

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, June 16, 2011 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	David Parker	Vice Chairman
	Kathleen Oster	Member
	Susan Strickler	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Noreen Thorsen	Claims Manager
	Victoria Feaster	Claims
	Cherry Neumann	Claims
	Belia Herrera	Claims
	Yoko Lozano	Claims
	Mike Hawthorne	Chief Financial Officer
	Renee Pastor	Self Insurance Manager
	Jeri McAnerny	Tax Accountant
	Kamen Kovatchev	Accounting
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:02 p.m. noting a quorum present. Mr. McCarthy was not able to attend. Also in attendance were Scot Mussi of HBACA; Carol Floco, Jeff Banker and Scott Schuster of American Subcontractors Association of Arizona; Milli Lee of AZ ASSE; Tom Carroll and Will Judd of Maricopa County; Jeremy Bethancourt; and Eda Barolli of Snell & Wilmer.

Approval of Minutes of June 2, 2011 Meeting

The Commission unanimously approved the Minutes of the June 2, 2011 General Session on motion of Mr. Parker, second of Ms. Oster.

The Commission unanimously approved the Minutes of the June 2, 2011 Executive Session on motion of Mr. Parker, second of Ms. Strickler.

Discussion & Action of Resolution Appointing Custodians of Record

Victoria Feaster  
Cherry Neumann  
Belia Herrera  
Yoko Lozano

Ms. Thorsen introduced Ms. Feaster, Ms. Neumann, Ms. Herrera and Ms. Lozano to the Commissioners and responded to questions from the Commissioners. She explained that she is requesting approval for them to become custodians of record so that they can accept subpoenas.

The Commission unanimously appointed each of the above listed employees as custodians of record on motion of Ms. Strickler, second of Mr. Parker.

#### Discussion & Action regarding Enforcement of the December 16, 2010 OSHA Directive on Residential Fall Protection

Laura McGrory provided a brief summary of Federal OSHA's action regarding the fall protection directive, including the announcement of a three month phase-in period last week. She then recommended that the Commission issue a stay of enforcement of the December 16, 2010, directive and that ADOSH continue to enforce the fall protection standards as it did prior to the effective date of the December 2010 directive. She also stated that implementation of a stay would provide an opportunity to step back and address the development of a public forum to allow for additional input and comments. Following that input and comment, the Commission could revisit the issue of the stay. Ms. McGrory stated that her recommendation would require action on two items: first, the implementation of a stay of enforcement of the December 16, 2010 directive and continuation of enforcement of the fall protection standards as they are currently being enforced by ADOSH; and second, to direct staff to work on the development of a public forum to receive additional input and comment on the issue of residential fall protection. Chairman Delfs thanked Ms. McGrory and stated that he looks forward to having the public forum. He also stated that he agrees that the implementation of a stay is appropriate. The Commission unanimously accepted staff's recommendation on motion of Mr. Parker, second of Ms. Oster.

#### Discussion & Action of Request for Lump Sum Commutation

Adan Martinez #20060-050416 - Noreen Thorsen presented this lump sum petition with a recommendation to deny the petition. In support of this recommendation, Ms. Thorsen explained that Mr. Martinez would be losing over \$246,000 if this award is commuted to a lump sum. While it would help him to pay off his debt and remodel his house, it would not offset the amount he would be losing. Ms. Thorsen responded to questions from the Commissioners. Following discussion, the Commission unanimously denied the lump sum request on motion of Ms. Oster, second of Ms. Strickler. Ms. Oster suggested that Kids' Chance may be able to help with Mr. Martinez' childrens' tuition and school expenses.

#### Discussion & Action of Requests for Renewal of Self-Insurance Authority

Safeway, Inc. - Renee Pastor presented staff's renewal report along with current Fitch, Moody's, Standard & Poor and Dunn and Bradstreet bond and credit ratings. The Commission discussed the denial rate and Safeway's explanation of denials. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the financial stability, large size with total assets of just over \$15.1 billion, a clean audit report, acceptable bond scores and an acceptable credit rating. The Commission unanimously approved renewal of self-insurance authority with the directive that Safeway provide an explanation of all denials in the future on motion of Mr. Parker, second of Ms. Oster.

Target Corporation dba Target Stores, Inc. -- Ms. Pastor presented staff's renewal report along with current Fitch, Moody's, Standard & Poor and Dunn and Bradstreet bond and credit ratings. Ms. Pastor advised that Administration is recommending continuance of workers' compensation self-insurance authority based on the overall financial stability and continued

profitability with total assets of just over \$44.5 billion, acceptable credit ratings and a clean audit report. The Commission unanimously granted renewal of self-insurance authority on motion of Ms. Oster, second of Mr. Parker.

Unisource Energy Corporation – Ms. Pastor presented staff's renewal report along with current Fitch, Moody's, Standard & Poor and Dunn and Bradstreet bond and credit ratings. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the financial stability and profitability, large size with assets exceeding \$3.7 billion, a clean audit report and an acceptable credit rating. The Commission unanimously approved continuance of self-insurance authority on motion of Mr. Parker, second of Ms. Strickler.

Wal-Mart Associates, Inc. – Ms. Pastor presented staff's renewal report along with current Fitch, Moody's, Standard & Poor and Dunn and Bradstreet bond and 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 over \$180.6 billion, a clean audit report, and acceptable credit ratings. The Commission unanimously approved renewal of self-insurance authority on motion of Ms. Oster, second of Ms. Strickler.

#### Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

- 2C10/11-0771 Espamex, LLC dba El Mariachi Gaucho
- 2C10/11-1200 Flexeco, Incorporated dba Flex
- 2C10/11-0509 SS Quality Fuels, LLC
- 2C10/11-1684 Chazen Enterprises, L.L.C. dba Smok'n Joe's Roadhouse, L.L.C.

Andrew 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. Mr. Wade stated that giving consideration to the factors of A.R.S. §23-907(K), a civil penalty of \$500.00 is recommended against employer #1200 since they have recently obtained coverage. He is also recommending civil penalties of \$1,000.00 against employers #0771, 0509 and 1684. He provided information about these employers and responded to questions from the Commissioners. The Commission unanimously approved a civil penalty of \$500.00 against employer #1200 and civil penalties of \$1,000.00 against employers #0771, 0509 and 1684 on motion of Ms. Oster, second of Mr. Parker.

#### Discussion &/or Action of A.R.S. §23-1041(E) to Adopt the Maximum Average Monthly Wage under A.R.S. §23-1041(D)(8) for Calendar Year 2012

Andrew Wade explained the information in the memorandum provided to the Commissioners regarding the calculation of the new maximum average monthly wage for calendar year 2012. Mr. Wade and Mr. Hawthorne responded to questions from Ms. Oster regarding the BLS statistics that are used to calculate the average monthly wage. The Commissioners discussed that the Commission's responsibility to set the maximum average monthly wage is simply to run the formula set forth in statute. Following additional discussion as to why the number increased in today's economy, the Commission unanimously adopted the maximum average monthly wage of \$4,062.29 for 2012 on motion of Mr. Parker, second of Ms. Oster.

Discussion and/or Action regarding United Food & Commercial Workers Local 99, et. al, v. Jan Brewer, in her capacity as Governor of the State of Arizona, et al., U.S. District Court case number 2:11-cv-921-PHX-SRB. 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 that this is a continuing agenda item. The Office of the Attorney General represents the Secretary of State, Attorney General, and the Commission, and is planning on filing responsive pleadings on June 20, 2011.

Discussion & Action regarding 2011-2012 Physicians' and Pharmaceutical Fee Schedule pursuant to A.R.S. §23-908(B)

Ms. McGrory advised that this is a continuing agenda item and that copies of all comments received have been provided to the Commissioners. She stated she would summarize the comments and make recommendations at a future meeting. Mr. Parker requested an analysis of the impact of medical costs in workers' compensation claims.

Discussion &/or Action regarding Legislation

Ms. McGrory stated that Scot Butler would be giving the Commissioners a final report and recommendations for next year at next week's meeting.

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

Ms. McGrory advised that the new claims system is expected to be fully operational on June 27, 2011. The conversion will begin on June 23, 2011, which means that the claims system will be unavailable for two business days, June 23<sup>rd</sup> and June 24<sup>th</sup>. This information will be placed on the Commission's website.


Announcements and Scheduling of Future Meetings

Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Wednesday, June 22<sup>nd</sup>. The Commissioners agreed to have a meeting on Friday, August 12<sup>th</sup> at the Claims Seminar.

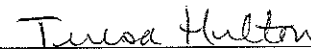
There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:00 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
\_\_\_\_\_  
Laura L. McGrory, Director

ATTEST:

  
\_\_\_\_\_  
Teresa Hilton, Commission Secretary