

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Wednesday, September 19, 2012 – 1:00 p.m.

Present:	David Parker	Chairman (video conference)
	Kathleen Oster	Vice Chair
	Susan Strickler	Member
	Michael G. Sanders	Member
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	Kathy Harris	Legal Counsel
	Jesus Maeda	I.H. Supv., ADOSH
	Mandy Murphy	I.H., 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. John McCarthy was not able to attend. Also in attendance were Eda Barolli of Snell & Wilmer and Seema Lord of Freeport-McMoRan.

Approval of Minutes of September 5, 2012 Meeting

The Commission unanimously approved the Minutes of the September 5, 2012 meeting on motion of Ms. Oster, second of Ms. Strickler.

Consent Agenda:

- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
 1. 2C11/12-2771 Delta Fresh, L.L.C.
 2. 2C12/13-0007 JC's Tires and Auto Sales, L.L.C.

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. Strickler.

Discussion & Action of ADOSH Discrimination Complaints

#12-02 Raymon Handy v Loomis Armored U.S. LLC – Jesus Maeda presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Handy. In his complaint, Mr. Handy alleges he was terminated for filing a safety complaint with management and ADOSH. In response to the complaint, the employer presented its position with respect to Mr. Handy's separation from employment.

Mr. Maeda presented a history of Mr. Handy's employment and chronology of events and responded to questions from the Commissioners. The Division recommendation was not to pursue the complaint because insufficient evidence has been identified to support a causal link between protected activity and adverse action. Mandy Murphy, principal investigator, and Kathy Harris, legal counsel, also responded to questions from the Commissioners.

Mr. Sanders and Ms. Strickler questioned whether there were three guards working together from the time Mr. Handy was hired. Ms. Murphy answered yes, but that when a new manager took over the branch in April of 2011, the protocol was changed to eliminate use of the guard, leaving the driver and messenger for the route. Ms. McGrory asked whether ADOSH considered that issue when it conducted the jobsite inspection of the employer. Mr. Maeda responded to the question describing the scope and outcome of that inspection. Mr. Sanders also questioned whether ADOSH investigated other branches to determine if there were other cross-load incidents and the employer response to those incidents. Mr. Maeda responded that they were aware of only the two incidents which occurred at the branch where Mr. Handy worked. Mr. Parker asked whether Mr. Handy had any previous disciplinary action. Mr. Maeda stated the investigation did not reveal any. The Commission discussed the 2010 cross-load incident in greater detail. The Commissioners expressed concern over the timing of the adverse action since Mr. Handy was terminated right after the employer received notice of the citation from ADOSH. They also expressed concern whether Mr. Handy was treated more harshly following the cross-loading incident than other employees as a result of the exercise of protected activity.

Following further discussion, Mr. Parker tabled the matter and requested that ADOSH further investigate the Loomis' handling of cross-loading incidents at other branches (if any) and whether Loomis is using only a driver and messenger in other branches or is it using a driver, guard, and messenger. Ms. McGrory commented on the time that has elapsed since Mr. Handy was suspended/terminated and the potential implications. Mr. Parker also requested that ADOSH investigate practices among other armored transportation companies. Mr. Parker and Ms. McGrory thanked staff for their work on this difficult and complex case and stated the narrative was very well written.

Discussion & Action of Proposed OSHA Citations & Penalties

VW Dig, LLC
4302 E. Superior Avenue
Phoenix, AZ 85040

Fatality/Accident
Yrs/Business - 18
Empl. Cov. by Insp. - 25

Site Location: 4302 E. Superior Avenue, Phoenix, AZ 85040
Inspection #: A7746/316553445
Insp. Date: 06/07/12

SERIOUS - Citation 1 - Item 1 - Procedures for lock-out and/or tag-out of loader backhoes to control potentially hazardous energy had not been developed, documented and utilized to protect employees servicing and maintaining or working on or around loader backhoes (1910.147(c)(4)(i)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS - Citation 1 - Item 2 - An adequate supply of lock out devices (swing lock pins) were not available to protect employees servicing and maintaining or working on or around loader

backhoes (1910.147(c)(5)(i)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1 - Item 3 – Employees servicing and maintaining or working on or around loader backhoes were not provided training regarding the purpose and function of the energy control program, or safe application, usage and removal of the energy controls to protect them when working around loader backhoes (1910.147(c)(7)(i)).

Div. Proposal - \$ 7,000.00

Formula Amt. - \$ 7,000.00

TOTAL PENALTY - \$16,500.00

TOTAL FORMULA AMT. - \$16,500.00

Jesus Maeda summarized the citations and proposed penalty as listed. It was clarified that the Division proposal for Citation 1, Item 2 should have been \$7,000.00 because all three violations caused or contributed to an employee's death, for a total proposed penalty of \$21,000.00. Mr. Sanders requested that in the future the narrative be included in the materials provided to the Commissioners. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$21,000.00 on motion of Ms. Oster, second of Mr. Sanders.

Discussion & Action regarding Requests for Renewal of Self Insurance Authority. The Commission may move into Executive Session under A.R.S. §38-431.03(A)(2) to discuss records exempt by law from public inspection. 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

Chairman Parker asked if any of the Commissioners wanted to discuss confidential information in Executive Session. Hearing no request, he stated Ms. Pastor could present her reports and the Commission could go into Executive Session later if needed.

Since there was a representative present from Freeport-McMoRan, Mr. Parker stated that renewal would be discussed first.

Freeport-McMoRan Copper & Gold, Inc. – Ms. Oster recused herself from this agenda item. Ms. Pastor presented staff's renewal report along with current Standard and Poor's, Moody's, Fitch 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 their profitability, large size with total assets of just over \$32 billion, a clean audit report, and good credit ratings. The inspections from the U.S. Department of Labor Mine and Safety office listed accidents and citations. It was discussed that they are inspected every six months so this was not unusual. Mr. Parker suggested to Ms. Lord that Freeport check with MSHA (Mine Safety Health Administration) to determine if the number of citations was unusually high, in which case they may need to explore whether improvements are needed to Freeport's loss control program. The Commission granted renewal of self-insurance authority on motion of Mr. Sanders, second of Ms. Strickler with a vote of three in approval and none against. Ms. Oster did not participate in the discussion or vote.

Empire Southwest LLC – Renee Pastor presented staff's renewal report along with current credit rating from Dunn and Bradstreet and responded to questions from the Commissioners. Administration is recommending renewal of self-insurance authority due to the Company's financial soundness; a clean audit report and good credit ratings. Ms. Oster asked

Ms. Pastor about excess insurance. Ms. Pastor responded to the question. Following further discussion, the Commission unanimously approved renewal of self-insurance authority on motion of Ms. Strickler, second of Mr. Sanders.

Kiewit Corporation – Ms. Pastor presented staff’s renewal report along with a current Dunn and Bradstreet credit rating. Administration is recommending approval of continuance of self-insurance authority based on the Company’s strong financial position with assets of just over \$5.6 billion and consistent record of profitability. The Commission unanimously approved continuance of self-insurance authority on motion of Mr. Sanders, second of Ms. Strickler.

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

DG Retail, LLC – Ms. Pastor presented staff’s renewal report along with current Standard & Poor’s, 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 the employer’s stability and profitability; a clean audit report; and acceptable bond and credit ratings. Ms. Oster stated the employer is in the process of moving to self-administering claims and Ms. Pastor explained the process and training that the Claims Division provides. Following discussion, the Commission unanimously granted continuance of self-insurance authority on motion of Ms. Strickler, second of Ms. Oster.

Learjet Inc. – Ms. Pastor presented staff’s renewal report along with current Standard and Poor’s, Moody’s, Fitch and Dunn and Bradstreet bond and credit ratings. Administration is recommending renewal of workers’ compensation self-insurance authority based on their overall financial stability with total assets of the parent company just over \$23.8 billion; a clean audit report; acceptable bond and credit ratings; and quarterly statements showing increased revenues and profits. The Commission unanimously approved renewal of self-insurance authority on motion of Mr. Sanders, second of Ms. Strickler.

Nordstrom, Inc. – Ms. Pastor presented staff’s renewal report along with current Fitch, Moody’s, Standard and Poor’s, and Dunn and Bradstreet bond and credit ratings. Administration is recommending renewal of workers’ compensation self-insurance authority based on the employer’s financial stability and profitability, with total assets of \$8.5 billion; a clean audit report; and stable credit ratings. The Commission unanimously granted continuance of self-insurance authority on motion of Ms. Strickler, second of Ms. Oster.

Safeway, Inc. – Ms. Pastor presented staff’s renewal report and an updated ratio sheet along with current Fitch, Moody’s, Standard and Poor’s, and Dunn and Bradstreet bond and credit ratings. Administration is recommending renewal of workers’ compensation self-insurance authority based on the employer’s financial stability, large size with total assets of just over \$15.07 billion; a clean audit report; and acceptable bond and credit ratings. The Commission unanimously granted renewal of self-insurance authority on motion of Mr. Sanders, second of Ms. Strickler.

Smith Pre-Cast, Inc. – Ms. Pastor presented staff’s renewal report along with current Moody’s and Dunn and Bradstreet bond and credit ratings and responded to questions from the Commissioners. Ms. Pastor expressed concerns regarding the employer’s financial condition and questioned the consistently low number of claims reported. She described the security and that the employer does not have any excess insurance and is self-administering claims. The

Commissioners discussed the financial information and expressed concerns over some "red flags." After further discussion regarding the financial condition of the self-insured, Mr. Parker questioned whether the Commission has the authority to approve renewal. The Commission discussed the consequences of continuing self-insurance compared to the consequences of denying self-insurance. Ms. McGrory explained the grounds upon which the Commission can revoke self-insurance authority. Ms. Strickler suggested that ADOSH could look into whether any injuries have been reported related to quarry work. Ms. McGrory identified and explained the Commission's options. Following further discussion, Mr. Parker tabled consideration of self-insurance renewal and requested that legal counsel prepare and bring back to the Commission at next week's meeting for further discussion and action, a draft findings and order denying renewal based on the company's financial inability to pay.

YRC, Inc., dba YRC Freight - Ms. Pastor stated that the Commission reviewed this employer's self-insurance authority six months ago and, at that time, requested staff present an update in six months with current information. She 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 the financial strength of the parent company, YRC Worldwide, Inc., with assets over \$2.4 billion and a clean audit report. Ms. Pastor expressed some concerns over certain financial aspects. Mr. Oster stated they have a low self-insured retention and stated that she was comfortable with the excess coverage trigger at \$250,000.00. Mr. Parker described concerns with maintaining that coverage. Following further discussion, the Commission unanimously granted renewal of self-insurance authority for six months to be re-evaluated in six months and directed that the current deposit be maintained on motion of Ms. Strickler, second of Mr. Sanders. Ms. Oster suggested that Ms. Pastor encourage the company to keep the SIR at \$250,000.00.

Discussion &/or Action regarding Legislation

Ms. McGrory stated that there was nothing new to report.

Announcements and Scheduling of Future Meetings

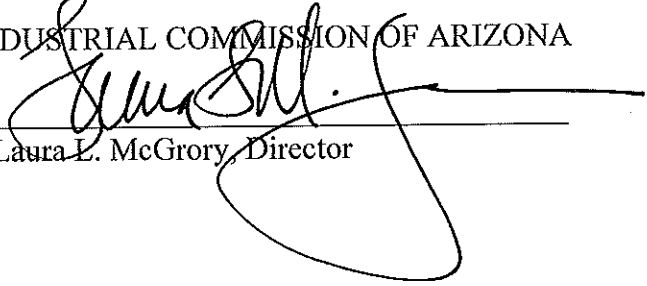
Ms. McGrory advised that staff has been discussing how to address the backlog of ADOSH discrimination complaints and that we are pulling resources from the Legal Department to assist with this. Mr. Parker stated this should be an agenda item for discussion next week.

Secretary Hilton reminded the Commissioners that the next meeting is scheduled for Wednesday, Sept 26, 2012.

There being no further business to come before the Commission and no public comment,
Chairman Parker adjourned the meeting at 3:35 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary