MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, June 13, 2019 – 1:00 p.m.

Present: Dale L. Schultz Chairman
Joseph M. Hennelly, Jr. Vice Chair
Scott P. LeMarr Commissioner
Steven J. Krenzle Commissioner
James Ashley Director
Stacey Rogan Assistant Chief Legal Counsel
Trevor Laky Legislative Affairs Chief / Public Information Officer
Renee Pastor Self Insurance
Jessie Atencio ADOSH Director
Kara Dimas Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Tracy Kopp (Premier Risk Management); Scot Butler (Unknown); and Michael Fassett (Snell & Wilmer).

Approval of Minutes of June 6, 2019 Regular Meeting.

Chairman Schultz tabled this item.

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 Requests for Renewal of Self-Insurance Authority.

1. Encompass Health Corporation
2. Intel Corporation
3. Swift Transportation Co., LLC

Vice Chair Hennelly requested that a.1 (Encompass Health Corporation) be removed from the Consent Agenda to be heard separately. Chairman Schultz commended Intel Corporation on their record of consistently improving their modification factor which shows their dedication to provide a safe workplace, especially in light of their size. Chairman Schultz also commended Swift Transportation and their low experience modification factor which has been reduced four years in a row, showing their diligent work towards providing a safe workplace in a very hazardous occupation.
Commissioner LeMarr moved to approve the remaining items on the Consent Agenda and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Encompass Health Corporation – Vice Chair Hennelly questioned the high experience modification factor and inquired if they have consulted with ADOSH consultation. Ms. Pastor noted there was an ADOSH visit in October 2018, which she attended, and felt the employer has an excellent safety program. The high experience modification factor is a result of old claims from prior years that are closing. She anticipates that the experience modification factor will drop even further.

Chairman Schultz hopes the experience modification will drop. Ms. Pastor reviewed the past couple of years and they are doing better with the new claims that are not becoming large claims, if they keep on the trend they are on next year it will drop significantly and discussed a few of the common claims.

Chairman Schultz explained that self-insured companies are supposed to be an exemplary employers and this is not a good example for other employers in the state. Ms. Pastor explained that Encompass Health Corporation has revamped their management placing more emphasis on their risk program.

Chairman Schultz and Ms. Pastor discussed the security deposit requested is the standard amount and the reasons behind that decision.

Vice Chair Hennelly noted Encompass Health needs to understand this is not a given and they need to keep this up, next time the answer may be no.

Vice Chair Hennelly moved to approve the self-insurance renewal for Encompass Health Corporation. Commissioner Krenzel 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.

<table>
<thead>
<tr>
<th>Kristopher Smith, Sole Proprietor</th>
<th>Fatality/Accident</th>
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<tbody>
<tr>
<td>dba Kris’ Tree Trimming</td>
<td></td>
</tr>
<tr>
<td>1772 E San Marcos Dr</td>
<td></td>
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<tr>
<td>Yuma, AZ 85365</td>
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<table>
<thead>
<tr>
<th>Site Location:</th>
<th>Years in Business:</th>
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<tbody>
<tr>
<td>2200 W 20th St</td>
<td>10</td>
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<table>
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<tr>
<th>Empl. Covered by Inspection:</th>
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<table>
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<tr>
<th>Inspection No:</th>
<th>02/20/2019</th>
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<tbody>
<tr>
<td>E5149 -1379844</td>
<td>Yuma, AZ 85365</td>
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</tbody>
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Mr. Atencio summarized ADOSH’s fatality investigation and reviewed the file and photographs. He noted that ADOSH was not recommending a citation.
Commissioner LeMarr and Mr. Atencio discussed there was no one to cite since it was the owner. Mr. Atencio noted that OSHA standards do not have much on tree care or trimming and Federal OSHA is looking at updating the standards for a better way of doing business.

The Commission took no action.

Storazona, LLC  
8632 W Northern Ave  
Glendale, AZ 85305  

Complaint  
Years in Business: 94  
Empl. Covered by Inspection: 5

Site Location: 8632W Northern Ave  
Glendale, AZ 85305  

Inspection No: V4364 -1375395  
Inspection Date: 02/01/2019

SERIOUS – Citation 1 - Item 1 –

a) Southwest side of building: Three employees were working on a mobile scaffold at heights up to 15ft 3in and the scaffold had not been erected under the supervision of a competent person.

b) Southwest side of building: Platform scaffolds were erected without the supervision or direction of a competent person. 29 CFR 1926.451(f)(7)  
Div. Proposal - $1,000.00  
Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 2 –

a) Southwest side of building: Three employees were using a mobile scaffold 15ft 3in in height without having received training in the safe use of a scaffold to lay block.

b) Southeast and Southwest side of building: Three employees were using a cantilever scaffold approximately 15ft above the ground level without having received training in the safe use of a scaffold to lays block. 29 CFR 1926.454(a)  
Div. Proposal - $1,000.00  
Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 3 –

a) Roof: One employee was applying caulk under sheet metal on a roof 17ft in height with no fall protection. 29 CFR 1926.501(b)(10)  
Div. Proposal - $1,000.00  
Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 4 –

a) Roof: One employee was applying caulk under sheet metal on a roof 17ft in height without having received fall protection training on the recognition of the hazards of falling or the procedures to be followed in order to minimize these hazards. 29 CFR 1926.503(a)(1)  
Div. Proposal - $1,000.00  
Formula Amt. - $1,000.00

SERIOUS – Citation 1 – Item 5a –
a) Southwest side of building: One employee had accessed a scaffold 15ft 3in in height with a portable ladder with side rails that did not extend 3ft over the scaffold landing surface. 29 CFR 1926.1053(b)(1)
Div. Proposal - $1,000.00  Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 5b –

a) Roof: Two employees used an A Frame Ladder that was leaned against the upper landing of a roof approximately 10ft in height in a closed position to gain access to the upper level of the building. 29 CFR 1926.1053(b)(4)
Div. Proposal - $0.00  Formula Amt. - $0.00
TOTAL PENALTY - $5,000.00  TOTAL FORMULA AMT. - $5,000.00

Mr. Atencio discussed ADOH's complaint investigation, summarized the citation and proposed penalty, and reviewed the photographs.

Commissioner LeMarr and Mr. Atencio discussed photograph #5 depicting a ladder from one roof to a second roof, but the employer had no knowledge of this type of use.

Mr. Atencio noted the employer is growing fast and understands the value of safety to insure they do not see this again; the company has hired a third party consultant to design a safety program.

Commissioner Krenzel and Mr. Atencio discussed that the third party consultant was hired as a result of the inspection.

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

Discussion and/or Action pursuant to A.R.S. §23-1041(E) to Adopt the Maximum Average Monthly Wage under A.R.S. §23-1041(D)(8) for Calendar Year 2020.

Ms. Rogan explained that A.R.S. § 23-1041(E) requires the Commission to annually adopt a maximum average monthly wage. Ms. Rogan explained how the maximum average monthly wage is used in the workers’ compensation system, and discussed the process used for the calculation of the maximum average monthly wage. Ms. Rogan recommended the maximum average monthly wage be set at $4,888.56 for calendar year 2020, noting the Bureau of Labor and Statistics had an increase of 3.1% from 2019.

Chairman Schultz and Ms. Rogan discussed the reason for using 2018, which is the last year published which is required by statute.

Vice Chair Hennelly moved to set the maximum average monthly wage at $4,888.56 for calendar year 2020 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/or Action regarding: (1) a Proposed Sale of the Frontage Portion of the Tucson Property to the City of Tucson for Purposes of the Broadway Improvement Project and (2) Associated Transactional Documents.
Chairman Schultz noted the next two items would be tabled to a later date.

Executive Session under A.R.S. § 38-431.03(A)(3), (A)(4) & (A)(7) regarding: (1) a Proposed Sale of the frontage portion of the Tucson Property to the City of Tucson for Purposes of the Broadway Improvement Project and (2) Associated Transactional Documents.

There was no need for an executive session.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley noted the Claims/ALJ system went into effect the day after Memorial Day and has been a successful launch. He noted the greater than two year process replaced a 1991 COBOL based MS-DOS system, processing nearly 70,000 claims every year. There have been nearly 1,500 new users since launch and the second phase will include additional improvements and upgrades. He noted the analytics the Commission is now able to gather. Also the interested parties’ portal has been replaced by the new system which is even more user friendly. Chairman Schultz noted one glitch he heard about was the Third-Party Administrator for self-insured. Mr. Ashley explained the history and noted the employers will assign either themselves or a predominate TPA as the point of contact to receive the notices. Chairman Schultz noted what is most important is making sure not to delay benefits to the injured worker and it’s up to the carrier to figure out how to get it to the right entity to make sure benefits are adjusted and paid.

Mr. Ashley noted the Economy Goal Council, which is a combination of 12 agencies, and the Commerce Authority, is doing “Arizona on the Road” tours and the first one is Friday in Flagstaff with 10 Directors for this first stop.

Mr. Ashley advised that DOC has a new safety manager who will be meeting with Mr. Atencio for consultation services.

Mr. Ashley noted during the trip to Yuma earlier this year there were conversations of what we can do to help the community and they mentioned heat stress awareness. In response we now have a Public Service Announcement running on Yuma radio stations throughout the summer.

Mr. Ashley noted the Commission will be working on the next out of town meeting for September for Florence for a one day trip and then Douglas for October.

Mr. Ashley noted Mr. Laky is working on planning a Tribal Safety Summit. Though we have limited jurisdiction over tribal land, many tribal nations have safety managers and points of contact. Mr. Laky is working with the Governor’s Office of Tribal Affairs and will be working on a Safety Summit for September to share best practices to reduce workplace injuries. Chairman Schultz and Mr. Laky discussed making the scope larger and including a variety of occupations and creating breakout sessions that are industry specific. The Governor’s goal is to make the state the number one and safe place to live, work, recreate, get an education, and retire.

Ms. Dimas confirmed Commission meeting dates through August 2019.

Public Comment.

There was no public comment.
Commissioner LeMarr moved to adjourn and Commissioner Krenzel 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 1:54 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By [Signature]
James Ashley, Director

ATTEST:

[Signature]
Kara Dimas, Commission Secretary