

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Auditorium
Phoenix, Arizona 85007
Thursday, June 19, 2014 – 1:00 p.m.

Present:	David M. Parker	Chairman
	Susan Strickler	Vice Chair (telephonic)
	Kathleen Oster	Member
	Michael G. Sanders	Member
	Joseph M. Hennelly, Jr.	Member (telephonic)
	Andrew Wade	Chief Legal Counsel
	William Warren	ADOSH Director
	Sylvia Simpson	Chief Financial Officer
	David Sosa	Special Fund Manager
	Renee Pastor	Accounting
	Yvonne Borunda	Legal Division
	Kara Dimas	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present and explained that the meeting will be recessed after the public hearing and moved to the third floor Commissioners' Conference Room for consideration of the remaining agenda items. Also in attendance were James Stabler from CopperPoint Mutual Insurance Company, and Jason Weber and Ethan Hirsch from Snell and Wilmer. A list of attendees who chose to sign in for the hearing is also available.

Public Hearing to accept comments and other information regarding the one-half percent assessment under A.R.S. §23-1065(F). During this hearing, the Commission may also discuss the assessment and information relevant to the levying of the assessment.

Chairman Parker welcomed interested parties to the public hearing and stated that the Commission published notice of this hearing on May 1, 2014 inviting comments. He described the process for today's hearing and explained that the record will close at the conclusion of the hearing. The Commission will discuss and may take action on this assessment at a later scheduled meeting. A court reporter was present for this agenda item.

Sylvia Simpson addressed the Commission and summarized her report and exhibits. She noted that under A.R.S. § 23-1065(F), the Commission is authorized to assess a one-half percent assessment if the total annual reserved liabilities of the Special Fund for apportionment under § 23-1065 exceed six million dollars. The assessment was previously assessed for calendar years 2005, 2006, 2007, 2010, 2011, 2012, 2013 and 2014 and was not assessed for 2008 and 2009. As of June 30, 2013 the Special Fund's total actuarial liability for apportionment under A.R.S. § 23-1065(B) and (C) was \$94 million at a confidence level of 80%. Ms. Simpson stated that, in view of the foregoing apportionment liabilities there is justification and authority to continue the one-half percent assessment under A.R.S. § 23-1065(F) for calendar year 2015.

Mr. Sanders asked whether the actuarial liability included handling fees. Mr. Parker commented on the amount expected to be paid in the next fiscal year versus the reserves and noted that the actuary does not include an estimate of the handling fees, or the costs of administering

claims. Ms. Oster added that the actuary also does not include the administrative costs of the Commission employees who work on Special Fund matters.

James Stabler addressed the Commission. Mr. Stabler stated that CopperPoint Mutual Insurance Company, formerly SCF Arizona, views the apportionment statutes, A.R.S. § 23-1065(B) and (C) an out dated statute and they would suggest the statutes be repealed. Mr. Stabler stated the purpose of the apportionment statutes were to encourage employers to hire workers with prior disabilities. He explained that after the enactment of the apportionment statutes, Congress enacted the American Disability Act of 1990. He explained why he thought there were conflicts between the apportionment statutes and the ADA, and why those conflicts were a problem. He also commented on settlement practices and stated he would like the Special Fund to take a second look at settlement policies.

Mr. Parker stated that he has considered whether the apportionment concept has out-lived its need. He commented on the premise behind the apportionment statutes Mr. Parker asked Mr. Stabler what the regulated community thought.

Mr. Stabler stated he had discussed this topic with other carriers and that probably at least a majority of the industry would support repeal. He added that the self-insured employers reportedly like the apportionment statutes but he does not know why. Mr. Stabler commented on difficulties he perceived in satisfying the elements to qualify for apportionment.

There being no other speaker, Mr. Parker concluded the public hearing and comment period and closed the record.

At 1:24 p.m., Chairman Parker recessed the meeting to move the remainder of the meeting to Conference Room 308.

The meeting reconvened at 1:29 p.m. in Conference Room 308. All members are present in person or by phone.

Approval of Minutes of June 4, 2014 Meeting.

The Commission requested a change to the minutes regarding Residential Fall Protection and completing the sentence of Mr. Wade's response, Mr. Wade responded that he had no specific information. The Commission unanimously approved the Minutes of the June 4, 2014 General Session on motion of Mr. Sanders, second of Mr. Parker.

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. 2C13/14-4256 Act Fast Delivery of Tucson, Inc.
2. 2C13/14-1818 Adventure Kids Preschool, L.L.C.

3. 2C13/14-1654 Cingular Staffing, Inc. (a California Corporation)
4. 2C13/14-1500 Destiny Child Care Center, L.L.C. dba Destiny Child Care Center
5. 2C13/14-0485 Navoona Corporation dba Gus's New York Pizza & Bar
6. 2C12/13-0129 Neyarez Trucking, LLC
7. 2C13/14-0564 Negnu Network, LLC
8. 2C13/14-0698 Plus Event Services, L.L.C.
9. 2C13/14-1665 Richard L. Countryman, a single man, dba Alterative Choices Transportation
10. 2C12/13-1035 Timothy Wright Sr., a single man, dba Rentals Tempe
11. 2C13/14-2064 Yuma Vending, LLC

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

1. Healthsouth Corporation
2. Honeywell International, Inc.
3. Viad Corp

Chairman Parker asked if any agenda items needed to be removed from the Consent Agenda. Hearing none, the Commission unanimously approved the items on the consent agenda on motion of Ms. Oster, second of Ms. Strickler.

Discussion and/or Action regarding Legislation.

Scot Butler was not available today. Mr. Wade stated there was nothing to report at this time.

Discussion and/or Action regarding Residential Fall Protection and Federal OSHA's Notice of Initiation of Proceedings to Reject State Initiated Plan Change No. 133, and Reconsider Arizona's State Plan Authority under Section 18(e) of the Occupational Safety and Health Act. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(3) and (A)(4) to consult with its attorneys to obtain legal advice and to consider its position and instruct its attorneys regarding pending or contemplated litigation.

Mr. Wade stated there was nothing new to report at this time.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Harris and Son's Tree Specialists LLC	Fatality/Accident	
4335 N 106 th Ave	Years in Business:	1
Phoenix, AZ 85037	Empl. Covered by inspection:	7
Site Location:	2432 E Marshall Ave	
	Phoenix, AZ 85016	
Inspection No:	Q6169-317585206	
Inspection Date:	1/09/2014	

SERIOUS – Citation 1 - Item 1 – Roof: Two employees working on the roof of a home were not provided personal protective equipment or other equivalent protection to preclude a 7 feet 9 inch fall to the ground below. Two employees working on the roof of a home were not provided personal

protective equipment or other equivalent protection to preclude a 7 feet 9 inch fall to the ground below. (1910.132(a)).

Div. Proposal - \$7,000.00
TOTAL PENALTY - \$7,000.00

Formula Amt. - \$7,000.00
TOTAL FORMULA AMT. - \$7,000.00

Mr. Warren summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. Mr. Warren explained why the proposed citation related to personal protection equipment. He described the working theory of what caused the worker to fall of the roof and sustain fatal injuries. Following discussion, Mr. Parker commented that this was the appropriate citation for this general industry accident. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$7,000.00 on motion of Ms. Oster, second of Ms. Stickler.

Verde Valley Medical Center
269 S Candy Ln
Cottonwood, AZ 86326

Complaint
Years in Business: 50
Empl. Covered by inspection: 15

Site Location: 269 S Candy Ln
Cottonwood, AZ 86326
Inspection No: 16950-317693570
Inspection Date: 4/17/2014

SERIOUS – Citation 1 – Item 1 – Operations Department: Employees exposed to corrosive chemicals such as ChemTreat BL1554 (pH 12.7) did not have an adequate eyewash station capable of providing a continuous flow of water for 15 minutes. (1910.151(c)).

Div. Proposal - \$2,250.00
Formula Amt. - \$2,250.00

SERIOUS – Citation 1 - Item 2 – Operations Department: Boiler Room Area: An emergency shower was located directly next to an electrical panel and outlet that were not suitable for a wet location. (1910.305(e)(1)).

Div. Proposal - \$2,250.00
TOTAL PENALTY - \$4,500.00
Formula Amt. - \$2,250.00
TOTAL FORMULA AMT. - \$4,500.00

Mr. 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 \$4,500.00 on motion of Mr. Sanders, second of Ms. Oster.

Mr. Parker stated the topic of eye wash stations and emergency showers is a topic he would like ADOSH to consider including in an upcoming ADOSH Advocate and he explained why.

Discussion and Action Regarding Attorneys' Fees Petition.

Mona L. Goodband v. Jack Levine, P.C. - Mr. Wade noted that Mr. Levine has submitted a Petition for attorneys' fees and summarized the history of the claim and the work Mr. Levine performed on behalf of Ms. Goodband. Mr. Wade stated that staff recommended that the Petition be denied and he explained why. Mr. Sanders moved to deny the Petition for attorneys' fees and Mr. Hennelly seconded the motion. Mr. Wade asked if the motion could include authorizing staff to type in the Commissioners' signatures on the findings and award since not all Commissioners were present. Mr. Parker clarified with Mr. Sanders and Mr. Hennelly that the motion includes such authorization and they each agreed. The Commission unanimously voted in favor of the motion.

Discussion and Action regarding Commissioner Attendance at upcoming conferences and seminar in 2014.

Mr. Parker commented on upcoming conferences and inquired into interest and availability. The Commissioners discussed the Commission's Claim Seminar in August, the IAIABC Conference, and the State Bar Workers' Compensation Seminar which are both scheduled for the same time frame. Some Commissioners selected conferences to attend and Commission Secretary Dimas stated she would make the arrangements.

Mr. Warren noted that the ADOSH Summer Safety Summit is scheduled for July 23 and 24, 2014 in Flagstaff.

Mr. Warren also commented on safety and loss control topics that have been added to the Commission's August Claims Seminar. Mr. Parker stated that he liked adding in loss control on the claims side and rounding out the experience.

Announcements and Scheduling of Future Meetings.

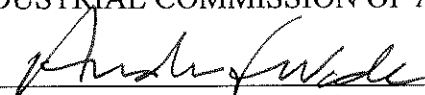
Chairman Parker confirmed the dates scheduled for future Commission meetings.

Mr. Parker announced that the public risk management community lost a champion this week, Keith L'Espbrance was the risk manager for the Rapid City, South Dakota and was a mentor to many of the leaders in public risk management. The entire community is mourning his loss.

There being no further business to come before the Commission and no further public comment, the meeting was adjourned at 1:58 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


Andrew F. Wade, Acting Director

ATTEST:


Kara Dimas, Commission Secretary