

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Wednesday, July 11, 2012 – 1:00 p.m.

Present:	David Parker	Chairman (video conference)
	Kathleen Oster	Vice Chair
	John A. McCarthy, Jr.	Member
	Susan Strickler	Member
	Michael G. Sanders	Member
	Laura L. McGrory	Director
	Andrew Wade	Chief Counsel
	Darin Perkins	Director, ADOSH
	Renee Pastor	Manager, Self Insurance
	Michael Hawthorne	Chief Financial Officer
	Kamen Kovatchev	Self Insurance
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Heather Wilkey of the PTPN/AZ PTA; Brandy Petrone of Goodman Schwartz Public Affairs; Jeff Gray for the Arizona Self Insurance Association; and Eda Barolli of Snell & Wilmer.

Approval of Minutes of June 28, 2012 Meeting

The Commission unanimously approved the Minutes of June 28, 2012 on motion of Mr. McCarthy, second of Mr. Sanders.

Consent Agenda:

- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
1. 2C11/12-0894 American & Import Performance, LLC
  2. 2C11/12-0408 Abraham Setoodeh, D.D.S., & Ashely Shahnaz,  
Husband & Wife dba  
Chandler Dentistry-EZ Dental Care
  3. 2C11/12-0401 Big Burrito, Inc. dba Big Burrito #5
  4. 2C11/12-2327 Professional Psychiatric Staffing Services, LLC
  5. 2C11/12-0899 Roberts Advertising, Inc. dba Cattleman's  
Bar & Grill aka Cattleman's Steakhouse
  6. 2C11/12-0375 Zone Sports Management, LLC

Chairman Parker asked whether any items needed to be removed from the consent agenda. Secretary Hilton stated that there were not. The Commission unanimously approved the consent agenda on motion of Mr. Sanders, second of Ms. Oster.

Discussion &/or Action regarding Legislation

Ms. McGrory stated there was nothing new to report.

Discussion & Action of Proposed OSHA Citations & Penalties

Bigford Enterprises, Inc.  
711 Central Avenue N  
Locust, NC 28097

Unprogrammed Related  
Yrs/Business - 15  
Empl. Cov. by Insp. - 15

Site Location: 1000 S. Sawmill Road, Flagstaff, AZ 86001  
Inspection #: R0738/316402890  
Insp. Date: 03/05/12

SERIOUS - Citation 1 - Item 1 - Two employees were working from an aerial lift at heights of 18' and greater above the ground without wearing a body belt or a full body harness and a lanyard (1910.453(b)(2)(v)).

Div. Proposal - \$1,250.00                      Formula Amt. - \$1,250.00

SERIOUS - Citation 1 - Item 2 - Employees were not adequately trained in the recognition and avoidance of hazards associated with the use of aerial lifts (1910.454(a)).

Div. Proposal - \$1,250.00                      Formula Amt. - \$1,250.00

SERIOUS - Citation 1 - Item 3 - Employees were entering and exiting a second floor landing at 9 feet 8 inches above the concrete surface without utilizing a fall protection system or other equivalent means to prevent a fall (1926.501(b)(1)). There was another instance of this violation.

Div. Proposal - \$1,250.00                      Formula Amt. - \$1,250.00

SERIOUS - Citation 1 - Item 4 - Unprotected ladder access holes on the third and fourth floors did not have guardrails or other means to protect employees from falling greater than 9 feet to the wood deck below (1926.501(b)(4)(i)).

Div. Proposal - \$1,250.00                      Formula Amt. - \$1,250.00

SERIOUS - Citation 1 - Item 5 - Employees working at heights more than 6' above the ground and exposed to fall hazards were not provided adequate training to recognize the hazards, or in the procedures to be followed to minimize those hazards (1926.503(a)(1)).

Div. Proposal - \$1,250.00                      Formula Amt. - \$1,250.00

SERIOUS - Citation 1 - Item 6(a) - A non-self-supporting 10' job made wood ladder with split and missing cleats and used by employees to access the second floor was not withdrawn from service until repaired (1926.1053(b)(17)).

Citation 1 - Item 6(b) - Employees did not receive adequate ladder training before using a non-self-supporting 10' job made wood ladder (1926.1060(a)).

Div. Proposal - \$1,250.00                      Formula Amt. - \$1,250.00

TOTAL PENALTY - \$7,500.00                      TOTAL FORMULA AMT. - \$7,500.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, the Commission unanimously

approved issuing the citations and assessed the recommended penalty of \$7,500.00 on motion of Ms. Oster, second of Mr. McCarthy.

Truss Fab, LLC

P.O. Box 848

Glendale, AZ 85311

Planned

Yrs/Business - 7

Empl. Cov. by Insp. - 100

Site Location: 7831 N. 67<sup>th</sup> Avenue, Glendale AZ 85301

Inspection #: R1538/316475474

Insp. Date: 04/17/12

SERIOUS - Citation 1 - Item 1 - Procedures were not developed; documented and utilized when employees were conducting routine maintenance, changing chains and blades on saws, for locking out and tagging out the machine (1910.147(c)(4)(i)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1 - Item 2 - Two saws were without adequate guards installed to prevent employees from contacting rotating and moving parts (1910.212(a)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1 - Item 3 - Two radial arm saws were lacking side guards for the lower portion of the blade (1910.213(h)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1 - Item 4 - A rip saw with a conveyor system attached did not have a guard installed over several gears, sprockets and chains (1910.219(f)(3)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$5,000.00

TOTAL FORMULA AMT. - \$5,000.00

Darin Perkins summarized the citations and proposed penalty as listed. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$5,000.00 on motion of Mr. McCarthy, second of Mr. Sanders.

Yuma County Water Users' Association

3800 W. County 15<sup>th</sup> Street

Yuma, AZ 85350

Planned

Yrs/Business - 109

Empl. Cov. by Insp. - 6

Site Location: Hwy. 95 & County 16-1/4, Yuma, AZ 85366

Inspection #: F3875/316553072

Insp. Date: 05/23/12

SERIOUS - Citation 1 - Item 1 - Two employees working in an excavation that was 11 feet deep, 27 feet wide at the top, 11 feet wide at the base and 60 feet long, had not received any training by the employer in the recognition of hazards associated with excavations (1926.021(b)(2)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1 - Item 2 - Two employees were allowed to work in the excavation that measured 11 feet deep, 27 feet wide at the top, 11 feet wide at the base and 60 feet long, and were not provided a safe means of egress out of the excavation (1926.651(c)(2)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 3 –Employees working in the excavation that was 11 feet deep, 27 feet wide at the top, 11 feet wide at the base and 60 feet long were not protected from falling debris. The spoil piles and equipment were within two feet of the edge of the excavation (1926.651(j)(2)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 4 –The competent person designated by the employer was not conducting regular inspections of the excavation that was 11 feet deep, 11 feet wide at the base, 27 feet wide at the top and 60 feet long (1926.651(k)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 5 –Employees conducting work inside of the excavation that was 11 feet deep, 11 feet wide at the base, 27 feet wide at the top and 60 feet long, were not adequately protected from a wall collapse (1926.652(a)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$6,250.00

TOTAL FORMULA AMT. - \$6,250.00

Mr. Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$6,250.00 on motion of Mr. Sanders, second of Mr. McCarthy.

Shoppes At Oracle Rd., L.L.C.  
6360 N. Placita De Tia Rd.  
Tucson, AZ 85750

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

Site Location: 8550 N. Oracle Rd., Tucson, AZ 85704  
Inspection #: N7988/316482199  
Insp. Date: 04/23/12

SERIOUS – Citation 1 - Item 1a – Employees were working on tubular welded frame scaffolds at a height of approximately nine to 12 feet that were not erected on an adequate firm foundation, but on stacked wood and concrete blocks (1926.451(c)(2)).

Citation 1 - Item 1b – The tubular welded frame scaffolds that were nine to 12 feet high were not inspected by a competent person before each work shift for visible defects such as those found at this job-site that include missing guardrails, base plates, mud sills and an adequate firm foundation (1926.451(f)(3)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 2 – Employees performed overhead bricklaying operations on top of a tubular welded frame scaffold at a height of approximately 12 feet above the ground without any installed guardrails 1926.451(g)(1)(vi)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3 – Employees who worked from the tubular welded frame scaffolds that were nine to 12 feet high were not trained by a qualified person in the subject matter to recognize the hazards associated with the type of scaffold being used and to understand the procedures to control or minimize those hazards (1926.454(a)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4 – Two employees working on the roof of the building installing side panels and nailing the top plate at a height of approximately 25 feet above the ground were not utilizing any type of fall protection (1926.501(b)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 5 – Two employees working on the roof of the building installing side panels and nailing the top plate at a height of approximately 25 feet above the ground had not been trained to recognize the hazards of falling and procedures to control or minimize those hazards (1926.503(a)(1)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$3,750.00

TOTAL FORMULA AMT. - \$3,750.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,750.00 on motion of Ms. Oster, second of Mr. Sanders.

DLS Precision Fab L.L.C. dba  
Di-Matrix Precision Manufacturing  
5225 S. 31<sup>st</sup> Place  
Phoenix, AZ 85040

Planned  
Yrs/Business – 9  
Empl. Cov. by Insp. – 85

Site Location: 5261 S. 31<sup>st</sup> Place, Phoenix, AZ 85040

Inspection #: H1793/316509702

Insp. Date: 05/10/12

SERIOUS – Citation 1 - Item 1 – Employees were operating a forklift without training and evaluation (1910.178(I)(1)(i)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1 - Item 2 – A press brake was lacking a guard to prevent the operator from placing any part of his body in the danger zone (1910.212(a)(1)). There were three other instances of this violation.

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1 - Item 3 – One bench grinder did not have the work rest installed and adjusted to within 1/8” of the abrasive wheel to prevent the work from being jammed between the wheel and the frame of the grinder (1910.215(a)(4)).

Div. Proposal - \$100.00

Formula Amt. - \$100.00

SERIOUS – Citation 1 - Item 4 –The angular exposure of the grinding wheel periphery and sides on a horizontal surface grinder exceeded 150 degrees (1910.215(b)(5)).

Div. Proposal - \$1,400.00

Formula Amt. - \$1,400.00

TOTAL PENALTY - \$5,000.00

TOTAL FORMULA AMT. - \$5,000.00

Darin Perkins summarized the citations and proposed penalty as listed. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$5,000.00 on motion of Ms. Oster, second of Mr. Sanders.

Century Roofing, Inc. – Consideration of proposed citations and penalty for this employer was removed from the agenda.

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

Marriott International, Inc. - Renee Pastor presented staff's renewal report along with current Moody's, Standard & Poor's and Dunn and Bradstreet bond and credit ratings and responded to questions from the Commissioners. Administration is recommending renewal of workers' compensation self-insurance authority based on Marriott's financial condition, worldwide assets of just over \$5.9 billion, a clean audit report and an acceptable credit rating. Following discussion, the Commission unanimously approved continuance of self-insurance authority on motion of Ms. Strickler, second of Mr. McCarthy.

Pinnacle West Capital Corporation - Renee Pastor presented staff's renewal report along with current Moody's, Standard and Poor's, Fitch, and Dunn and Bradstreet bond and credit ratings. Administration is recommending renewal of workers' compensation self-insurance authority based on Pinnacle West's financial stability and profitability, large size with assets of just above \$13.1 billion, a clean audit report and acceptable credit ratings. The Commission unanimously approved renewal of self-insurance authority on motion of Ms. Strickler, second of Ms. Oster.

Scottsdale Healthcare Corporation - Renee Pastor presented staff's renewal report along with current Fitch, Moody's and Dunn and Bradstreet bond and credit ratings and responded to questions from the Commissioners. Administration is recommending renewal of workers' compensation self-insurance authority based on Scottsdale Healthcare's financial strength with total assets of \$1.076 billion, a clean audit report, and acceptable credit ratings. Following discussion, the Commission unanimously granted continuance of self-insurance authority on motion of Mr. Sanders, second of Mr. McCarthy.

Viad Corp. - Renee Pastor presented staff's renewal report along with a current Dunn and Bradstreet credit rating and responded to questions from the Commissioners. Administration is recommending renewal of workers' compensation self-insurance authority based on Viad's large size, total worldwide assets of \$617.8 million, a clean audit report and acceptable credit ratings. Following discussion, the Commission unanimously approved renewal of self-insurance authority on motion of Mr. McCarthy, second of Ms. Strickler.

## Discussion &/or Action pursuant to A.R.S. §23-1041(E) to Adopt the Maximum Average Monthly Wage under A.R.S. §23-1041(D)(8) for Calendar Year 2013

Andrew Wade advised that this was an agenda item at the Commission's June 7, 2012 meeting. At that meeting, the Commission tabled consideration to allow staff to provide additional information to stakeholders. Mr. Wade summarized efforts to inform stakeholders and stated that no comments have been received. Staff is recommending the Commission adjust the average monthly wage, as directed by statute, to reflect the annual percentage increase in the Arizona mean wage of 3.04% which results in an average monthly wage of \$4,185.78 for calendar year 2013. Ms. Strickler asked Mr. Wade to explain the issues with the new version of the statute regarding the uses of the Economic Cost Index. Mr. Wade explained how the economic cost index is the broad title that includes many different indexes and the new legislation does not specify which of the many indexes to use. Ms. Strickler asked if Mr. Wade would recommend a change in the statute or how to fix this. Mr. Wade and Ms. McGrory responded to the question.

Mr. Parker stated that most of the indexes within the Economic Cost Index can be discarded from consideration leaving two or three to consider. He stated that staff should recommend one of the indexes and obtain input from stakeholders. Ms. McGrory commented on the process. Mr. Parker stated that the recommendation for this year is to use the current version of the statute and he suggests the Commission begin the process quickly to identify the appropriate index for next year. Following further discussion, Ms. Strickler moved to establish the maximum average monthly wage based on staff's recommendation and that for the future, the Commission consider the rulemaking process. Ms. Oster seconded the motion. Chairman Parker recommended that for clarification the motion be restated as two separate items. The motion and second were withdrawn. The Commission unanimously adopted the staff recommendation and set the maximum average monthly wage at \$4,185.78 for calendar year 2013 on motion of Ms. Strickler, second of Ms. Oster.

