

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Auditorium  
Phoenix, Arizona 85007  
Thursday, October 11, 2018 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Steven J. Krenzel	Commissioner
	James Ashley	Director
	Gaetano Testini	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.

Legislative Stakeholders' Meeting.

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

Tony Cipriano (Lyons Speedy Transport); Chris Reynolds (Desert Hand & Physical Therapy); and Thomas Stillwell (attorney) addressed the Commission. A written transcript of the Legislative Stakeholders' Meeting is attached hereto.

Approval of Minutes of September 27, 2018 Regular Meeting.

Commissioner LeMarr moved to approve the Minutes of the September 27, 2018 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr 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. 2C-17/18-0534 Creative Green Landscaping, LLC
2. 2C-17/18-0621 Dalla Mae Home Care PLLC



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

Chairman Schultz pointed out information from the report related to employees, subcontractors, and contractors and the control of work being performed.

Mr. Atencio noted the location of work being performed related to demolition work and demolition plans.

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

The Fairfax Companies, LLC dba	Fatality/Accident	
Tank's Ina Road Land Reclamation Facility	Years in Business:	30
5300 W Ina Rd.,	Empl. Covered by inspection:	12
<u>Tucson, AZ 85743</u>		
Site Location:	5300 W Ina Rd.,	
	Tucson, AZ 85743	
Inspection No:	T3633 - 1310189	
Inspection Date:	04/18/18	

Mr. Atencio summarized ADOSH's fatality investigation and reviewed the file. He noted that ADOSH was not recommending a citation.

Commissioner LeMarr and Mr. Atencio discussed if the backup horn was operational, was there speculation on how the accident happened if there was notice to the spotter that the equipment was backing up.

Vice Chair Hennelly and Mr. Atencio discussed OSHA Standard 1910.178 not applying in this circumstance because of the configuration of the steer truck and if it did apply there would have been a different conclusion.

The Commission took no action.

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

Mr. Ashley noted dates for Tucson stakeholder outreach.

Ms. Dimas confirmed Commission meeting dates through December 2018.

Ms. Dimas presented a retirement resolution for Robert Retzer (Administrative Law Judge), who has provided 42 years of state service.

#### Public Comment.

There was no 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 1:38 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

James Ashley  
James Ashley, Director

ATTEST:

Kara Dimas  
Kara Dimas, Commission Secretary

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BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA

STAKEHOLDER MEETING

Phoenix, Arizona  
October 11, 2018  
1:00 p.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

- Mr. Dale Schultz, Chairman
- Mr. Joseph M. Hennelly, Jr., Vice Chair
- Mr. James Ashley, Director
- Mr. Steven J. Krenzel, Commissioner
- Mr. Scott P. LeMarr, Commissioner
- Mr. Gaetano Testini, Chief Legal Counsel

Reported by:  
Marla F. Knox, CR, RPR, CRR  
Certified Court Reporter  
Certificate No. 50870

(Copy)

Phoenix, Arizona  
October 11, 2018

P R O C E E D I N G S

CHAIRMAN SCHULTZ: I would like to call this meeting of the Industrial Commission to order, and I would like to start with the Pledge of Allegiance.

(Pledge of Allegiance recited.)

CHAIRMAN SCHULTZ: Now, so you all know who you are going to throw vegetables at, I'm Dale Schultz; and I'm Chairman of the Commission. James, you want to start us from your end.

MR. ASHLEY: James Ashley, Director.

MR. KRENZEL: Steve Krenzel, Commissioner.

MR. HENNELLY, JR: Joe Hennelly, Vice Chair.

MR. LEMARR: Scott LeMarr, Commissioner.

MR. TESTINI: Gae Testini, Chief Legal Counsel.

CHAIRMAN SCHULTZ: Thank you. Now, we are going to start with the public hearing portion of our meeting. We are then going to roll right into our regular business meeting, and you are all welcome to stay for that if you wish; but it certainly is not required.

So the purpose of this meeting is to give commission stakeholders and members of the public a formal opportunity to comment on any aspect of the Industrial

1 Commission's operations. Although the Commission has not  
2 at this time taken any action to have legislation  
3 introduced in the upcoming legislative session, you may  
4 include recommendations regarding potential legislation  
5 you would like to see introduced in your comments.

6           For those that wish to speak, please fill  
7 out a speaker's slip. They have these just outside the  
8 back door. I have a very paltry number so far. So if you  
9 want to jump up and fill them out, we will give you an  
10 opportunity to speak; but you certainly are not required  
11 to. I will call each speaker who will have five minutes  
12 to address the Commission.

13           In the interest of time, please let us know  
14 if you agree with the statement from a prior speaker  
15 rather than restating the same position.

16           At the conclusion of each presentation, the  
17 commissioners and staff may ask questions. If you would  
18 prefer not to answer questions, you may return to your  
19 seat at the conclusion of your presentation.

20           If you are not comfortable addressing the  
21 Commission in this public meeting, you are welcome to  
22 submit written comments by letter or e-mail. Written  
23 comments should be directed to Kara Dimas, the Commission  
24 secretary. Ms. Dimas' e-mail address is  
25 kara.dimas@azica.gov. The Commission's mailing address is

1 available on the Commission's web page at [www.azica.gov](http://www.azica.gov).

2           With that, we now open the floor to public  
3 comments; and we will begin with Tony Cipriana. Good to  
4 see you again.

5           MR. CIPRIANA: Thank you very much. Thank you  
6 Commissioners, Chairman Schultz and Director Ashley. I'm  
7 here today regarding networks, and I have spoken,  
8 previously. My name is Tony Cipriana. I'm the principal  
9 owner of Lyons Speedy Transportation, and we specialize in  
10 workers' compensation disability transportation services.  
11 I'm also a member of Canyon State Comp Partners, an  
12 advocate of local businesses providing services to the  
13 workers' compensation industry. I have been serving the  
14 workers' compensation industry and working in the industry  
15 since 1996.

16           So many of you may be aware that  
17 CopperPoint Mutual, the larger insurer of workers'  
18 compensation here in the State of Arizona, has been  
19 undergoing some changes. On September 17th I received a  
20 letter receiving that CopperPoint will be terminating  
21 their current preferred provider vendor network. As a  
22 business owner serving CopperPoint for the last 10 years,  
23 this caused me some concern. On September 27th I  
24 contacted CopperPoint, and I was advised that while  
25 CopperPoint was terminating their preferred panel of



1 providers so that they could expand into other states,  
2 that they were going to continue to do work with the  
3 businesses they have done work with sometimes for decades,  
4 20, 30 years on a direct business.

5           On October 5th I received a letter from One  
6 Call advising that they were now the preferred provider  
7 for the following services: Dental, diagnostics, home  
8 health, inpatient facilities, physical therapy and  
9 transportation and translation. The e-mail advised that  
10 all billings for these services must be submitted to One  
11 Call and not to CopperPoint.

12           The e-mail further advised -- and going to  
13 me as a business owner -- that if I receive any direct  
14 referrals from this client, that I have been doing  
15 business with for the last 10 years, that I must submit  
16 the direct referrals to the One Call network; and they  
17 will administer those referral requests.

18           It clearly seems to me that this is  
19 bordering on direction of care. Historically, CopperPoint  
20 has been supportive of locally owned businesses serving  
21 the workers' compensation industry, especially some of  
22 these businesses who have been serving them for many, many  
23 years. So I would like to be here today and ask the  
24 Commissioners if they would be willing to open a line of  
25 communication with CopperPoint and with One Call to make

1 sure that there is no direction of care with this new  
2 contract with One Call; and that the businesses that have  
3 supported -- you know, supported CopperPoint and  
4 CopperPoint has supported the local businesses for  
5 decades -- can continue that working relationship of  
6 excellence and service.

7 CHAIRMAN SCHULTZ: Thank you. Anything further?

8 MR. CIPRIANA: No, that was it. I'm available  
9 for questions if the Board has any.

10 CHAIRMAN SCHULTZ: Thank you. Good.  
11 Commissioners, any questions for Mr. Cipriana?

12 BOARD: (Inaudible response.)

13 MR. CIPRIANA: Thank you.

14 CHAIRMAN SCHULTZ: By the way, just so you know,  
15 we are in the process of setting up a meeting with  
16 representatives of One Call, CopperPoint and some other  
17 insurers just to make sure that they understand the  
18 Commission's position on directing care.

19 MR. CIPRIANA: Thank you very much, gentlemen.

20 CHAIRMAN SCHULTZ: Okay. Now, Chris Reynolds.

21 MR. REYNOLDS: Thank you, Commissioners, for  
22 giving me the opportunity to speak. My name is Chris  
23 Reynolds. I am a physical therapist and a certified hand  
24 therapist. I have been in the valley for almost 40 years  
25 working directly with hand surgeons initially and then

1 starting my own business 21 years ago with Desert Hand  
2 Therapy. We have 13 offices in the valley, and about 20%  
3 of our business is dealing with workers' comp patients.  
4 We all know that our objective is to get these folks back  
5 to work as quickly as possible, and traditionally that  
6 wheel has spun by a group of or an individual surgeon  
7 referring a complex case that requires hand therapy in an  
8 immediate fashion within a couple of days usually because  
9 these are generally very difficult cases. From the  
10 standpoint of getting these people back to functioning  
11 within a couple of months, we need to do that rather  
12 quickly.

13 I'm not going to address all of what Tony  
14 just talked about; but the fact remains that with these  
15 business groups, such as One Call, who start to manage  
16 these patients without the -- without the direct  
17 relationship between the hand surgeon to the hand  
18 therapist, we have these waiting periods for authorization  
19 that concur, among other things -- some of these patients  
20 are just taken away from us. I mean, we have dealt with  
21 every hand surgeon in the valley. Unfortunately, now the  
22 hand surgeon who has a preferred provider, which may not  
23 even be us but -- it might be somebody else and that's  
24 okay -- he knows that hand therapist and knows that hand  
25 therapist is going to get that patient back to work. All

1 of the sudden it is not about him and the therapist and  
2 the patient and ultimately the employer. It is about One  
3 Call, a business that is designed to make money only. We  
4 don't even know why they are involved with this to begin  
5 with.

6                   So take that away from them in some  
7 fashion. Give it back to the folks that are in the  
8 trenches doing the work; trying to get these people back  
9 as quickly as possible. We know we are scrutinized. We  
10 are scrutinized by the State when we are audited every  
11 month to make sure we have clean environments; to make  
12 sure our charts are up to date; our charts are showing we  
13 are getting people well, and we are not a mill and we are  
14 not churning patients. We know what that is.

15                   So scrutinize One Call, and recognize that  
16 they are doing this only for money; and we are doing it to  
17 get the -- we are doing it to serve the patient and the  
18 employer. So that's all I have got to say. Thank you.

19                   CHAIRMAN SCHULTZ: Would you entertain questions?

20                   MR. REYNOLDS: Sure. Anybody have questions?

21                   CHAIRMAN SCHULTZ: Commissioners, any questions  
22 for Mr. Reynolds?

23                   MR. REYNOLDS: I'm very passionate about this  
24 subject because I have been doing it a long time, and I  
25 love taking care of these patients; but this is kind of --

1 this is over the top, and it's really infiltrating our  
2 businesses like, you know, putting these momentary breaks  
3 throughout our day when we are just really trying to do  
4 what we do best, which is help patients.

5 CHAIRMAN SCHULTZ: And we appreciate your  
6 passion. That is an important part of the  
7 patient-therapist relationship. So thank you for all you  
8 do for our injured workers.

9 MR. REYNOLDS: Thank you, guys, appreciate it.

10 CHAIRMAN SCHULTZ: Okay. Our next speaker is Tom  
11 Stillwell.

12 MR. STILLWELL: Mr. Chairman, my name is Tom  
13 Stillwell. I have been practicing workers' comp law for  
14 31 years. I started with the Industrial Commission as a  
15 student attorney when I was going to ASU and litigated  
16 cases at that time. I have been representing injured  
17 workers for most of my career. Started with State Fund,  
18 but then quickly switched sides; and I have been a solo  
19 practice attorney for almost that entire time. So I have  
20 personal involvement with my clients every day.

21 Had an occasion to hear Ruby Tate give a  
22 presentation about the Commission's new computerized claim  
23 system which brought to mind something that I wanted to  
24 bring to your attention, and I wanted to congratulate her  
25 and the entire staff on the amazing rollout they are

1 doing. It looks like a fantastic system.

2           A great deal of time that those of us who  
3 represent injured workers spend is -- believe it or not --  
4 trying to find carriers. A growing number of carriers are  
5 moving their files out of state. Of these hundreds of  
6 thousands of injured workers who are on supportive care  
7 awards -- potentially for their lives -- that those  
8 supportive care cases frequently are switched from  
9 adjuster to adjuster and even state to state by the  
10 carriers without any notice to the Commission or to the  
11 injured worker or more importantly to the medical  
12 providers.

13           The result of that is that in one case that  
14 I had, for instance, in the past few weeks, a doctors's  
15 office called to ask for authorization for something under  
16 supportive care; and they got a recording. The number you  
17 have reached is out of service. They contacted me, and I  
18 called the main number in that city for the carrier. That  
19 number was out of service. So that left me wondering what  
20 in the world happened to this carrier.

21           I contacted the Commission, and I took up  
22 some of the Commission staff's time; and still we could  
23 not figure out what happened to that carrier. Fortunately  
24 their attorney, who has represented them on occasion in  
25 the past, was aware of another number that I could try;

1 and I went -- after probably spending a couple of hours on  
2 this, I finally found the person who is currently  
3 adjusting. They said, I have been here all along. I  
4 don't know why you couldn't just call me. Well, that was  
5 because I didn't have your number; and I didn't have your  
6 fax number, and I didn't have your e-mail address; and I  
7 didn't even have your mailing address.

8                   So what brought this to mind with Ruby's  
9 presentation would be a relatively simple requirement  
10 under the new technology you are implementing to require  
11 that any claim that is open for benefits, that they log on  
12 when they move the file and put the current contact  
13 information for the adjuster, where it can be found by the  
14 injured worker, their attorney and more importantly the  
15 medical providers. They can log on and go where in the  
16 world are we sending bills these days. Make sure that is  
17 the right place.

18                   It will save the Commission staff time. It  
19 will expedite care for injured workers, and I think it  
20 will actually cause the carriers also to save some time as  
21 well because I spend a lot of time talking to supervisors  
22 and managers trying to find these people. I think it is a  
23 win-win for everyone to try to implement something like  
24 this. I think it can be done under the current statute.  
25 I don't think it requires any legislation. I think that a

1 rule could make reference to new technology and dependent  
2 upon the implementation of new technology. I certainly  
3 don't support something that requires more paperwork and  
4 issuing a notice, but a page where they can just log onto  
5 that claim. We know the system is going to have a place  
6 where every interested party can identify themselves.  
7 They can go there and say, Here is where we are right now,  
8 would be a boon to the rest of us. That's all. Thank  
9 you.

10 CHAIRMAN SCHULTZ: Would you entertain questions?

11 MR. STILLWELL: Sure.

12 CHAIRMAN SCHULTZ: Commissioners, any questions  
13 for Mr. Stillwell?

14 BOARD: (Inaudible response.)

15 CHAIRMAN SCHULTZ: Thank you very much.

16 MR. STILLWELL: Thank you.

17 CHAIRMAN SCHULTZ: That's the last of the folks  
18 that have signed speaker's slips; but if there is anyone  
19 else who would like to speak, please just signify so right  
20 now; and we will hear from you, and then we will do the  
21 paperwork after. Nobody interested in speaking. Okay.  
22 Thank you.

23 This will conclude the Commission's 2018  
24 Stakeholder's meeting. We appreciate your attendance and  
25 participation.



1                   As a reminder, although the oral proceeding  
2 has concluded, written comments may be submitted to Kara  
3 Dimas, the Commission's secretary. The Commission will  
4 carefully consider all written and oral comments.

5                   We will now move to continue our meeting  
6 with our regular agenda.

7                   (Proceedings concluded at 1:15 p.m.)

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1 STATE OF ARIZONA )  
2 COUNTY OF MARICOPA )

3 C E R T I F I C A T E

4 I, **MARLA F. KNOX**, Registered Professional  
5 Reporter and Certified Reporter, Certificate No. 50870, in  
6 and for the State of Arizona, do hereby certify that the  
7 foregoing pages constitute a full, true and accurate  
8 transcript of all proceedings had in the foregoing matter,  
9 all done to the best of my skill and ability.

10 I FURTHER CERTIFY that I am not related to  
11 nor employed by any of the parties hereto, and have no  
12 interest in the outcome.

13 Dated in Phoenix, Arizona, this 15th day of  
14 October, 2018.

15 /s/ *Marla F. Knox*  
16 **MARLA F. KNOX, CR, RPR, CRR**  
**Certified Reporter No. 50870**

17  
18 I certify that Perfecta Reporting has  
19 complied with the requirements set forth in ACJA 7-201.  
20 Dated in Phoenix, Arizona this 15th day of October, 2018.

21  
22  
23 Perfecta Reporting  
24 Arizona RRF No. R1071  
25