

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 W. Washington  
Conference Room 308  
Phoenix, Arizona 85007  
Wednesday, December 8, 2010 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	David Parker	Vice Chairman
	John A. McCarthy, Jr.	Member
	Susan Strickler	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Michael Hawthorne	Chief Financial Officer
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Kathleen Oster was not able to attend. Also present was Scot Butler, the agency's lobbyist, and Teresa Yi of Snell & Wilmer.

Approval of Minutes of December 1, 2010 Meeting

The Commission approved the Minutes of December 1, 2010 on motion of Mr. McCarthy, second of Mr. Parker. Chairman Delfs abstained.

Discussion & Action regarding Legislation

Scot Butler summarized meetings that have been held and meetings that are planned with legislative staff. He discussed the Commission's three main areas of interest: SCF Arizona transition, budget and relationship to the general fund, and the agency's efforts in broadcasting the stability and predictability of Arizona's workers' compensation system. Ms. McGrory and Mr. Butler explained how this could help in promoting economic development. Laura McGrory provided a draft of a document that she is preparing that illustrates the components of Arizona's workers' compensation system that makes it a consistently top-ranked program. She also discussed the impact of 1) declining revenue on the ability of the Commission to transfer money to the General Fund and 2) policies with deductible coverage.

Discussion & Action of Proposed OSHA Citations and Penalties

Hendrix & Company, I.LC  
940 E. Broadway Road  
Phoenix, AZ 85040

Fatality  
Yrs/Business – 1  
Empl. Cov. by Insp. – 10

Site Location: 940 E. Broadway Road, Phoenix, AZ 85040  
Inspection #: L3419/314948696  
Insp. Date: 09/22/10

SERIOUS – Citation 1, item 1 – The swing radius of the superstructure/counterweight on a hydraulic excavator was not effectively protected by some form of barricade or warning line(s)

to prevent workers from entering the swing radius and being struck or crushed (23.403(A)). There was another instance of this violation.

(No inspection history in the past three years).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1, item 2 – One employee operating a powered industrial truck failed to utilize and wear the operator restraint system (i.e. seatbelt) to prevent the operator from being thrown from the truck and being crushed between the ground and the overhead protective structure when the truck rolled over (1910.132(a)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1, item 3 – Forklift operators were not trained in the safe operation of trucks including the use of the operator restraint system (i.e. seatbelt) (1910.178(l)(1)(i)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1, item 4 – Forklift operators did not inspect or examine forklifts for defects prior to use including but not limited to the operator restraint system (i.e. seatbelt)(1910.178(q)(7)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$21,750.00

TOTAL FORMULA AMT. - \$21,750.00

Mr. Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Division recommendation for the first three items was for the gravity based penalty with no adjustment factors since these violations directly related to the fatality. Mr. Parker questioned whether the citations should be classified as willful and expressed concern over the hazards in the employer's operation. Mr. Perkins responded that the employer should have been aware of the hazards but there was insufficient evidence to establish that the employer had the requisite knowledge of the particular hazard. Mr. Delfs stated that he understood what Mr. Parker was struggling with and he agreed the employer should have taken precautions to protect employees. The Commission discussed whether to levy the maximum civil penalty and whether to direct ADOSH that no reduction be given in informal conference. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$21,750.00 on motion of Mr. McCarthy, second of Mr. Parker.

Executive Session pursuant to A.R.S. §§38-431.03(A)(1) and (2) for discussion of applicants for Assistant Chief Administrative Law Judge position of the Industrial Commission. The names of the applicants are confidential pursuant to A.A.C. R2-5-202

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Consideration of this agenda item was held until the next meeting.

General Session – Discussion and Action regarding Appointment of Assistant Chief Administrative Law Judge

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Consideration of this agenda item was held until the next meeting.

Discussion & Action of Attorney Fee Petition

Robert E. Wisniewski, Robert E. Wisniewski, P.C. v Joel Rodriguez – Andrew Wade advised that at the Commission meeting on November 17, 2010, the Commission voted to award

Robert E. Wisniewski attorneys' fees in the above matter. The Award has not yet been mailed as some Commissioners were not present and had not signed the Award. On November 29, 2010, Mr. Wisniewski withdrew his Petition for Attorneys' Fees since Mr. Rodriguez has now rehired him. Mr. Rodriguez has consented to the filing of the settlement agreement Mr. Wisniewski originally negotiated. Based on Mr. Wisniewski's request, Mr. Wade recommended that the Commission rescind its Findings and Award Setting Attorneys' Fees and allow Mr. Wisniewski's request to withdraw his Petition. Following discussion, the Commission unanimously rescinded its Findings and Award Setting Attorneys' Fees and allowed the withdrawal of the Petition for Attorneys' Fees on motion of Mr. Parker, second of Ms. Strickler.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C09/10-1117	Devil's Hideaway, L.L.C.
2C09/10-2081	Shananne Edwards, DVM, a Single Woman, dba Arizona Small Animal Clinic aka The Cleo Corporation
2C10/11-0047	Zion Home Health Care Agency, Inc.

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. Mr. Wade responded to questions from the Commissioners and explained the process related to issuing the civil penalties and what happens if an employer does not obtain insurance after the issuance of a civil penalty. Following discussion, the Commission unanimously assessed civil penalties of \$1,000.00 against employers #1117, 2081 and 0047 on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion & Action of Membership in IAIABC

Ms. McGrory stated that the agency had accepted the invitation to join the IAIABC for six months at no charge. That time is expiring, and she advised that the agency is being asked to become a dues paying member. Ms. McGrory recommended joining and explained why. Following further discussion, the Commission agreed to join the organization for one year and revisit the matter before that year is up on motion of Mr. Parker, second Mr. McCarthy. Mr. Delfs was opposed.

Discussion & Action of Authorization to Sign Commission Minutes

Ms. McGrory stated that legal staff has researched the issue of who needs to sign Commission Minutes and provided a copy of the memorandum to the Commission. She explained that due to telephonic and video conferencing, some Minutes are not signed by all members for some weeks, which delays the posting of the approved Minutes on the Commission's website. She explained the Commission's options, which include designating one person to sign and another person to attest to the signature rather than all of the Commissioners. Following discussion, the Commission unanimously authorized the Director or Acting Director to sign the Minutes with the Commission Secretary or Acting Commission Secretary attesting on motion of Mr. Parker, second of Ms. Strickler.

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

Ms. McGrory advised that the agency will be working to improve the ADOSH website.

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.

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Mr. Wade stated that oral arguments will be heard on Friday and that he will have more information at next week's Commission meeting.

Announcements and Scheduling of Future Meetings

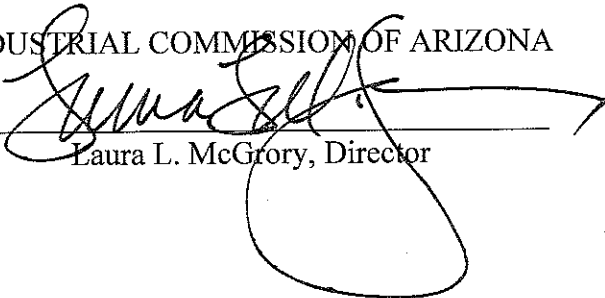
The Commissioners scheduled meetings for January 6, 12 and 19, 2011. Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Thursday, December 16<sup>th</sup>.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:15 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
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Laura L. McGrory, Director

ATTEST:

  
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Teresa Hilton, Commission Secretary