Discussion & Action regarding 2012-2013 Physicians' and Pharmaceutical Fee Schedule pursuant to A.R.S. §23-908(B)

Ms. McGrory reviewed the Summary of Commission Action document that was provided to the Commissioners. She stated that the last step in this year's annual review process is to obtain final approval of the language used to describe the action taken by the Commissioners and approval of the values found in Section II of the document, which are based on the methodology approved by the Commission. She directed the Commissioners' attention to the language used to describe the "incident to" exception that was approved as part of the provision addressing reimbursement of Physician Assistants or Nurse Practitioners. She stated that the summary document will be placed on the agency's website on August 1<sup>st</sup> and the updated Fee Schedule will be placed on the website on September 1<sup>st</sup>. Following discussion, the Commission unanimously approved the values and language set forth in Section II on motion of Mr. Oster, second of Mr. McCarthy. Ms. Strickler suggested that the Commission include as a future discussion item the methodology to determine values. Mr. Parker agreed. Ms. McGrory stated that this issue is included as a future discussion item on page 17 of the summary document.

Discussion &/or Action regarding the Development and Implementation of a Process for the Use of Evidence-Based Medical Treatment Guidelines under HB 2368

Ms. McGrory provided a list of the names of the individuals who have agreed to serve on the Director's Advisory Committee. Members are Ms. McGrory and Melinda Poppe, Claims Manager, from the ICA, Dr. Donald Dearth, Dr. Marjorie Eskay-Auerbach, Attorney Dennis Kurth, Dr. Chris Labban, Dr. Bill Lewis, Attorney Todd Lundmark, Dr. Beth Purdy, Sydney Standifird from Arizona Risk Management, Dr. Patricia Treharne, Cathy Vines of SCF Arizona, Marilyn Waite of Gallagher Bassett, and Attorney Steve Weiss. She stated that she has scheduled the first meeting for August 27, 2012. Ms. McGrory asked if the Commissioners had any goals or information that she may share the Committee. Ms. Strickler asked why there was no physical therapy representative on the committee. Ms. McGrory said no, and explained why the original group, intended to be a steering committee, is comprised of representatives of payers, providers and patients (claimants). Ms. Oster stated they were excellent selections and a good start.

As an outcome, Mr. Parker stated that he would like to ensure that litigation does not increase and that there is a decrease in the time and effort to resolve cases. He also stated that he thinks the process should focus attention on those injuries that are not resolving as expected so

they can be resolved and addressed. The process should also provide an appropriate opportunity for documentation of treatment that is inconsistent with evidence based medicine guidelines. He stated that evidence based medicine is not the answer to everything, but he would like the ability to measure its effectiveness. He suggested that if effective it should reduce "J" requests. Ms. McGrory agreed. She also stated that the committee will also develop interests and goals related to the development of the process. Ms. Oster agreed that the Commission does not want to see an increase litigation and that the resolution process will be important.

Discussion &/or Action regarding Residential Fall Protection

Ms. McGrory advised that she and Mr. Perkins have had discussions with Zachary Barnett, Federal OSHA Area Director, and in response to the Complaint Against State Program Administration (CASPA) that was filed against the state program, federal compliance officers intend to accompany ADOSH compliance officers on inspections that involve residential fall protection. Mr. Perkins stated there have been two joint inspections so far and the feedback he has received is positive. In response to a question from Mr. Sanders regarding the expectations as to when federal OSHA would provide ADOSH with feedback, Mr. Perkins stated that he was told we could expect federal compliance officers to accompany ADOSH compliance officers through the month of July and that at some point he expects we would get some kind of written finding. Mr. McCarthy asked if federal OSHA is doing this with any other states. Ms. McGrory advised that they are looking at four other states with different trigger heights for the use of conventional fall protection but Arizona is the only state in which federal compliance officers are accompanying state compliance officers because someone filed a CASPA with Federal OSHA.

Announcements and Scheduling of Future Meetings

The Commissioners agreed to cancel the meeting scheduled for July 18<sup>th</sup>. Meetings are scheduled for July 26, and August 1, 10, and 22, 2012.

There being no further business to come before the Commission and no public comment, Chairman Parker adjourned the meeting at 2:20 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By *Laura L. McGrory* Acting Director  
Laura L. McGrory, Director

ATTEST:

*Teresa Hilton*  
Teresa Hilton, Commission Secretary