

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Auditorium and Conference Room 308
Phoenix, Arizona 85007
Thursday, November 16, 2017 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Robin S. Orchard	Commissioner
	Steven J. Krenzel	Commissioner (Telephonic)
	James Ashley	Director
	Jason M. Porter	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief / Public Information Officer
	William Warren	ADOSH Director
	Jessie Atencio	Assistant ADOSH Director
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Kim MacEachern with Cavanagh Law Firm; Russell Smoldon and Emily Rice with the Arizona Self-Insurers Association (“ASIA”); Grant Hanna with the Arizona Senate; Thomas Blackshear, Ron Harman, Niemann Spears, and Greg Walker with Coreslab Structures, Inc.; Debra Runbeck representing Arizona Association of Lawyers for Injured Workers (“AALIW”); Zachary Barnett with OSHA; Dee Huddleston with Arizona Department of Administration-State Risk; Mark Welch with Arizona Department of Economic Security; Brian Moore on behalf of Arizona firefighters; Daniel Romm with Property Casualty Insurers (“PCI”); Amanda Grover with Nucor; Frank Garcia with Premier Risk Management; Chris Harris with Reseco Insurance Advisors; Terry Petko with the Town of Gilbert; Joyce Capinjola with Covel Corporation; Chris Brandon with Arizona Department of Environmental Quality; Dave Baker with Diversified Roofing; Tim Blackey and Steven Merier with Good Omen Bottling, LLC dba Wild Tonic; Meaghan Mintzel with the City of Chandler; and Jessica Aceves with Snell & Wilmer.

Chairman Schultz expressed his gratitude for the service and sacrifice of all veterans.

Legislative Stakeholders’ Meeting.

Chairman Schultz discussed the purpose of and process for the Commission’s 2018 Legislative Stakeholders’ Meeting.

Ms. Runbeck and Ms. MacEachern addressed the Commission. A written transcript of the Legislative Stakeholders’ Meeting is attached hereto.

Chairman Schultz recessed the meeting at 1:15 p.m. The meeting reconvened at 1:20 p.m. in Conference Room 308. Also present was Thomas Blackshear, Ron Harman, Niemann Spears, and Greg Walker with Coreslab Structures, Inc.; Frank Garcia with Premier Risk Management; Ernie Vasquez and Sean Storer with Pacwest Energy LLC dba Jacksons Car Wash; Tim Blackey and Steven Merier with Good Omen Bottling, LLC dba Wild Tonic; Stephanie Coulter with the Cavanagh Law Firm; and Jessica Aceves with Snell & Wilmer.

Approval of Minutes of November 2, 2017 Regular Meeting Minutes.

Vice Chair Hennelly moved to approve the Minutes of the November 2, 2017 regular session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. Commissioner Krenzel abstained. 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. 2C17/18-0022 Davison Angus LLC, dba Davison Ranch
2. 2C17/18-0131 Eastern Products Foundry, Inc.
3. 2C17/18-0160 Maven Transport LLC
4. 2C17/18-0256 OP Transportations LLC
5. 2C17/18-0103 Professional Personnel Service, Inc.
6. 2C17/18-0275 Recycle King LLC dba Recycle King #2
7. 2C17/18-0077 Saigon Vietnamese Restaurant
8. 2C17/18-0152 Southwest Carriers LLC
9. 2C17/18-0266 Taj Automotive Holdings LLC, dba Royal Car Care

Chairman Schultz reviewed the Consent Agenda and moved item (a)(5) (Professional Personnel Service, Inc.) to the regular agenda.

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

Mr. Porter stated that Professional Personnel Service, Inc., had obtained workers' compensation insurance and recommended a reduced \$500.00 civil penalty, rather than staff's previous recommendation of a \$1,000.00 civil penalty.

Vice Chair Hennelly moved to approve the issuance of a \$500.00 civil penalty to Professional Personnel Service, Inc., and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel 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 petitions and the reasonable hourly rates used in analyzing fee petitions.

Robert Wisniewski Law Office and Juan Ramos

Mr. Porter discussed the Petition for Attorney's Fees submitted by Robert Wisniewski, the scope of Mr. Wisniewski's representation of Mr. Ramos, and the results of the representation. Mr. Porter recommended that the Commission award Mr. Wisniewski 25% of Mr. Ramos' indemnity benefits for temporary and permanent benefits (if applicable) for a period of 10 years from July 31, 2017, or until Mr. Wisniewski recovers \$13,079.65 in fees, whichever comes first.

Vice Chair Hennelly commented on the thoroughness of the memorandum and the submitted billing records.

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

Executive Session under A.R.S. § 38-431.03(A)(3) to Obtain Legal Advice Regarding Correspondence Related to the December 9, 2016 OSHA Inquiry.

Commissioner LeMarr moved to go into Executive Session and Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenznel voted in favor of the motion. The motion passed.

The Commissioner went into Executive Session at 1:29 pm.

The Commission returned to regular session at 2:13 p.m.

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.

Good Omen Bottling, LLC dba Wild Tonic	Fatality/Accident	
288 Justin Dr.	Years in Business:	2
Cottonwood, AZ 86326	Empl. Covered by inspection:	40
Site Location:	288 Justin Dr.	
	Cottonwood, AZ 86326	
Inspection No:	Y8817-1252521	
Inspection Date:	08/03/2017	

Mr. Warren summarized ADOSH's fatality investigation and reviewed the photographs. He reported that the investigation did not identify any violations and ADOSH was not recommending any citations.

Commissioner Orchard noted that she was impressed that a two-year-old company knew to report the fatality.

Mr. Merier noted the unfortunate circumstances leading to the fatality and discussed the company's efforts to improve their safety program. Chairman Schultz noted his appreciation of the company's safety efforts.

No action was taken by the Commission.

LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Classic Roofing, LLC
2744 W. Virginia Ave.
Phoenix, AZ 85009

Referral
Years in Business: 16
Empl. Covered by inspection: 5

Site Location: 301 W. Indian School Rd
Phoenix, AZ 85013
Inspection No: T1999-1242612
Inspection Date: 06/22/2017

REPEAT-SERIOUS – Citation 1 - Item 1 – a) Roof top of a two-story storage building: Two employees working on a roof were not protected from falling 21ft to the ground below by the use of conventional fall protection or the combination of other fall protection systems required by the standard including a safety monitor. (29 CFR 1926.501(b)(10)).

The (Classic Roofing, LLC) was previously cited for a violation of this occupational safety and health standard or its equivalent standard (1926.501(b)(10)), which was contained in ADOSH inspection number 1135607, citation number 1, item number 1 and was affirmed as a final order on (11/30/16), with respect to a workplace located at 3330 E Camelback Rd., Phoenix, AZ, 85018.

Div. Proposal - \$3,000.00	Formula Amt. - \$3,000.00
TOTAL PENALTY - \$3,000.00	TOTAL FORMULA AMT. - \$3,000.00

Mr. Warren summarized the citation and proposed penalty, discussed the company's inspection history, and reviewed the photographs.

Commissioner Orchard and Mr. Warren discussed the employer's safety program and Classic Roofing's efforts to provide a safe working environment for its employees.

Commissioner Orchard, Chairman Schultz, and Mr. Warren discussed Classic Roofing's involvement in the Chairman's Roofing Alliance.

Commissioner Orchard noted the company's quick abatement, including the immediate on-site safety meeting. She moved to amend the proposed penalty as follows: (1) reduce the proposed penalty for Citation 1, Item 1 from \$3,000.00 to \$2,550.00 (15% reduction), for a total proposed penalty of \$2,550.00. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Coreslab Structures (Ariz) Inc.
5026 S. 43rd Ave.
Phoenix, AZ 85041

Referral
Years in Business: 40
Empl. Covered by inspection: 5

Site Location: 5026 S. 43rd Ave.
Phoenix, AZ 85041
Inspection No: H0333-1247556
Inspection Date: 07/18/2017

SERIOUS – Citation 1 - Item 1 – a) Steel Shop metal Fab: One JET Step Pulley Drill Press (model JDP-20MF, serial number unknown) did not have the rotating chuck guarded to protect the operator

from placing any part of his body into the danger zone (near rotating part) during operation. (29 CFR 1910.212(a)(1)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1 - Item 2 – a) Steel Shop: One employee was injured while operating a Milwaukee 7in angle grinder (serial number-B45CD14440) that was lacking safety guards to prevent/protect the operator from the hazards of the abrasive wheel. (29 CFR 1910.243(c)(3)).

Div. Proposal - \$5,000.00

Formula Amt. - \$1,750.00

TOTAL PENALTY - \$6,750.00

TOTAL FORMULA AMT. - \$3,500.00

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

Commissioner Orchard, Mr. Warren, Commissioner LeMarr, and Mr. Porter discussed abatement, reviewed the timing of Photographs 3, 5, 7, and discussed who took the various photographs.

Chairman Schultz and Mr. Warren discussed the absence of training violations, ADOSH’s review of the company’s safety program, and the scope of the inspection.

Commissioner Orchard and Mr. Warren discussed the difference between Citation 1, Item 1 and Citation 1, Item 2.

Mr. Blackshear, Safety Director for Coreslab Structures, discussed: (1) abatement of Citation 1, Item 1, and Citation 1, Item 2; (2) safety training provided by the company following the inspection; (3) the company’s accident investigation; and (4) the company’s safety program and safety record.

Commissioner LeMarr, Mr. Blackshear, Chairman Schultz, and Mr. Spears (Assistant Safety Coordinator for Coreslab Structures) discussed the mechanism of injury, the use of personal protection equipment, training provided to the injured worker, and the current status of the injured worker.

Commissioner LeMarr noted the company’s strong safety program and prompt abatement. He moved to amend the proposed penalties as follows: (1) reduce the proposed penalty for Citation 1, Item 1 from \$1,750.00 to \$1,400.00 (20% reduction); and (2) reduce the proposed penalty for Citation 1, Item 2 from \$5,000.00 to \$4,000.00 (20% reduction), for a total proposed penalty of \$5,400.00. Commissioner Orchard and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Pacwest Energy, LLC dba Jacksons Car Wash
1954 E Highland Ave., Store 8109
Phoenix, AZ 85016

Planned
Years in Business: 3
Empl. Covered by inspection: 21

Site Location: 1954 E Highland Ave.
Phoenix, AZ 85016
Inspection No: H9685-1249709
Inspection Date: 07/25/2017

SERIOUS – Citation 1 - Item 1 – 1954 E Highland Ave, Phoenix, AZ 85016: Twenty-one employees who were exposed to eye, hand, face, and bodily injuries while working with hazardous, corrosive chemicals, and dangerous compressed air which exceeded 100 P.S.I. did not use personal protective

equipment whenever hazards capable of causing injury and impairment were encountered. (29 CFR 1910.132(a)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1 - Item 2 – Starting Line Area: Four employees, who were exposed to injurious corrosive Zep brand Clean Up liquid when it was sprayed onto the front of vehicles prior to entering the carwash tunnel, were not provided with suitable facilities for flushing of the eyes within their work area for immediate emergency use as the Haws brand wall mounted emergency eyewash station adjacent to the work area was not maintained and was empty and void of water. (29 CFR 1910.151(c)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1 - Item 3 –

a) Finish Line: Six Prevost brand blow guns that were used with compressed air for cleaning and drying vehicles after they exited the car wash were all measured operating over 100 P.S.I. and each blow gun was not fitted with a relief device that dropped the pressure to less than 30 P.S.I. if the flow was dead-ended or obstructed. (29 CFR 1910.242(b)).

b) Detail Area: One Prevost brand blow gun that was used with compressed air for cleaning and drying vehicles after they exited the car wash was measured operating over 50 P.S.I. and the blow gun was not fitted with a relief device that dropped the pressure to less than 30 P.S.I. if the flow was dead-ended or obstructed. (29 CFR 1910.242(b)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1 - Item 4 –

a) Car Wash Tunnel: One employee was exposed to in-running nip points from four unguarded pulleys on the power transmissions of a towel washer and dryer, manufacturer and model unknown. (29 CFR 1910.219(d)(1)).

b) Car Wash Tunnel: One employee was exposed to in-running nip points from two horizontal running belts on the power transmissions of a towel washer and dryer, manufacturer and model unknown. (29 CFR 1910.219(e)(1)(i)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1 - Item 5 –

29 CFR 1910.1200(f)(6)(ii)

a) Starting Line: A Scotts brand 2 gallon multi-use pump sprayer that contained corrosive Zep brand Clean Up liquid was not correctly labeled, tagged, or marked with the product identifier and words, pictures, symbols, or combination thereof. (29 CFR 1910.1200(f)(6)(ii)).

b) Finish Line: One five gallon container that contained corrosive Zep brand DZ-7 Neutral Disinfectant Cleaner was not correctly labeled, tagged, or marked with the product identifier and words, pictures, symbols, or combination thereof as the product inside did not match the outside labels. (29 CFR 1910.1200(f)(6)(ii)).

c) Finish Line: A spray bottle that contained corrosive Zep brand DZ-7 Neutral Disinfectant Cleaner was not labeled, tagged, or marked with the product identifier and words, pictures, symbols, or combination thereof. (29 CFR 1910.1200(f)(6)(ii)).

29 CFR 1910.1200(g)(8):

b) 1954 E Highland Ave, Phoenix, AZ 85016: Safety data sheets for hazardous chemicals such as Zep brand Blue Coral Dissolve All, Zep brand Clean Up, and Central Chemical brand Body Solvent were

not readily accessible to employees when they were in their work areas as the safety data sheets were solely retrievable from a manager's computer that was located inside a predominantly locked office in the front of the building. (29 CFR 1910.1200(g)(8)).

29 CFR 1910.1200(h)(1):

c) 1954 E Highland Ave, Phoenix, AZ 85016: Employees were not provided effective information and training on hazardous chemicals in their work area at the time of their initial assignment and whenever a new hazard that the employees had not been previously trained about was introduced into their work area. (29 CFR 1910.1200(h)(1)).

Div. Proposal - \$5,000.00	Formula Amt. - \$5,000.00
TOTAL PENALTY - \$22,500.00	TOTAL FORMULA AMT. - \$22,500.00

Mr. Warren noted that ADOSH had removed the Pacwest Energy, LLC dba Jacksons Car Wash item from the Agenda and it would be presented at a future meeting.

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 the Agency Scorecard. He highlighted: (1) the strong performance of the Loss of Earning Capacity unit of the Claims Division; (2) the number of Special Fund voluntary settlements achieved to date; (3) the decrease in work-related injuries in the State; (4) increasing participation in the VPP, SHARP, and PEPP programs; (5) improvements by the Labor Division's wage claim processing group; and (6) the performance of the Legal Compliance Unit in assisting employers in getting workers' compensation insurance.

Chairman Schultz, Mr. Ashley, and Mr. Warren discussed potential participation by La Paz County and the Towns of Quartzsite and Parker in the PEPP program.

Mr. Ashley reported the hiring of a new Human Resources Manager, Marilyn Carter, who will be starting on December 4, and discussed her background.

Mr. Ashley discussed his meeting with the State's new Chief Operating Officer, Gilbert Davidson.

Mr. Warren reported on the ADOSH's Tucson Safety Summit and the Phoenix Leadership Safety Summit. Commissioner Orchard, Chairman Schultz, and Mr. Warren discussed the feedback received from participants.

Commissioner Orchard, Chairman Schultz, and Mr. Ashley discussed Commission efforts to track and report safety performance compared to other states.

Chairman Schultz noted that additional data regarding opioid use would soon be available.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Chairman Schultz noted the Fall issue of the ADOSH Advocate is now available. Commissioner LeMarr highlighted an outstanding article by Mr. Atencio regarding roofing.

Ms. Dimas confirmed the Commission Meeting dates through December 2017. Mr. Ashley noted that the tentative meeting date for December 28, 2017, has been cancelled.

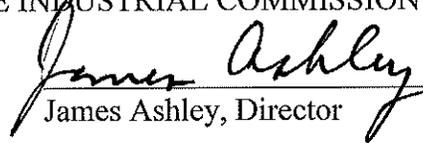
Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 3:04 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary

BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA

STAKEHOLDERS' MEETING

Phoenix, Arizona
November 16, 2017
1:00 p.m.

APPEARANCES:

Dale Schultz, Chairman
Joseph M. Hennelly, Jr., Vice-Chair
James Ashley, Director
Jason M. Porter, Chief Legal Counsel
Robin S. Orchard, Commissioner
Steve J. Krenzel, Commissioner (Telephonic)
Scott P. Lemar, Commissioner

PREPARED BY:

Vicki L. O'Ceallaigh Champion, CCR
Certified Reporter
Certificate No. 50534

ORIGINAL

Perfecta Reporting
(602) 421-3602

17 DEC 01 PM 04:03 IA BUSINESS

1 Phoenix, Arizona
2 November 16, 2017
3 1:00 p.m.

4 P R O C E E D I N G S

5 MR. CHAIRPERSON: I'd like to call this meeting of
6 the Industrial Commission to order, and I'd like to start the
7 meeting with the Pledge of Allegiance.

8 (The Pledge of Allegiance.)

9 MR. CHAIRPERSON: Thank you. And because we did not
10 have a meeting last week, I'd like to take this opportunity
11 to thank all of the Veterans, any of you who are here, and of
12 course, our Veterans throughout the world for your service
13 and the sacrifices you make to keep us safe. So thank you
14 very much.

15 And now, the purpose of this meeting is to give
16 Commission Stakeholders and Members of the Public a formal
17 opportunity to comment on any aspect of the Industrial
18 Commission's operations. Although the Commission has not at
19 this time taken any action to have legislation introduced in
20 the upcoming legislative session, you may include
21 recommendations regarding potential legislation in your
22 comments.

23 For those who wish to speak, please fill out a
24 speaker's slip, which can be found at the door. I will call
25 each speaker, who will have five minutes to address the

1 Commission. In the interest of time, please let us know if
2 you agree with the statement from a prior speaker rather than
3 restating the same position.

4 At the conclusion of each presentation, the
5 commissioners and staff may ask questions. If you would
6 prefer not to answer questions, you may return to your seat
7 at the conclusion of your presentation. If you are not
8 comfortable addressing the Commission in this public meeting,
9 you are welcome to submit written comments by letter or
10 e-mail. Written comments should be directed to Kara Dimas,
11 the Commission's secretary. Ms. Dimas' e-mail address is,
12 kara.dimas@azica.gov. The Commission's mailing address is
13 available on the Commission's web page at www.azica.gov.

14 With that, we will now open the floor to public
15 comments, and we will begin with Debra Runbeck.

16 DEBRA RUNBECK: Good afternoon, Mr. Chair, Members
17 of the Commission. My name is Debra Runbeck, and I'm here on
18 behalf of the Arizona Association of Lawyers for Injured
19 Workers. First of all, I would like to commend the
20 Industrial Commission, particularly Jason and Trevor, for
21 reaching out in an effort to work together on some of these
22 issues that we are talking about today. Our sincere hope is
23 that the spirit of cooperation will continue.

24 I don't want to take up too much of your time. I
25 don't have a lot to say, and like you have indicated, there

1 is nothing out there right now that is ready to go, from what
2 I understand may be issues.

3 First of all, we have significant reservations about
4 any directed care bill. We urge you to hold significant
5 stakeholder meetings to get input from all interested parties
6 before moving forward with anything on that.

7 With regard to ODG, we recognize that there is a
8 special meeting coming up November 30 to address that, so I
9 won't go into a great deal of detail on that. Suffice it to
10 say, we think that it's premature, and it's unwise to expand
11 the application of the ODG at this time.

12 However, if that is going to be done over our
13 objections, we urge you to incorporate a form and some of the
14 suggestions that we had for approval of care that were
15 arrived at by a coalition of applicants' attorneys,
16 Copperpoint, and other carriers.

17 On opioids, there is still some discussion that we
18 are having about details on it, but we don't anticipate any
19 real objection to anything on that bill.

20 These are the issues that we are aware of. It was
21 short and sweet. Again, we appreciate the efforts of the
22 ICA employees and by Copperpoint and some of the other
23 Carriers to work cooperatively on these issues. We hope that
24 will continue.

25 Thank you. Any questions?

1 MR. CHAIRMAN: Questions for Debra? Debra, I want
2 to thank you and your group for working with the other
3 stakeholders on working to try and make the form that will
4 streamline the process of appeals as efficiently and
5 effectively as possible. So thank you very much to you and
6 the entire group.

7 DEBRA RUNBECK: Thank you, Mr. Chairman.

8 MR. CHAIRMAN: Thank you. Anything else? Okay.
9 Our next speaker is Kim MacEachern.

10 MR. ASHLEY: For the folks on the phone, with the
11 exception of Commissioner Krenzel, if you could please mute
12 your phones unless you would like to make a comment.

13 KIM MacEACHERN: Thank you. My name is Kim
14 MacEachern. I am with the Cavanagh Law Firm. The Cavanagh
15 Law Firm has a group that is headed by Julie Payson, Dave
16 Sullivan. They do a great deal of work with the Industrial
17 Commission, and they are very appreciative of the compliance
18 orientation that the agency is taking. With the goal of the
19 program and the employer being reduction of injuries and
20 increase in safety, we think that's being born out by the
21 statistics and the fact that the claims for workman's
22 compensation have been decreasing. So we applaud everyone
23 for that and recognize that this means that the training and
24 the movement toward safety programs are really working.

25 Julie and Dave asked me to specifically thank the

1 Chairman Mr. Schultz and the Director James Ashley and
2 especially Assistant Director Bill Warren for the direction
3 that the program is taking, because it really does seem to be
4 working. And, of course, we couldn't do it without the most
5 enthusiastic program manager I have ever seen, Jesse Atencio,
6 so we submit that you are not going to get more energy than
7 that guy has.

8 So the business oriented focus on Compliance is
9 something that is very welcome, and the training of course is
10 part and parcel to the success in the category of incident
11 reduction, so we think we couldn't have gotten here without
12 all the outreach and the consultations, the compliance, and
13 of course, the voluntary protection program is very important
14 to that.

15 So we work hard at Cavanagh to digest all these
16 rules and these programs, regulations and guidance and train
17 our clients and help them ensure that they are adopting the
18 very best practices that are out there and using all the
19 tools available.

20 So with all this positive forward motion, we do have
21 one area where there is still some concern, and it's because
22 it seems to be a little bit of a departure from that
23 direction, and it's taking away from the cooperative aspect
24 and kind of adding to the adversarial approach where we think
25 there may be something we can do intermediately that would

1 keep that from happening and keep it in that training
2 cooperative arena.

3 Specifically, what I'm talking about is situations
4 where we have an instance where it's an employee misconduct
5 or an isolated incident. And it seems that whenever there is
6 someone on the site at the time that this is spotted that has
7 anything to do with leadership of any kind, including a
8 crew member or any kind of supervisor, that it automatically
9 goes to a citation.

10 Our experience is that many of the times when we go
11 to the hearing on those citations we get them dismissed,
12 because if you look at all the criteria that you take into
13 account for a particular employer, their history of
14 compliance, their programming, whether they audit their work
15 and have a method in place for detecting violations and so
16 forth, you will find that this is an anomaly, so then it
17 gets dismissed. To have to go all the way to the citation
18 and a hearing seems a bit more than what we really need to do
19 in some of those cases, especially when it's pretty obvious
20 that the employer has a great track record, has a program in
21 place, is training the employees.

22 We recognize that, you know, we try the best we can,
23 but are we really ever going to be able to make it to
24 100 percent, and sometimes things just happen. The person
25 might be trained, and you know, they might be fully aware,

1 but you just make a little mistake or you just aren't as
2 conscientious as you need to be, and the timing is bad.

3 It seems to be imputing to the employer the
4 responsibility just because there is someone of leadership
5 present at the time, and so we would submit that. That's
6 something we need to look at and maybe take advantage of the
7 informal processes that are available at the end of an
8 inspection to discuss those issues and run it through that
9 set of criteria to determine whether or not it really does
10 rise to the level of the citation.

11 What happens in the long run, when you do that, is
12 of course that the people that do all the work to make sure
13 they are trying to comply with everything end up getting
14 cited just like the guy who does nothing. So it creates a
15 bit of an uneven playing field, and we feel that after
16 looking at all the rules and regulations that we hope there
17 is something we can do in that regard to bring that back to
18 the spirit of cooperation and not tension, because then you
19 are in the adversarial situation and hearing.

20 With that, I will take any questions.

21 MR. CHAIRMAN: Questions for Kim? Thank you. And I
22 want to thank you for pointing out a number of things. First
23 and foremost, yes. Our injuries, we are down almost 4,000
24 injuries in two years. That's 4,000 people who weren't hurt.
25 That's 4,000 families who didn't have their lives interrupted

1 and sometimes devastated in just that relatively short period
2 of time, and it does. It isn't just by what we're doing.
3 It's by what everybody is doing in the State of Arizona to
4 make this a safer place to work, raise families, and play.

5 I also wanted to point out that we have just
6 concluded two very successful training programs that you
7 mentioned, one in Tucson where we had over 200 employers
8 participating, and we are just about wrapping up right now
9 our two-day meeting here in Phoenix where we had about a like
10 attendance. So they are free to all, and they have been well
11 attended, and they are another attempt by us to reach out and
12 do things collaboratively through training and education.

13 And, by the way, I would very much encourage you to
14 spend some time with Jesse and Bill and discuss your issue of
15 how representatives of management are identified and perhaps
16 become involved in our educational program.

17 KIM MacEACHERN: We welcome that opportunity. I
18 know we have clients at those meetings the last couple days,
19 and we are getting good reports back on that, as well.

20 MR. CHAIRMAN: Thank you.

21 KIM MacEACHERN: Thank you very much.

22 MR. CHAIRMAN: That's all of the slips that I have,
23 but we are not standing on decorum here. If anybody wishes
24 to raise any other issues, ask any questions, I'd be happy to
25 entertain that right now. Going once, going twice, going

1 three times. There we go.

2 Okay. This will conclude the Commission's 2017
3 Stakeholders Meeting. We appreciate your attendance and
4 participation. As a reminder, although the oral proceeding
5 has concluded, written comments may be submitted to Kara
6 Dimas, the Commissions' Secretary. The Commission will
7 carefully consider all written and oral comments. Thank you
8 all.

9 And we are now going to adjourn for just a few
10 minutes and move our meeting upstairs to conduct the rest of
11 the Commission's business. Any of you that would like to
12 participate or just come and watch the fun, please, you are
13 welcome to come up to the third floor with me.

14 (WHEREUPON, the proceedings concluded at
15 1:15 p.m.)

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I HEREBY CERTIFY that the proceedings had upon the foregoing hearing are contained in the shorthand record made by me thereof, and that the foregoing 10 pages constitute a full, true, and correct transcript of said shorthand record, all done to the best of my skill and ability.

DATED at Phoenix, Arizona, this 27th day of November, 2017.


VICKI L. O'CEALLAIGH CHAMPION
CR No. 50534

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