MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, February 21, 2019 – 1:00 p.m.

Present: Dale L. Schultz          Chairman
Joseph M. Hennelly, Jr.           Vice Chair
Scott P. LeMarr                  Commissioner
Jason M. Porter                  Deputy Director
Stacey Rogan                    Assistant Chief Legal Counsel
Trevor Laky                     Legislative Affairs Chief/Public Information Officer
Renee Pastor                    Self Insurance
Jessie Atencio                  ADOSH Director
Steven Morgan                   ADOSH Assistant Director
Scott Huckfeldt                 Compliance Officer
Manuel Saldana                  Compliance Officer
Kara Dimas                      Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Scot Butler (Unknown); David Matthews and Joe Jatzkewitz (City of Phoenix); and Michael Fassett (Snell & Wilmer).

Approval of Minutes of February 7, 2019 Regular Meeting Minutes.

Vice Chair Hennelly moved to approve the Minutes of the February 7, 2019 regular session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr 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. 2C-18/19-0139 - Angel's Landscaping and Housekeeping, LLC for $1,000.00
2. 2C-18/19-0255 - Diggum Excavating, Inc. for $1,000.00
3. 2C-18/19-0094 - EGA Build & Design Construction, LLC for $1,000.00
4. 2C-18/19-0400 - Express Moves, LLC for $1,000.00
5. 2C-18/19-0402 - My Neighborhood Handyman, LLC for $1,000.00

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

1. City of Phoenix
2. Dignity Health
3. Maricopa County Community College District
4. Mesa Unified School District No. 4

Chairman Schultz noted the excellent experience modification for Maricopa County Community College District. Chairman Schultz also noted he would like to remove the City of Phoenix from the Consent Agenda. Ms. Rogan noted that a.3. (My Neighborhood Handyman, LLC) had obtained insurance and the penalty was reduced to $500.00.

Commissioner LeMarr moved to approve the remaining items on the Consent Agenda and 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 Phoenix – Chairman Schultz noted he removed the City of Phoenix from the consent Agenda to give them an opportunity to make any comments.

Mr. Matthews thanked Ms. Pastor for her work on the renewal.

Commissioner LeMarr moved to approve the City of Phoenix Renewal of Self-Insurance Authority and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr 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.

YBL LLC dba Liberty Lumber
8525 N 75th Ave
Peoria, AZ 85345

<table>
<thead>
<tr>
<th>Site Location:</th>
<th>8525 N 75th Ave</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Peoria, AZ 85345</td>
</tr>
<tr>
<td>Inspection No:</td>
<td>N8278 - 1362745</td>
</tr>
<tr>
<td>Inspection Date:</td>
<td>11/30/2018</td>
</tr>
</tbody>
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Fatality/Accident: Years in Business: 19
Covered by inspection: 3

Mr. Atencio summarized ADOSH’s fatality investigation and reviewed the file. He noted that ADOSH was not recommending any citations and that the company has an injury illness prevention plan and program.

Commissioner LeMarr, Mr. Atencio and Chairman Schultz discussed whether the forklift seatbelt was being used and that the company training included the use of seatbelts.

The Commission took no action.

Dollar Tree Stores, Inc. dba Dollar Tree Stores, Inc. #3591
9820 W Lower Buckeye Rd.,
Tolleson, AZ 85353

| Site Location: | 9820 W Lower Buckeye Rd., |
|               | Tolleson, AZ 85353 |
| Inspection No: | T0132 - 1351299 |
| Inspection Date: | 10/4/2018 |

Complaint
Years in Business: 30
Covered by inspection: 4
REPEAT-SERIOUS – Citation 1 - Item 1 –

a) Stockroom: The exit access for the back stockroom was reduced to 16 inches wide. 29 CFR 1910.36(g)(2)

DOLLAR TREE STORES, INC. WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS OCCUPATIONAL SAFETY AND HEALTH STANDARD OR ITS EQUIVALENT STANDARD 29 CFR 1910.36(g)(2) WHICH WAS CONTAINED IN ADOSH INSPECTION NUMBER 1170707, CITATION NUMBER 01, ITEM NUMBER 01, ISSUED ON 11/03/16 AND WAS FINAL ORDER ON 8/28/17, WITH RESPECT TO A WORKPLACE LOCATED AT 16815 E SHEA BLVD #127, FOUNTAIN HILLS, AZ AND FOR A VIOLATION OF THIS OCCUPATIONAL SAFETY AND HEALTH STANDARD OR ITS EQUIVALENT STANDARD 29 CFR 1910.37(a)(3) WHICH WAS CONTAINED IN ADOSH INSPECTION NUMBER 1224253, CITATION 01, ITEM NUMBER 01, INSTANCE B, ISSUED ON 6/1/17, AND FINAL ORDER ON 6/26/18 WITH RESPECT TO A WORKPLACE LOCATED AT 3927 E. GRANT ROAD, TUCSON.
Div. Proposal - $25,000.00
Formula Amt. - $25,000.00

