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
3. 2C-18/19-0196 Scarizona Scaregrounds, LLC
4. 2C-18/19-2017 The Shutter Source LLC
5. 2C-17/18-0920 U-Stor Self Storage LLC

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

1. The Kroger Co.
2. Parker-Hannifin Corporation

Commissioner LeMarr moved to approve the 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.

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.

Fuzed, L.L.C.
7464 N Sweet River Rd.,
Tucson, AZ 85743

Site Location: 1025 N Huntington Park Dr.
Tucson, AZ 85710

Inspection No: T3633 - 1335149
Inspection Date: 01/08/2018

Fatality/Accident
Years in Business: 2
Empl. Covered by inspection: 5

SERIOUS – Citation 1 - Item 1a –

a) Northwest corner of roof: Employees who were removing roof panels worked along an unprotected edge that was 13 feet above the ground at the eave, and 21 feet above the floor of the building at the peak, and the employee were not protected from falling by adequate system. 29 CFR 1926.501(b)(1)
Div. Proposal - $7,000.00  Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 1b –

a) 1025 N Huntington Park Dr., Tucson: Employees were removing roof panels on a system-engineered metal building and an engineering survey related to the demolition operations. 29 CFR 1926.501(b)(4)(i)
Div. Proposal - $0.00  Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 2 –

a) 1025 N Huntington Park Dr., Tucson: Employees were removing roof panels on a system-engineered metal building and an engineering survey related to the demolition operations. 29 CFR 1926.850(a)
Div. Proposal - $750.00  Formula Amt. - $750.00

TOTAL PENALTY - $7,750.00  TOTAL FORMULA AMT. - $3,750.00
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 Krenzel voted in favor of the motion. The motion passed.

The Fairfax Companies, LLC dba Tank’s Ina Road Land Reclamation Facility
5300 W Ina Rd.,
Tucson, AZ 85743

Fatality/Accident
Years in Business: 30
Empl. Covered by inspection: 12

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 [Signature]
James Ashley, Director

ATTEST:

[Kara Dimas, Signature]
Kara Dimas, Commission Secretary
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 F. LeMarr, Commissioner
Mr. Gaetano Testini, Chief Legal Counsel

Reported by:
Marla F. Knox, CR, RPR, CRR
Certified Court Reporter
Certificate No. 50870
(Copy)
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
Commission's operations. Although the Commission has not
at this time taken any action to have legislation
introduced in the upcoming legislative session, you may
include recommendations regarding potential legislation
you would like to see introduced in your comments.

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

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

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

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

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

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

So many of you may be aware that
CopperPoint Mutual, the larger insurer of workers'
compensation here in the State of Arizona, has been
undergoing some changes. On September 17th I received a
letter receiving that CopperPoint will be terminating
their current preferred provider vendor network. As a
business owner serving CopperPoint for the last 10 years,
this caused me some concern. On September 27th I
contacted CopperPoint, and I was advised that while
CopperPoint was terminating their preferred panel of
providers so that they could expand into other states, that they were going to continue to do work with the businesses they have done work with sometimes for decades, 20, 30 years on a direct business.

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

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

It clearly seems to me that this is bordering on direction of care. Historically, CopperPoint has been supportive of locally owned businesses serving the workers' compensation industry, especially some of these businesses who have been serving them for many, many years. So I would like to be here today and ask the Commissioners if they would be willing to open a line of communication with CopperPoint and with One Call to make
sure that there is no direction of care with this new contract with One Call; and that the businesses that have supported -- you know, supported CopperPoint and CopperPoint has supported the local businesses for decades -- can continue that working relationship of excellence and service.

CHAIRMAN SCHULTZ: Thank you. Anything further?

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

CHAIRMAN SCHULTZ: Thank you. Good.

Commissioners, any questions for Mr. Cipriana?

BOARD: (Inaudible response.)

MR. CIPRIANA: Thank you.

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

MR. CIPRIANA: Thank you very much, gentlemen.

CHAIRMAN SCHULTZ: Okay. Now, Chris Reynolds.

MR. REYNOLDS: Thank you, Commissioners, for giving me the opportunity to speak. My name is Chris Reynolds. I am a physical therapist and a certified hand therapist. I have been in the valley for almost 40 years working directly with hand surgeons initially and then
starting my own business 21 years ago with Desert Hand Therapy. We have 13 offices in the valley, and about 20% of our business is dealing with workers' comp patients. We all know that our objective is to get these folks back to work as quickly as possible, and traditionally that wheel has spun by a group of or an individual surgeon referring a complex case that requires hand therapy in an immediate fashion within a couple of days usually because these are generally very difficult cases. From the standpoint of getting these people back to functioning within a couple of months, we need to do that rather quickly.

I'm not going to address all of what Tony just talked about; but the fact remains that with these business groups, such as One Call, who start to manage these patients without the -- without the direct relationship between the hand surgeon to the hand therapist, we have these waiting periods for authorization that concur, among other things -- some of these patients are just taken away from us. I mean, we have dealt with every hand surgeon in the valley. Unfortunately, now the hand surgeon who has a preferred provider, which may not even be us but -- it might be somebody else and that's okay -- he knows that hand therapist and knows that hand therapist is going to get that patient back to work. All
of the sudden it is not about him and the therapist and
the patient and ultimately the employer. It is about One
Call, a business that is designed to make money only. We
don't even know why they are involved with this to begin
with.

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

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

CHAIRMAN SCHULTZ: Would you entertain questions?
MR. REYNOLDS: Sure. Anybody have questions?
CHAIRMAN SCHULTZ: Commissioners, any questions
for Mr. Reynolds?
MR. REYNOLDS: I'm very passionate about this
subject because I have been doing it a long time, and I
love taking care of these patients; but this is kind of --
this is over the top, and it's really infiltrating our
businesses like, you know, putting these momentary breaks
throughout our day when we are just really trying to do
what we do best, which is help patients.

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

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

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

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

Had an occasion to hear Ruby Tate give a
presentation about the Commission's new computerized claim
system which brought to mind something that I wanted to
bring to your attention, and I wanted to congratulate her
and the entire staff on the amazing rollout they are
doing. It looks like a fantastic system.

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

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

I contacted the Commission, and I took up some of the Commission staff's time; and still we could not figure out what happened to that carrier. Fortunately their attorney, who has represented them on occasion in the past, was aware of another number that I could try;
and I went -- after probably spending a couple of hours on this, I finally found the person who is currently adjusting. They said, I have been here all along. I don't know why you couldn't just call me. Well, that was because I didn't have your number; and I didn't have your fax number, and I didn't have your e-mail address; and I didn't even have your mailing address.

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

It will save the Commission staff time. It will expedite care for injured workers, and I think it will actually cause the carriers also to save some time as well because I spend a lot of time talking to supervisors and managers trying to find these people. I think it is a win-win for everyone to try to implement something like this. I think it can be done under the current statute. I don't think it requires any legislation. I think that a
rule could make reference to new technology and dependent upon the implementation of new technology. I certainly don't support something that requires more paperwork and issuing a notice, but a page where they can just log onto that claim. We know the system is going to have a place where every interested party can identify themselves. They can go there and say, Here is where we are right now, would be a boon to the rest of us. That's all. Thank you.

CHAIRMAN SCHULTZ: Would you entertain questions?

MR. STILLWELL: Sure.

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

BOARD: (Inaudible response.)

CHAIRMAN SCHULTZ: Thank you very much.

MR. STILLWELL: Thank you.

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

This will conclude the Commission's 2018 Stakeholder's meeting. We appreciate your attendance and participation.
As a reminder, although the oral proceeding has concluded, written comments may be submitted to Kara Dimas, the Commission's secretary. The Commission will carefully consider all written and oral comments.

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

(Proceedings concluded at 1:15 p.m.)
STATE OF ARIZONA

COUNTY OF MARICOPA

CERTIFICATE

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

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

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

/s/ MARLA F. KNOX, CR, RPR, CRR
Certified Reporter No. 50870

I certify that Perfecta Reporting has complied with the requirements set forth in ACJA 7-201.

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

Perfecta Reporting
Arizona RRF No. R1071