

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, April 9, 2009 – 1:00 p.m.

|          |                       |                            |
|----------|-----------------------|----------------------------|
| Present: | Brian Delfs           | Chairman                   |
|          | Joe Gosiger           | Vice Chairman (telephonic) |
|          | Louis W. Lujano, Sr.  | Member                     |
|          | John A. McCarthy, Jr. | Member                     |
|          | Laura McGrory         | Director                   |
|          | Andrew Wade           | Chief Legal Counsel        |
|          | Darin Perkins         | Director, ADOSH            |
|          | David Sosa            | Special Fund Monitor       |
|          | Patricia Gillis       | Vocational Rehab, SF       |
|          | Gary Norem            | Chief Financial Officer    |
|          | Glenn Hurd            | Financial Officer          |
|          | Teresa Hilton         | Commission Secretary       |

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Mrs. Weeks was not able to attend. Also in attendance were Jen Jones of Snell & Wilmer and Kathy Levandowsky of DES.

Approval of Minutes of April 2, 2009 Meeting

The Commission unanimously approved the Minutes of the April 2, 2009 general session on motion of Mr. Lujano, second of Mr. McCarthy.

The Commission unanimously approved the Minutes of the April 2, 2009 executive session on motion of Mr. McCarthy, second of Mr. Lujano.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

|              |   |
|--------------|---|
| 2C08/09-1631 | CURTIS BYRD, A SINGLE MAN<br>DBA DIAMONDBACK MOVERS |
| 2C08/09-1360 | EMPLOYMENT RESOURCES, INC.                          |
| 2C08/09-1243 | GS TILE LLC   |
| 2C08/09-1445 | SONOITA FUEL STOP LLC                               |
| 2C08/09-1559 | SUPER PLUS "98", INC.<br>DBA SUPER PLUS 2000        |

Andrew Wade advised that with regard to the above listed employers, a compliance investigation confirmed that they 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 \$5,000.00 be assessed against employer #1631 since this is their second civil penalty. He recommended civil penalties of \$1,000.00 be assessed against employers #1360, 1243 and 1445. He further recommended a civil penalty of \$500.00 be assessed against employer #1559 since they recently obtained



Lujano.

Mr. Lujano commented that the first case file was a repeat violation and in the second case file, the employer had been in business 20 years and in both cases the employers should have been aware of the safety violations. He expressed concern that they did not seem to be getting the message and wondered if the gravity-based penalties should be assessed to get their attention. Mr. Perkins stated that the Commission has the authority to modify the recommended penalties. Chairman Delfs agreed with Mr. Lujano and stated that his point was well taken.

PCM Custom Molding, Inc.  
432 S. Robson  
Mesa, AZ 85210

Planned  
Yrs/Business – 6  
Empl. Cov. by Insp. – 4

Site Location: 432 S. Robson, Mesa, AZ 85210  
Inspection #: L3419/313088056  
Insp. Date: 03/11/09

SERIOUS – Citation 1, item 1 – A rotating barrel mixer was not guarded with an enclosure which was interlocked with the drive mechanism so that the barrel could not revolve unless the enclosure was in place.

(No inspection history in the past three years).

Div. Proposal - \$375.00

Formula Amt. - \$375.00

SERIOUS – Citation 1, item 2 – Sprocket wheels and drive chain for a rotating barrel mixer were not enclosed to prevent accidental contact with rotating parts, pinch points and in-going nip points.

Div. Proposal - \$375.00

Formula Amt. - \$375.00

SERIOUS – Citation 1, item 3 – A pendant cord operating at 240 volts, 3 phase was missing an attachment plug to prevent accidental contact with energized electrical components.

Div. Proposal - \$375.00

Formula Amt. - \$375.00

SERIOUS – Citation 1, item 4 – Approximately ten feet (10') of PVC plastic piping was used to transport compressed air from the compressed air receiver to rubber air lines located in Building A.

Div. Proposal - \$ 150.00

Formula Amt. - \$ 150.00

TOTAL DIV. PROP. - \$1,275.00

TOTAL FORMULA AMT - \$1,275.00

Darin Perkins summarized the citations and proposed penalty as listed. He advised that he has given the employer a good faith adjustment factor of 15% since they corrected all of the violations immediately. He stated that the normal Commission policy for the PVC pipe violation was \$300.00, but that he is recommending a penalty of \$150.00. Following discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations with no penalties based on the employer's good faith effort on motion of Mr. Delfs, second of Mr. McCarthy.

Swisstech Tooling & Mfg., Inc.  
15895 N. 77<sup>th</sup> Street  
Scottsdale, AZ 85260

Complaint  
Yrs/Business – 23  
Empl. Cov. by Insp. – 40

Site Location: 15895 N. 77<sup>th</sup> Street, Scottsdale, AZ 85260

Inspection #: S2603/312993629

Insp. Date: 01/20/09

SERIOUS – Citation 1, item 1 – Employees who operate the forklift were not wearing the seatbelt.

(No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 2 – Employees were operating the forklift without formal training and certification.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 3 – One Supermax CNC machine was not guarded by an interlocking enclosure. There were seven other instances of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 4 – The employer did not ensure that the spindle end, nut and flange projection was guarded on a precision grinder.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL DIV. PROP. - \$5,000.00

TOTAL FORMULA AMT - \$5,000.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion of these violations and inspection of photos, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$5,000.00 on motion of Mr. Lujano, second of Mr. Gosiger.

White Mountain Building Products, LLC  
1508 W. Red Baron Road  
Payson, AZ 85541

Complaint  
Yrs/Business – 6  
Empl. Cov. by Insp. – 7

Site Location: 1508 W. Red Baron Road, Payson, AZ 85541

Inspection #: A7717/313060840

Insp. Date: 02/19/09

SERIOUS – Citation 1, item 1 – Approximately 400' of schedule 40 PVC was used for the transportation of compressed air at 76 p.s.i.

(No inspection history in the past three years).

Div. Proposal - \$300.00

Formula Amt. - \$300.00

SERIOUS – Citation 1, item 2 – One employee was working on a platform without a standard toprail, installed above dangerous equipment (i.e. mixing paddle).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – The press rollers did not have the point of operation guarded to prevent the operator from placing any part of his body into the danger zone during the operating cycle. There were three other instances of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 4 – A vertical and horizontal sprocket wheel and chain which were located approximately 1' above the floor were not enclosed to prevent accidental contact. There

were two other instances of this violation.

Div. Proposal - \$ 750.00  
TOTAL DIV. PROP. - \$2,550.00

Formula Amt. - \$ 750.00  
TOTAL FORMULA AMT - \$2,550.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$2,550.00 on motion of Mr. McCarthy, second of Mr. Lujano.

Discussion &/or Action regarding Operations of the Industrial Commission

Ms. McGrory stated that she had nothing new to report under this agenda item.

Discussion &/or Action regarding Interagency Service Agreement with the Arizona Department of Economic Security, Rehabilitation Services Administration for Vocational Rehabilitation Services pursuant to A.R.S. §23-1065(A)

Ms. McGrory provided a brief background on vocational rehabilitation and the current interagency services agreement ("ISA") with the Department of Economic Security (DES), Rehabilitation Services Administration ("RSA"). Due to budget cuts, DES has notified the agency that they are no longer able to serve ICA claimants as they have been. The Commission needs to address questions including whether to continue the ISA with DES.

Ms. McGrory introduced David Sosa, and stated that he will provide additional foundational information regarding the program, including suggested alternatives to address the issue. She also indicated that he would provide information from a meeting held yesterday with representatives from DES. Mr. Sosa introduced Pat Gillis, who is the vocational rehabilitation coordinator for the Special Fund. He gave a background of the agency's vocational rehabilitation program and described the vocational rehabilitation services that are provided for scheduled disabilities and unscheduled disabilities. He described the differences between the two programs (scheduled versus unscheduled) and the costs that are paid for by the Special Fund under these two programs. He described the ISA with DES stating that the cost for vocational rehabilitation of unscheduled injuries is shared between the Special Fund and the Arizona Department of Economic Security, Rehabilitation Services Administration through the ISA between both agencies. Under this agreement the Special Fund pays, in advance, \$200,000 annually to cover the services provided by RSA. Under this agreement, RSA provides counseling and plan development services while the Special Fund pays the cost of any tuition.

Mr. Sosa further advised that effective March 16, 2009, RSA closed all priority categories in the Order of Selection, which includes all claimants referred by the Special Fund. Ms. McGrory stated that if RSA is unable to provide the vocational rehabilitation services, then the Special Fund is advancing money without benefit. She stated that the Commission has an interest in ensuring that vocational rehabilitation services are being provided to injured workers, and also has the fiduciary responsibility to the Special Fund to ensure that its monies are properly spent. She also noted that DES secures federal grant funds of up to \$800,000 based on the funds they receive from the Special Fund.

Ms. McGrory described the difference in costs between the services received from RSA for unscheduled claims and the services received from private rehabilitation firms on scheduled

claims, noting that on average services are faster and less expensive when provided by the private rehabilitation firms. She stated that she and Mr. Sosa had a productive discussion yesterday regarding the issues with the head of the program, Katharine Levandowsky, and the Assistant Director from DES and noted that Ms. Levandowsky was in attendance at today's Commission meeting. Ms. McGrory stated that they are interested in working with the agency and appear to understand the concerns about prepaying for services, the overall cost of the service, and the problems associated with claimants not timely receiving services. Ms. McGrory further described the discussions and the possibilities for renegotiating the ISA.

Chairman Delfs addressed the difference in costs and invited Ms. Levandowsky to join the conversation. He questioned whether better service is received from RSA than through the private sector. Mr. Sosa and Ms. Gillis agreed that the service was "pretty much equal", except that DES takes longer to develop the plan than the private sector. Mr. Delfs questioned how the unscheduled plan differs from that for a scheduled injury. Staff explained that there are varying degrees of severity and that each case is very individualized, but that there is not a real difference between plans between the two types of disabilities. Mr. Delfs questioned why there were two systems. Ms. McGrory explained the reason.

Mr. Sosa stated alternatives for the Commission to consider. Ms. Levandowsky stated that she was not aware that the Special Fund was paying tuition on unscheduled claims and stated that DES could have paid for tuition. She then explained the vocational rehabilitation program process. Mr. McCarthy questioned whether the money for tuition could be reimbursed to the Special Fund. Ms. Levandowsky stated that she would look into that. Mr. Sosa advised that in 2008, the Special Fund paid over \$54,000 in tuition, over and above the \$200,000 advance.

Chairman Delfs stated that, if the other Commissioners agreed, no decision needed to be made today and that he would like staff to continue to meet with DES to come up with an agreement to bring costs in to line with scheduled injury cases. He also suggested that staff should explore in greater detail what services are being provided and whether there is a difference in the quality or quantity of services. He also noted that DES is using Special Fund dollars to leverage for federal funds, which is also healthy for the state, but on the surface it appears the Special Fund is paying too much.

Ms. McGrory stated that, from a timing standpoint, the ISA requires a 60 day notice of termination and the ISA renews on June 30 2009, if not terminated. She recommended that the Special Fund attempt to negotiate a new agreement to address the agency's concerns. If it cannot be negotiated to everyone's satisfaction, it could be terminated. Chairman Delfs stated that Chief Counsel could draft a letter that states that we intend to terminate the current ISA and are willing to renegotiate a new contract. Mr. Lujano stated that he would like to see a breakdown of services and expenses to better understand what is going on. Chairman Delfs further stated that rather than paying the \$200,000 up front, he would like to see a "pay as you go" system. Ms. McGrory stated that staff would continue its discussions with DES and bring this item back for further consideration.

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

Ms. McGrory described the latest activity with respect to the budget and how it impacts the Commission. Ms. McGrory stated that outside counsel filed the lawsuit on Monday and she has given the Commissioners a copy of the Petition for Special Action. Outside counsel has been contacted by the Attorney General's office, who will be representing both the Governor and Treasurer. The Supreme Court is scheduled to hold its conference on June 1<sup>st</sup>. Mr. Wade explained that the Governor's Office response is due by April 23, 2009 and the reply will be due ten days later. The Petition has been provided to a number of interested parties, who may file amicus briefs to join.

Announcements

Ms. McGrory stated that two documents have been provided to the Commission for informational purposes: a self insurance watch report that will be updated on a monthly basis and foundational information regarding the financial condition of the Special Fund.

Ms. Hilton reminded the Commissioners that the next meeting will be held on Thursday, April 16, 2009.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 1:55 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By *Richard C. Delfs*  
Chairman

By *Joseph A. Genger*  
Vice Chairman

By *Charles W. Luyano, Sr.*  
Member

ATTEST:

By \_\_\_\_\_  
Member

*Teresa Hilton*  
Commission Secretary

By *Jhametz*  
Member