

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington

Conference Room 308

Phoenix, Arizona 85007

Wednesday, August 18, 2010 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	David Parker	Vice Chairman
	Kathleen Oster	Member
	Susan Strickler	Member
	Darin Perkins	Acting Director
	Andrew Wade	Chief Legal Counsel
	Renee Pastor	Self Insurance Manager
	Randal Maruca	Labor Director
	Kara Dimas	Acting Commission Secretary

Chairman Delfs convened the Commission meeting at 1:05 p.m. noting a quorum present. Mr. McCarthy was not able to attend. Also present was Jason Weber of Snell & Wilmer, Mike Cook and Mark Beuker of Distinctive Custom Cabinetry, Lynn Greenawal, Cindy Bezarry and Kelly Gottschalk of the City of Tucson, John Huffman of Pinnacle Risk Management, and Liz Cadeoan of Ames Construction.

Approval of Minutes of August 5, 2010 Meeting

The Commission unanimously approved the Minutes of August 5, 2010 on motion of Mr. Parker, second of Ms. Oster, and unanimously approved.

Discussion & Action of Proposed OSHA Citations and Penalties

Ames Construction, Inc.	Fatality
8333 E. Hartford Drive	Yrs/Business – 24
Scottsdale, Arizona 85255	Empl. Cov. by Insp. – 15
Site Location: Hwy 74 & Lake Pleasant Road, Phoenix, AZ 85382	
Inspection #: I7163/314310137	
Insp. Date: 03/04/10	

SERIOUS – Citation 1, item 1 – One employee was driving a Mack truck without utilizing the seat belt of the vehicle (1926.0095(a)).

(No inspection history in the past three years).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1, item 2 – Traffic signs were not posted to warn employees of road hazards (1926.200(g)(1)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1, item 3 – The service brake system and the emergency brake system on a side dump trailer were not maintained in operable condition (1926.601(b)(1)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS – Citation 1, item 4 – All defects were not documented and corrected on a side dump trailer when placed in service (1926.601(b)(14)).

Div. Proposal - \$ 2,250.00

Formula Amt. - \$ 2,250.00

TOTAL PENALTY - \$18,500.00

TOTAL FORMULA AMT. - \$18,500.00

Darin Perkins explained that this matter had been presented at the meeting held on August 5, 2010 but had been tabled to allow additional review of Citation 1, Item 2. After further review, he recommends the Citation 1, Item 1, 3, and 4 remain the same and that Citation 1, Item 2 not be issued. The Division recommendation for Citation 1 item 1 is for the gravity-based penalty with no adjustment factors since the violation resulted in, caused, or contributed to the death of a worker. Mr. Parker made comments regarding his investigations into accidents such as this and that he agrees with staff recommendations. The Commission unanimously approved issuing the Citation as now recommended on motion of Mr. Parker, and second of Ms. Oster, Citation 1, item 1 would remain as originally recommended; Citation 1, item 3 is renumbered to item 2; and Citation 1, item 4 is renumbered to item 3 with a total penalty of \$11,500.00

LB3 Enterprises, Inc.
2098 Valley View Blvd.
El Cajon, California 92019

Complaint
Yrs/Business – 7
Empl. Cov. by Insp. – 12

Site Location: 2601 E. Huntington Drive, Flagstaff, AZ 86004
Inspection #: I7163/314538356
Insp. Date: 05/27/10

SERIOUS - Citation 1, item 1 – One employee was not instructed in the recognition and avoidance of hazards associated with trenching and excavation (1926.21(b)92).

-No inspection history in the past three years

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

SERIOUS – Citation 1, item 2 – The competent person at the jobsite did not conduct daily inspections of the excavation and adjacent areas through the course of the work to identify evidence of a situation that could result in a possible cave-in or other hazards (1926.651(k)(1)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

SERIOUS – Citation 1, item 3 – One employee was working in a 14' deep, 9' wide and 9' long manhole excavation with an intersecting trench 9' deep, 2' wide and 240' long that was lacking a protective system installed or other means to prevent a collapse (1926.652(a)(1)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1, item 4 – One employee was using a 15' extension ladder to gain access into a 14' deep excavation and the ladder did not extend 3' above the landing (1926.1053(b)(1)).

Div. Proposal - \$ 600.00

Formula Amt. - \$ 600.00

NON-SERIOUS – Citation 2, item 1 – A non-exempt employer, having more than 10 employees did not keep OSHA injury and illness records (1904.0001(a)(2)).

Div. Proposal - \$ 300.00

Formula Amt. - \$ 300.00

TOTAL PENALTY - \$4,900.00

TOTAL FORMULA AMT. - \$4,900.00

Mr. 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, Ms. Oster and Mr. Parker expressed a concern with Citation 1, item 3 and asked if the penalty amount should be increased due to the violation (lack of shoring) being a very serious matter. The Commission discussed how it appeared from the photographs that there was shoring present. Mr. Perkins stated that what appeared to be shoring might be utility lines. The Commission also discussed how it appeared there were attempts to bench the excavation. Mr. Delfs recommended the full penalty for the violation and suggested that Mr. Perkins have the authority to reduce the penalty during conference with the employer if there was some attempt at shoring. On motion by Ms. Oster and seconded by Mr. Parker, the Commission unanimously approved issuing the Citations and assessed a penalty of \$2,500.00 for Citation 1, item 3 for a total penalty of \$4,900.00.

Falcone Bros & Associates, Inc.
 15885 N. Equestrian Trail
 Tucson, Arizona 85739

Planned
 Yrs/Business - 15
 Empl. Cov. by Insp. - 6

Site Location: 900 S. Pinal Parkway, Florence, AZ 85132
 Inspection #: N5645/314667767
 Insp. Date: 06/30/10

SERIOUS - Citation 1, item 1 - A An employee was installing temporary traffic lights from an aerial lift at approximately 18' high without any type of fall protection (1926.453(b)(2)(v)).

-No inspection history in the past three years

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

SERIOUS - Citation 1, item 2 - The employee installing the temporary traffic lights from an aerial lift was not trained by a person qualified in this subject matter to recognize those hazards associated with the aerial lift and the procedures to control those hazards (1926.454(a)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

NON-SERIOUS - Citation 2, item 1 - The log and summary of recordable work-related injuries and illnesses was not maintained for the establishment (1904.0001(a)(2)).

Div. Proposal - \$ 300.00

Formula Amt. - \$ 300.00

TOTAL PENALTY - \$1,800.00

TOTAL FORMULA AMT. - \$1,800.00

Mr. 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 \$1,800.00 on motion of Mr. Parker, second of Ms. Strickler.

Headlee Roofing Co., Inc.
 P.O. Box 51808
 Phoenix, Arizona 85076

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

Site Location: 21754 S. 214th Street, Queen Creek, Arizona 85142
 Inspection #: A7717/314617945
 Insp. Date: 06/02/10

Red Mountain Health Services, LLC
1223 S. Clearview Avenue, Suite 110
Mesa, Arizona 85209

Planned
Yrs/Business – 4
Empl. Cov. by Insp. – 35

Site Location: 1223 S. Clearview Avenue, Suite 110, Mesa, Arizona 85209
Inspection #: U9805/314667734
Insp. Date: 06/30/10

SERIOUS – Citation 1, item 1a – The employer did not implement an exposure control plan designed to eliminate or minimize exposure to blood or other potentially infectious materials (1910.1030(c)(1)(i)).

-No inspection history in the past three years

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 2 – Hepatitis B vaccinations were not made available to the employees (1910.1030(f)(2)(i)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$2,500.00

TOTAL FORMULA AMT. - \$2,500.00

Mr. Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners regarding the exposure to the blood born pathogens and the fact that the vaccinations were not denied, they were just not offered. Following discussion 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 Ms. Strickler.

Discussion & Action of Request for Renewal of Self Insurance Authority

City of Tucson – Mr. Delfs stated that he was recusing himself from discussion and action in this matter. Renee Pastor presented staff's renewal report along with current Moody's, and Dunn and Bradstreet credit ratings. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the financial stability and profitability, with total assets of just under \$2.91 billion and net assets of \$1.26 billion as of June 30, 2009. Ms. Pastor responded to questions from the Commissioners. Ms. Pastor and the Commission asked questions of representatives from the City of Tucson and Pinnacle Risk Management. The City representatives explained their plan to better describe the workers' compensation fund as a trust fund. Mr. Parker asked for clarification on the City's reserving method and what they are doing to make sure their reserves are accurate. John Huffman from Pinnacle Risk Management and Kelly Gottschalk from the City responded. Ms. Oster asked the representatives about reserving and present values. The City responded and mentioned they were using an 8% discount factor. Mr. Parker had questions regarding the timing of the renewal and the use of the June 30, 2009 financial report and noted that the figures are over a year old. The City responded and noted that they are still working on the fiscal year 2010 data. The City representatives stated that they expect the City's fiscal year 2010 data to be significantly better than 2009, and they have passed the budget for 2011 and are working on the 2012 budget. Ms. Pastor noted that their self insurance fund has been underfunded for the last couple of years, and asked if there has been any changes since June 30th. She also asked about the fund being a trust dedicated for workers' compensation. The City representatives stated they have had discussions with the City Attorney about designating the risk fund as a trust fund.

Ms. Pastor stated that the City has posted approximately 22 million in Treasury Notes and staff would recommend the security be required to cover 135% of liabilities. Mr. Parker described his expectations with respect to the City's financial situation. The Commission further discussed the use of a trust for workers' compensation liabilities and an actuarial review of the City's reserves.

Ms. Strickler suggested approving renewal authority contingent on further review in six months. The City representative's explained that the City has budgeted for the expense of an actuarial report for this year. Mr. Wade suggested that the Commission could change the renewal date to February, rather than July. The Commission discussed the time-lag in obtaining financial information and the City representatives stated that they expected the 2010 financial reports to be completed by the end of 2010. The Commission discussed authorizing the City to self-insure until February 2011 and moving the renewal date to February.

Mr. Parker moved that the Commission grant renewal authority for the City of Tucson until February 2011, conditioned upon the City contracting for an outside actuarial analysis and report, having a workers' compensation trust fund in place or very close to being in place, and posting security at 135% of liabilities. Ms. Strickler seconded the motion and Mr. Parker, Ms. Strickler and Ms. Oster voted in favor of the motion.

Dole Food Company, Inc.- Renee Pastor presented staff's renewal report along with current Moody's, Fitch and Dunn and Bradstreet credit ratings. She responded to questions from the Commissioners. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the financial stability and profitability, with total assets of just over \$4.1 billion, a clean audit report and acceptable credit ratings. Mr. Parker commented regarding ratio analysis for the past couple of years. Following discussion, the Commission approved continuance of self insurance authority on motion of Mr. Parker, second of Ms. Oster and unanimously approved.

Announcements and Scheduling of Future Meetings

Mr. Delfs asked if there was a need for a meeting next week since it appeared there was going to be a light agenda. It was discuss and decided that the Commission would hold the meeting as scheduled for Thursday, August 26, 2010. Mr. Parker stated that he will be available by video and Ms. Strickler stated she would be available by phone. The next Commission meetings were scheduled for September 2, 2010, September 8, 2010 and tentatively for September 29, 2010, all meeting will be at 1:00 p.m.

Discussion & Action of New Employment Agency Licenses.

Career Solutions of Arizona, L.L.C.
M Model Management, L.L.C.

Mr. Maruca advised that these applicants are new businesses. Career Solutions of Arizona, L.L.C. is a career counseling services and M Model Management, L.L.C. is a modeling agency and both have been investigated by the Department as required by the Statutes and Rules governing Private Employment Agencies. The Employment Advisory Council has recommended approval of these licenses. Following discussion, the Commission unanimously approved the applications on motion of Mr. Parker, second of Ms. Strickler.

Discussion & Action of Attorney Fee Petitions

Harlan Crossman v. Francisco Pacheco – Mr. Wade reviewed the information that was presented at the meeting held on August 5, 2010 when this matter was held for staff to obtain additional information related to settlement negotiations between the attorney and the insurance carrier. Mr. Wade summarized the information obtained from the attorney regarding the settlement attempts.

Mr. Wade recommended the Commission award attorney's fees based on 25% of benefits for the next 5 years. Following discussion, the Commission unanimously awarded attorneys' fees based on 25% of any permanent disability benefits for 5 years or 25% of any lump sum settlement of permanent disability, on motion of Ms. Oster, second of Mr. Parker.

Ruben Duenas v. Robert E. Wisniewski – Mr. Wade advised that Bob Wisniewski has petitioned the Industrial Commission to set attorney's fees with respect to work that he performed on behalf of Mr. Duenas in connection with Mr. Duenas' March 18, 2009 industrial injury claim. Mr. Wade presented a history of the claim and summarized the work performed by Mr. Wisniewski on behalf of Mr. Duenas. Mr. Duenas has terminated the attorney/client relationship.

Mr. Wade presented several options to the Commission. After reviewing those options, Mr. Wade stated that staff recommends an award granting attorneys' fees based on 10% to 15% of the remaining scheduled award payments. Following discussion, the Commission unanimously awarded attorneys' fees based on 10% of any remaining payments on the scheduled award, on motion of Mr. Parker, second of Ms. Oster.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C09/10-2927	Natalie-Ann Miners, L.L.C. dba Western Destinations
2C09/10-2949	OMNI Apparel Group, LLC dba Designer District
2C09/10-2928	PEP Precision Auto and Transmission LLC
2C09/10-2772	Raymond M. McCartney & Jennifer McCartney, Husband and Wife dba Ray's Landscape & Design Services
2C09/10-0884	Taylor's Café LLC dba Taylor's Café
2C09/10-2704	United Funeral Support Services, LLC dba United Funeral Support

Mr. 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), civil penalties of \$1,000.00 are recommended against each of these employers with the exception of employers #2772 and 2704. With regard to these two employers, they have recently obtained coverage and staff recommends a lesser penalty of \$500.00 for each employer. He provided additional information regarding these employers and responded to questions from the Commission. Following further discussion, the Commission unanimously assessed civil penalties of \$1,000.00 against employers #2927, 2949, 2928 and 0884 and a reduced penalty of \$500.00 for employers #2772 and #2704 on motion of Mr. Parker, second of Ms. Oster.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 3:10 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By *Brian C. Duffy*
Chairman

By *[Signature]*
Vice Chairman

By _____
Member

By *Kathleen Oster*
Member

By *[Signature]*
Member

ATTEST:

Kara Dimas
Acting Commission Secretary