

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington

Conference Room 308

Phoenix, Arizona 85007

Thursday, November 12, 2009 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	Marcia Weeks	Vice Chairman
	Louis W. Lujano, Sr.	Member
	David Parker	Member (video conference)
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Renee Pastor	Self Insurance Manager
	Glenn Hurd	Asst. Chief Financial Officer
	Jeri McAnerny	Tax Accountant
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Mr. McCarthy was not able to attend. Also in attendance were Scot Butler, the agency's lobbyist, Jeff Homer of General Dynamics, Jen Jones of Snell & Wilmer, and Jeremy Bethancourt.

Approval of Minutes of November 5, 2009 Meeting

The Commission approved the Minutes of the November 5, 2009 meeting on motion of Mr. Lujano, second of Mr. Parker. Mrs. Weeks abstained.

Discussion & Action of Proposed OSHA Citations and Penalties

ETW Group, Inc.	Planned
P.O. Box 4258	Yrs/Business – 9
<u>Apache Junction, AZ 85278</u>	Empl. Cov. by Insp. – 2
Site Location: 3220 S. 48 th Street, Phoenix, AZ 85040	
Inspection #: A7746/313738155	
Insp. Date: 08/24/09	

SERIOUS – Citation 1, item 1 – The employer failed to ensure a masonry sub-contractor had installed a guardrail system on the end of the platform of a frame scaffold that the crew was utilizing (1926.451(g)(4)(i).

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – The employer did not ensure that each employee of a sub-contractor on a working surface with an unprotected side or edge more than 6' above ground level was protected from falling by the use of a guardrail system, safety net system or personal fall arrest system (1926.501(b)(1).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$1,500.00

TOTAL FORMULA AMT - \$1,500.00

Site Location: 9127 N. Vista Verde, Fountain Hills, AZ 85268

Insp. #: Z5834/313891335

Insp. Date: 09/25/09

SERIOUS – Citation 1, item 1 – Four employees were working from the balcony 15' - 20' above ground level without utilizing a fall protection system or other equivalent means to prevent a fall (1926.501(b)(1). There were two other instances of this violation.

(No inspection history in the past three years).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1, item 2 – The employer did not ensure each employee was protected from falling in or through holes in the working surface 15' above the next lower level by covers or other protective systems (1926.501(b)(4)(i).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1, item 3 – Four employees were using a stairway that did not have a handrail system installed on all open sides to prevent a 15' fall(1926.1052(c)(1)(ii).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL DIV. PROP. - \$3,000.00

TOTAL FORMULA AMT - \$3,000.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. He advised that at last week's meeting, the Commission had approved citations for the subcontractor on the site and had combined items 2 and 3 into a grouped citation for a total penalty of \$2,000.00. He recommended that the same change be made for this employer, the general contractor. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$2,000.00 on motion of Mr. Parker, second of Mr. Lujano.

AA-Anchor Fence, Inc. dba Associated Fence of Glendale

7630 N. 67th Avenue

Glendale, AZ 85301

Planned

Yrs/Business – 17

Empl. Cov. by Insp. – 10

Site Location: 7630 N. 67th Avenue, Glendale, AZ 85301

Insp. #: L3419/313891517

Insp. Date: 10/08/09

SERIOUS – Citation 1, item 1 – The point-of-operation on a homemade hydraulic ironworker used for notching tubing was not guarded to prevent employees from having any part of their body in the danger zone during the operating cycle (1910.212(a)(3)(ii).

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

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 2 – An electrical panel operating at 50 volts or more was not equipped with a dead front cover to prevent contact with energized electrical components (1910.303(g)(2)(i).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL DIV. PROP. - \$2,500.00

TOTAL FORMULA AMT - \$2,500.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the

recommended penalty of \$2,500.00 on motion of Mr. Parker, second of Mr. Lujano.

Discussion & Action of Requests for Renewal of Self Insurance Authority

Pima County – Mr. Parker recused himself from this agenda item and was out of view on the video conferencing system. Renee Pastor presented staff's renewal report along with current Moody's and Fitch bond ratings for general obligation bonds, revenue bonds and certificate of participation, and a Dunn and Bradstreet credit report. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority due to the County's good financial condition, total assets of \$423,501 million, clean audit reports, acceptable credit ratings and acceptable bond and COP ratings. Mr. Lujano made a motion for approval. Mrs. Weeks noted that claim denial rates were still higher than they should be. Ms. Pastor explained that a large portion of the denied claims were "exposure only" claims. Mrs. Weeks also questioned whether more current financials than June of 2008 could be obtained. Ms. Pastor advised that new financial reports should be available next month.

Mrs. Weeks seconded the motion for approval. Mr. Delfs stated that generally self-insureds are required to deposit security equal to 125% of unpaid losses and questioned the exemption from posting securities since net assets are at \$13.2 million and current unpaid losses are in excess of \$11 million and questioned whether, given the current economic and financial climate, if the Commission had the ability to require Pima County to add assets to the service fund or obtain additional insurance coverage. Ms. Pastor explained that Rule 20-5-1114 does not require that the fund have assets at 125% but just provides that the fund has to be actuarially sound and meet liabilities. Ms. McGrory stated that staff would have to review the rules, but she believes that if the exemption for posting security has been granted, the Commission would not have the ability to require the employer provide additional security. She stated that staff could review the rules and the Commission could consider revisiting the rule since it was promulgated in a different environment when no one seemed to recognize the potential for cities and counties to go bankrupt. Mr. Delfs asked whether the County's internal service fund was just for workers' compensation or for all risk. Ms. Pastor advised that it was for their entire risk pool, but some other self insured cities and counties report their workers' compensation risk separately. She stated that Pima County has \$25 million in excess liability and other insurance coverage that covers some of the risk and their risk management fund appears solid.

Ms. Weeks questioned approving this self-insurance renewal based on 2008 financial statements. Ms. Pastor explained the timing of the statements. In response to a question from Ms. McGrory, Ms. Pastor stated that she expected the 2009 financial statements in approximately one month. Ms. McGrory recommended that the Commission table consideration of this renewal until the 2009 financial statements are received. Following further discussion on the need to see the 2009 financial statements, Chairman Delfs tabled consideration of self insurance renewal until more current financial information is obtained.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C08/09-1236	E.T.I. Technologies, LLC dba Kirby of Mesa aka Elite Technologies, Inc.
2C08/09-1841	JCA Mobility Systems LLC dba Worldwide Mobility
2C09/10-0215	Heavy Duty Radiator Services, L.L.C.
2C09/10-0057	Patrick Nilz & Bobby Nilz, Husband & Wife dba All R.V. Service Center, Inc.
2C08/09-2093	RAM, LLC dba Catalina Market
2C08/09-2078	A2J4 Thai Express, Inc. dba Neo Tokyo
2C09/10-0424	Jose Sorto, a Single Man dba Jose's Pallets
2C09/10-0380	Louis F. Capello, Jr., a Single Man

dba West Sun Tech Group

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 that civil penalties of \$1,000.00 be assessed against each of the above listed employers. The Commission unanimously approved civil penalties of \$1,000.00 be assessed against employers #1236, 1841, 0215, 0057, 2093, 2078, 0424 and 0380 on motion of Mr. Lujano, second of Mrs. Weeks.

Discussion &/or Action regarding Budget and Operations of the Industrial Commission

Ms. McGrory stated that there was nothing new to report.

Discussion &/or Action regarding Legislation

Scot Butler presented an update regarding the Special Session which will be starting next week and advised that it will be limited to redoing some of the budget cuts vetoed by Governor Brewer in prior sessions. If all goes well, the Legislature will probably come back in December to focus on revenue. Mr. Butler stated that the most significant change has been the Governor's reorganization of her top staff who are more familiar with budgeting.

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

Mr. Wade stated there was nothing new to report.

Discussion &/or Action regarding Industrial Commission of Arizona, a state government entity, Plaintiff/Appellant/Cross-Appellee, v. Old Republic Insurance Company, a foreign corporation; Zurich American Insurance Company, a foreign corporation, Defendants/Appellees, and Liberty Insurance Corporation, a foreign corporation, Defendant/Appellee/Cross-Appellant. 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 on motion of Mr. Lujano, second of Mr. Delfs. Executive Session Minutes are kept separately.

Upon return to General Session, Mr. Parker made a motion to proceed with the filing of a petition for review in the Arizona Supreme Court which was seconded by Mrs. Weeks. Mr. Lujano suggested that the Commission wait 30 days to take action. Mr. Wade clarified that the Commission must, if it is going to file a petition for review, file it within 30 days of November 3, 2009 unless an extension is requested. Mr. Delfs stated that we may not have all five

Commissioners in attendance any time soon and called for a vote. The motion passed with Mr. Parker, Mrs. Weeks and Mr. Delfs voting aye and Mr. Lujano voting nay.

Announcements

Mr. Parker announced that he attended a stakeholders meeting in Tucson last week and that he was very impressed with Darin Perkins, Bill Wright and Mark Norton and the level of respect they received from the regulated community.

Ms. Hilton reminded the Commissioners that the next meeting was scheduled for Thursday, November 19th. Future meetings were scheduled for Thursday, December 10th, Thursday, December 17th and Thursday, December 31st.

Public Comment

Jeremy Bethancourt introduced himself to Commissioner Parker.

There being no further business to come before the Commission, Chairman Delfs adjourned the meeting at 2:05 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By _____

Chairman

By *Patricia Weeks*

Vice Chairman

By *Louis W. Lujano, Sr.*

Member

ATTEST:

By _____

Member

Teresa Hilton
Commission Secretary

By *[Signature]*

Member