

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street

Conference Room 308

Phoenix, Arizona 85007

Wednesday, February 12, 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 (video conference)
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	Renee Pastor	Manager, Self Insurance
	William Warren	Director, ADOSH
	Phil Murphy	Compliance Officer
	Ron Harnsberger	Compliance Officer
	Ana Maldonado	Industrial Hygienist
	Kathleen McLeod	Claims Manager
	Jacquelyn Kurth	Claims Department
	Karen Axsom	Director, Labor Department
	Michael Hawthorne	Chief Financial Officer
	Sylvia Simpson	Controller
	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, Commission lobbyist; Katherine Callaway and Jeff Nichols of City of Scottsdale; Tom Carroll of Maricopa County; James Stabler of CopperPoint Mutual; Mary Kyle of City of Phoenix; Judy Connell of Arizona Trial Lawyers Association; and Andrea Lewis of Snell and Wilmer.

Approval of Minutes of January 29, 2014

The Commission unanimously approved the Minutes of January 29, 2014 on motion of Mr. Sanders, 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. 2C13/14-0087 All Insurance LLC, dba

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| | | Fritsinger Insurance Agency |
| 2. | 2C13/14-0905 | Apex Solutions LLC (A Delaware Corporation) |
| 3. | 2C13/14-0340 | Christopher Morris, a single man, dba
Calculated Designs |
| 4. | 2C12/13-2010 | Fatboys New York Pizza LLC, dba
Fat Boys Pizza |
| 5. | 2C12/13-1925 | FHNC, Inc., (A Colorado Corporation) dba
Silver King International |
| 6. | 2C13/14-1202 | Gorilla Services, L.L.C. |
| 7. | 2C12/13-1975 | Jeremy Huscher, a single man, dba
Wholesale Computers |
| 8. | 2C12/13-0823 | JOM Enterprises LLC, dba
Arizona Southwest Shuttle |
| 9. | 2C13/14-0572 | Juan Murillo & Ana Gaytan, h/w, dba
Tortilleria Viva Mexico |
| 10. | 2C13/14-0573 | McFadden's Glendale, LLC, dba
McFadden's Restaurant & Saloon |
| 11. | 2C11/12-1121 | Murphy & Schmidt Enterprises, LLC, dba
Precise Mattress Inspection |
| 12. | 2C13/14-0017 | Rigo's Locksmith, L.L.C. |
| 13. | 2C13/14-0949 | Roberts Complete Auto, LLC, dba
Robert's Complete Automotive |
| 14. | 2C12/13-2211 | S G & L Construction, LLC |

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

1. City of Peoria
2. City of Phoenix
3. City of Scottsdale
4. Pima County
5. Walgreen Co (an Illinois Corporation)

Chairman Parker stated that agenda items a (1), (3), (4), (6) and (7) 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 Mr. Sanders.

Andrew Wade advised that item a (1) was being removed from the agenda. With regard to items a (3) Christopher Morris, a single man, dba Calculated Designs; a (4) Fatboys New York Pizza LLC, dba Fat Boys Pizza; a (6) Gorilla Services, L.L.C.; and a (7) Jeremy Huscher, a single man, dba Wholesale Computers; 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 (3), (4), (6) and (7) on motion of Ms. Oster, second of Ms. Strickler.

Discussion & Action of OSHA Proposed Citations & Penalties

Bowtie Roofing Inc.
HC 1 Box 202
Strawberry, AZ 85544

Planned
Yrs/Business – 8
Empl. Cov. by Insp. – 3

Site Location: 800 W. Airport Rd. #B, Payson, AZ 85541
Inspection #: Q6169-317464782
Insp. Date: 12/10/2013

SERIOUS – Citation 1 - Item 1 – One employee used a cutoff wheel (model and serial number unknown) without eye protection to cut metal standing seam roofing material. (1926.102(a)(1)).
Div. Proposal - \$750.00 Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 2 - One employee used a cutoff wheel (model and serial number unknown) that was not equipped with a wheel guard to cut metal standing seam roofing material. (1926.300(b)(1)).
Div. Proposal - \$750.00 Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3- Three employees reroofing a low-slope roof, less than 50' in width, with a fall height of approximately 8' were not protected from falling to the ground. (1926.501(b)(10)).
Div. Proposal - \$750.00 Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4- One employee working at heights greater than 6' and exposed to falls was not provided training to recognize the hazards of falling or the procedures to be followed in order to minimize these hazards. (1926.503(a)(1)).
Div. Proposal - \$750.00 Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 5- Three employees used a folding multiladder (model and serial number unknown) that was not capable of extending 3 feet above the landing surface, was not secured at its top and no grasping device was provided. (1926.1053(b)(1)).
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. Phil Murphy was also available to answer questions from the Commissioners. 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.

DTA – Roofing & Framing LLC
2811 E. Earll Dr.
Phoenix, AZ 85016

Complaint
Yrs/Business – 3
Empl. Cov. by Insp. – 6

Site Location: 1525 E. Lynwood St., Mesa, AZ 85203
Inspection #: N4762-317427029
Insp. Date: 11/04/2013

SERIOUS – Citation 1 - Item 1 – Three employees were using pneumatic nail guns to nail shingles onto the sheathing of a 12:12 pitch roof while not wearing any personal protective equipment (i.e., safety glasses). (1926.102(a)(1)).
Div. Proposal - \$750.00 Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 2 - Three employees had not been provided ladder safety training, as they were using extension ladders that did not have the ladder side rails extend at least 3 feet above the landing surface of the roof and the ladders were not secured at their tops to a rigid

support, and did not have a grasping device to assist employees mounting and dismounting the ladder. (1926.1060(a)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3 - Three employees were working on a 12:12 pitch roof, with a roof eave height of 10 feet 6 inches, without using a personal fall protection system, catch platform or scaffold platform. (A.R.S. § 23-492.05(C)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4 - Employees were conducting roofing activities on the roof of a residential dwelling that had a 12:12 pitch and an eave height of 10 feet 6 inches, 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 - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 5- Three employees were re-roofing a 12:12 pitch residential roof, with a roof eave height of 10 feet 6 inches, without using a fall protection device, and were not trained in accordance with the requirements of 29 CFR 1926.503. (A.R.S. § 23-492.09).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$3,750.00

TOTAL FORMULA AMT. - \$3,750.00

Bill Warren and Ron Harnsberger summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. 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.

Great Western Building Materials, Inc.
3652 E. Miami Ave.
Phoenix AZ 85040

Referral
Yrs/Business – 26
Empl. Cov. by Insp. – 1

Site Location: 8317 E. Gray Rd., Scottsdale, AZ 85260

Inspection #: U9805-317512838

Insp. Date: 12/23/2013

SERIOUS – Citation 1 - Item 1 – The employer did not enforce the use of an operator restraint device (seatbelt) by an employee who was operating a Hiab Moffit M55 forklift. (1910.132(a)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1 - Item 2 - An employee was operating a Moffit M55 forklift without formal training and certification. (1910.178(l)(1)(i)).

Div. Proposal - \$ 5,000.00

Formula Amt. - \$ 5,000.00

TOTAL PENALTY - \$10,000.00

TOTAL FORMULA AMT. - \$10,000.00

Bill Warren and Ana Maldonado summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Warren advised that the Division proposal was for the gravity-based penalties since the violations directly related to the injury.

Chairman Parker asked whether ADOSH is continuing to focus on the awareness program on forklift training. Mr. Warren responded that he would ascertain the current status of

that program. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$10,000.00 on motion of Mr. Sanders, second of Ms. Oster.

Discussion &/or Action regarding Legislation

Scot Butler presented a summary of proposed legislation of interest to the Commission including House Bills 2040, 2221, 2361, 2394, 2455 and 2487 and Senate Bills 1075, and 1323 and responded to questions from the Commissioners. Regarding SB 1181, Mr. Butler and Ms. McGrory explained the issues, impact and ongoing work of the interested parties. The Commission discussed these issues at length and provided direction to staff regarding continued work on this bill, which included providing information to the legislature to ensure an understanding of the implications of the different funding models, that the regulatory authority, or safety net, found in A.R.S. § 23-966, is important for the workers' compensation system and should be maintained, that the vast majority, if not all, of the assessment authority under § 23-966 and § 23-1065(A) should be maintained, and that any transfer of Special Fund assets should not harm the Special fund. Mr. Butler stated that he would supply the Commission with any amendments.

Chairman Parker disconnected from the meeting at this point. Vice Chair Strickler took over as Chair.

Discussion & Action of Request for Lump Sum Commutation

Ernest W. Grant, III - 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. Oster.

Discussion & Action of Attorney Fee Petition

Robert E. Wisniewski, P.C. v Senada Omerasevic - Andrew Wade stated that Attorney Robert Wisniewski has petitioned the Industrial Commission to set attorneys' fees with respect to work performed for Ms. Omerasevic in connection with Ms. Omerasevic's June 2, 2012 workers' compensation claim. Mr. Wade presented a history of the claim and the work performed by Mr. Wisniewski on behalf of Ms. Omerasevic. Mr. Wisniewski withdrew as legal counsel when Ms. Omerasevic refused a settlement offer. Mr. Wisniewski estimates he spent 18.4 hours on the case and is requesting attorneys' fees of \$5,520.00. Ms. Omerasevic responded to staff's letter stating that she does not feel she owes any fees because Petitioner withdrew from representation and that she did not understand the fee agreement that she signed and there was not a translator present. Mr. Wade explained the options available to the Commission and stated that staff is recommending an award of attorney fees based on 25% of any settlement of the compensability issue, or, if the claim becomes compensable, of indemnity benefits, not to exceed the sum of \$2,000.00. If the claim is ultimately found non-compensable, there would be no fees owed or paid. Following discussion, the Commission unanimously awarded attorney fees based on 25% of any settlement, or, if the claim becomes compensable, of indemnity benefits, not to exceed the sum of \$2,000.00. If the claim is ultimately found non-compensable, there would be no fees owed or paid, and authorized staff to use typed signatures to facilitate issuing the award on motion of Ms. Oster, second of Mr. Sanders.

Discussion & Action regarding Re-appointment of Employment Advisory Council Members

Karen Axsom advised that the Arizona Employment Advisory Council has four vacancies as the result of term expirations of its current members and explained the make-up and duties of the Council. She advised that staff is seeking reappointment of the following three individuals: Dani Green, Martha Rockwell and Madalynn Terzenbach. The Department will continue to look for an individual to fill the final vacancy. The Commission unanimously reappointed Ms. Green, Ms. Rockwell and Ms. Terzenbach on motion of Mr. Sanders, second of Ms. Oster.

Announcements and Scheduling of Future Meetings

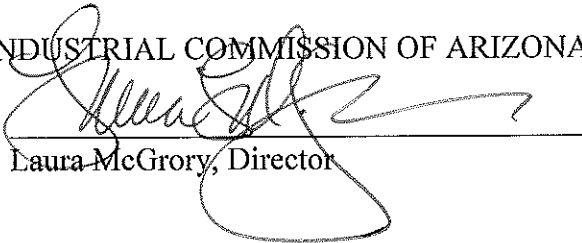
Ms. McGrory advised that the vacant ALJ position has been posted and she anticipated that the second week in March the names of the applicants would be provided to the Commissioners.

Secretary Hilton reminded the Commissioners that the next meeting is scheduled for February 19, 2014.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 2:45 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary