

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Auditorium
Phoenix, Arizona 85007
Wednesday, November 20, 2013 – 1:00 p.m.

Present:	David M. Parker	Chairman (video conference)
	Susan Strickler	Vice Chair
	Kathleen Oster	Member
	Michael G. Sanders	Member
	Joseph M. Hennelly, Jr.	Member
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	William Warren	Director, ADOSH
	Michael Hawthorne	Chief Financial Officer
	Kamen Kovatchev	Tax Accountant
	Kathleen Oster	Claims Manager
	Chad Lester	MIS
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Attached is the attendance sheet for those who chose to sign in. Also in attendance was Andrea Lewis of Snell and Wilmer.

Legislative Stakeholders' Meeting

Chairman Parker welcomed interested parties to the Commission's 2013 Stakeholders' Meeting and advised that at this time the Commission has not taken any action to have legislation introduced on its behalf in the upcoming legislative session. He explained that the purpose of the meeting is to provide stakeholders with an additional opportunity to comment on issues or to recommend the introduction of legislation regarding any aspect of the Industrial Commission's operations. Mr. Parker stated that information can be provided to the Commission after the meeting, though preferably before the start of the legislative session.

Steve Haver of Framing Contractors Associates addressed the Commission. He stated that he would like to speak about A.R.S. § 23-492 and that he represents five of the largest apartment framers in the valley. He explained the effect this statute has on his framer clients in that they have to make a choice between the six foot rule and ADOSH enforcement, or the six foot rule and federal OSHA enforcement. Mr. Haver commented that ADOSH is more capable of enforcing the six foot rule for fall protection and that the existing statute, § 23-492, should be repealed. He stated that they will support a bill repealing 23-492 and he believes that most of the framing contractors in the valley will also support it given the choice that they are confronted with. Mr. Haver stated that they do not want to see the valley taken over by federal OSHA and that they do not know whether the Industrial Commission is able to take a position on this subject. He stated that his group would be delighted with whatever the Industrial Commission could do to encourage third parties, trade associations, and others to organize to repeal A.R.S. § 23-492.

There being no further requests to speak, Chairman Parker announced that the stakeholders' meeting was completed and the Commission would proceed with the remaining agenda items.

Approval of Minutes of November 14, 2013 Meeting

The Commission unanimously approved the Minutes of the November 14, 2013 Commission meeting on motion of Ms. Oster, second of Ms. Strickler.

Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. 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.

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C12/13-2245 Big Saver LLC dba Big Savers Food Mart
2. 2C11/12-2156 Bravo's Towing LLC
3. 2C11/12-1939 Classic Air Aviation LLC dba Classic Air Aviation
4. 2C13/14-0639 Designated Drivers, LLC dba DD 24/7
5. 2C12/13-0089 Mesa Air, LLC
6. 2C13/14-0152 Robert M. Lucero, Jr., ASM, dba El Camino Auto
7. 2C13/14-0354 Tuti Automotive, LLC dba R&S Automotive

b. Approval of Requests for Renewal of Self-Insurance Authority.

1. Mayo Clinic
2. Pilot Travel Centers, LLC

Chairman Parker stated that item a. 7 is being removed from the consent agenda. The Commission unanimously approved the remaining items on the consent agenda on motion of Ms. Strickler, second of Mr. Hennelly.

Discussion & Action of Proposed Civil Penalty Against Uninsured Employer

2C13/14-0354 Tuti Automotive, LLC dba R&S Automotive – Andrew Wade advised that this employer has recently obtained workers' compensation insurance and that staff is now recommending a reduced penalty of \$500.00. Following discussion, the Commission unanimously assessed the recommended penalty of \$500.00 on motion of Mr. Sanders, second of Ms. Oster.

Discussion & Action of Proposed OSHA Citations & Penalties

Elite Underground, LLC
12473 W. Montgomery Rd.

Fatality/Accident
Yrs/Business – 6

Peoria, AZ 85335

Empl. Cov. by Insp. - 4

Site Location: Acapulco and Tonya St., El Mirage, AZ 85335

Inspection #: W3109-317221901

Insp. Date: 07/08/2013

SERIOUS - Citation 1 - Item 1 - Acapulco and Tonya St., El Mirage, AZ: An employee was not provided with information and training on the hazards associated with heat stress resulting in the death of one employee. (1926.21(b)(2)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

Bill Warren summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. The Division proposal was for the gravity based penalty with no adjustment factors because the violation was a contributing factor to the fatality.

The Commissioners discussed at length that the employee had only worked for the company for two days and that even though the employer appeared to have a good training program, that the deceased employee had not been trained. Mr. Parker described the problem faced by employers with regard to training of new employees. He stated that is important that employees be trained as soon as possible and that the employer should not wait until the next scheduled training. Mr. Warren responded to questions from Mr. Sanders relating to the investigation, the training provided to the foreman and other employees, the job conditions, and standard cited by ADOSH. In response to a statement by Ms. Strickler that she believed the employee had some personal responsibility in that he could have asked for a break or let someone know he was having trouble, the Commissioners discussed the responsibilities of an employer and employee in this situation, and whether training to recognize the signs of heat stress might have prevented this fatality. The Commissioners also discussed the recommended penalty and whether \$7,000.00 was too high.

Following further discussion, Ms. Strickler made a motion to reduce the penalty to \$1,500.00, by the gravity based penalty of \$5,000.00 and applying adjustment factors totaling 70%, which was seconded by Ms. Oster. Mr. Parker and Mr. Hennelly explained why they felt \$1,500.00 was too low. The motion failed with Mr. Parker, Mr. Sanders, and Mr. Hennelly opposed. The Commission then approved issuing the citation and assessed the gravity based penalty of \$5,000.00 on motion of Mr. Sanders, second of Mr. Parker. The motion passed with Mr. Parker, Ms. Oster, Mr. Sanders, and Mr. Hennelly in favor, and with Commissioner Strickler voting against the motion.

Primus Builders, Inc.
8294 Hwy 92 Ste. 210
Woodstock, GA 30189

Planned
Yrs/Business - 14
Empl. Cov. by Insp. - 7

Site Location: 7600 W. Van Buren St., Phoenix, AZ 85043

Inspection #: Q6169-317289460

Insp. Date: 09/10/2013

SERIOUS - Citation 1 - Item 1 - Roof: Two employees were working approximately 20' above a lower level without utilizing a fall protection system. (1926.760(a)(1)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1 - Item 2 – Roof: The employees were not trained in the recognition and avoidance of hazards associated with falls. (1926.761(b)).

Div. Proposal - \$1,250.00	Formula Amt. - \$1,250.00
TOTAL PENALTY - \$3,750.00	TOTAL FORMULA AMT. - \$3,750.00

Bill Warren 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 a penalty of \$2,625.00 by applying an additional adjustment factor of 15% for good faith since the employer immediately corrected the fall protection violation and provided training on motion of Ms. Strickler, second of Mr. Sanders.

Safeway, Inc. dba Safeway
20227 N. 27th Ave.
Phoenix, AZ 85027

Complaint
Yrs/Business – 100
Empl. Cov. by Insp. – 30

Site Location: 801 E. Glendale Ave., Phoenix, AZ 85020
Inspection #: H1793-317334233
Insp. Date: 09/26/2013

SERIOUS – Citation 1 - Item 1 – North West Receiving Room: The Receiving Room walk-in freezer door way floor had an approximate one inch ice buildup and was not maintained in a dry condition. (1910.22(a)(2)).

Div. Proposal - \$4,500.00	Formula Amt. - \$4,500.00
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SERIOUS – Citation 1 - Item 2 – Meat Department cutting room: The workplace was not assessed to determine if hazards were present, or were likely to be present, which necessitated the use of personal protective equipment when operating the band saw. (1910.132(d)(1)).

Div. Proposal - \$1,800.00	Formula Amt. - \$1,800.00
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SERIOUS – Citation 1 - Item 3 – North West Receiving Room: The exit door was blocked by product display stands. (1910.37(a)(3)).

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. 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 Mr. Hennelly.

Discussion & Action of Attorney Fee Petition

Robert E. Wisniewski, P.C. v. Soledad Mejia - Andrew Wade stated that Attorney Robert E. Wisniewski has petitioned the Industrial Commission to set attorneys' fees with respect to work performed for Ms. Mejia in connection with Ms. Mejia's April 17, 2013 workers' compensation claim. Mr. Wade presented a history of the claim and the work performed by Mr. Wisniewski on behalf of Ms. Mejia. Mr. Wisniewski has received no attorney fees to date and is requesting 10.2 hours at a rate of \$300.00 per hour, or \$3,060.00. Mr. Wade advised that staff is recommending that Mr. Wisniewski be awarded attorneys' fees based on a reasonable hourly rate for a certified specialist of \$185.00 per hour, which would translate to \$1,887.00, or 25% of any benefits or settlements, whichever is less. Following discussion, the Commission

unanimously awarded \$1,887.00 or 25% of any benefits or settlements, whichever is less, on motion of Ms. Oster, second of Ms. Strickler.

Announcements and Scheduling of Future Meetings

Secretary Hilton reminded the Commissioners that the next meeting is scheduled for December 4th. The Commission established a schedule of meetings for the first three months of 2014 as follows: January 9, 22 and 29, February 12, 19 and 27, March 5, 19 and 26.

Discussion &/or Action regarding Industrial Commission of Arizona, for itself and as Trustee for the Special Fund of the Industrial Commission of Arizona, and the Special Fund of the Industrial Commission of Arizona, et. al. v. Janice K. Brewer, Governor of the State of Arizona, in her official capacity, et. al. The Commission may move into Executive Session under A.R.S. §§38-431.03(A)(3) and (A)(4) for discussion and consultation with Commission attorneys for legal advice and in order to consider its position and instruct its attorneys regarding the Commission's position regarding pending or contemplated litigation or settlement discussions conducted in order to avoid or resolve litigation. 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

Mr. Wade gave a brief summary of the history of the litigation regarding the 2009 legislative attempt to sweep \$5 million from the Special Fund and the current status. The Commission unanimously agreed to move into Executive Session on motion of Ms. Strickler, second of Ms. Oster.

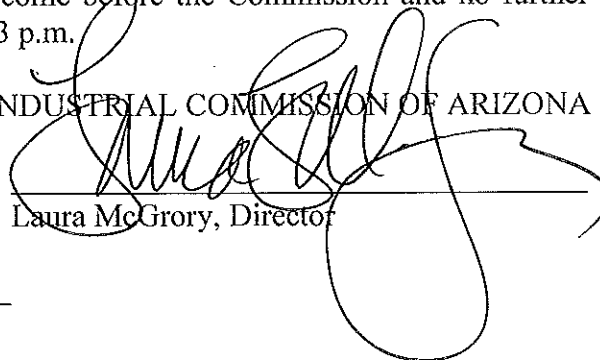
Executive Session Minutes are kept separately.

Upon return to General Session, the Commission unanimously moved to proceed with a Petition for Review to the Arizona Supreme Court on motion of Ms. Strickler, second of Mr. Parker.

There being no further business to come before the Commission and no further public comment, the meeting was adjourned at 2:53 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary