

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, May 23, 2013 – 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
	Andrew Wade	Acting Director
	William Warren	Director, ADOSH
	Larry Gast	Asst. Director, ADOSH
	Renee Pastor	Manager, Self-Insurance
	Melinda Poppe	Claims Manager
	Michael Hawthorne	Chief Financial Officer
	Kamen Kovatchev	Accounting
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 1:02 p.m. noting a quorum present. Also in attendance were Garry Shuster of MGM IV, LLP; Paul Levin of Sundt; Ruth Unks, Kim Granio and Cynthia Sneed of Maricopa County Community College District; Rock Tangen of Roofing Southwest; Scot Butler, the agency's lobbyist; and Andrea Lewis of Snell and Wilmer.

Approval of Minutes of May 8, 2013 Meeting

The Commission unanimously approved the Minutes of the May 8, 2013 meeting on motion of Mr. Sanders, second of Mr. McCarthy.

Discussion & Action regarding Appointment of Vice Chair of the Industrial Commission.

Chairman Parker stated that the Governor has appointed a replacement for Kathleen Oster and the Senate has not yet confirmed the replacement. Ms. Oster will continue to serve on the Commission but has requested that she be replaced as Vice Chair. Mr. McCarthy made a motion to appoint Michael Sanders as Vice Chair which was seconded by Mr. Sanders. The motion failed with a vote of two in favor and three opposed. Mr. McCarthy made a motion to appoint Susan Strickler as Vice Chair which was seconded by Ms. Oster and unanimously approved.

Consent Agenda:

a. Approval of Proposed Civil Penalties Against Uninsured Employers

1. 2C12/13-0038 AZ Move for Less, L.L.C. dba
Arizona Moving & Storage
2. 2C12/13-1468 Arizona Differential, L.L.C.
3. 2C12/13-0298 Bourget's Bike Works, Inc.

4. 2C11/12-2923 Callaghan Tile, L.L.C.
5. 2C11/12-2296 Classic Delivery, Inc.
6. 2C11/12-1872 Ernesta Pearl, a Single Woman, fka
Scottsdale Manor Assisted Living, Inc.
7. 2C12/13-0746 Exclusive Iron, L.L.C. dba
Exclusive Iron Concepts
8. 2C12/13-0349 GRO Industries, Inc.
9. 2C11/12-2473 Hi Tech Roofing, L.L.C.
10. 2C12/13-0957 Hilario Siguenza & Elisa Moreno, H/W, dba
Pancho Villa Scrap Metal
11. 2C12/13-1460 Jose Estrada & Erica Estrada, H/W, dba
Estrada Body Paint
12. 2C11/12-2678 Now Hiring Telemarketers, L.L.C.
13. 2C12/13-0088 Platinum X Entertainment, L.L.C. dba
Locas Show Club
14. 2C12/13-1028 Royal Auto Glass & Tint, L.L.C.
15. 2C12/13-0179 VJ & Son Painting & Drywall, L.L.C.
16. 2C12/13-1431 Gustavo Martinez & Debra Martinez, H/W, dba
Splash Spa Mobile Detailing

Chairman Parker stated that agenda item a (4) would be removed from the consent agenda. The Commission unanimously approved the remaining consent agenda items on motion of Mr. McCarthy, second of Mr. Sanders. Andrew Wade advised that with regard to item a (4) Callaghan Tile, L.L.C., the employer has obtained workers' compensation insurance and he is recommending a penalty of \$500.00 be assessed against this employer. The Commission unanimously assessed the recommended penalty of \$500.00 against employer a (4) on motion of Mr. Sanders, second of Ms. Oster.

Discussion &/or Action regarding Legislation

Scot Butler provided a brief updated report of current legislative activity and the status of the budget.

Discussion & Action regarding ADOSH Discrimination Complaint

#12-65 Kevin Thomas vs. Arizona Affordable Movers – Larry Gast advised that this complaint had been previously presented at which time the Commissioners raised several issues including whether other employees who complained about safety were treated differently and whether there was a progressive discipline program. Chairman Parker requested ADOSH perform an inspection to ascertain whether the truck had been repaired. Based on the discussion and issues raised, Chairman Parker had previously asked that the file be referred to the Legal Division for further review and tabled consideration of the matter. Mr. Gast responded to the Commissioners' questions and advised that the truck has been removed from service.

Mr. Gast recommended that the Commission decline to pursue the matter because the investigation did not find sufficient evidence to support a causal link between the exercise of any protected activity and adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. McCarthy, second of Ms. Strickler. With regard to the ADOSH inspection, Mr. Parker requested that, if appropriate, a citation be added based on the heat and window that would not roll down.

Discussion & Action of Requests for Renewal of Self Insurance Authority

Renee Pastor advised that representatives are here from the District and, due to time constraints, they have requested that this agenda item be considered next. Mr. Parker stated that this agenda item would be considered at this time.

Maricopa County Community College District - Ms. Pastor presented staff's renewal report along with current Fitch, Moody's, and Standard & Poor's bond ratings and a current Experian credit rating and responded to questions from the Commissioners. According to the District, the District does not have a risk management trust fund but has a quasi-endowment fund, which is overseen by the District's Governing Board and uses a 72% confidence level. Staff is recommending renewal of workers' compensation self-insurance authority based on the District's stable condition, a strong financial position at year-end with adequate resources and reserves to meet all current obligations; as well as good bond and credit ratings. Following discussion, the Commission unanimously approved renewal of authorization to self-insure on motion of Ms. Strickler, second of Ms. Oster.

Discussion & Action of Proposed OSHA Citations & Penalties

MGM IV, L.L.P. 2200 N. Central Ave., Ste. 205 Phoenix, AZ 85004	Fatality/Accident Yrs/Business - 15 Empl. Cov. by Insp. - 2
Site Location: 71 Biltmore Estates, Phoenix, AZ 85016	
Inspection #: X9949/316888924	
Insp. Date: 12/19/2012	

SERIOUS – Citation 1 - Item 1 – The employer did not instruct each employee in the recognition and avoidance of unsafe workplace conditions and the regulations applicable to his work environment, such as, demolition hazards and roll-up garage door hazards. (1926.0021(b)(2)).

Div. Proposal - \$7,000.00	Formula Amt. - \$7,000.00
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SERIOUS – Citation 1 - Item 2 – Employees were not provided protective helmets for protection against impact of falling and flying objects, such as a roll-up RV garage door. (1926.100(a)).

Div. Proposal - \$ 750.00	Formula Amt. - \$ 750.00
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SERIOUS – Citation 1 - Item 3 – A Dewalt 4-1/2" angle grinder, model number 20030749, serial number 930219, was not equipped with a wheel guard when in use. (1926.300(b)(1)).

Div. Proposal - \$ 750.00	Formula Amt. - \$ 750.00
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SERIOUS – Citation 1 - Item 4 – An engineering survey was not performed by a competent person to determine the conditions of the possibility of unplanned collapse of any portion of a roll-up RV garage door prior to permitting employees to start demolition operations. (1926.850(a)).

Div. Proposal - \$ 7,000.00	Formula Amt. - \$ 7,000.00
TOTAL PENALTY - \$15,500.00	TOTAL FORMULA AMT. - \$15,500.00

Mr. Gast summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Division proposal for items 1 and 4 was for the gravity-

Sundt Construction, Inc.
2620 S. 55th St.
Tempe, AZ 85282

Complaint
Yrs/Business - 122
Empl. Cov. by Insp. - 7

Site Location: 330 N. 1st Ave., Phoenix, AZ 85003
Inspection #: N4762/316914886
Insp. Date: 02/06/2013

SERIOUS - Citation 1 - Item 1 - One employee was working near the outer edge of the floor area that did not have a guardrail system or safety net system installed and was not using a personal fall protection system or equivalent, to prevent an approximate 30' fall hazard. (1926.501(b)(1)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS - Citation 1 - Item 2 - One employee was not trained to recognize the hazards of falling and in the procedures to minimize fall hazards, as the employee was observed working at the outer edge of the floor area, approximately 30' above the ground surface, without the use of any fall protection devices or equipment. (1926.503(a)(1)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$4,500.00

