

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 W. Washington
Conference Room 308
Phoenix, Arizona 85007
Thursday, April 29, 2010 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	Marcia Weeks	Vice Chairman
	John A. McCarthy, Jr.	Member
	David Parker	Member (video conference)
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Gary Norem	Chief Financial Officer
	Darin Perkins	Director, ADOSH
	Renee Pastor	Self Insurance Manager
	Jeri McAnerny	Tax Accountant
	Susan Manandhar	Accountant
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:04 p.m. noting a quorum present. Also present were Scot Butler, the agency's lobbyist and Teresa Yi of Snell & Wilmer.

Approval of Minutes of April 15, 2010 Meeting

The Commission unanimously approved the Minutes of April 15, 2010 on motion of Mr. McCarthy, second of Mrs. Weeks.

Discussion &/or Action regarding Legislation

Scot Butler advised that the legislature is running the final sequence of bills and hopes to adjourn by the end of the day. He provided an update on the different floor amendments to SB1045. He explained the risk if the Legislature fails to take action on SB 1045 and suggested that the Commission issue a position regarding the same. The Commission unanimously adopted a statement citing its concerns if a bill is not enacted extending the life of SCF beyond July 1, 2010, on motion of Mr. McCarthy, second of Mrs. Weeks.

Discussion &/or Action regarding June 30, 2009 Special Fund Actuarial Report and Financial Statements

Present telephonically for this agenda item was Gail Flannery of AMI Risk Consultants, Inc. Ms. Flannery presented an overview of the Special Fund's Loss and Loss Adjustment Expense Reserves Review as of June 30, 2009 and responded to questions from the Commissioners. Discussion followed regarding the confidence level, risk margin and loss reserve forecasts. Mr. Norem addressed the Special Fund's June 30, 2009 Statement of Net Assets and explained some of the assets and liabilities. Mr. Parker explained the benefits of reserving for new claims that may arise in the year subsequent to the Report date. The Commission discussed the relationship between "booking" the reserves at a given confidence level and premium assessments. Chairman Delfs described additional information that would be helpful to the Commission in making decisions regarding the appropriate confidence level and premium assessments.

Discussion & Action of ADOSH Discrimination Complaints

#09-80 Miguel Legaspi v Fisher Industries - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Legaspi. In his complaint,

Mr. Legaspi alleged that he was terminated for bringing up various on the job safety concerns. The employer's position is that Mr. Legaspi was laid-off because there was no work for him to perform.

Mr. Perkins responded to questions from the Commissioners. The Division recommendation was to pursue the matter because it appears that the employer terminated Mr. Legaspi's employment as a result of his raising safety concerns. Mr. Perkins described evidence that established a connection between the protected activity (Mr. Legaspi complaining about the safety of training his supervisor on how to operate the Liebherr crane, his insistence that three individuals assemble and disassemble the crane, and his complaints about welding with his supervisor) and the adverse action (termination). In addition, Mr. Perkins noted that the employer hired two new workers to replace Mr. Legaspi four days after the employer laid-off Mr. Legaspi. Following further discussion, the Commission unanimously voted to pursue the complaint on motion of Mr. Parker, second of Mr. McCarthy.

#10-12 Madelynn Kosco v Pink Jeep Tours, Inc. - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Ms. Kosco. In her complaint, Ms. Kosco alleged that she was terminated because she had called the Arizona Division of Occupational Safety and Health in April 2009 about an unsafe working condition. Ms. Kosco reported that a co-worker verbally attacked her and she feared for her safety. The employer terminated Ms. Kosco employment seven months after she called ADOSH. The employer's position is that Ms. Kosco was terminated for violating the Guide Attendance Policy, specifically for missing four tours in a 12 month rolling period.

Mr. Perkins responded to questions from the Commissioners. The Division recommendation was not to pursue the complaint because there was insufficient evidence to establish a connection between the protected activity (contacting ADOSH to discuss her concerns about the incident where her coworker was verbally abusive to her) and the adverse action (Ms. Kosco's termination). Following further discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. McCarthy, second of Mrs. Weeks.

Discussion & Action of Proposed OSHA Citations and Penalties

The Fishel Construction Company (FN)
4203 E. Irvington Road
Tucson, AZ 85714

Complaint
Yrs/Business - 75
Empl. Cov. by Insp. - 5

Site Location: Ina & Le Canada, Tucson, AZ 85714
Inspection #: P0775/314168709
Insp. Date: 02/10/10

SERIOUS - Citation 1, item 1 - The excavation 6' to 12' deep, 450' long and 3' to 6' wide at the bottom had spoil piles that were not kept at least two feet from the edge of the excavation (1926.651(j)(2)).

(No inspection history in the past three years).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS - Citation 1, item 2 - Two employees working along the bottom of the excavation 6' to 12' deep, 450' long, 3' to 6' wide at the bottom and 3' to 10' wide at the top were not protected from cave-ins by an adequate protective system 91926.652(a)(1).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$4,500.00

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 \$4,500.00 on motion of Mr. McCarthy, second of Mrs. Weeks.

Horizon Steel Co., Inc.
2325 W. Curtis Road
Tucson, AZ 85705

Planned
Yrs/Business – 31
Empl. Cov. by Insp. – 13

Site Location: 2325 W. Curtis Road, Tucson, AZ 85705
Inspection #: F3875/314224940
Insp. Date: 02/11/10

SERIOUS – Citation 1, item 1 – The horizontal band saw had an unused portion of the blade that was not guarded (1910.212(a)(1)).

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – The cords to the two grinders were damaged with cuts on the insulation exposing live conductors (1910.334(a)(2)(ii)).

Div. Proposal - \$ 600.00

Formula Amt. - \$ 600.00

TOTAL PENALTY - \$1,350.00

TOTAL FORMULA AMT. - \$1,350.00

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 \$1,350.00 on motion of Mrs. Weeks, second of Mr. McCarthy.

Milum Textile Services Co.
333 N. 7th Avenue
Phoenix, AZ 85007

Follow-up
Yrs/Business – 53
Empl. Cov. by Insp. – 93

Site Location: 333 N. 7th Avenue, Phoenix, AZ 85007
Inspection #: Z5834/314020181
Insp. Date: 12/02/09

SERIOUS – Citation 1, item 1 – There is no system to warn of belt start-up and no emergency stop buttons or similar devices in place for the two belt conveyors (23.403.A).

(Five inspections with 6 nonserious violations in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 2 – Maintenance personnel stand on I-Beams up to 15' above the concrete floor to reach valves that need to be accessed without utilizing a fall protection system (1910.23(c)(1)). There was another instance of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 3 – Two employees were using damaged fall arrest gear to include harnesses and lanyard while performing maintenance work on the roof up to 40' above ground level (1910.132(e)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

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 accident.

Citation 1, item 4a – The employer made modifications to the forklift without written approval from the manufacturer (1910.178(a)(4)).

Citation 1, item 4b - Each operator of a forklift was not trained regarding the safe operation of powered industrial trucks (1910.178(l)(1)(i)).

Citation 1, item 4c - The forklift had a damaged seatbelt, a low tire and was missing part of its counterweight and was not removed from service (1910.178(p)(1)).

Citation 1, item 4d - The forklift was not examined daily 91910.178(q)(7).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

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 accident.

Citation 1, item 5a – One shop built monorail crane did not have the rated load of the crane marked on each side of the crane (1910.179(b)(5).

Citation 1, item 5b - One unrated shop built monorail crane was missing trolley stops at both ends of the I-Beam 91910.179(e)(1)(i).

Citation 1, item 5c - The 900 pound shop built monorail crane was missing one trolley bumper (1910.179(e)(3)(iii). There was another instance of this violation.

Citation 1, item 5d - The 1-ton hoist on the monorail crane had a top hook that was missing its safety latch (1910.179(h094).

Citation 1, item 5e - Overhead underhung trolley hoisting units were not subjected to monthly hook inspections with signed reports (1910.179(j)(2)(iii).

Citation 1, item 5f - Monthly inspections of hoist chains had not been performed on a hoist (1910.179(j)(2)9iv). There were two other instances of this violation.

Citation 1, item 5g - The 900 pound shop built monorail crane with the 1 ton hoist had not received a periodic inspection in the last 12 months (1910.179(j)(3).

Citation 1, item 5h - The shop built monorail crane had a bent bridge (1910.179(l)(3)9iii).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1, item 6 – The hanging system had one broken Plexiglas guard (1910.212(a)(1). There were five other instances of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 7 – A sewing machine did not have a needle barrier installed to prevent the operator from placing any part of the body into the point of operation during the operating cycle (1910.212(a)(3)(ii). There was another instance of this violation

Div. Proposal - \$700.00

Formula Amt. - \$700.00

SERIOUS – Citation 1, item 8 – The towel unspooling machine did not have a guard covering the unsmooth shaft and unsmooth shaft end (1910.219(c)(4)(i). There was another instance of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 9- The hanging system did not have guards installed to prevent a person from placing any part of their body into the danger zone during the operation of the conveyor system, where the guard was missing covering the sprockets and chain. There was another instance of this violation.

Div. Proposal - \$875.00

Formula Amt. - \$875.00

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 accident.

Citation 1, item 10a - Safety related work practices had not been developed or implemented by maintenance personnel performing work on or near equipment or circuits that were energized or could be energized (1910.333(a).

Citation 1, item 10b- Employees were not provided with adequate personnel protective equipment designed to protect employees while working on energized equipment (1910.335(a)(1)(i)).

Div. Proposal - \$ 1,250.00
TOTAL PENALTY - \$11,075.00

Formula Amt. - \$ 1,250.00
TOTAL FORMULA AMT. - \$11,075.00

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 \$11,075.00 on motion of Mr. McCarthy, second of Mr. Parker.

Mr. Parker commented that federal OSHA is exploring potential changes to its penalty policy. Mr. Perkins stated that it could affect penalty amounts.

Discussion & Action of Proposed Civil Penalties against Uninsured Employers.

2C09/10-1620	Ramon Macazani & Jane Doe, Husband & Wife dba Arizona Radiator & Muffler Service, Inc.
2C09/10-1680	Reliance Aeroproducts International, L.P.
2C09/10-2408	Too Kool, LLC dba Warren's Jazz Bistro
2C09/10-1675	Uribe Mexican Food, Inc. dba Filibertos Mexican Food
2C09/10-2064	Wasauna, LLC

Mr. Wade advised that he is no longer recommending a penalty for employer #2408. With regard to the remaining 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), civil penalties of \$1,000.00 have been recommended against these employers. Mr. Wade provided additional information regarding these employers and responded to questions from the Commission. Following discussion, the Commission unanimously approved civil penalties of \$1,000.00 against employers #1620, 1680, 1675 and 2064 on motion of Mrs. Weeks, second of Mr. McCarthy.

Discussion & Action of Request for Renewal of Self Insurance Authority

The Procter & Gamble Company - Renee Pastor presented staff's renewal report along with a current Dunn and Bradstreet credit rating. She responded to questions from the Commissioners. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority due to the Company's solid financial condition with worldwide assets of just over \$134 billion, continued profitability record, an acceptable credit rating and a clean audit report. Following discussion, the Commission unanimously approved continuance of self insurance authority on motion of Mr. McCarthy, second of Mr. Parker.

Executive Session pursuant to A.R.S. §38-431.03(A)(2) to discuss records exempt by law from public inspection regarding the application for renewal of self insurance authority for Quiktrip Corporation

The Commissioners agreed that an Executive Session was not necessary since they had thoroughly reviewed the confidential financial information.

General Session for Discussion & Action regarding Application for Renewal of Self Insurance Authority for Quiktrip Corporation

Renee Pastor presented staff's renewal report along with a current Dunn and Bradstreet credit rating. She responded to questions from the Commissioners. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority due to the Company's good financial condition, an acceptable credit rating and the meeting of all

requirements required for a self-insured employer in the State of Arizona. Following discussion, Mr. Parker made a motion to grant self insurance authority which was seconded by Mr. McCarthy. The motion was then amended to grant "renewal" of self insurance authority and was unanimously approved.

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

Ms. McGrory advised that the Senate has confirmed Kathleen Oster as Commissioner to replace Mr. Lujano. She also provided an update on the status of the other Commission appointment.

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 advised that Judge Grant held oral arguments on April 23rd. Ms. McGrory attended the hearing and provided a brief summary of the oral arguments.

Announcements and Scheduling of Future Meetings

Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Thursday, May 13th.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:45 p.m.

APPROVED: THE INDUSTRIAL COMMISSION OF ARIZONA

By [Signature]
Chairman

By [Signature]
Vice Chairman

By [Signature]
Member

By [Signature]
Member

ATTEST:

[Signature]
Commission Secretary

By _____
Member