

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 W. Washington
Conference Room 308
Phoenix, Arizona 85007
Thursday, February 12, 2009 – 1:00 p.m.

Present:	Joe Gosiger	Vice Chairman
	Louis W. Lujano, Sr.	Member (telephonic)
	Marcia Weeks	Member
	John A. McCarthy, Jr.	Member
	Laura McGrory	Director
	Andrew Wade	Acting Chief Legal Counsel
	Noreen Thorsen	Claims Manager
	William Wright	Asst. Director, ADOSH
	Gary Norem	Chief Accountant
	Teresa Hilton	Commission Secretary

Vice Chairman Gosiger convened the Commission meeting at 1:00 p.m. noting a quorum present. Chairman Delfs was not able to attend. Also in attendance were Scot Butler, the agency's lobbyist, John Soza of CST Risk Management, Jenypher Jones of Snell & Wilmer and Jeremy Bethancourt of LeBlanc Building Company.

Approval of Minutes of February 4, 2009 Meeting

The Commission unanimously approved the Minutes of the February 4, 2009 general session on motion of Mr. McCarthy, second of Mr. Lujano. The Commission unanimously approved the Minutes of the February 4, 2009 executive session on motion of Mr. McCarthy, second of Mrs. Weeks.

Discussion & Action of Request for Lump Sum Commutation

Daniel V. Avila #20071-650365 - Noreen Thorsen presented this lump sum petition. She advised that Mr. Avila requested a lump sum commutation of his scheduled award of \$1,800.00 per month (present value \$16,020.00) in order to start a food vending and catering business in Surprise, Arizona. He intends to work part time at his current job while starting his business. After the payments made by the carrier and attorney fees are subtracted from the present value, Mr. Avila would receive \$11,220. Mr. Avila is employed as a delivery driver earning \$1,600.00 to \$1,800.00 per month.

Ms. Thorsen advised that the Claims Department is recommending approval of the lump sum commutation since it will allow Mr. Avila to get his business up and running and provide additional support for his family. Following discussion, the Commission unanimously approved the lump sum commutation on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C08/09-1086	HIEEN T. NGUYEN, DBA MESA HAIR DESIGN
2C07/08-1843	NATIVE AZ, LLC DBA ACC HOMECARE

2C07/08-2198	AKA ADULT CARE CONSULTANTS PHILLIP ALLEN SECKER JR. & RONNA MICHELLE SECKER JR., HUSBAND & WIFE DBA CASA DE BUENA VIDA CARE HOME
2C07/08-2473	SIMPLY SCHOOL UNIFORMS LLC

Andrew Wade advised that a compliance investigation confirmed that the above listed employers were operating (or had operated) a business with employees, but without workers' compensation insurance. Giving consideration to the factors of A.R.S. §23-907(K), Mr. Wade recommended that a civil penalty of \$1,000.00 be assessed against employers #1086, 1843, 2198 and 2473. Following discussion, the Commission unanimously approved assessing a civil penalty of \$1,000.00 against employers #1086, 1843, 2198 and 2473 on motion of Mr. McCarthy, second of Mr. Lujano.

Discussion & Action of ADOSH Discrimination Complaint

#08-68 Christopher Helms-Faircloth v. Arizona AFO, Inc. – This agenda item was held and will be considered at next week's meeting.

Discussion & Action of Proposed OSHA Citations and Penalties

PFG Construction, Inc.
1617 W. Williams Dr.
Phoenix, AZ 85027

Fatality
Yrs/Business – 8
Empl. Cov. by Insp. – 17

Site Location: 4500 N. Oracle Rd., Tucson, AZ 85705
Inspection #: F3875/312623663
Insp. Date: 09/18/08

SERIOUS – Citation 1, item 1 – Building D: A midrail was not correctly installed at the height midway between the top edge of the top rail and the walking/working surface.
(Three other inspections in the past three years with one nonserious violation).

Div. Proposal - \$7,000.00	Formula Amt. - \$7,000.00
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SERIOUS – Citation 1, item 2 – The employer did not establish a training program for those employees who were exposed to fall hazards.

Div. Proposal - \$ 7,000.00	Formula Amt. - \$ 7,000.00
TOTAL DIV. PROP. - \$14,000.00	TOTAL FORMULA AMT - \$14,000.00

Bill Wright summarized the citations and proposed penalty as listed. This case file and the next two are of the same job site. This employer was considered the exposing employer. The Division proposal was for the gravity-based penalties with no adjustment factors since the violations directly related to the fatality. Following discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$14,000.00 on motion of Mr. Lujano, second of Mr. McCarthy.

Parsons Steel Erectors, Inc.
4580 N. Highway Dr.
Tucson, AZ 85705

Unprogram Related
Yrs/Business – 38
Empl. Cov. by Insp. – 5

Site Location: 4500 N. Oracle Rd., Tucson, AZ 85705
Inspection #: F3875/312757479
Insp. Date: 11/05/08

SERIOUS – Citation 1, item 1 – Tucson Mall expansion, building D: The midrail was not correctly installed at a height midway between the top edge of the top guardrail and the walking/working surface.

(Three inspections with one nonserious violation in the past three years).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

Bill Wright summarized the citation and proposed penalty as listed, noting that this employer created the hazard when it incorrectly installed the guardrail system. The Division proposal was for the gravity-based penalty with no adjustment factors since the violation directly related to the fatality. Following discussion and inspection of photos of this violation, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$7,000.00 on motion of Mr. Lujano, second of Mr. McCarthy. Mrs. Weeks stated that her husband was previously associated with the Steel Erection Association and this employer was a member, but that she did not believe there was a conflict so participated in the vote.

Commissioner Lujano noted that workers' compensation coverage was not verified and asked Mr. Wade to check this. Mr. Wade stated that the Legal Division will verify the workers' compensation coverage for these and the rest of the employers.

Ledcor Construction, Inc.
901 N. Green Valley Pkwy, Suite 100
Henderson, NV 89071

Unprogram Related
Yrs/Business – 60
Empl. Cov. by Insp. – 50

Site Location: 4500 N. Oracle Rd., Tucson, AZ 85705
Inspection #: F3876/312623671
Insp. Date: 09/18/08

SERIOUS – Citation 1, item 1 – Building D: The midrail was not correctly installed at a height midway between the top edge of the top guardrail and the walking/working surface.

(No inspection history in Arizona in the past three years).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

Bill Wright summarized the citation and proposed penalty as listed. He advised this employer was the general contractor on the site and had signed off and accepted that the guardrails were installed correctly. The Division proposal was for the gravity-based penalty with no adjustment factors since the violation directly related to the fatality. Following discussion and inspection of photos of this violation, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$7,000.00 on motion of Mr. McCarthy, second of Mr. Lujano.

Turner Tree Management, LLC
3021 E. Almeria Road
Phoenix, AZ 85008

Complaint
Yrs/Business - 5
Empl. Cov. by Insp. - 25

Site Location: 3021 E. Almeria Road, Phoenix, AZ 85008
Inspection #: Z5834/312623556
Insp. Date: 09/23/08

SERIOUS - Citation 1, item 1 - The employer did not ensure that each employee engaged in arboriculture operations such as tree trimming had been trained in accordance with ANSI Z133.1-2006 Safety Requirements for Arboriculture Operations, Chapter 5 Safe Use of Vehicles and Mobile Equipment Used in Arboriculture, Section 5.1 General and 5.3 Brush Chippers; and Chapter 8 Work Procedures, Section 8.6 Brush Removal and Chipping, and Section 3.3 Emergency Procedures and Readiness.

(5 previous inspections with no violations in the past three years).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS - Citation 1, item 2 - The employer did not ensure that employees engaged in tree trimming operations and exposed to fall hazards above 25' had two means of fall protection in accordance with ANSI Z133.1-266 Safety Requirements for Arboriculture Operations, Section 8 Work Procedures, Item 8.1.18.

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS - Citation 1, item 3 - The employer did not ensure that a truck mounted insulated aerial lift had received annual dielectric testing and frequent and periodic inspections in accordance with ANSI A92.2-2001 Vehicle Mounted Elevating and Rotating Work Platforms and the Aerial Lift, Inc. Operations, Maintenance and Repair Parts Manual.

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS - Citation 1, item 4 - One untrained employee operated the truck-mounted aerial lift when trimming palm trees with three feet of fronds up to heights of 40'.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 5 - One employee operated a chainsaw from the ground while not wearing leg protectors.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 6 - One employee was using a damaged hook on his climbing rope while working aloft in a tree 20' above ground level.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 7 - The employer did not provide training for employees in the use, care and maintenance of the provided personal protective equipment (i.e. climbing saddles, flip lines, hearing protection, chemical suits, etc.) that are associated with the tools, machinery and chemicals used in the workplace to protect employees from injuries associated with their work environment.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 8 - The employer did not issue, free of charge, the required personal protective equipment (i.e. climbing saddles, ropes, flip lines, etc.) for employee use on the jobsite.

the jobsite.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 9 – The use of the common drinking cup or other container was not prohibited.

Div. Proposal - \$75.00

Formula Amt. - \$75.00

SERIOUS – Citation 1, item 10 – The employer had not established and implemented a written lockout/tagout program and procedures for the maintenance or servicing on a machine or equipment where the unexpected energizing, start-up or release of stored energy could occur and cause injury.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 11 – The employer did not ensure that kickbacks were installed on the chain saw.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 12 – The employer allowed the use of three homemade 220 volt extension cords that had junction boxes installed on the ends, where gaps in the metal framework existed, and proper strain relief was not installed.

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

Div. Proposal - \$10,575.00

Formula Amt. - \$10,575.00

Bill Wright summarized the citations and proposed penalties as listed. Mr. Lujano expressed concerns, particularly in regard to items 6, 7 and 11. He asked for further review by the Legal Division concerning remedies for current and past employees who were charged for their PPE. He also asked the Legal Division to review whether the employer engaged in criminal activity by charging the employees for the PPE. Following discussion of this issue, Mr. Wright advised that as part of the abatement process, ADOSH would request additional documentation regarding charges assessed against current and past employees for PPE and would further request the employer reimburse the employees for these charges if they have not already done so. If necessary, the matter would be referred to the Labor Department to address the issue of wages owed. Following further discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$10,575.00 on motion of Mr. Lujano, second of Mr. McCarthy with the instruction that ADOSH report back to the Commission on the issues described above.

Watson Roofing, Inc.
3185 Longview Drive
Sacramento, CA 95821

Planned
Yrs/Business –
Empl. Cov. by Insp. – 4

Site Location: 15460 N. Reems Road, Surprise, AZ 85374

Inspection #: Q7984/312936784

Insp. Date: 01/09/09

SERIOUS – Citation 1, item 1 – The employer failed to ensure that three employees working on a roof 20' above ground level were protected from falling by the use of a fall protection system. (Three inspections with 4 serious violations in the past three years).

Div. Proposal - \$3,000.00

Formula Amt. - \$3,000.00

Bill Wright summarized the citation and proposed penalty as listed. Following discussion and inspection of photos of this violation, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$3,000.00 on motion of Mr. McCarthy, second of Mr. Lujano.

Discussion &/or Action regarding Legislation

Scot Butler provided the Commissioners with an updated legislative report on HB 2056, HB 2057, HB 2087, HB 2146, HB 2198, HB 2199, HB 2200, HB 2422, and SB 1262. He stated that the Senate is continuing to work on the budget and have no bills assigned or committee hearings scheduled. Mr. Butler explained the progress on budget issues that impact the Commission and amendments made to House Bills.

Discussion &/or Action regarding Operations of the Industrial Commission

Ms. McGrory advised that there is nothing new to report under this agenda item.

Discussion &/or Action regarding Legislation. The Commission may move into Executive Session under A.R.S. §§38-431.03(A)(3) and (A)(4) for Discussion and Consultation with the Attorneys of the Public Body regarding Contemplated Litigation or Settlement Discussions in order to avoid Litigation arising out of Bills passed in the Forty-Ninth Legislature, First Special Session (2009). 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

The Commission agreed that an executive session was not necessary at this time.

Announcements

Ms. Hilton reminded the Commissioners that the next meeting will be held on Thursday, February 19th.

There being no further business to come before the Commission and no public comment, Vice Chairman Gosiger adjourned the meeting at 1:45 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By _____
Chairman

By Joseph Gosiger
Vice Chairman

By Thomas W. Higgins, Sr.
Member

ATTEST:

By Thomas Weeks
Member

Terisa Hilton
Commission Secretary

By John McCall Jr.
Member