

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Wednesday, November 6, 2013 – 1:00 p.m.

|          |                         |                             |
|----------|-------------------------|-----------------------------|
| Present: | David M. Parker         | Chairman (video conference) |
|          | Susan Strickler         | Vice Chair (telephonic)     |
|          | Kathleen Oster          | Member                      |
|          | Michael G. Sanders      | Member                      |
|          | Joseph M. Hennelly, Jr. | Member (video conference)   |
|          | Laura McGrory           | Director                    |
|          | Andrew Wade             | Chief Counsel               |
|          | Chris Anderson          | Legal Counsel               |
|          | William Warren          | Director, ADOSH             |
|          | Francis Imes            | Compliance Officer          |
|          | Ron Harnsberger         | Compliance Officer          |
|          | Ana Maldonado           | Compliance Officer          |
|          | Stephanie Caler         | Compliance Officer          |
|          | Kathleen McLeod         | Claims Manager              |
|          | Jacqueline Kurth        | Claims                      |
|          | Michael Hawthorne       | Chief Financial Officer     |
|          | Kamen Kovatchev         | Tax Accountant              |
|          | Teresa Hilton           | Commission Secretary        |

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Scot Butler, the agency's lobbyist; Matt Saxe of Lang, Baker & Klain, PLC; Laura Camarillo and Andrew Chippindale of Hotel Valley Ho; and Jason Weber of Snell and Wilmer.

Approval of Minutes of October 30, 2013 Meeting

The Commission unanimously approved the Minutes of the October 30, 2013 General Session on motion of Ms. Strickler, second of Mr. Hennelly.

The Commission unanimously approved the Minutes of the October 30, 2013 Executive Session on motion of Mr. Sanders, second of Ms. Oster.

Discussion &/or Action regarding Legislation

Scot Butler presented a summary of potential changes in the House and Senate. He also advised that the Goldwater Institute has initiated a legal action challenging the constitutionality of the Medicaid expansion and he summarized the impact that action might have on budget discussions. Mr. Butler commented on potential responses to federal OSHA's intent to take over enforcement of construction standards in Arizona. He summarized other items of interest to the Commission, including the large deductible issue, the in lieu tax deviation, and workers' compensation bad faith. He stated that he recommends that the Commission not initiate any legislation at this time and responded to questions from the Commissioners.

Discussion & Action of Proposed OSHA Citations & Penalties

MSR Properties, LLC dba Hotel Valley Ho  
6850 E. Main St.  
Scottsdale, AZ 85251

Complaint  
Yrs/Business – 8  
Empl. Cov. by Insp. – 20

Site Location: 6850 E. Main St., Scottsdale, AZ 85251  
Inspection #: U9805-317334175  
Insp. Date: 09/25/2013

SERIOUS – Citation 1 - Item 1 – Employees working with mild acid detergent were not provided with appropriate protective equipment (i.e., goggles, rubber gloves, and rubber boots). (1910.132(a)).

Div. Proposal - \$3,150.00

Formula Amt. - \$3,150.00

SERIOUS – Citation 1 - Item 2 – The employer did not evaluate the workplace for hazards which would require the use of personal protective equipment while cleaning the sauna. (1910.132(d)(1)).

Div. Proposal - \$3,150.00

Formula Amt. - \$3,150.00

SERIOUS – Citation 1 - Item 3 – The employer did not establish, implement, and maintain a written hazard communication program for employees who are potentially exposed in the workplace to hazardous chemicals, materials and/or substances such as mild acid detergent, oils, lubricants, disinfectants, and chlorine. (1910.1200(e)(1)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

TOTAL PENALTY - \$8,550.00

TOTAL FORMULA AMT. - \$8,550.00

Bill Warren summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Chairman Parker invited those in attendance from Hotel Valley Ho to address the Commission. Laura Camarillo, HR Manager, commented on the availability of certain personal protective equipment, use by employees, and the alleged injury. She responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$8,550.00 on motion of Ms. Oster, second of Ms. Strickler.

Star Plastering, Inc.  
2005 W. Parkside Ln.  
Phoenix, AZ 85027

Unprogrammed Related  
Yrs/Business – 35  
Empl. Cov. by Insp. – 2

Site Location: 9861 E. Blue Sky Dr., Scottsdale, AZ 85262  
Inspection #: F3189-317334464  
Insp. Date: 10/03/2013

SERIOUS – Citation 1 - Item 1 – North side of the home: An employee was working from a 3' wide by 10' long fabricated frame scaffold at a height of approximately 7'- 0", and a fall protection plan containing all the elements as outlined in subparagraphs 1-10 had not been implemented. (A.R.S. § 23-492(07)(A)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 2 –

(a) North side of the home: An employee was utilizing a 3' wide, 10' long by 7' high fabricated frame scaffold and the plywood deck scaffold plank was not capable of supporting without failure, its own weight and at least 4 times the maximum intended load. (1926.451(a)(1)).

(b) North side of the home: One employee was working from a 3' x 10' fabricated frame scaffold at a height of up to approximately seven feet without the working level of the scaffold being fully planked between the front uprights and the guardrail supports. (1926.451(b)(1)).

(c) North side of the home: One employee was working from the platform of a 3 feet wide by 6 feet wide high trestle scaffold (one end) and a 3 feet wide by 7 feet high fabricated frame scaffold (opposite end) at a height of between 6 feet and 7 feet that consisted of two wooden planks, which extended over the scaffold support approximately 23 inches and did not have guardrails or other protective measures which would block employee access to the cantilevered portion of the plank. (1926.451(b)(5)(ii)).

(d) North side of the home: One employee was working from a 3' x 10' fabricated frame scaffold where the scaffold uprights did not bear on mud sills or other firm foundation in that one end of the scaffold the uprights were being supported by the surrounding ground area. (1926.451(c)(2)).

(e) North side of the home: One employee was accessing and exiting a 3' x 10' fabricated frame scaffold from and to another surface, when the scaffold was approximately 22 inches horizontally from that other surface. (1926.451(e)(8)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 3 – North side of the home: An employee was not trained in the recognition and avoidance of the hazards associated with the use of fabricated frame scaffolds. (1926.454(a)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 4 – Protruding reinforcing steel (i.e., rebar) onto or into which employees could fall, was not protected by appropriate caps, covers or other equivalent means to protect employees from the hazard created by impalement. (1926.701(b)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL PENALTY - \$4,750.00

TOTAL FORMULA AMT. - \$4,750.00

Bill Warren and Francis Imes 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 \$4,750.00 on motion of Mr. Sanders, second of Ms. Oster.

Sombrero Construction, L.L.C.  
P.O. Box 1209  
Cashion, AZ 85329

Planned  
Yrs/Business – 12  
Empl. Cov. by Insp. – 9

Site Location: 12320 E. North Ln., Scottsdale, AZ 85255

Inspection #: F3189-317322600

Insp. Date: 9/12/2013

SERIOUS – Citation 1 - Item 1 –

(a) Roof: Two workers were installing roof sheathing and were not protected from falling approximately nine feet through an approximately two foot by four foot opening in the working surface. (A.R.S. § 23-492(03)(B)).

(b) Bedroom 3: A standard or intermediate rail was not provided where the framing created wall openings that were approximately 22-1/2" wide, approximately 8'-10" in height and where there was a drop of approximately 9'-6" to the stair landing below. (A.R.S. § 23-492(03)(1)(1)).

(c) Roof: Two employees were installing roof sheathing on a two-story structure where the fall height exceeded fifteen feet and the employees were not protected by guardrails, personal fall protection systems or by other means prescribed by this article. (A.R.S. § 23-492.04(G)(1)(a)).

(d) Two employees were working at heights above 6 feet and a fall protection plan had not been prepared and implemented which reduced or eliminated fall hazards for employees engaged in residential construction. (A.R.S. § 23-492(07)(A)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1 - Item 2 – Two employees were working at a height greater than six feet above a lower level on a dwelling under construction and were not trained in accordance with the requirements of 29 CFR 1926.503. (A.R.S. § 23-492(09)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1 - Item 3 – West side of the home: During the course of construction employees were exposed to scrap lumber with protruding nails. (1926.25(a)).

Div. Proposal - \$1,400.00

Formula Amt. - \$1,400.00

SERIOUS – Citation 1 - Item 4 – North of the Building: Protruding reinforcing steel (i.e., rebar) which employees could fall onto, was not protected by appropriate caps, covers or other equivalent means to protect employees from the hazard created by impalement. (1926.701(b)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

TOTAL PENALTY - \$6,650.00

TOTAL FORMULA AMT. - \$6,650.00

Bill Warren and Francis Imes 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. Hennelly, second of Ms. Oster.

Doors West, Inc.  
6205 N. 55<sup>th</sup> Ave.  
Glendale, AZ 85301

Complaint  
Yrs/Business – 19  
Empl. Cov. by Insp. – 25

Site Location: 6205 N. 55<sup>th</sup> Ave., Glendale, AZ 85301

Inspection #: U9805-317365013

Insp. Date: 10/7/2013

SERIOUS – Citation 1 - Item 1 – Storage Room: A mezzanine in the storage room above 7' used for miscellaneous materials was unguarded with no standard railing provided for fall protection. (1910.23(c)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 2 – Door manufacturing area: An employee in the nailing area was exposed to an 8-hour time weighted average (TWA) noise level above the OSHA Permissible Exposure Limit (PEL) of 90 dBA and was not provided a continuing, effective hearing conservation program. On October 16, 2013 noise monitoring results indicated an 8-hour TWA employee exposure of 95.9 dBA. (1910.95(c)(1)). There was one other instance of this violation.

Div. Proposal - \$1,050.00

Formula Amt. - \$1,050.00

SERIOUS – Citation 1 - Item 3 – Door manufacturing building: The employer did not assess the hazards present in the door manufacturing area to determine the nature of the hazards that are likely to be present, which necessitate the use of personal protective equipment, such as ear plugs and dust masks. (1910.132(d)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4 – Door manufacturing building: The employer did not have NIOSH approved dust masks available on site for workers to use while working in the door manufacturing area. (1910.134(d)(1)(ii)).

Div. Proposal - \$600.00

Formula Amt. - \$600.00

SERIOUS – Citation 1 - Item 5 – Door manufacturing building: Wood dust was not kept clean near the saw beside the casing area and on the floor to the extent that the nature of the work allowed and had accumulated at the base of the saw as well as inside the unit. (1910.141(a)(3)(i)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$3,900.00

TOTAL FORMULA AMT. - \$3,900.00

Bill Warren and Ana Maldonado summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Chairman Parker asked whether additional language should be added to Citation 1 – Item 4 regarding the lack of a respiratory protection program and appropriate dust masks. Ms. Maldonado explained when a respiratory protection program is needed and that she had supplied the employer with a sample program. The Commission discussed how a future citation might be classified as a willful because the employer now knows of the requirements. Mr. Sanders questioned whether Citation 1 – Item 5 should have an adjustment for good faith since the employer was cleaning saw dust off the floors. Ms. Maldonado explained why the saw dust accumulation inside the table saw cabinet was a hazard. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,900.00 on motion of Ms. Oster, second of Mr. Hennelly.

Consolidated Engineering & Construction, LLC  
2537 W. Missouri Ave.  
Phoenix, AZ 85017-2740

Referral  
Yrs/Business – 10  
Empl. Cov. by Insp. – 6

Site Location: 18864 E. Germann Rd., Queen Creek, AZ 85142

Inspection #: N4762-317221877

Insp. Date: 07/05/2013

SERIOUS – Citation 1 - Item 1 – Gymnasium Roof Area: Five employees climbed up and down the guardrail system of a Skyjack scissor lift, Model SJIII 4632, Serial number unknown, which is prohibited by the manufacturer, to gain access to and from the roof which was approximately 50” above the platform of the scissor lift, while elevated at 26’ above the concrete floor. (1926.451(e)(1)).

50" above the platform of the scissor lift, while elevated at 26' above the concrete floor. (1926.451(e)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 2 – Gymnasium Roof Area: An employee had climbed up and down the guardrail system of a Skyjack scissor lift, Model SJIII 4632, Serial Number unknown, which is prohibited by the manufacturer, to gain access to and from the roof which was approximately 50" above the platform of the scissor lift, while elevated 26' above the concrete floor, without being trained in the hazards associated with the type of scaffold being used and understanding the procedures to control or minimize those hazards. (1926.454(a)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 3 – Northwest corner of Gymnasium Roof Area: An employee was walking on an endwall rafter beam beyond the leading edge of the metal decking, approximately 29' above the gymnasium floor, and was not protected from falling by a guardrail system, safety net system, personal fall arrest system, positioning device system or fall restraint system, resulting in an employee fall with serious injuries. (1926.760(a)(1)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1 - Item 4 – Gymnasium Roof: Five employees were working in an area where the employer had verbally designated the entire 81' by 106' gymnasium roof as a Controlled Decking Zone, but there were no signs or control lines posted identifying the area as a Controlled Decking Zone, and some of the boundaries of the CDZ were more than 90' from a leading edge. (1926.760(c)(3)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$8,750.00

TOTAL FORMULA AMT. - \$8,750.00

Bill Warren advised that at a previous meeting, consideration of these citations was held pending review by staff whether any of the violations should be classified as "willful" violations. Following thorough review of the file, staff is still recommending "serious" classifications. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$8,750.00 on motion of Mr. Sanders, second of Ms. Oster.

Laura McGrory introduced Kathleen McLeod, new Claims Manager, and Jackie Kurth, Claims Department, to the Commissioners.

#### Discussion & Action of Request for Lump Sum Commutation

Rumaldo Martinez #20061-040040 – Kathy McLeod presented this lump sum petition with a recommendation to approve the petition. Ms. McLeod 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 Mr. Sanders, second of Ms. Strickler.

#### Announcements and Scheduling of Future Meetings

Chairman Parker reviewed the proposed meeting schedule for 2014. Mr. Sanders stated, for the record, that he feels that it is better for the Agency and that the public is better served if the Commission has a regular meeting schedule. Whatever that day of the week is set to be, he

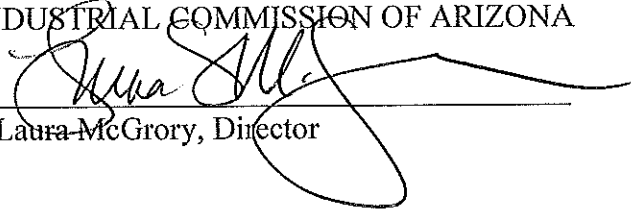
would adjust his schedule. In response to a question from Chairman Parker, the other Commissioners stated their preferences for having flexibility in the meeting calendar and whether they preferred a morning or afternoon meeting. Mr. Parker stated that this could be discussed further at a future meeting.

Secretary Hilton reminded the Commissioners of the meetings that are scheduled through the rest of the year and that the next meeting is scheduled for Thursday, November 14, 2013 and will begin at 1:30 p.m.

There being no further business to come before the Commission and no further public comment, the meeting was adjourned at 2:30 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
\_\_\_\_\_  
Laura McGrory, Director

ATTEST:

  
\_\_\_\_\_  
Teresa Hilton, Commission Secretary