

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Wednesday, September 5, 2012 – 1:00 p.m.

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

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Vice Chair Oster had not yet arrived. Also in attendance were Scot Butler, the agency's lobbyist, and Eda Barolli of Snell & Wilmer.

Approval of Minutes of August 22, 2012 Meeting

The Commission unanimously approved the Minutes of the August 22, 2012 meeting on motion of Mr. Sanders, second of Mr. McCarthy.

Consent Agenda:

- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
1. 2C11/12-2861 A Caring Solution Home Care, LLC
 2. 2C11/12-0896 AZ Pool Care Repair & Remodeling, L.L.C.
 3. 2C11/12-2370 Bruce Arnold, A Single Man, dba
Bruce's Automotive Specialists
 4. 2C11/12-1948 Dysart & Santa Fe Food & Gas, L.L.C.
 5. 2C10/11-2135 Gullatte Investments A, L.L.C.
 6. 2C11/12-1114 Morning Glory Adult Care, L.L.C.
 7. 2C12/13-0015 Outdoorsman RV Repair Center, Inc.
 8. 2C11/12-2488 Rae and Yong Pak, L.L.C. dba
Oishi Sushi & Teriyaki
 9. 2C12/13-0000 Robert Jewell, A Single Man, dba
Affordable Movers

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 Mr. McCarthy.

SERIOUS – Citation 1 - Item 3 – One horizontal band saw did not have the unused portion of the blade guarded (1910.212(a)(1)). There was another instance of this violation.

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

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 - \$6,650.00

TOTAL FORMULA AMT. - \$6,650.00

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 \$6,650.00 on motion of Mr. McCarthy, second of Mr. Sanders.

LGS AZ, LLC dba Look Trailers
8230 N. El Mirage Road
El Mirage, AZ 85335

Complaint
Yrs/Business – 2
Empl. Cov. by Insp. – 50

Site Location: 8230 N. El Mirage Road, El Mirage, AZ 85335

Inspection #: N9589/316631027

Insp. Date: 07/25/12

GROUPED SERIOUS – Citation 1 – Item 1(a) – Three differential pressure gauges (manometers) installed to indicate required air velocity were not functional. The subject gauges did not have any indicating solution (1910.107(b)(5)(i)).

Citation 1 – Item 1(b) – The spraying area was not provided with mechanical ventilation adequate to remove flammable vapors, mists or powders to a safe location and to confine and control combustible residues in that only one of the two exhaust fans were operational, the front and rear doors of the booth were open during spraying, and a substantial number of filters used to catch and contain combustible overspray were missing (1910.107(d)(2)).

Citation 1 – Item 1(c) – The spraying area was not kept free from the accumulation of deposits of combustible residue. Air filters had fallen from the walls and were covered with overspray. The west doors to the spray booth could not be closed due to accumulation of paint overspray (1910.107(g)(2)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 2 – Flammable paints used in spraying operations were transferred from one container to another without both containers being effectively bonded and grounded. Fifty-five gallon containers of flammable paint and the paint sprayer were not bonded and grounded (1910.107(e)(9)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

GROUPED SERIOUS – Citation 1 - Item 3(a) – The written respiratory protection program that included the provisions in 1910.134(c)(1)(i) – (ix) with worksite specific procedures was not established and implemented for required respirator use (1910.134(c)(1)).

Citation 1 - Item 3(b) – Employees were not provided a medical evaluation prior to wearing full-face air purifying respirators during spray finishing (1910.134(e)(1)).

for the gravity-based penalty with no adjustment factors because the violation caused or contributed to an employee's serious injury. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$12,500.00 on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion &/or Action regarding Legislation

Scot Butler provided a summary of primary election results and responded to questions from the Commissioners. Mr. Butler stated that he intends to present information regarding ballot propositions and the general election ballot at the end of September or beginning of October.

Ms. Oster arrived during the above discussion.

Discussion & Action regarding Consideration of Assessments under A.R.S. §§23-961(J), 23-966(D), 23-1065(A), and 23-1065(F) for Calendar Year 2013

Michael Hawthorne advised that the Commission has statutory authority to levy four assessments and he described the assessments and the purposes for each assessment. He provided the Commissioners with an updated cash flow analysis. He explained that the Commission may assess a maximum of 3.0% premium tax for the administrative fund and that the Commission established this rate for calendar year 2012. He provided projections for calendar years 2012 and 2013 taxable premiums. He presented an analysis of different options and he stated that staff was recommending the option that reduced the Administrative Fund premium tax to 2.50% for calendar year 2013, and he provided an explanation for the recommendation.

Mr. Hawthorne then described the financial condition of the Special Fund and stated that the Fund continues to be actuarially unsound with a net asset deficit (at a confidence level of 75%) as of June 30, 2011 of \$14.1 million. If the confidence level is increased to 80%, the actuarial deficit increases to \$54.3 million. Mr. Hawthorne stated that to fully protect the beneficiaries of the Special Fund by ensuring the Fund can meet its statutory obligations, staff recommends the confidence level be increased to 80%. Balancing the desire to reduce the tax burden, and in view of the ongoing net asset deficit position of the Special Fund, annual expenditures that exceed projected assessment, uncertain investment returns, apportionment liabilities that exceed six million dollars, and a net loss incurred under A.R.S. § 23-966, he stated that staff recommends that the Commission establish the §§ 23-966(D), 23-1065(A), and 23-1065(F) assessments at 0.5% , 1.25% and 0.5% respectively for calendar year 2013. This recommendation would reduce the total Special Fund assessments to 2.25% for calendar year 2013 from the current assessment rate of 2.5% for calendar year 2012.

Chairman Parker stated he would like to address how the Commission will define "actuarially sound," then address the Administrative Fund premium tax and then the Special Fund assessments. He explained the confidence level and stated he would be more comfortable with the 80%. Ms. Strickler expressed her concern for self-insured entities with raising the confidence level and stated that there needs to be a balance. In response to a question from Chairman Parker, Ms. McGrory explained why the Special Fund faces greater risks associated with its statutory obligations and that from staff's perspective it makes sense to increase the confidence level. She stated the recommendation made by staff attempts to achieve a balance

between lowering the assessment rates, while addressing the Special Fund's net asset deficit. Ms. Oster stated that the Commission has a fiduciary responsibility to the Special Fund and she stated that an 80% confidence level would be more appropriate and why. Further discussion followed regarding the definition of "actuarially sound." The Commission set the confidence level for the Special Fund at 80% on motion of Mr. Parker, second of Ms. Oster. Ms. Strickler voted against the motion. The motion passed four votes in favor and one against.

Mr. Parker stated that the next question is where to set the Administrative Fund tax; to stay at 3.0% or to reduce the tax to 2.75% or 2.5%. The Commission discussed the three alternatives. Mr. Parker stated that reducing the tax .25% is moving in the right direction. Mr. Sanders and Mr. McCarthy agreed. Ms. Strickler stated she was in favor of lowering the assessment. Ms. Oster stated she did not want to have to go back next year and increase the tax. Further discussion followed regarding projected revenue and the effect of insolvencies. Mr. Sanders explained that he would be more comfortable with a reduction of .25%, rather than .5% and explained why. Ms. Strickler questioned whether there were other alternatives for additional revenue or funding sources other than taxes/assessments. The Commission discussed the revenue sources of the Industrial Commission and the ongoing lawsuit regarding the attempted sweep of the Special Fund money.

Mr. McCarthy made a motion to set the Administrative Fund tax at 2.5% for calendar year 2013 which died for lack of a second. The Commission unanimously set the Administrative Fund tax at 2.75% for calendar year 2013 on motion of Mr. Sanders, second of Ms. Oster.

Noting the Special Fund's net asset deficit and the losses incurred under A.R.S. § 23-966, the Commission unanimously set the Special Fund § 23-966(D) insolvencies assessment at 0.5% on motion of Mr. Sanders, second of Mr. McCarthy.

Noting that the Special Fund's apportionment liabilities under § 23-1065(F) exceed \$6 million, the Commission unanimously set the § 23-1065(F) assessment at 0.5% for calendar year 2013 on motion of Ms. Oster, second of Mr. Sanders.

The Commission unanimously set the § 23-1065(A) Special Fund general assessment at 1.25% for calendar year 2013 on motion of Mr. Sanders, second of Mr. McCarthy.

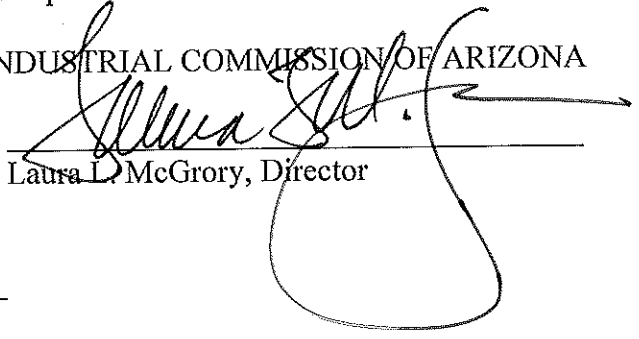
Announcements and Scheduling of Future Meetings

The Commission changed the meeting scheduled for October 10, 2012 to October 3, 2012. The December 5, 2012 meeting was changed to "if needed" and the December 12, 2012 meeting was confirmed.

There being no further business to come before the Commission and no public comment,
Chairman Parker adjourned the meeting at 3:00 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary