MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Wednesday, December 18, 2013 – 1:00 p.m.

Present:

David M. Parker
Susan Strickler
Kathleen Oster
Michael G. Sanders
Laura McGrory
Andrew Wade
William Warren
Chris Brandon
Michael Hawthorne
Teresa Hilton

Chairman (video conference)
Vice Chair (telephonic)
Member
Member
Director
Chief Counsel
Director, ADOSH
Compliance Officer
Chief Financial Officer
Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Mr. Hennelly was not able to attend. Also in attendance were Richard Ruelas with the Arizona Republic, and Andrea Lewis of Snell and Wilmer.

Approval of Minutes of December 12, 2013 Meeting

Mr. Sanders stated that the discussion of the agenda item regarding appointment of administrative law judges is not described as he remembered. Chairman Parker stated he believed the Minutes reflected the discussion correctly. Mr. Parker stated that this agenda item will be put back on the agenda for a future meeting. The Commission approved the Minutes of the December 12, 2013 Commission meeting on motion of Ms. Oster, second of Ms. Strickler. The motion passed with a vote of three in favor and one against. Mr. Sanders voted against the motion.

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. 2C12/13-0533 ACME Home Services, LLC
2. 2C11/12-1572 Andrew J Monaghan, P.C. aka The Monaghan Group
3. 2C12/13-1888 Daymar Enterprises, Inc. dba Marsh Management and Real Estate
4. 2C11/12-1950 ER Lounge LLC
5. 2C12/13-1485  European Custom Upholstery, Inc. dba European Custom Upholstery & Woodcraft Mfg.
6. 2C12/13-1689  GGM Enterprises LLC
7. 2SP13/14-0001  Groundhogs & Pistachios Enterprises, LLC dba Bel-Espirit Day School at Palm Valley
8. 2C13/14-0492  High Desert Delivery, L.L.C.
9. 2C13/14-0575  Miguel A. Rivera, a single man, dba 4 Less Furniture Center
10. 2C12/13-0294  No Hassle Wireless LLC
11. 2C12/13-0500  Ordinary Lifestyles LLC
12. 2C12/13-1566  Promo 360 LLC dba P360 Creative Marketing
13. 2C12/13-2190  Pearson Vending, LLC
14. 2C12/13-1773  Rhodes Transport, LLC
15. 2C11/13-1183  Sierra Madre Granite LLC
16. 2C12/13-1774  Trails, LLC dba Trails, aka Trails Department Store
17. 2C13/14-0039  Wholesale Tree Trimming, LLC

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

1. Arizona Counties Workers’ Compensation Pool
2. Dignity Health fka Catholic Healthcare West
3. Kroger Co
4. Medtronic, Inc.
5. Regis Corporation
6. Ruan Transportation Management Systems, Inc.
7. The Proctor & Gamble Company
8. Valley Schools Workers’ Compensation Pool

Chairman Parker stated that item b.1 would need to be heard separately and that Ms. Strickler was recusing herself from that agenda item. The Commission unanimously approved the remaining items on the consent agenda on motion of Mr. Sanders, second of Ms. Oster.

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

Arizona Counties Workers’ Compensation Pool – The Commission approved renewal of self-insurance authority on motion of Ms. Oster, second of Mr. Sanders with a vote of three in favor. There was no discussion and Ms. Strickler did not participate in the vote.

Discussion & Action of OSHA Proposed Citations & Penalties

Ciadella Interiors
3116 S. 52nd St.
Tempe, AZ 85282

Site Location: 3116 S. 52nd St., Tempe, AZ 85282
Inspection #: H1793-317322766
Insp. Date: 09/17/2013

Fatality/Accident
Yrs/Business -- 5
Empl. Cov. by Insp. -- 22
SERIOUS – Citation 1 - Item 1 – Production area: A written lockout/tagout program was not developed and implemented for maintenance personnel or repair persons to prevent the release of stored energy during the performance of repair work on equipment, such as, but not limited to work on die cutting roller press machine. (1910.147(c)(1)).

Div. Proposal - $750.00 Formula Amt. - $750.00

SERIOUS – Citation 1 - Item 2 – Production area: One die cutter rolling press machine (Corfine Econopress, model EP84 and serial number 41513.M) was not adequately guarded to protect the operator from the point of operation. (1910.212(a)(1)).

Div. Proposal - $5,000.00 Formula Amt. - $5,000.00

SERIOUS – Citation 1 - Item 3 –

(a) Production area: One Carpet Carousel, model and serial number unknown had horizontal drive belts that were not fully enclosed and pulleys were not guarded to protect the operator. (1910.219(d)(1)).

(b) Production area: One Carpet Carousel, model and serial number unknown had sprocket wheels and chains that were 7 feet or less above the floor and were not enclosed to protect the operator. (1910.219(f)(3)).

Div. Proposal - $750.00 Formula Amt. - $750.00

TOTAL PENALTY - $6,500.00 TOTAL FORMULA AMT. - $6,500.00

Bill Warren summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Division proposal for Citation 1 – Item 2 was for the gravity based penalty with no adjustment factors since the violation directly related to the serious injury. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of $6,500.00 on motion of Ms. Oster, second of Mr. Sanders.

Bold Framing Inc.
5128 E. Ingram St.
Mesa, AZ 85205

Site Location: 10047 N Metro Pkwy E, Phoenix, AZ 85051
Inspection #: F3189-317365161
Inspr. Date: 10/16/2013

SERIOUS – Citation 1 - Item 1 – West side of the building: Three employees were working on the roof of a building where the parapet wall installation had not been completed, and the employees were not protected by use of a guardrail system, safety net system, or personal fall arrest system to preclude an approximate 16'-1 1/2" fall hazard. (1926.501(b)(1)).

Div. Proposal - $1,500.00 Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 2 – 10047 N Metro Pkwy East: Three employees working on a roof were exposed to an approximately 16'-1 1/2" fall hazard and had not been trained by a person qualified in the areas specified in 29 CFR 1926.503(a)(2)(iii) and (a)(2)(viii). (1926.503(a)(2)).

Div. Proposal - $1,500.00 Formula Amt. - $1,500.00

TOTAL PENALTY - $3,000.00 TOTAL FORMULA AMT. - $3,000.00
Bill Warren summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Sanders requested that ADOSH provide a list of violations under previous history in the future. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of $3,000.00 on motion of Mr. Sanders, second of Ms. Oster.

Inhance Technologies LLC
16223 Park Row Ste 100
Houston, TX 77084

Complaint
Yrs/Business – 11
Empl. Cov. by Insp. – 6

Site Location: 7211 E. 30th Street #A, Yuma, AZ 85365
Inspection #: T3633-317427110
Insp. Date: 11/04/2013

SERIOUS – Citation 1 - Item 1 – The Tox-Array 2000 brand hydrogen fluoride sensor installed in the cell room, and connected to the alarm panel located on the north outside wall of the cell room, was not maintained in an operating condition. (1910(38)(d)).

Div. Proposal - $3,500.00
Formula Amt. - $3,500.00

SERIOUS – Citation 1 - Item 2 – Cell Room: The employer did not evaluate the potential level of exposure to hydrogen fluoride (HF) during HF leaks, including if the IDLH for HF was or could be exceeded, and allowed the use of air purifying respirators by employees assigned to find and repair leaks, which are not a type of respirator allowed by the OSHA Respiratory Protection standard for use in environments where the IDLH may be exceeded. (1910.134(d)(1)(iii)).

Div. Proposal - $1,750.00
Formula Amt. - $1,750.00
TOTAL PENALTY - $5,250.00
TOTAL FORMULA AMT. - $5,250.00

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 $5,250.00 on motion of Ms. Oster, second of Ms. Strickler.

Joe & Sons Framing Co.
19653 E. Via Park St.
Queen Creek, AZ 85142

Planned
Yrs/Business – 8
Empl. Cov. by Insp. – 10

Site Location: 1417 S. Ponderosa Dr., Gilbert, AZ 85296
Inspection #: J7272-317402907
Insp. Date: 11/01/2013

REPEAT SERIOUS – Citation 1 - Item 1 – Employees were conducting wood framing activities on top of a house where they were working at heights above 6’ 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)). There was one other instance of this violation.

JOE & Sons Framing Co. WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS OCCUPATIONAL SAFETY AND HEALTH STANDARD OR ITS EQUIVALENT STANDARD (23-294.07.A) WHICH WAS CONTAINED IN ADOSH INSPECTION NUMBER J7272-317334209, CITATION NUMBER #1, ITEM #1, ISSUED ON 10/29/13,
WITH RESPECT TO A WORKPLACE LOCATED AT LOT #167, 2871 E IRIS DR,
CHANDLER, AZ, 85249.

Div. Proposal - $5,000.00 Formula Amt. - $5,000.00

SERIOUS – Citation 2 - Item 1 – Two employees were setting trusses on the top plate of a two
story home where they were not protected from a fall of approximately 22’ to the ground below
by use of any combination of personal fall protection systems, catch platforms, scaffold
platforms, eave barriers, roof jack systems, safety monitoring systems, or parapets at least
twenty-four inches high. (A.R.S. 23-492(05)(A)).

Div. Proposal - $1,000.00 Formula Amt. - $1,000.00

SERIOUS – Citation 2 - Item 2 – Employees were not using protective helmets for protection
against impact or falling and flying objects, such as trusses being lifted by a crane.
(1926.100(a)).

Div. Proposal - $600.00 Formula Amt. - $600.00

SERIOUS – Citation 2 - Item 3 –

a) Three employees were using a Louisville 24’ fiberglass extension ladder, model and serial
number unknown, which did not extend 3’ above the landing surface. (1926.1053(b)(1)).

b) Three employees were utilizing a Louisville, 24’ fiberglass extension ladder, model and serial
number unknown, to access the second floor of a home under construction at a height of
approximately 12’ and the extension ladder had a structural defect in that three of the rungs had
several dents in them. (1926.1053(b)(16)).

Div. Proposal - $1,000.00 Formula Amt. - $1,000.00
TOTAL PENALTY - $7,600.00 TOTAL FORMULA AMT. - $7,600.00

Chairman Parker stated that consideration of these citations would be tabled.

Linesets, Inc. Planned
4480 N. 43rd Ave., Ste. A3 Yrs/Business – 9
Phoenix, AZ 85031 Empl. Cov. by Inspl. – 20

Site Location: 4480 N. 43rd Ave., Ste. A3, Phoenix, AZ 85031
Inspection #: J7272-317402717
Insp. Date: 10/30/2013

SERIOUS – Citation 1 - Item 1 – West end of Production Building: A door labeled, Emergency
Exit Only, opened to a drop in height of approximately forty-nine inches onto the ground below
and the difference in elevation was not negotiated by stairs or ramps. (1910.37(j)).

Div. Proposal - $1,000.00 Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 2 –

a) Production and Distribution Area: A Komatsu forklift, model and serial number unknown,
was missing the data plate which provided information about forklift such as model and serial
number and lifting capacity. (1910.178(a)(6)).
b) Production and Distribution Areas: Two employees were not trained in the safe operation of a Komatsu forklift, model and serial number unknown. (1910.178(l)(1)(i)).

 Div. Proposal - $1,250.00
 Formula Amt. - $1,250.00

SERIOUS – Citation 1 - Item 3 –

a) Production Area: The hook on a Kone Crane, model # XN05050015Y16S1C, serial number E0910219, which was being utilized on a Gorbel 1,000lb Work Station Crane, serial number A85212, did not meet the manufacturer's specifications, as the safety latch did not automatically engage. (1910.179(h)(4)).

b) Production Line: The hook on a Kone Crane ½ ton manual trolley chain hoist, model # XN05050015Y16S1C, serial number E0910219, which was being utilized on a Gorbel 1,000lb Work Station Crane, serial number A85212, did not have the hooks inspected monthly by employer and signed reports were not made available upon request. (1910.179(j)(2)(iii)).

c) Production Line: The hook on a Kone Crane ½ ton manual trolley chain hoist, model # XN05050015Y16S1C, serial number E0910219, which was being utilized on a Gorbel 1,000lb Work Station Crane, serial number A85212, did not have the hoist chains inspected monthly by employer and signed reports were not made available upon request. (1910.179(j)(2)(iv)).

d) Production Area: One Kone Crane ½-ton manual trolley chain hoist, model number XN05050015Y16S1C, serial number E0910219, did not have a complete periodic inspection conducted in the past 12 months. (1910.179(j)(3)).

e) Production Line: The rated load test report for the pendant controlled overhead crane was not readily available upon request. (1910.179(k)(2)).

 Div. Proposal - $1,250.00
 Formula Amt. - $1,250.00

SERIOUS – Citation 1 - Item 4 – Compression Station: A foot pedal was used to actuate power to an Enerpac model number PUD1100B, product code G32100, where the pedal was not provided guarding to prevent unintended operation from falling objects or by accidental stepping onto the pedal. (1910.212(a)(1)). There were two other instances of this violation.

 Div. Proposal - $1,000.00
 Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 5 – The compressed air distribution system at the site was comprised of polyvinyl chloride pipe. (A.A.C. R20-5-628).

 Div. Proposal - $ 300.00
 Formula Amt. - $ 300.00
 TOTAL PENALTY - $4,800.00
 TOTAL FORMULA AMT. - $4,800.00

Bill Warren and Chris Brandon 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 $4,800.00 on motion of Ms. Oster, second of Mr. Sanders.

Smith’s Food & Drug Centers, Inc. dba Fry’s Food Stores  
Fry’s Marketplace #623  
1815 W. Glendale Ave.  
Phoenix, AZ 85015  

Complaint  
Yrs/Business – 20  
Empl. Cov. by Insp. – 25
Serious - Citation 1 - Item 1 - Exit route was not free and unobstructed:

(a) West Receiving Room: The exit door was blocked by plastic covered furniture product.

(b) Northwest Emergency Exit: The exit door was blocked by a handi-cap shopping cart.

(c) Northeast Emergency Exit: The exit door was blocked by packaged beer.

(d) North Office Emergency Exit: The exit door was blocked by shelving.

(1910.37(a)(3)).

Div. Proposal - $2,250.00

Formula Amt. - $2,250.00

Serious - Citation 1 - Item 2 - Each exit must be clearly visible and marked by a sign reading “Exit”:

(a) South Bakery Emergency Exit: The emergency exit was not marked as an exit.

(1910.37(b)(2)).

Div. Proposal - $2,250.00

Formula Amt. - $2,250.00

TOTAL PENALTY - $4,500.00

TOTAL FORMULA AMT. - $4,500.00

Bill Warren summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, the Commission unanimously removed item b from Citation 1 - Item 1 and approved issuing the remaining citations and assessed the recommended penalty of $4,500.00 on motion of Mr. Parker, second of Mr. Sanders. Chairman Parker recommended that ADOSH have a conversation with the Fire Marshal about egress to see if they can help educate employers. He also requested that ADOSH follow up with the employer regarding the photos from Citation 1 - Item 2 in which it appears as though they have added a latch to the door. Ms. McGrory suggested that in informal conference ADOSH discuss the concerns for item b Citation 1 - Item 1 even though it was not cited. Chairman Parker commended ADOSH staff for the timely referral of the file to the Commission.

Discussion & Action of Attorney Fee Petition

Weston S. Montrose v. Joe Ruiz - Andrew Wade stated that Attorney Weston Montrose of Taylor and Associates has petitioned the Industrial Commission to set attorneys’ fees with respect to work performed for Mr. Ruiz in connection with Mr. Ruiz’s December 18, 2012 workers’ compensation claim. Mr. Wade presented a history of the claim and the work performed by Mr. Montrose on behalf of Mr. Ruiz and advised that Mr. Ruiz has retained new counsel. Staff estimates Mr. Montrose spent at least 6 hours although he did not submit documentation itemizing time. Mr. Montrose is also seeking reimbursement of $350.00 in costs. Mr. Wade stated that the Commission does not have authority to award costs. Mr. Ruiz did not respond to staff’s letter inviting him to comment on Mr. Montrose’s petition. Mr. Wade stated that staff is recommending an award of attorney fees for 6 hours at $185 per hour, for a total of $1,110.00. Following discussion, the Commission unanimously awarded $1,110.00 in attorney
fees not to exceed 10% of any award or settlement, whichever is less, and authorized staff to use typed signatures to facilitate issuing the award on motion of Mr. Parker, second of Mr. Sanders.

Announcements and Scheduling of Future Meetings

Chairman Parker read the list of tentative Commission meetings through March 2014 and the Commissioners agreed that those dates were still acceptable. Ms. McGrory stated that the tentative Commission meeting schedule has been included on the Commission’s website.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 2:15 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

Laura McGrory, Director

ATTEST:

Teresa Hilton, Commission Secretary