

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, December 12, 2013 – 1:00 p.m.

Present:	David M. Parker	Chairman (video conference)
	Susan Strickler	Vice Chair
	Kathleen Oster	Member
	Michael G. Sanders	Member (telephonic)
	Joseph M. Hennelly, Jr.	Member (video conference)
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	William Warren	Director, ADOSH
	Bryce Rucker	Compliance Officer
	J. R. Imes	Compliance Officer
	Melinda Poppe	Chief Administrative Law Judge
	Michael Hawthorne	Chief Financial Officer
	Renee Pastor	Self Insurance
	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; Sara Begley of SCF Arizona; Steven Harris and David Price of REDW LLC; Marc Osborn and Sara Sparman of Kutak Rock; and Andrea Lewis of Snell and Wilmer.

Approval of Minutes of December 4, 2013 Meeting

The Commission unanimously approved the Minutes of the December 4, 2013 Commission meeting on motion of Ms. Strickler, second of Ms. Oster.

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. 2C13/14-0338 Bubba Phatz BBQ, LLC
2. 2C13/14-0367 Circus Furniture, LLC
3. 2C13/14-0490 E-Z Money Recycling, LLC
4. 2C12/13-1849 Go Green Body and Paint, LLC
5. 2C13/14-0493 Jose Flores & Beatrice Flores, H/W,

- 6. 2C13/14-0372 dba Weld and Repair Services  
Maria Elena Lopez-Sandoval, ASW,  
dba Sandovalraba Remodeling
- 7. 2C13/14-0417 Precious Hands Healthcare, LLC
- 8. 2C11/12-2435 Royal, Quick, Trip, Transportation, Services,  
Taxi, LLC dba QT Taxi Service
- 9. 2C12/13-1703 Southwest American Woodworks, LLC
- 10. 2C12/13-1802 The Cedar Sanctuary, L.L.C.
- 11. 2C12/13-2214 Triple J Restaurant Group LLC dba  
Speakeasy Saloon & Grill
- 12. 2C13/14-0640 Weaver Enterprises, LLC dba  
Weaver Enterprises Auto Repair

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

- 1. Coca-Cola Refreshments USA, Inc.
- 2. Conagra Foods, Inc.
- 3. Knight Transportation, Inc.
- 4. QuikTrip Corporation
- 5. Salt River Project Agricultural Improvement and Power District and the  
Salt River Valley Water Users' Association (SRP)
- 6. TMC Healthcare
- 7. Van Tuyl Group, Inc.

Chairman Parker stated that item b.4 would need to be heard separately and that he was recusing himself from that agenda item. The Commission unanimously approved the remaining items on the consent agenda on motion of Ms. Strickler, second of Mr. Sanders.

Vice Chair Strickler took over chairmanship for the following agenda item only.

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

QuikTrip Corporation – The Commission approved renewal of self-insurance authority on motion of Ms. Oster, second of Mr. Hennelly with a vote of four in favor. There was no discussion and Mr. Parker did not participate in the vote.

Discussion & Action regarding Appointment of ADOSH Boiler Advisory Board Member

Bill Warren advised that there is a vacancy on the ADOSH Boiler Advisory Board. He explained that the Commission appoints members who serve three-year terms. The Board meets at least annually or more often as may be appropriate, and is composed of a balanced representation of members with respect to industry, owner/operators, labor, and the public. Randy Austin, ADOSH Chief Boiler Inspector, recommends Brad Bruckner and Mr. Austin has verified that Mr. Bruckner of Greenfield Dynamics as industry representative is willing to serve and is qualified to serve on the Board. Mr. Warren stated that he concurs with the Mr. Austin's recommendation. Following discussion, the Commission unanimously appointed Brad Bruckner to the ADOSH Boiler Advisory Board on motion of Ms. Oster, second of Ms. Strickler. Chairman Parker asked Mr. Warren to convey the Commission's appreciation to Mr. Bruckner for being willing to serve.

Discussion & Action of ADOSH Discrimination Complaints

#13-2603-08 Keith Ehlert v. Westar Environmental, L.L.C and #13-2603-09 Barbara Ehlert v. Westar Environmental, L.L.C. - Bill Warren and Bryce Rucker presented a summary of Mr. and Mrs. Ehlert's complaints, the employer's response, and the Division's investigation of the matter and responded to questions from the Commissioners. Mr. Warren recommended that the Commission pursue the matter because the investigation found sufficient evidence to support a causal link between the exercise of protected activity and the adverse action. The Commission voted on the agenda items separately. With regard to case #13-2603-08, the Commission unanimously voted to pursue the complaint on motion of Mr. Sanders, second of Ms. Oster. With regard to case #13-2603-09, the Commission unanimously voted to pursue the complaint on motion of Mr. Sanders, second of Ms. Strickler.

Ralph L. Wadsworth Construction Company, LLC – Bill Warren advised that this file is for information only with no violations noted or penalties recommended. He advised that this involved a fatality in which one worker was crushed and one worker was seriously injured during removal of the shoring system under an elevated portion of a roadway when the suspension system providing support for steel I-beams and wood falsework collapsed and partially fell to the ground below.

Metric Roofing, Inc.  
3811 West Lower Buckeye  
Phoenix, AZ 85009-6601

Programmed Related  
Yrs/Business – 20  
Empl. Cov. by Insp. – 5

Site Location: 3359 Constitution Dr., Gilbert, AZ 85296  
Inspection #: W3109-317173144  
Insp. Date: 06/18/2013

WILLFUL SERIOUS – Citation 1 - Item 1 – Five employees were working on a roof approximately 22 feet above a lower level without the use of a fall protection system. (A.R.S. § 23-492.03(A)).

Div. Proposal - \$63,000.00

Formula Amt. - \$63,000.00

SERIOUS – Citation 2 - Item 1 – The employer's written fall protection plan was not up to date, site specific nor did it identify the competent person as required. (A.R.S. § 23-492.07(A)(1)).

Div. Proposal - \$ 2,000.00

Formula Amt. - \$ 2,000.00

TOTAL PENALTY - \$65,000.00

TOTAL FORMULA AMT. - \$65,000.00

Bill Warren advised that this case file was previously brought before the Commission at which time the matter was tabled pending further review regarding a possible willful classification. It is now recommended that Citation 1 – Item 1 be classified as willful serious. Mr. Warren summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Ms. Strickler and Ms. Oster stated that they felt the dollar amount of penalty was high considering that the employer had fall protection and had provided training but the supervisor did not assure the employees used conventional fall protection. Mr. Parker explained that if a supervisor disregards the employer's rules, the employer is still subject to penalty. In response to a question from Mr. Parker, Mr. Wade commented on the different size adjustment factors for a serious and a willful serious penalty. Mr. Sanders stated that he was all for giving leeway when possible, but that the photos speak for themselves regarding the danger – the proximity of employees to the edge and the high pitch of the roof. Following further

discussion, the Commission approved issuing the citations and assessed the recommended penalty of \$65,000.00 on motion of Mr. Parker, second of Mr. Sanders with a vote of three in favor and two opposed.

Nimbus Brewing Company, L.L.C.  
3850 E. 44<sup>th</sup> Street  
Tucson, AZ 85713

Complaint  
Yrs/Business - 17  
Empl. Cov. by Insp. - 6

Site Location: 3850 E. 44<sup>th</sup> Street, Tucson, AZ 85713  
Inspection #: F3875-317260958  
Insp. Date: 08/21/2013

SERIOUS – Citation 1 - Item 1 – Southwest side of Brewing area: Employees worked on a platform eight feet above ground to connect the piping for a new osmosis water tank and that platform did not have a standard railing or equivalent to prevent a fall. (1910.23(c)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 2 – Brewing Warehouse: Employees were allowed to operate the Yale Forklift, model and serial number unknown, without being adequately trained and evaluated in the safe operation of the forklift. (1910.178(l)(1)(i)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 3 – Southwest Corner of Brew Warehouse: The electrical panel was missing a front cover exposing the live circuit breakers and electrical wires. (1910.305(d)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4 – Southwest Brewing Area: An unqualified employee was allowed to reset the circuit breakers without having a qualified person investigate why the breaker tripped. (1910.334(b)(2)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

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 the recommended penalty of \$3,750.00 on motion of Ms. Oster, second of Ms. Strickler.

#### Discussion &/or Action regarding Legislation

Scot Butler stated that he had not recommended that the agency initiate any legislation and advised that there may be legislation proposed regarding the issue of overprescribed opioids and narcotic pharmaceuticals, which is an ongoing problem. He will research the issue and provide further information. Ms. Oster stated that the IAIABC was having a seminar about legislation in various jurisdictions with regard to the opioid problem. Ms. McGrory advised that the opioid issue is also being discussed by the Director's Advisory Committee on Treatment Guidelines.

### Discussion & Action of Attorney Fee Petition

Taylor and Associates, P.L.L.C. v. Paloma Dalmolin - Andrew Wade stated that Taylor and Associates, P.L.L.C. (the firm) has petitioned the Industrial Commission to set attorneys' fees with respect to work performed for Ms. Dalmolin (now Martin) in connection with Ms. Dalmolin's November 5, 2007 workers' compensation claim. Mr. Wade presented a history of the claim and the work performed by the firm on behalf of Ms. Dalmolin.