SERIOUS – Citation 1 - Item 2a –

a) Retail Floor: A written Hazard Communication program was developed and implemented for employees exposed to chemicals such as Helium. 29 CFR 1910.1200(e)(1)
Div. Proposal - $2,500.00
Formula Amt. - $2,500.00

SERIOUS – Citation 1 - Item 2b –

a) Retail Floor: Two employees were not provided with Safety Data Sheets for chemicals or gases in the workplace such as Helium. 29 CFR 1910.1200(g)(1)
Div. Proposal - $0.00
Formula Amt. - $2,500.00

SERIOUS – Citation 1 - Item 2c –

a) Retail Floor: The employer did not provide Hazard Communication training for employees using chemicals or gases in the workplace such as Helium. 29 CFR 1910.1200(h)(1)
Div. Proposal - $0.00
Formula Amt. - $2,500.00
TOTAL PENALTY - $27,500.00
TOTAL FORMULA AMT. - $32,500.00

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

Commissioner LeMarr and Mr. Atencio discussed the Helium gas violation and noted it was not a violation on the previous citations and whether all stores had Helium.

Chairman Schultz noted he did not see a reason to give them the benefit of bundling the additional penalties. He cannot comprehend as an entire company they continue to put folks at risk knowing the hazards. The same issues continue to exist across the company. Commissioner LeMarr concurred looking at the inspection history, with 18 prior citations at different stores. Vice Chair Hennelly noted these are not individual franchises, but corporate owned.
Chairman Schultz and Mr. Atencio discussed the excellent job that Jonathan Slone did with his inspection.

Commissioner LeMarr moved to approve the formula amount of $32,500.00 giving Mr. Atencio discretion for settlement. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Hudson Baylor North Gateway, LLC  
dba Republic Services  
30205 N Black Canyon Hwy.,  
Phoenix, AZ 85024

Referral  
Years in Business: 11  
Covered by inspection: 34

Site Location: 30205 N Black Canyon Hwy.,  
Phoenix, AZ 85024

Inspection No: T1999 - 1342028  
Inspection Date: 08/27/2018

SERIOUS – Citation 1 - Item 1 –

a) Production area, north side: An employee was exposed to a conveyor belt system, model and serial numbers unknown, which lacked a guard over the in-going nip points. 29 CFR 1910.212(a)(1)

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

SERIOUS – Citation 1 - Item 2 –

a) Mechanic’s Shop: A battery operated DeWalt right angle grinder, model #DCG412 and serial numbers unknown, was lacking a guard. 29 CFR 1910.243(c)(1)

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

TOTAL PENALTY - $4,050.00  
TOTAL FORMULA AMT. - $4,050.00

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

Chairman Schultz and Mr. Atencio discussed that the strobe light was active on the forklift.

Mr. Saldana discussed the guarding on the conveyor belt.

Mr. Atencio and Mr. Saldana noted the employee who was struck by the forklift has returned to work.

Chairman Schultz asked for clarification on a date for May, Mr. Saldana noted it was a typographical error and should be August.

Chairman Schultz, Mr. Saldana and Mr. Atencio discussed the abatement for the guarding done at the time of the inspection.

Based on prompt abatement, Commissioner LeMarr moved to amend the proposed penalties, as follows: (1) reduce the proposed penalty for Citation 1, Item 1 by 25% from $2,250 to $1,687.50; and (2) Citation 1, Item 2 remain the same, for a total proposed penalty of $3,487.50. Vice Chair Hennelly seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner LeMarr 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 petition and the reasonable hourly rates used in analyzing fee petition.

Justin Greenberg / Trujillo – Ms. Rogan discussed her analysis of the Petition for Attorney Fees submitted by Mr. Greenberg and his representation of Mr. Trujillo.

Chairman Schultz and Ms. Rogan discussed the benefits resulting from the representation of Mr. Greenberg and Mr. Manion the applicant’s new attorney, concluding that the applicant benefitted in large part as a result of Mr. Greenberg who succeeded in having an element accepted. The amount Mr. Greenberg has already received for his work securing the applicant’s temporary benefits acts as a credit against the proposed amount.

Vice Chair Hennelly moved to approve staff’s recommendation and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Mr. Porter noted that the hourly rate for attorney fees for work comp specialists and non-work comp specialists was set in 2013 and if the Commission would like, he would have the Legal Division conduct a review for more current rates. The Commissioners would like to see updates given the low rates.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through May 2019, and noted the Yuma community outreach plans for March 6 and 7 plans are just about complete. Vice Chair Hennelly noted he was not available on March 28. The ICA Day at the Capitol will be March 27. Commissioner LeMarr noted he would be here or on the phone for March 28 and was not available on May 23.

Chairman Schultz noted the WCRI Conference for February 28 and March 1. Chairman Schultz and Vice Chair Hennelly will be attending.

Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion and the meeting was adjourned at 1:48 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By [Signature]  
Jason M. Porter, Deputy Director

ATTEST:

[Signature]  
Kara Dimas, Commission Secretary