

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 2675 E. Broadway  
Tucson, Arizona  
Conference Room  
Thursday, June 4, 2009 – 10:00 a.m.

Present:	Brian Delfs	Chairman
	Louis W. Lujano, Sr.	Member
	Marcia Weeks	Member
	John A. McCarthy, Jr.	Member
	David Parker	Member
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	William Wright	Asst. Director, ADOSH
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 10:07 a.m. noting a quorum present. Commissioner Parker had not yet arrived. Also in attendance were James B. Whitten, Jeremy Bethancourt, Robert Damman, Daniel Godinez, Sid Wolitzky and Jeffrey Patten of SCF Arizona. Scot Butler, the agency's lobbyist, joined the meeting telephonically for the discussion of legislation and the Executive Session. David Ouimette also joined the meeting telephonically for the Executive Session.

Approval of Minutes of May 28, 2009 Meeting

The Commission unanimously approved the Minutes of the May 28, 2009 meeting on motion of Mr. Lujano, second of Mr. McCarthy.

Lump Sum Commutation Hearing – Daniel Godinez #20033-520467

Present for the lump sum hearing were Mr. Godinez and his attorney, Sid Wolitzky. The Defendant Employer and Insurance Carrier were represented by their attorney, Jeffrey Patten. A court reporter was also present and transcript of the hearing will be available for review. Andrew Wade stated that the first matter for the Commission to consider was the potential untimely nature of the request for hearing filed by Mr. Wolitzky. Mr. Wolitzky explained that he mailed the petition on March 16, 2009, which was within the ten day protest period, but that when he called the Commission on April 7, 2009 to check on the status of his hearing request, the Claims Division representative stated that she could not locate the request for hearing. He faxed a copy of the request for hearing to the Commission that day. Mr. Wolitzky explained that the request for hearing was signed on and dated March 16, 2009 and it was his usual practice to mail such a request for hearing on the same day he signs and dates the request for hearing. The Commission unanimously agreed to consider the request timely filed and proceed with the hearing on the merits on motion of Mr. Lujano, second of Mr. McCarthy.

Mr. Godinez was sworn in and provided testimony regarding his financial situation and intended plans for the lump sum. He testified that he would purchase a reliable vehicle and pay bills with the proceeds. He also stated that he would buy clothes for his children. He advised that he pays \$670.25 per month in child support plus \$150 per month for back child support. After attorney's fees, Mr. Godinez would receive approximately \$12,400.00 if the lump sum commutation was granted. Mr. Godinez also advised that he wanted to go to culinary school, and would continue to work while attending school. Mrs. Weeks explained that the Commission had reversed its prior approval of the lump sum commutation because it was granted with the understanding that the funds would be used for child support purposes. When it was discovered that was not the intended usage, the Commission had reconsidered the matter and denied the lump sum. At the conclusion of his testimony and following discussion, the Commission voted to reconsider their previous decision and approved the lump sum commutation request on motion of Mr. Lujano, second of Mrs. Weeks.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C08/09-0989 Allbest Enterprises, LLC  
Aka Allbest Assisted Living 2  
2C08/09-1112 Mayan Mexican Bistro LLC

Mr. 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 civil penalties of \$1,000.00 be assessed against these employers. The Commission unanimously assessed the recommended penalty of \$1,000.00 against employers #0989 and 1112 on motion of Mrs. Weeks, second of Mr. Lujano.

Discussion & Action of Proposed OSHA Citations and Penalties

Bowles Contracting Inc. dba Wall Tech Planned  
3310 W. Bell Road, #104 Yrs/Business – 15  
Phoenix, AZ 85053 Empl. Cov. by Insp. – 11

Site Location: 1870 W. Germann Road, Chandler, AZ 85286  
Inspection #: A7717/313125999  
Insp. Date: 03/31/09

GROUPED SERIOUS – The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from accident.

Citation 1, item 1a – One employee was working on a scaffold 3' wide, 10' long and 21' high that did not have all the working levels of the scaffold fully planked to prevent a fall.

Citation 1, item 1b - The employer did not have available on-site a qualified competent person during the erection and inspection of a scaffold from which employees were working. (One inspection in the past three years with no violations).

Div. Proposal - \$750.00 Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – Four employees were working on a canopy roof approximately 16' above ground level without utilizing a fall protection system to prevent a fall.

Div. Proposal - \$ 750.00 Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$1,500.00 TOTAL FORMULA AMT - \$1,500.00

Bill Wright 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 \$1,500.00 on motion of Mr. Lujano, second of Mr. McCarthy.

Red Star Plumbing, LLC Planned  
2235 W. 1<sup>st</sup> Street, Suite 110 Yrs/Business – 5  
Tempe, AZ 85281 Empl. Cov. by Insp. – 3

Site Location: 1607 N. Dysart Road, Avondale, AZ 85392  
Inspection #: Z5834/313060576  
Insp. Date: 02/06/09

SERIOUS – Citation 1, item 1 – One employee was working 10' above ground from a scissor lift, while standing on the outside of the mid-rail and top rail without utilizing a fall arrest system or other equivalent means to prevent a fall.

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

**SERIOUS** – Citation 1, item 2 – One untrained employee was working from a scissor lift at a height of 12' above ground level.

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$1,500.00

TOTAL FORMULA AMT - \$1,500.00

Bill Wright 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 \$1,500.00 on motion of Mr. Lujano, second of Mr. McCarthy.

Coreslab Structures Arizona Inc.

P.O. Box 18150

Phoenix, AZ 85005

Planned

Yrs/Business – 27

Empl. Cov. by Insp. – 160

Site Location: 5026 S. 43<sup>rd</sup> Avenue, Phoenix, AZ 85041

Inspection #: A7717/313160137

Insp. Date: 04/02/09

**SERIOUS** – Citation 1, item 1 – One employee was inflating multi-piece rim wheels without using a restraining device.

(One inspection in the past three years with 7 nonserious violations).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

**SERIOUS** – Citation 1, item 2 – One employee was operating a horizontal band saw which did not have the unused portion of the blade guarded. There were three other instances of this violation.

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

**SERIOUS** – Citation 1, item 3 – A 50 ton H press was lacking a guard. There were three other instances of this violation.

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

TOTAL DIV. PROP. - \$5,250.00

TOTAL FORMULA AMT - \$5,250.00

Bill Wright 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 \$5,250.00 on motion of Mr. McCarthy, second of Mr. Lujano.

Commissioner Parker arrived during discussion of the following OSHA file and participated in the vote.

Euro Med Foundation

4845 E. Thunderbird Road, Suite 2

Scottsdale, AZ 85254

Complaint

Yrs/Business – 6

Empl. Cov. by Insp. – 6

Site Location: 4825 E. Thunderbird Road, Suite 2, Scottsdale, AZ 85254

Inspection #: Y8053/313088064

Insp. Date: 03/11/09

**SERIOUS** – Citation 1, item 1 – The employer did not establish a written exposure control plan designed to eliminate or minimize employee exposure to blood or other potentially infectious materials

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – Employees are not using a fume hood while mixing chemotherapy drugs.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – Euro Med had not provided training for employees on the dangers of the cytotoxic drugs used.

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$2,250.00

TOTAL FORMULA AMT - \$2,250.00

Bill Wright 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 \$2,250.00 on motion of Mr. Lujano, second of Mr. McCarthy.

S Diamond Steel Inc.  
4205 W. Lower Buckeye Road  
Phoenix, AZ 85009

Unprogram Related  
Yrs/Business – 10  
Empl. Cov. by Insp. – 16

Site Location: 15257 N. Scottsdale Road, Scottsdale, AZ 85254

Inspection #: Q7984/313060998

Insp. Date: 02/20/09

SERIOUS – Citation 1, item 1 – One employee was operating a grinder that was lacking a guard. There was another instance of this violation.

(No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

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 \$1,250.00 on motion of Mr. McCarthy, second of Mr. Lujano.

C S Construction, Inc.  
22023 N. 20<sup>th</sup> Avenue  
Phoenix, AZ 85027

Planned  
Yrs/Business – 22  
Empl. Cov. by Insp. – 2

Site Location: Intersection Cactus Road & Dysart Road, El Mirage, AZ 85335

Inspection #: Q7984/313160285

Insp. Date: 04/14/09

SERIOUS – Citation 1, item 1 – One employee was working on a boom truck approximately 20' above the ground level without utilizing a full body harness and a lanyard attached to the boom basket.

(No inspection history in the past three years).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

Bill Wright summarized the citation and proposed penalty as listed. Following inspection of photos of this violation, Mr. Lujano made a motion to issue the citation and assess the recommended penalty of \$1,750.00 which was seconded by Mrs. Weeks. Ms. McGrory asked Mr. Wright about employer knowledge. Mr. Wright responded that the employer should have known of the violation and should have instructed the worker to wear the harness. Mr. Parker asked if the employer had a safety program and had provided training. Mr. Wright advised that the employer did have a good safety program and that they had provided training. Mr. Parker stated that he believed the employer had met its burden by providing the training and safety equipment. Mr. Lujano called for the question. Following discussion on the point of order and the issue of employer knowledge, the Commission approved issuing the citation and assessed the recommended penalty of \$1,750.00 with Mr. Parker voting against issuing the

citation.

James Michael Cline dba Cline Masonry Inc.  
5985 W. Filly Drive  
Tucson, AZ 85743

Complaint  
Yrs/Business – 23  
Empl. Cov. by Insp. – 11

Site Location: 1050 W. Beta Street, Green Valley, AZ 85743  
Inspection #: F3875/313060816  
Insp. Date: 02/20/09

GROUPED SERIOUS – The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from an accident.

Citation 1, item 1a – Employees were working on a steel welded-frame scaffold measuring 15' high, 5' wide and 112' long that was not fully planked between the front uprights and the guardrail supports, exposing the employees to a 24" opening on the walking/working platforms.

Citation 1, item 1b - Employees were working on a steel welded-frame scaffold that measured 15' high, 5' wide and 112' long and the scaffold frame posts were resting on loose lumber with out base plates or other adequate firm foundation.

Citation 1, item 1c - Employees were working on a steel welded-frame scaffold measuring 15' high, 5' wide and 112' long and were not provided any ladder(s) or other safe means of access.

Citation 1, item 1d - Employees working on and below multiple sections of the steel-welded frame scaffold measuring 15' high, 5' wide and 112' long and the toe boards were not in place to protect employees below from being hit by objects falling from above such as an 8" by 16" cement block.

(Two inspections with three serious and three nonserious violations in the past three years).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

GROUPED SERIOUS – The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from an accident.

Citation 1, item 2a – The employer failed to provide a competent person to conduct daily inspections of the scaffold for visual defects such as missing planks, base plates, ladders, toe-boards and guardrails.

Citation 1, item 2b - The employer failed to provide a competent person qualified in scaffold erection and capable of identifying and correcting existing hazards which were dangerous to employees such as missing planks, ladders, toe-boards and guardrails.

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 1, item 3 – Employees were working on a steel welded-frame scaffold measuring 15' high, 5' wide and 112' long that did not have any guardrails installed along the open sides and ends of the platform.

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 1, item 4 – Employees working on a steel welded-frame scaffold 15' high, 5' wide and 112' long were not trained by a qualified person in the subject matter to recognize the hazards associated with the type of scaffold being used and to understand the procedures to control or minimize those hazards.

Div. Proposal - \$1,400.00

Formula Amt. - \$1,400.00

TOTAL DIV. PROP. - \$7,400.00

TOTAL FORMULA AMT - \$7,400.00

Bill Wright summarized the citations and proposed penalty as listed. In response to a question from Mr. Parker, he explained why some of the items were grouped. Following discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$7,400.00 on motion of Mr. McCarthy, second of Mr. Lujano.

Embree Construction Group, Inc.  
4747 Williams Drive  
Georgetown, TX 78633

Planned  
Yrs/Business - 20  
Empl. Cov. by Insp. - 2

Site Location: 1607 N. Dysart Road, Avondale, AZ 85392  
Inspection #: Z5834/313060535  
Insp. Date: 02/06/09

GROUPED SERIOUS - The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from accident.

Citation 1, item 1a - The employer did not ensure one employee using a powder-actuated tool was trained in the safe operation of this tool.

Citation 1, item 1b - An employee who was operating a powder-actuated tool left the loaded tool unattended on the floor of a scissor lift.

Citation 1, item 1c - An employee left misfired and unused powder-actuated tool charge strips lying on the work platform of a scissor lift.

(One inspection with no violations in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1, item 2 - A chop saw used for cutting metal stud framing did not have a properly installed guard on the lower portion of the blade to prevent the operator from placing hands/fingers into the danger zone during operation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1, item 3 - Two employees were working from a scissor lift of which one was standing on the mid-rail and the top-rail without the use of a fall arrest system or other equivalent means to prevent a 12' fall and the mid-rail chain was not installed.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1, item 4 - Two untrained employees were working from a scissor lift at a height of 12' above ground level.

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS - Citation 1, item 5 - One employee was working from a small metal overhang 12' above ground level without utilizing a fall protection system or other equivalent means to prevent a fall.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1, item 6 - The employer did not implement a training program that instructed each employee in the recognition and avoidance of fall hazards associated with working at elevated heights of 6' or more above ground level and in the care and use of a fall protection system.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL DIV. PROP. - \$7,250.00

TOTAL FORMULA AMT - \$7,250.00

Bill Wright 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 \$7,250.00 on motion of Mr. Lujano, second of Mrs. Weeks.

First Choice Commercial Builders, Inc.  
9232 N. 19<sup>th</sup> Avenue  
Phoenix, AZ 85021

Planned  
Yrs/Business - 2  
Empl. Cov. by Insp. - 2

Site Location: 1870 W. Germann Rd., Chandler, AZ 85286  
Inspection #: A7717/313125973  
Insp. Date: 03/31/09

SERIOUS - Citation 1, item 1 - Two employees were working on a scaffold 3' wide, 10' long and 16' high that did not have the working level of the scaffold fully planked to prevent a fall.

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 2 - Two employees were working on a scaffold 3' wide, 10' long and 16' high which was lacking guardrails on all open ends and sides.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 3 - Two employees were working on a scaffold system 3' wide, 10' long and 16' high without training by a qualified person in the hazards associated with working on scaffolding.

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$2,250.00

TOTAL FORMULA AMT - \$2,250.00

Bill Wright 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 \$2,250.00 on motion of Mr. McCarthy, second of Mrs. Weeks.

Chairman Delfs stated that due to time constraints, he was suspending consideration of the remaining OSHA agenda items until the next Commission meeting.

Discussion &/or Action regarding Appointment of Vice Chairman of the Industrial Commission

Chairman Delfs asked if there were any nominations for Vice Chairman. Mr. Lujano nominated Mrs. Weeks for the position which was seconded by Mr. McCarthy and unanimously approved. Mrs. Weeks agreed that she would accept the position.

Discussion &/or Action regarding Operations of the Industrial Commission

Ms. McGrory stated there was nothing new to report.

Discussion &/or Action regarding Legislation

Scot Butler joined the meeting telephonically and gave an update on the legislatures progress on the budget.

Mr. Butler also gave an update on legislation and advised that HB2198 was amended but the new language does not resolve all of the Commission's concerns and he recommended that the Commission continue to be in opposition. He stated that it is not known at this time whether any more bills will be considered besides the budget.

Discussion &/or Action regarding Industrial Commission of Arizona, for Itself and as Trustee for the Special Fund of the Industrial Commission of Arizona; and the Special Fund of the Industrial Commission of Arizona, Petitioners, v. Dean Martin, Arizona State Treasurer, in his official capacity; Janice K. Brewer, Governor of the State of Arizona, in her official capacity, Respondents. 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 Pending Litigation or Settlement Discussions in order to resolve Litigation. 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 unanimously voted to go into Executive Session at 11:40 a.m. on motion of Mr. McCarthy, second of Mr. Lujano.

Upon return to General Session, the Commission unanimously approved the motion of Mr. Lujano, second by Mr. McCarthy, that the Commission proceed with litigation challenging the attempted legislative appropriation of Special Fund assets and directed the Commission's attorneys to file an action in Superior Court.

Announcements

Chairman Delfs recognized ex-Commissioner Jim Whitten and stated his appreciation for his attendance at the meeting.

Ms. Hilton reminded the Commissioners that the next meeting will be held on Wednesday, June 10, 2009 at 1:00 p.m.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 12:15 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By Janice K. Brewer  
Chairman

By \_\_\_\_\_  
Vice Chairman

By James W. Lujano, Sr.  
Member

ATTEST:

By John McCarthy  
Member

Teresa Hilton  
Commission Secretary

By [Signature]  
Member