The firm has received \$5,584.55 in attorney fees to date and is requesting 25% of the permanent disability award for ten years or \$10,292.70, less the \$5,584.55, for a total award of \$4,708.15. Mr. Wade presented two options to the Commission, along with his staff recommendation. Following discussion, the Commission unanimously awarded 25% of permanent disability benefits not to exceed \$85.7 per month or 25% of any settlement of permanent disability benefits for a period of up to ten years with the total amount of fees paid under the award not to exceed \$4,708.15 and authorized staff to use typed signatures to facilitate issuing the award on motion of Mr. Sanders, second of Ms. Strickler.

Discussion & Action regarding report required to be published under SB 1310 (passed in the 51<sup>st</sup> Legislature's Regular Session, 2013), showing the amount of cash and assets held by the Special Fund established by A.R.S. §23-1065 that are attributable or allocated to the payment of claims of insolvent insurance carriers as of June 30, 2013

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Laura McGrory summarized the requirements of SB1310 and introduced Sylvia Simpson, the Commission's Controller, to present the report. Ms. Simpson introduced David Price and Steve Harris, the independent CPA's who were retained as required under the legislation. Ms. Simpson summarized the report and schedules, and she and Ms. McGrory responded to questions from the Commissioners. In response to questions from Ms. Strickler, Ms. McGrory explained the role of a Receiver with respect to collection of monies from a reinsurer and that, in response to concerns about the adequacy of the statutory deposit formula, legislation was introduced in the mid-2000's to increase statutory deposits (which did not pass). Ms. Strickler questioned whether excess insurance could be purchased by the Special Fund to address this issue and stated that whether the insolvent carrier claims are handled under the current model or under another model, the insolvent carrier claims will still need to be paid. Mr. Parker explained the difference between excess insurance and reinsurance. Mr. Hennelly also explained the process under which a Receiver collects and distributes money from a reinsurer of an insolvent insurance carrier. Mr. Parker provided a history of the assessments and explained the approach that is now used by the Commission in setting assessment rates. Ms. McGrory stated that, subject to the Commission's approval, the report will be published. Hard copies of the report will be available, along with an electronic version that will be posted on the agency's website. She acknowledged staff for their hard work in preparing this report. The Commission unanimously approved the report and directed staff to publish the report on motion of Ms. Strickler, second of Ms. Oster.

Discussion & Action regarding Appointment Process of Administrative Law Judges under A.R.S. §23-108.02

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Ms. McGrory explained the current appointment process. She invited Melinda to address the Commission regarding two ALJ positions that she would like to post externally. Ms. Poppe explained the need to fill these vacancies. Chairman Parker asked the Commissioners for their

thoughts on whether the process should stay the same or whether the Commissioners want to be more involved in the interview process. Mr. Sanders explained his position and why he wanted the Commissioners to interview the applicants. In response to a question from Ms. Oster, Ms. Poppe stated that she envisioned her role as recruiter, bringing qualified candidates to the table, and that she would be comfortable with whatever involvement the Commissioners wanted to take. Ms. Strickler stated that for staff ALJ's she would be comfortable delegating the interviews to the Chief ALJ and having the Chief ALJ provide recommendations regarding the top three candidates. Ms. Oster explained why she would prefer to have the Commissioners interview the top candidates before making a selection. After further discussion, it was agreed that the Commissioners would review the hiring list for the ALJ position. From that list, the Chief ALJ would interview the candidates selected by the Commissioners, in addition to candidates that the Chief ALJ would want to interview. Based on those interviews, the Chief ALJ would present recommendations for the top candidates, who would then be interviewed by the Commissioners prior to making the appointment. Ms. Poppe then stated that she wanted to internally fill the position for another Assistant Chief ALJ in the Phoenix Division. She explained the reason for this. Ms. McGrory stated that with respect to filling this position internally, she recommended that the Chief ALJ be given the authority to make this selection since it would be made from the pool of ALJ's already appointed by the Commission. Mr. Sanders explained that he was comfortable with this process. The other Commissioners agreed.

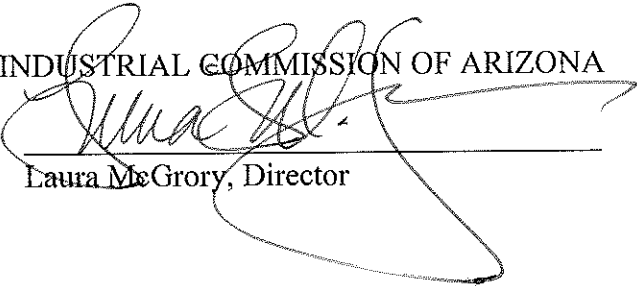
Announcements and Scheduling of Future Meetings

Secretary Hilton reminded the Commissioners that the next meeting is scheduled for Wednesday, December 18, 2013.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 3:20 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
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Laura McGrory, Director

ATTEST:

  
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Teresa Hilton, Commission Secretary