Mr. Gast summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Parker asked that Citation 1 - Item 2 be reworded to more precisely reflect the hazard. The corrected wording reads as follows, "One employee working 30' above the ground and exposed to falls was not trained to recognize the hazards of falling and in the procedures to be followed to minimize fall hazards." Following further discussion, the Commission unanimously approved issuing the citations and decreased the recommended penalty to \$1,875.00 per violation for a total penalty of \$3,750.00 by applying a good faith reduction of 15% on both items on motion of Mr. Sanders, second of Mr. McCarthy.

Sprayfoam Southwest, Inc.
2401 E. Magnolia
Phoenix, AZ 85034

Planned
Yrs/Business - 42
Empl. Cov. by Insp. - 6

Site Location: 4445 S. 12th Street, Phoenix, AZ 85040
Inspection #: F3189-317023430
Insp. Date: 03/14/2013

SERIOUS - Citation 1 - Item 1 - Three employees were not protected from falling through a 48' x 48' skylight, approximately fourteen feet (14') to the concrete floor below, by a guardrail system, by use of a personal fall arrest system, or by a cover secured over the skylight. (1926.501(b)(4)(i)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS - Citation 1 - Item 2 - Two employees were working beyond the warning line system on the roof of a building under construction where they were exposed to a fall of approximately 14' 6". (1926.501(b)(10))

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

TOTAL PENALTY - \$4,000.00

TOTAL FORMULA AMT. - \$4,000.00

Mr. Gast summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Commission discussed the employer's history and that

the employer had been cited for a skylight violation before. Mr. McCarthy asked if the previously history information could be included with the packet. Chairman Parker stated that the matter would be tabled for further review by the Legal Department for possible repeat or willful classification. Mr. Sanders requested copies of reports from the manufacturer regarding the skylights and how much weight they can hold.

Commission Secretary Hilton left the meeting at this point and Kara Dimas took over as secretary.

Discussion & Action of Requests for Renewal of Self Insurance Authority

City of Yuma – Rene Pastor presented staff's renewal report along with current Fitch, Moody's, and Standard and Poor's bond ratings and a current Experian credit rating and responded to questions from the Commissioners. The City does not have a workers' compensation trust fund. According to the City's accounting manager, they are going to add workers' compensation to the benefits trust. Ms. Pastor stated that staff is recommending renewal of the City's workers' compensation self-insurance authority based on its financial stability and a clean audit report. Following discussion, the Commission unanimously approved renewal of authorization to self-insure on motion of Mr. Sanders, second of Mr. McCarthy.

Costco Wholesale Corporation – Ms. Pastor presented staff's renewal report along with current Fitch, Moody's, and Standard and Poor's bond ratings and a current Experian credit rating and responded to questions from the Commissioners. Staff is recommending renewal of workers' compensation self-insurance authority based on their continued profitability with total worldwide assets of just over \$27.1 billion; a clean audit report and acceptable credit ratings; with a qualification that Costco enter into the OSHA Safety Consultation Program. It was discussed that Costco did not believe they needed the program and could not be forced to enter into the program. Following further discussion, Mr. Parker expressed concern over the rapidly climbing experience modification rates and possible concerns about Costco's safety program. Ms. Pastor agreed that they have a frequency problem. Mr. Wade commented on the Consultation Program. Mr. Parker suggested that as a condition of renewal Costco be asked to submit a report of their safety program and their efforts to reduce their e-mod. Ms. Strickler suggested a renewal of six months and then follow-up before the next yearly renewal. Ms. Oster commented on the large retention of \$2 million and the e-mods in that industry. Chairman Parker stated that the matter would be tabled, instructing Ms. Pastor to request a report from them on their intended effort to address their high e-mod. Their self-insurance authority will continue in the meantime, and the Commission will address this matter after receiving the report. Costco shall have 30 days to submit the report. Mr. Parker instructed staff regarding any request for additional time to submit the report. Mr. Sanders commented on the significant trend with the e-mod increasing. Ms. Strickler also requested that the material provided be specific to Arizona and not national numbers. Ms. Oster stated it would also be helpful to get reports about the types of injuries such as lifting, pulling, and etcetera.

Maricopa County – Chairman Parker and Vice Chair Strickler both recused from this agenda item. Ms. Oster took over as Chair. Ms. Pastor presented staff's renewal report along with current Fitch and Moody's bond ratings and a current Experian credit rating and responded to questions from the Commissioners. The County does have a trust fund and uses a confidence level of 55% and an annual discount rate of 2.0%. Staff is recommending renewal of workers' compensation self-insurance authority based on the County's financial strength; the financial protections afforded it as a governmental entity; the receipt of a clean audit report and acceptable

bond and credit ratings. Following discussion, the Commission approved renewal of authority to self-insure on motion of Mr. McCarthy, second of Mr. Sanders. The motion passed with three in favor and none opposed. Mr. Parker and Ms. Strickler did not take part in the discussion or the vote.

Scottsdale Healthcare Corporation - Ms. Pastor presented staff's renewal report along with current Fitch and Standard & Poor's bond ratings and a current Experian credit rating and responded to questions from the Commissioners. Staff is recommending renewal of workers' compensation self-insurance authority based on the Company's financial strength with total assets of just above \$1.2 billion, a clean audit report and an acceptable credit rating. Following discussion, the Commission unanimously approved renewal of authority to self-insure on motion of Ms. Strickler, second of Ms. Oster.

Yuma County - Ms. Pastor presented staff's renewal report along with current Fitch, Moody's, and Standard & Poor's bond ratings and a current Experian credit rating and responded to questions from the Commissioners. The County does not have a trust fund and has taken the position A.R.S. § 11-981 does not apply to Yuma County. According to information supplied by Yuma County, it has a workers' compensation fund with its own separate internal service fund. The County has stated that neither the Finance Department of Yuma County nor the County's hired auditors utilize a confidence level when producing the Certified Annual Financial Report. Yuma County asserts that it meets the qualifications under A.A.C. R20-5-1114 for maintaining a fully-funded risk management fund as an alternative to the posting of other securities.

Mr. Parker presented a summary of Yuma County's position and explained the background behind the statute that requires public entities have a trust fund if they self-insure for lawful claims of liability such as workers' compensation. He also discussed the Commission rule regarding alternative to posting other securities. He stated that in the past, Yuma County has been granted alternative to posting other security and he explained why the County must have a trust. Mr. Parker stated that he would like to have a conversation with Yuma County before taking action. Ms. Oster agreed and stated she wanted more time to read the statutes and information that Mr. Parker had provided. Following further discussion, Mr. Parker tabled consideration of self-insurance renewal until representatives from Yuma County can be present.

Discussion & Action of Application for New Employment Agency License

Keli Brinke on behalf of Career Transition, LLC - Mr. Wade advised that this agenda item should have been listed under the consent agenda but can be a discussion item if the Commissioners have any questions. Hearing none, the Commission unanimously approved the new employment agency license on motion of Ms. Oster, second of Ms. Strickler

Discussion & Action of Request for Lump Sum Commutation.

Timothy R. Sipe #20111-100173 - Melinda Poppe presented this lump sum petition with a recommendation to approve the petition. Ms. Poppe explained the reasons for her recommendation and responded to questions from the Commissioners. Following discussion, the Commission unanimously approved the lump sum commutation on motion of Ms. Strickler, second of Mr. McCarthy.

Announcements and Scheduling of Future Meetings

The next meeting of the Commission is scheduled for Wednesday, June 5, 2013. The Commissioners agreed to move the meeting scheduled for Wednesday, July 31, 2013 to Wednesday, July 3, 2013.

There being no further business to come before the Commission and no further public comment, the meeting was adjourned at 3:30 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By Andrew Wade
Andrew Wade, Acting Director

ATTEST:

Teresa Hilton
Teresa Hilton, Commission Secretary

Kara Dimas
Kara Dimas, Acting Commission Secretary