Schultz asked if a representative for The Arizona School Alliance for Workers' Compensation, Inc. would like to make any comments.

Mr. Cole commented that Ms. Pastor's write up was thorough in outlining the fiscal and operational stability of the pool and the pool looks forward to continue operating with the Commission's permission.

Commissioner Krenzel 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.

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.

C.J. Robbins, Inc.	Planned	
6851 W Belmont Ave	Years in Business:	6
<u>Glendale, AZ 85303</u>	Empl. Covered by Inspection:	5
Site Location:	6851 W Belmont Ave	
	Glendale, AZ 85303	
Inspection No:	B5049 - 1498593	
Inspection Date:	10/20/2020	

SERIOUS – Citation 1 - Item 1 –

- a) 6851 W. Belmont Ave, Glendale, Arizona: Four employees were working in an unprotected excavation that was 10ft in depth, 12ft in width and 47ft in length, with spoil piles that measured less than two feet from the edge. 29 CFR 1926.651(j)(2)  
 Div. Proposal - \$1,250.00    Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 2 –

- a) 6851 W. Belmont Ave, Glendale, Arizona: Four employees were working in an unprotected excavation that measured 10ft in depth, 12ft in width and 47ft in length. 29 CFR 1926.652(a)(1)  
 Div. Proposal - \$1,250.00    Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 3 –

- a) 6851 W. Belmont Ave, Glendale, Arizona: Four employees were working in an unprotected excavation and were exposed to unguarded rebar. 29 CFR 1926.701(b)  
 Div. Proposal - \$1,250.00    Formula Amt. - \$1,250.00
- TOTAL PENALTY - \$3,750.00    TOTAL FORMULA AMT. - \$3,750.00

Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalties, and reviewed the photographs and abatement photographs. He also noted that Mr. Mills was also available for questions.

Vice Chair Hennelly 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 Krenzle voted in favor of the motion. The motion passed.

Grizzly Iron, Inc.  
1329 W Lincoln St  
Phoenix, AZ 85007

COMPLAINT

Years in Business: 33  
Empl. Covered by Inspection: 10

Inspection No: 0936 – 1503268  
Inspection Date: 11/12/2020  
Site Location: 1329 W Lincoln St  
Phoenix, AZ 85007

SERIOUS – Citation 1 - Item 1a –

- a) 1329 W Lincoln St Phoenix, AZ 85007: Two employees were required to wear a 3M 6200 series half face, elastomeric respirator without developing or implementing a written respiratory protection program. 29 CFR 1910.134(c)(1)  
Div. Proposal - \$1,000.00    Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 1b –

- a) 1329 W Lincoln St Phoenix, AZ 85007: Two employees were required to wear a 3M 6200 series half face elastomeric respirator without receiving a medical evaluation. 29 CFR 1910.134(e)(1)  
Div. Proposal - \$0.00    Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 1c –

- a) 1329 W Lincoln St Phoenix, AZ 85007: Two employees were required to wear a 3M 6200 series half face elastomeric respirator without being fit tested prior to initial respirator use. 29 CFR 1910.134(f)(2)  
Div. Proposal - \$0.00    Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 1d –

- a) 1329 W Lincoln St Phoenix, AZ 85007: Two employees were required to wear a 3M 6200 series half face elastomeric respirator without receiving training. 29 CFR 1910.134(k)(1)  
Div. Proposal - \$0.00    Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 2 –

- a) 1329 W Lincoln St Phoenix, AZ 85007: No caution sign was posted to warn employee of excessive heat above forge.  
b) 1329 W Lincoln St Phoenix, AZ 85007: No caution sign was posted to warn employee of excessive heat above forge.



- a) 1329 W Lincoln St Phoenix, AZ 85007. One employee used hazardous chemicals such as, Xylene and Methyl Ethyl Ketone, without developing and implementing a written hazard communication program.
- b) 1329 W Lincoln St Phoenix, AZ 85007. One employee used hazardous chemicals such as, Argon CO2 shielding gas, without developing and implementing a written hazard communication program. 29 CFR 1910.1200(e)(1)  
 Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 7b –

- a) 1329 W Lincoln St Phoenix, AZ 85007: One employee was exposed to hazardous chemicals such as Xylene and Methyl Ethyl Ketone without safety data sheets readily accessible at the workplace.
- b) 1329 W Lincoln St Phoenix, AZ 85007: One employee was exposed to a hazardous chemical such as Argon CO2 shielding gas without safety data sheets readily accessible at the workplace. 29 CFR 1910.1200(g)(8)  
 Div. Proposal - \$0.00 Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 7c –

- a) 1329 W Lincoln St Phoenix, AZ 85007: One employee was exposed to hazardous chemicals such as, Xylene and Methyl Ethyl Ketone without receiving training.
- b) 1329 W Lincoln St Phoenix, AZ 85007: One employee was exposed to a hazardous chemical such as, Argon CO2 shielding gas without receiving training. 29 CFR 1910.1200(h)(1)  
 Div. Proposal - \$0.00 Formula Amt. - \$1,000.00

TOTAL PENALTY - \$6,200.00 TOTAL FORMULA AMT. - \$12,200.00

Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalties, reviewed the photographs, and corrected citation numbering issues which are reflected above. Mr. Everett was also available for questions.

Chairman Schultz checked if anyone on the phone would like to comment.

Roger LaBrash appreciated ADOSH coming by and has already incorporated items like guards on grinders and seeks to get things back as quick as he could to be a safe workplace for all of their employees.

Chairman Schultz thanked Mr. LaBrash and noted the Commission appreciates his abatement efforts.

Commissioner Krenzel appreciated the grouping of the citations and moved to amend the citation and proposed penalties to include as 25% reduction for the employer's timely abatement efforts, for a total of \$4,650.00. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Chairman Schultz thanked Mr. Everett and appreciated the thoroughness of the inspection which presented an opportunity to teach and help promote a safer workplace.

Discussion and/or Action regarding Proposed Memorandum of Understanding Between Special Fund and the Arizona Property Casualty Insurance Guaranty Fund Regarding Allocation of Workers' Compensation Recoveries Related to Insolvent Insurers and Apportionment Under A.R.S. § 23-1065.

Vice Chair Hennelly recused himself from this item given the representation he has had with the former Department of Insurance, now the Department of Insurance and Financial Institutions, his role as a Commissioner, and his law firm's role defending the Arizona Property Casualty Insurance Guaranty Fund.

Mr. Porter summarized the issue surrounding the transfer of workers' compensation liabilities associated with insolvent carriers from the Special Fund to the Arizona Property Casualty Insurance Guaranty Fund which is housed under the former Department of Insurance. The terms of the proposed final agreement have been presented to the Commissioners for review.

Chairman Schultz asked if the Commissioners had any questions for Mr. Porter or if there was a need for an Executive Session.

Chairman Schultz read the action part of the Resolution.

Commissioner LeMarr moved to approve the proposed Resolution. Commissioner Krenzel seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. Vice Chair Hennelly abstained. The motion passed.

Chairman Schultz thanked staff and a successful conclusion for the Commission and protecting the rights of the Special Fund and the best interest of the state.

Executive Session under A.R.S. § 38-431.03(A)(3) & (A)(4) regarding: Proposed Memorandum of Understanding Between Special Fund and the Arizona Property Casualty Insurance Guaranty Fund Regarding Allocation of Workers' Compensation Recoveries Related to Insolvent Insurers and Apportionment Under A.R.S. § 23-1065.

This item was provisional and on the agenda in the event there was a need for an executive session to obtain advice from counsel.

There was no need for an executive session.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley wished to recognize two employees of the agency. Afshan Peimani and Stephen Ball in the Legal Division are now Certified Specialists in Workers' Compensation. They join approximately 52 attorneys in Arizona that are Specialists in Workers' Compensation.

Chairman Schultz noted the significant achievement and our representation in that limited number of folks throughout the state.

Ms. Dimas confirmed Commission meeting dates through April 2021.

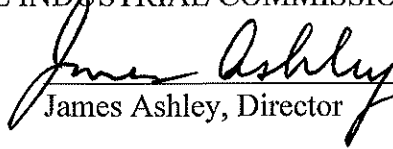
Public Comment.

There was no other public comment.

Commissioner Krenzel 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 2:00 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
James Ashley, Director

ATTEST:



Kara Dimas, Commission Secretary