

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, October 13, 2011 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	David Parker	Vice Chairman (video conference)
	John A. McCarthy, Jr.	Member
	Susan Strickler	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Renee Pastor	Manager, Self Insurance
	Darin Perkins	Director, ADOSH
	Randall Maruca	Director, Labor Dept.
	Michael Hawthorne	Chief Financial Officer
	Sylvia Simpson	Controller
	Jeri McAnerny	Tax Accountant
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Ms. Oster was not able to attend. Also in attendance were Scot Butler, the agency's lobbyist; Eda Barolli of Snell & Wilmer; Connie Wilhelm and Jackson Moll of HBAC and Jeff Gray from ASIA.

Approval of Minutes of October 5, 2011 Meeting

The Commission unanimously approved the Minutes of October 5, 2011, on motion of Mr. Parker, second of Mr. McCarthy.

Consent Agenda:

a. Approval of Self Insurance Renewal Applications

1. ABF Freight System, Inc.
2. Ameron International, Inc.
3. Banner Health
4. Freeport-McMoran Copper & Gold, Inc.
5. Goodrich Corporation
6. Hyatt Corporation
7. Macy's, Inc.
8. Manpower, Inc.
9. Marriott International, Inc.
10. Mayo Clinic
11. Medtronic, Inc.
12. Pilot Travel Centers, LLC
13. Southwest Gas Corporation
14. Textron, Inc.

15. TMC Healthcare

Chairman Delfs asked if any of the listed items needed to be removed from the consent agenda. Ms. Hilton stated there were not. The Commission unanimously granted renewal of self-insurance authority for the listed employers on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion & Action regarding Residential Fall Protection

Laura McGrory stated that at the direction of the Commission, she has provided the Commission with recommendations for members to comprise the residential fall protection work group and has supplied the Commission with a draft Statement of Purpose and Scope of Work. She presented names for consideration and explained that the individuals represent the homebuilders, framers/carpenters, roofers, and other affected trades. Since the Commission last discussed this topic, she recommends the Commission add an additional category to include safety/outside consultant, and she explained the reasons for that recommendation. She added that certain staff members may be helpful to the work group and she identified those staff the Commission may want to consider for the work group. Ms. McGrory noted that this topic was time sensitive and she stated that subject to the discretion of the work group to meet more frequently, meetings will be scheduled weekly to start the week of October 17, 2011. She stated the target date for the Commission to consider any recommendations from the work group is November 30, 2011 and the work group should be asked to provide any recommendations to the Commission no later than November 21, 2011. The Commission discussed whether members of the work group may designate someone to attend in their place if a member is not able to attend a scheduled meeting. Chairman Delfs stated he was in favor of having a designee if the member cannot attend, but that the group needs to understand that consistency at the table is needed and he does not want this to be a revolving door. He also stated that the Commission has no preconceived ideas of the outcome and is looking forward to their suggestions. He explained that the Commission is not delegating any decision-making authority to the work group and the Commission will make any decisions related to residential fall protection.

Following further discussion, the Commission unanimously adopted Ms. McGrory's recommendations for members: Connie Wilhelm, Home Builders Association; Jeff Eschliman, Maracay Homes; Edward Castelhano, Becklin Construction, LLC; Scott Schuster, Schuck and Sons; Kent Summers, Specialty Roofing; Dave Barber, Petersen Dean; Dave Morgan, Brewer Companies; Larry Etchechury, safety/outside consultant; Julie Pace, safety/outside consultant; Laura McGrory, Commission Director; Darin Perkins, ADOSH Director; Bill Cooper, ADOSH Compliance Officer; Jenny Mandeville, ADOSH Consultation Officer and adopted the Statement of Purpose and Scope of Work on motion of Mr. McCarthy, second of Mr. Parker.

Discussion &/or Action regarding Legislation

Scot Butler presented an update on legislative related matters for the upcoming legislative session. He recommended that the Commission hold a stakeholder meeting to allow interested parties to present suggestions for legislation. He advised that he and Director McGrory are in the process of meeting with legislative leadership and committee chairs, along with interested business and labor groups and stated that he would report back to the Commission in early November. Mr. Butler also discussed two key political issues – the District 18 recall election and Redistricting. In response to a question from Mr. Parker, Mr. Butler stated

that he is not recommending any legislative action be proposed at this time regarding large deductible policies and explained his reasons.

Discussion &/or Action regarding Workers' Compensation Policies with Deductible Coverage

Michael Hawthorne advised that staff had obtained large deductible policy premium data from the National Council on Compensation Insurance and staff has analyzed the data to ascertain the impact high deductible policies have on Commission revenue. He explained how carriers are not paying assessments on the large deductible discount. The most recent year for which data is available is 2008 and for that year and the prior three years, carriers did not pay assessments on a total of approximately \$888 million during that four year period. According to the data, a total aggregate assessment amount of \$48,828,109 was not collected for calendar (tax) years 2005, 2006, 2007 and 2008. In an effort to arrive at the most accurate estimate, Ms. McGrory stated that staff will request more detail concerning the specific carriers from the NCCI. She also stated that this topic is an informational item and no action is necessary at this time. Ms. Strickler asked if the Commission could form a work group of representatives from the high deductible employers to explore the issue and possible solutions. Ms. McGrory responded that Mr. Butler is having discussions with various associations and interested parties. Mr. Parker questioned what would the impact have been on overall tax rates if those few carriers paid assessments on the deductible discount, in other words, what would be the reduction in the assessments that all carriers and self-insureds paid. Mr. Hawthorne responded that staff would perform an analysis and return to the Commission with a report.

Discussion &/or Action regarding Assessments under A.R.S. §§23-961(J), 23-966(D), 23-1065(A), and 23-1065(F)

Michael Hawthorne advised that the Commission has statutory authority to levy four assessments and he described the assessments and the purposes for each. He provided the Commissioners with an updated cash flow analysis. He explained that the maximum assessment for the administrative fund is 3.0% and the Commission established this rate for calendar year 2011. He explained the relationship between insurance carrier taxable premiums and assessments and stated that insurance carrier taxable premiums have declined which results in a decline in assessment revenue and revenue has declined for the past four years. Taking into consideration the decline in revenue, staff recommends the administrative fund rate remain at 3.0% for 2012 to cover the expenses of the administrative fund.

Mr. Hawthorne described the financial condition of the Special Fund and stated that the Fund is not actuarially sound and the Fund had a net asset deficit as of June 30, 2010 of \$53.3 million. He stated that revenue from the Special Fund assessments is not sufficient to cover the actual expenses of the Special Fund. Ms. McGrory explained that the Special Fund's investment returns have allowed the Special Fund to meet its obligations and improve its financial condition. Mr. Hawthorne reminded the Commissioners that the calendar year 2011 Special Fund assessments total 2.5% which is the maximum that may be assessed under the three Special Fund statutes. Based on the ongoing actuarial deficit of the Special Fund, annual expenditures that exceed the revenue from the assessments, and apportionment liabilities that exceed \$6.0 million, staff recommends that the Commission continue the current assessment rates for the Special Fund for a total assessment rate of 2.5%. Mr. Hawthorne responded to questions from the Commissioners.

Mr. Parker stated that he had summarized the relevant considerations based on the financial and other information supplied and had identified key factors as Findings of Fact. He presented the Findings of Fact as follows:

1. Arizona taxable workers' compensation insurance and self-insurance premiums, after several years of significant decrease, are expected to continue to decrease.
2. The Industrial Commission of Arizona FY-10 and projected FY-11 appropriation (expenditures, fund transfers, and legislative adjustments) is approximately \$19.9M and \$20.5M, respectively.
3. As tax revenue is received quarterly, the Administrative Fund fiscal year ending balance should exceed \$2.0M (approximately two months' worth of expenditures) for cash flow.
4. The Accounting Division of the Industrial Commission has estimated, based upon current revenue forecasts and appropriated expenditures and transfers, that the FY-12 Administrative Fund ending balance will be approximately \$2.6M if the CY-11 taxable premium declines by 10% and the CY-12 Administrative Fund tax rate is maintained at 3.0%, the statutory maximum.
5. The Accounting Division of the Industrial Commission has estimated that the maximum Administrative Fund revenue at a 3.0% tax rate for CY-12 is \$20.9M - \$23.2M.
6. The 2010 State of Arizona CAFR indicates that the Industrial Commission Special Fund net assets are a negative \$53,292,000 indicating that the special Fund is not actuarially sound.
7. The Industrial Commission's actuarial analysis for Fiscal Year Ending June 30, 2010, dated December 23, 2010, estimated that the losses incurred by the Special Fund for new claims during FY-12 and FY-13 would be \$13.2M and \$13.5M, respectively (expected confidence level).
8. The Accounting Division of the Industrial Commission has estimated that the maximum Special Fund revenue at 2.5% tax rate for CY-12 is \$17.4M - \$19.3M.
9. The Industrial Commission's actuarial analysis for Fiscal Year Ending June 30, 2010, dated December 23, 2010, estimated that the Special Fund's outstanding liability for apportionment claims totaled \$59.9M at the expected confidence level and \$74.2M at the 75% confidence level. A public hearing was noticed on June 6, 2011, and was held on July 28, 2011, pursuant to A.R.S. §23-1065(F)

Ms. Strickler asked if the Commission had explored other methods to increase Special Fund income, such as increasing the penalty for uninsured employers. Ms. McGrory summarized the history of the civil penalties and, although at one time the penalties were collected and deposited in the Fund, the Legislature amended the statutes years ago and the penalties now are collected by the Commission but deposited in the state's general fund. She stated that the Commission has explored methods to reduce Special Fund expenditures and to

improve investment returns. Additional discussion followed regarding insolvent carriers and how carrier insolvencies have the single largest impact on the Special Fund. Mr. Parker moved for the Commission to adopt the Findings of Fact and to continue the assessment under A.R.S. § 23-966(J) for the administrative fund at 3.0%, and the Special Fund assessments under A.R.S. § 23-966(D) at 0.5%, under A.R.S. § 23-1065(A) at 1.5%, and under A.R.S. § 23-1065(F) at 0.5%. Mr. McCarthy seconded the motion and the Commission unanimously voted in favor of the motion.

Discussion & Action of ADOSH Discrimination Complaints

#11-11 Bradley Earle vs. Sedona Pines Resorts, LLC - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Earle. In his complaint, Mr. Earle alleges that he was terminated for filing an Injunction Against Workplace Harassment against his former supervisor, and for filing a complaint with OSHA/ADOSH. In response to the complaint, the employer presented its position with respect to Mr. Earle's termination.

Mr. Perkins presented a history of Mr. Earle's employment and chronology of events and responded to questions from the Commission. The Division recommendation was not to pursue the matter since there was insufficient evidence to support a causal link between protected activity and adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. Parker, second of Ms. Strickler.

#11-69 Albert Ustaszewski vs. Trax International - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Ustaszewski. In his complaint, Mr. Ustaszewski alleges that he was asked to draft some test questions for the Level I and II Radiography exams. After he read the standard operating procedure, he concluded that he was not qualified to write the test questions. After he refused to draft the questions, he was suspended, and then terminated. In response to the complaint, the employer presented its position with respect to Mr. Ustaszewski's termination.

Mr. Perkins stated this matter is treated as a refusal to work and there is a question whether Mr. Ustaszewski's refusal to work constituted protected activity. In this situation, there was no immediate danger of death or serious injury and if there were, the employee could have resorted to regular statutory enforcement channels. Mr. Perkins stated the evidence does not establish a justified refusal and that the Division's recommendation was not to pursue the matter. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion & Action of Applications for Renewal of Self-Insurance Authority

Healthsouth Corporation - Renee Pastor advised that consideration of renewal for this employer had been held to ascertain unpaid liabilities for potential reopening costs. Ms. Strickler and Mr. Parker have reviewed the model and found it to be acceptable. She presented staff's renewal report along with current Moody's and Dunn and Bradstreet credit ratings and responded to questions from the Commissioners. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority with a statutory deposit amount of \$950,084. This recommendation is based on a clean audit report and improved credit ratings, despite impact uncertainties of the Healthcare Reform Act and new

Medicare laws and rules. The Commission approved continuance of self-insurance authority on motion of Mr. Parker, second of Ms. Strickler. Mr. McCarthy voted nay. The motion passed three to one.

YRC, Inc. – Ms. Pastor presented staff's renewal report along with current Moody's, Fitch, and Dunn and Bradstreet credit ratings and responded to questions from the Commissioners. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority with a statutory deposit of \$406,253. The recommendation is based stabilization of the parent company, YRC Worldwide, Inc. with assets just under \$2.6 billion, improved bond ratings, and a clean audit report. There was discussion concerning the poor financial performance over the last four years and the Commission discussed options, including authorization renewal authority for a limited time, or tabling the matter and requesting additional financial information. Chairman Delfs stated that unless there was an objection, he would table consideration of renewal for six months and directed staff to review quarterly financial reports. There was no objection.

Discussion & Action regarding Arizona Minimum Wage Rate for 2012

Randy Maruca presented a history of Arizona's minimum wage and a summary of other state minimum wage rates. With respect to Arizona's minimum wage, he noted the language in A.R.S. § 23-363(B) that directs that the minimum wage shall be increased on January 1, 2008 and on January 1 of successive years by the increase in the cost of living and that the increase in the cost of living shall be measured by the percentage increase as of August of the immediately preceding year over the level as of August of the previous year of the consumer price index (all urban consumers, U.S. city average for all items) or its successor index as published by the U.S. department of labor or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of five cents. He provided a computation of the proposed increase in the Arizona minimum wage to become effective January 1, 2012. Mr. Maruca explained that the Consumer Price Index as of August 2011 was 3.8 percent higher compared to August 2010 and this results in an increase of \$0.30 per hour. In accordance with the requirements of the statute, he stated that the Labor Department recommends the Commission approve a new rate of \$7.65 per hour effective January 1, 2012. Mr. Maruca responded to questions from the Commissioners. Ms. Strickler noted that the increase will result in an additional amount of approximately \$615 per year for a minimum wage employee and questioned whether it is appropriate to raise the minimum wage, particularly during the present economy, without any fiscal or economic analysis to ascertain the impact on business. Mr. Parker stated he agreed with that concern and there was discussion that the Arizona minimum wage results from a voter initiative and the Commission's action is ministerial in nature. As a result the Commission is required to apply the formula found in the statute and publish the minimum wage based on that required computation. Mr. Delfs made a suggestion concerning the Commission issuing a press release. Following further discussion, the Commission approved the rate of \$7.65 effective January 1, 2012 on motion of Mr. McCarthy, second of Mr. Parker. Ms. Strickler voted nay. The motion passed three to one.

Discussion & Action regarding Directed Care Pilot Program under A.R.S. §23-1070(F)

Laura McGrory gave a quick update of the work group's progress and stated that looking at the criteria for measuring the effectiveness of the program has been a challenge. The group is not prepared to make any recommendations yet to the Commission. She also advised that no

city has expressed an interest in participating in the pilot program and she explained her understanding as to why. The group will meet again on November 1 and has invited the County Workers' Compensation Insurance Pool to participate.

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

Ms. McGrory stated there was nothing new to report.

Announcements and Scheduling of Future Meetings

The Commission scheduled a stakeholders meeting for Thursday, December 8th in the Auditorium and also scheduled a meeting for Thursday, December 15th. Ms. Hilton reminded the Commissioners that the next Commission meeting is scheduled for Thursday, October 27th.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:55 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary