

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street

Conference Room 308

Phoenix, Arizona 85007

Wednesday, January 22, 2014 – 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
	Jenny Mandeville	Compliance Officer
	Yesenia Uzan	Compliance Officer
	Stephanie Caler	Compliance Officer
	Nathan Casiraro	Compliance Officer
	Ron Harnsberger	Compliance Officer
	Kathleen McLeod	Claims Manager
	Jacqueline Kurth	Claims Department
	Michael Hawthorne	Chief Financial Officer
	Renee Pastor	Self Insurance Manager
	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, Matthew D. Saxe, PLC; Judith Connell of AZAJ; Ben Goldstein of AZTLA; and Andrea Lewis of Snell and Wilmer.

Discussion &/or Action regarding Legislation

Scot Butler presented a summary of Governor Brewer's budget proposal and proposed legislation of interest to the Commission including HB 2040, HB 2221, HB 2235, HB 2361, HB 2394, HB 2455, and SB 1075. Mr. Butler responded to questions from the Commissioners.

Approval of Minutes of January 9, 2014 Meeting

Mr. Parker stated that Mr. Sanders has request several revisions to the draft Minutes of January 9, 2014 and that the matter would be tabled until all members had a sufficient opportunity to review the proposed revisions.

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. 2C12/13-1989 American Elite Cheer & Dance Training Center LLC
2. 2C11/12-2900 Complete Technology Assistance, LLC dba CTAAZ.com
3. 2C11/12-0885 Creo Commmercium, Inc.
4. 2C13/14-0541 Danisi Management, LLC dba The Furniture Shop
5. 2C13/14-0024 El Bravo Sky Harbor LLC dba El Bravo Mexican Grill
6. 2C12/13-2280 Gilbert Contracting Company LLC
7. 2C12/13-2070 Great Wall Chinese Restaurant, LLC
8. 2C13/14-0576 Noah's Ark Transportation, LLC dba Noah's Ark Limousines & Buses
9. 2C13/14-0578 Play Factory Fun I, L.L.C. dba The Play Factory
10. 2C12/13-2228 Robert E. Simms, a Single Man, dba Village Phoenix Apartments
11. 2C12/13-2141 Savanna's Flowers, LLC dba Savanna's Enchanted Florist
12. 2C12/13-0462 Superstition Manor Assisted Living, LLC dba Crystal Manor Assisted Living Home
13. 2C12/13-2301 T. & D. Management Enterprises, Inc. dba Burger King #3078

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

1. Arizona School Alliance for Workers' Compensation
2. Young Electric Sign Company

Chairman Parker stated that agenda items a (2), (5), (7), and (9) would be removed from the consent agenda. The Commission unanimously approved the remaining items on the consent agenda on motion of Ms. Oster, second of Ms. Strickler.

Andrew Wade advised that with regard to items a (2) Complete Technology Assistance, LLC dba CTAAZ.com; a (5) El Bravo Sky Harbor LLC dba El Bravo Mexican Grill; a (7) Great Wall Chinese Restaurant, LLC; and a (9) Play Factory Fun I, L.L.C. dba The Play Factory, the employers have obtained workers' compensation insurance and staff is recommending a penalty of \$500.00 be assessed against each of these four employers. The Commission unanimously assessed the recommended penalty of \$500.00 against employers a (2), (5), (7), and (9) on motion of Mr. Sanders, second of Mr. Hennelly.

The Commission unanimously agreed to reconsider the Consent Agenda on motion of Ms. Oster, second of Mr. Sanders. Item b (1) was removed from the consent agenda and the

remaining items on the consent agenda were reconsidered and approved on motion of Ms. Oster, second of Mr. Hennelly.

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

Arizona School Alliance for Workers' Compensation – Susan Strickler recused herself from this agenda item. The Commission approved renewal of self-insurance authority on motion of Mr. Sanders, second of Ms. Oster with a vote of four to zero with no discussion.

Discussion & Action of OSHA Proposed Citations & Penalties

RSXteriors, LLC
39470 N. Dusty Dr.

San Tan Valley, AZ 85140

Site Location: 44515 W. Edison Rd., Maricopa, AZ
85239

Inspection #: N4762-317322576

Insp. Date: 09/11/2013

Fatality/Accident

Yrs/Business – 1 yr., 10
months

Empl. Cov. by Insp. – 15

SERIOUS – Citation 1 - Item 1 – Northwest outside corner of Building: One employee was observed dry-cutting concrete block while operating a Husqvarna hand-held gasoline-powered concrete cutting saw, Model K760, serial number unknown, and not wearing any type of respiratory equipment to protect him from the inhalation of silica and Portland Cement airborne particles. (1926.95(a)). There was one other instance of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 2 –

(a) North side of building: The tubular welded frame scaffold, 42” wide by 10’ long and 7’ tall, used by one employee, did not have mud sills placed under two of the base plates to support any load that might be placed upon the scaffold during the work activity. (1926.451(c)(2)).

(b) North side of building: One employee was working on a scaffold platform of a 42” wide by 10’ long and 7’ tall scaffold, which had a platform positioned at about 5’5” elevation, that was not provided with a means of access, as the employee climbed down the end frame of the scaffold, which was of the walk-thru type, which is not acceptable for use as a ladder. (1926.451(e)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 3 –

(a) West side of building: The top rail on the 3rd level of a tubular welded frame scaffold had not been installed so as to protect three employees from a 21’ fall hazard. (1926.451(g)(1)(vii)).

(b) West side of building: The 3rd level of a tubular welded frame scaffold, where 5-gallon buckets containing texture, water and/or hand tools were located, did not have paneling or a screening extending from the platform to the top of the guardrail erected for a distance sufficient to protect employees below, nor was the area below the scaffold barricaded to restrict employees from entering the hazard area. (1926.451(h)(2)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 4 – West side of building: One employee was not trained in the recognition and avoidance of the hazards associated with the use of tubular welded frame scaffolds. (1926.454(a)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$5,000.00

TOTAL FORMULA AMT. - \$5,000.00

Bill Warren and Ron Harnsberger 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 \$5,000.00 on motion of Ms. Strickler, second of Mr. Sanders.

Dani Dental Studio Incorporated
1243 E. Broadway Rd.
Tempe, AZ 85282

Complaint
Yrs/Business – 20
Empl. Cov. by Insp. – 50

Site Location: 1243 E. Broadway Rd., Tempe, AZ 85282

Inspection #: I6950-317526101

Insp. Date: 12/27/2013

SERIOUS – Citation 1 - Item 1 – A hazard assessment was not conducted to determine where and when personal protective equipment is necessary and the type of personal protective equipment to be used. (1910.132(d)(1)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1 - Item 2 –

(a) A written chemical hygiene plan had not been developed nor implemented by the employer, intended to protect employees from exposure to hazardous chemicals in the laboratory which include monomer, invex liquid, aluminum oxide, etc. (1910.1450(e)(1)).

(b) Laboratory employees were not trained on working with chemicals and dust in the workplace which include monomer, invex liquid, aluminum oxide, etc. (1910.1450(f)(1)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

TOTAL PENALTY - \$3,500.00

TOTAL FORMULA AMT. - \$3,500.00

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 \$3,500.00 on motion of Mr. Sanders, second of Mr. Hennelly.

RMJ Electrical Contractors, Inc. - This agenda item was for discussion only and involved a fatality. Mr. Warren noted this was the secondary part of the file presented two weeks ago and that the deceased was working through On Call Staffing for RMJ Electrical Contractors. No violations were noted or citations recommended. Mr. Warren and Mr. Casiraro responded to question from the Commissioners.

Stout Precision Development, Inc.
14009 E. Lexington St.
Gilbert, AZ 85297

Planned
Yrs/Business – 10
Empl. Cov. by Insp. – 5

Site Location: 9861 E. Blue Sky Drive, Scottsdale, AZ 85262
Inspection #: R1538-317334456
Insp. Date: 10/03/2013

SERIOUS – Citation 1 - Item 1 – Employees were installing a fascia board on a roof that was approximately 11 feet above the ground level, without adequate fall protection in that the employer had not developed a written fall protection plan. (A.R.S. § 23-492.07(A)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 2 – Employees, installing fascia board on a roof that was approximately 11 feet above the ground level, were not trained in the recognition and avoidance of hazards associated with working at heights. (A.R.S. § 23-492.09).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 3 –

(a) Southwest side of Building, back patio: One employee was working on a scaffold 5' wide, 10' long and approximately 10' high that did not have the working level of the scaffold fully planked. (1926.451(b)(1)).

(b) North end of building: One employee was working from a 5' wide, 10' long, 10' high fabricated frame scaffold where the scaffold legs did not bear base plates, mud sills or other firm foundation. (1926.451(c)(2)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 4 – Southwest side of Building: The employer did not ensure that each employee had received training by a qualified person in the hazards associated with working on scaffolding. (1926.454(a)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 5 – Interior southwest section of building: Protruding reinforcing steel (i.e., rebar) which employees could fall onto were not protected by appropriate caps, covers or other equivalent means to protect employees from the hazard created by impalement. (1926.701(b)). There was one other instance of this violation.

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL PENALTY - \$6,000.00

TOTAL FORMULA AMT. - \$6,000.00

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 \$6,000.00 on motion of Ms. Oster, second of Ms. Strickler.

Discussion & Action of Request for Lump Sum Commutation

Ned Peterson #20130-280448 – Kathy McLeod and Jacqueline Kurth presented this lump sum petition with a recommendation to approve the petition. Ms. McLeod and Ms. Kurth

explained the reasons for staff's 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

Secretary Hilton reminded the Commissioners that the next meeting is scheduled for January 29, 2014 and read the list of tentative meetings scheduled through March, 2014.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 2:05 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary