

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, November 2, 2017 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Robin S. Orchard	Commissioner
	James Ashley	Director
	Jason M. Porter	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief / Public Information Officer
	Terry Ann Apodaca	Special Fund Division
	Phillip Murphy	Assistant ADOSH Director
	Billie Gingrass	Compliance Officer
	Mitch Baird	Compliance Officer
	Miguel Castillo	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:01 p.m. Also in attendance were Jeremy Bethancourt with the Arizona Chapter of the American Society of Safety Engineers; Gustavo Portillo and T.J. Curtis with Metric Roofing; Alan Schiffman and David Thomson with Schiffman Law Office; Hector Contreras and Joe Capek with Petersen Dean Roofing; Frank Garcia with Premier Risk Management; and Jessica Aceves with Snell & Wilmer.

Approval of Minutes of October 19, 2017 Regular Meeting Minutes.

Commissioner LeMarr moved to approve the Minutes of the October 19, 2017 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard 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. 2CSP17/18-0024 Alpine Clock Shop, Inc.
2. 2C15/16-1439 Monarch Theatre dba (Solstice Management Group, L.L.C.)
3. 2C17/18-0087 Tommy's BCH, LLC, dba True Grit Tavern

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

Discussion and Action of Resolution Appointing Custodians of Records.

Ms. Apodaca requested that Lisa Ramirez be named a custodian of records for the Special Fund Division.

Commissioner LeMarr moved to approve the appointment of Ms. Ramirez as a custodian of records for the Special Fund Division. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard 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.

Inventure Foods, Inc.	Referral
3500 S. La Cometa	Years in Business: 30
Goodyear, AZ 85338	Empl. Covered by inspection: 12
Site Location: 3500 S. La Cometa	
Goodyear, AZ 85338	
Inspection No: A3807-1248546	
Inspection Date: 07/20/2017	

REPEAT-SERIOUS – Citation 1 - Item 1 –

- a) Packing Line #10: One employee was exposed to an inadequately guarded sprocket and chain drive assembly in that a gap of more than one inch in the guard did not protect an employee from making contact with the drive mechanism. (29 CFR 1910.219(f)(3)).
- b) Packing Line #11: One employee was exposed to an inadequately guarded sprocket and chain drive assembly in that a gap of approximately one inch at the top of the guard did not protect the employee from making contact with the drive mechanism. (29 CFR 1910.219(f)(3)).

Inventure Foods, Inc., was previously cited for a violation of this occupational safety and health standard or its equivalent standard 29 CFR 1910.212(a)(1), which was contained in ADOSH inspection number 1161311, citation number 1, item number 2a and was affirmed as a final order on November 1, 2016, with respect to a workplace located at 3500 S La Cometa Rd, Goodyear, AZ 85338.

Div. Proposal - \$12,500.00	Formula Amt. - \$12,500.00
TOTAL PENALTY - \$12,500.00	TOTAL FORMULA AMT. - \$12,500.00

Mr. Murphy summarized the citation and proposed penalty, explained the penalty calculation, and discussed the scope of a prior partial "in compliance" inspection. Ms. Gingrass reviewed the photographs.

Commissioner Orchard and Ms. Gingrass discussed the cited guarding standard.

Commissioner LeMarr and Ms. Gingrass discussed the inspection history, the prior “in compliance” inspection, and abatement efforts.

Vice Chair Hennelly, Ms. Gingrass, and Mr. Murphy discussed the employee’s injury, the basis for the “repeat serious” classification, and the previously-cited violation.

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

Metric Roofing, Inc. 3811 W. Lower Buckeye Rd. Phoenix, AZ 85009	Planned Years in Business: 46 Empl. Covered by inspection: 2
Site Location: 4529 E. Bethena St. Gilbert, AZ 85295	
Inspection No: D4452-1246841	
Inspection Date: 07/13/2017	

REPEAT-SERIOUS – Citation 1 - Item 1 – 4529 E. Bethena St., Gilbert AZ, North Elevation: Employees engaged in roofing activities on a steep roof with a 7/12 pitch, were not protected from falling approximately 15 feet to the ground below by the use of conventional fall protection or the combination of other fall protection systems required by the standard. (29 CFR 1926.501(b)(11)).

Metric Roofing, Inc. was previously cited for a violation of this occupational safety and health standard or its equivalent standard 29 CFR 1926.501(b)(13), which was contained in OSHA Inspection Number 1210222, Citation Number 1, Item Number 1 and was affirmed as a final order on 4/19/17, with respect to a workplace located at 3510 N. Miller Rd., Scottsdale AZ, 85251.

Div. Proposal - \$4,000.00	Formula Amt. - \$4,000.00
TOTAL PENALTY - \$4,000.00	TOTAL FORMULA AMT. - \$4,000.00

Mr. Murphy summarized the citation and proposed penalty.

Commissioner Orchard, Chairman Schultz, and Commissioner LeMarr discussed Metric Roofing’s participation in the Chairman’s Roofing Alliance and abatement efforts.

Mr. Murphy reviewed the photographs.

Commissioner LeMarr, Commissioner Orchard, Chairman Schultz, and Mr. Murphy discussed whether there was a reason for the employees’ failure to use available fall protection equipment and the absence of a training violation.

Mr. Curtis discussed Arizona’s labor shortage, the company’s investment in safety equipment, and his interaction with the workers involved in the incident. He noted that the company is part of the Chairman’s Roofing Alliance and emphasized the importance of training.

Vice Chair Hennelly and Mr. Curtis discussed Mr. Curtis’ position with Metric Roofing.

Commissioner Orchard and Mr. Curtis discussed disciplinary actions taken against the foremen.

Commissioner Orchard and Mr. Porter discussed good faith in the repeat-serious citation setting.

Commissioner LeMarr and Mr. Curtis discuss whether the Chairman's Roofing Alliance has improved safety in the roofing community. Mr. Curtis indicated that the Alliance had positively affected larger companies. He noted difficulties with terminated employees moving to competitors or smaller companies and discussed Metric Roofing's internal safety inspection program and safety training.

Chairman Schultz noted appreciation for the company's participation in the Chairman's Roofing Alliance and stated that while it can be painful to see terminated employees move to other companies, keeping the unsafe employees is "an accident waiting to happen." He offered his appreciation for the Chairman's Roofing Alliance's interest in creating a safety culture in the roofing industry. Mr. Curtis noted that the company is improving its safety culture and that additional money spent on fall protection equipment demonstrates that the employees are using the equipment enough to wear it out.

Commissioner Orchard noted the company's active participation in the Chairman's Roofing Alliance and its innovative safety program.

Commissioner Orchard moved to amend the proposed penalty as follows: (1) reduce the penalty for Citation 1 Item 1 from \$4,000.00 to \$3,600.00 (10% reduction), for a total penalty of \$3,600.00. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Petersen-Dean, Inc. dba Petersen Dean  
2224 W. Shangri-La Road  
Phoenix, AZ 85029

Referral  
Years in Business: 33  
Empl. Covered by inspection: 4

Site Location: 3257 E. Indigo Bay Ct.  
Gilbert, AZ 85234  
Inspection No: W0250-1244271  
Inspection Date: 07/03/2017

REPEAT-SERIOUS – Citation 1 - Item 1 – 3257 E. Indigo Bay, Mesa, AZ 85205: Two employees engaged in roofing activities on a 4:12 pitched roof were not protected from falling 9ft to the ground below by guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(10)).

Petersen-Dean Inc. was previously cited for a violation of this occupational safety and health standard or its equivalent standard.

29 CFR 1926.501(b)(10) which was contained in ADOSH inspection number 1117619, citation number 1, item number 1 and was affirmed as a final order on 8/04/2016, with respect to a workplace located at 19955 N. 51st Ave. in Glendale, AZ 85308.

Div. Proposal - \$12,500.00	Formula Amt. - \$12,500.00
TOTAL PENALTY - \$12,500.00	TOTAL FORMULA AMT. - \$12,500.00

Mr. Murphy summarized the citation and proposed penalty.

Commissioner LeMarr and Mr. Murphy discussed the involved compliance officer and prompt abatement efforts.

Commissioner Orchard and Mr. Murphy discussed whether the employee depicted in Photograph # 1 was wearing a harness and the presence of a lead roofer on the worksite.

Mr. Capek discussed the company's participation in the Chairman's Roofing Alliance and steps the company is taking to change the safety culture of the work force. He discussed employee training and the availability of necessary fall protection equipment.

Commissioner LeMarr and Mr. Capek discussed whether the Chairman's Roofing Alliance was improving industry and company safety. Mr. Capek suggested that it had improved safety.

Mr. Contreras discussed the citation, the company training program, the company's strict disciplinary policy, the fact that this incident was the third violation for the crew leader, and that the crew leader had been terminated. He indicated that the company is working with the remainder of the crew, as it was not their third violation. He noted that the employees are happy working with Petersen-Dean. He referenced a binder that contained the company's safety manual, training records for each crew member, inspections that took place this year, and disciplinary action for the subject crew.

Mr. Capek discussed the company's policy concerning forfeiture of safety pay, indicated that the company has no problem terminating employees for safety violations, and stated that he would rather have less roofers that are safe than have unsafe workers.

Mr. Contreras discussed the Chairman's Roofing Alliance's impact on safety culture in the roofing industry and his company. He discussed the company's approach to recognizing and rewarding crews that set a good safety example.

Mr. Capek noted that, in addition to Mr. Contreras performing safety audits full time, all company supervisors are required to perform a minimum of eight written inspections every week. Mr. Contreras noted there could be three or four safety inspections a day, not just one inspection per crew. He also stated that company trucks carry extra safety equipment to provide anything the roofers need at any time.

Chairman Schultz noted Mr. Contreras' significant contribution to the Chairman's Roofing Alliance's training syllabus and that he had created training videos for supervisors and crew. He noted the company's exemplary safety program. Chairman Schultz said that one of the difficult things about changing the safety culture was the employees' failure to recognize the dangers associated with lower heights.

Commissioner Orchard and Mr. Capek discussed the number of employees that work in Arizona and the number of inspections the company has undergone.

Mr. Contreras discussed the training syllabus, working with the Consultation Division, and thanked the Commission for attending company meetings.

Mr. Ashley, Chairman Schultz, and Mr. Murphy discussed who took the inspection photographs.

Commissioner LeMarr noted the company's excellent safety manual and approach to safety. He moved to amend the proposed penalty as follows: (1) reduce the penalty for Citation 1 Item 1 from \$12,500.00 to \$11,250.00 (10% reduction), for a total penalty of \$11,250.00. Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.



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

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.

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Mr. Ashley discussed attending the Annual Arizona Construction Career Days at the National Guard, its benefit for high school students, the stakeholders present, and industry growth. He discussed the relationship between STEM (“Science, Technology, Engineering and Math”) and the construction industry, speaker Willie Higgins, and the ICA’s intended participation in the DES Workforce Development Committee. Chairman Schultz discussed the presence of several VPP members at the event, the range of occupations that were present, the activities available, and involvement from the Arizona Legislature. He noted that over 2,500 high school students are expected to take part in the two-day event.

Mr. Ashley discussed agency metrics and improvements, noting that the claims portal has more than 1,000 registered users and continues to grow.

Mr. Ashley discussed the Agency Scorecard and the number of injured workers on a monthly basis. He stated that, in October 2017, the Commission met its goal to see less than 5,735 notified claims on a monthly basis, representing nearly an 8% drop in injury rates. Chairman Schultz noted the Commission’s “amazing accomplishment,” especially in light of higher risk exposures.

Mr. Ashley noted that President Trump had nominated Scott Mugno to be the Assistant Secretary for Federal OSHA and discussed Mr. Mugno’s impressive background.

Commissioner LeMarr offered appreciation for the tour of the Central Arizona Project (“CAP”). He discussed CAP’s operations and safety culture. Chairman Schultz and Mr. Ashley discussed the VPP partnership with CAP and CAP’s commitment to safety.

#### Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas presented a retirement resolution for Jenny Mandeville, State Occupational Safety Consultant and Trainer.

Ms. Dimas confirmed upcoming Commission meeting dates through December 2017. Mr. Porter discussed the upcoming ODG public hearing and noted that the MRO Office had posted related information on the MRO webpage. Chairman Schultz discussed the physicians who had reviewed sections of ODG. Mr. Porter noted that the written comment period will be open until November 30, and that people interested in the issue can either make public comments on November 30 or submit comments in writing. Mr. Ashley added that notice of the public hearing had been provided to interested parties and stakeholders.

#### Public Comment.

Mr. Bethancourt discussed improvements in the economy, the Commission’s proactive efforts to engage with industry to find solutions, Jenny Mandeville’s role in changing industry culture in his

company, fall protection, his interaction with NIOSH, the financial benefits of safety, and data being collected concerning this issue.

Chairman Schultz noted support from the Legislature and stated that Arizona is only the second state in the nation to have a codified VPP Program.

There was no other public comment.

Commissioner LeMarr moved to adjourn and Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion and the meeting was adjourned at 2:05 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley  
James Ashley, Director

ATTEST:

Kara Dimas  
Kara Dimas, Commission Secretary