

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, October 16, 2014 – 1:00 p.m.

Present:	David M. Parker	Chairman
	Susan Strickler	Vice Chair
	Michael G. Sanders	Member
	Joseph M. Hennelly, Jr.	Member
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Accounting Department
	William Warren	ADOSH Director
	Greg Beck	ADOSH Compliance
	Kathleen McLeod	Claims Manager
	Karen Axsom	Labor Director
	Jacque Kurth	Claims Division
	Kara Dimas	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Brian Arbizu, John A. McCarthy, Jr., and Jason Weber of Snell & Wilmer.

Approval of Minutes of October 8, 2014 Regular Meeting.

The Commission unanimously approved the Minutes of the October 8, 2014 Regular Session on motion of Mr. Sanders, second of Ms. Strickler. Mr. Hennelly was not in attendance on October 8, 2014 and did not vote.

Consent Agenda:

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C13/14-2067 Anastacio Salaiz & Bertha Salaiz, H/W, dba Tacho's Tacos
2. 2C14/15-0318 Canyon Fast Foods Inc., dba Jack in the Box #1134
3. 2C14/15-0323 Doc Holliday's Saloon, L.L.C., dba Doc Holliday's Saloon
4. 2C14/15-0472 JMD Landscaping, L.L.C.
5. 2C13/14-0923 Salazar Enterprise, LLC dba Villa Peru Restaurant
6. 2C14/15-0476 Show Low Tires, Inc., dba Big O Tires

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

1. Young Electric Sign Company

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. Strickler, second of Mr. Hennelly.

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.

Ms. McGrory commented on when federal OSHA may publish a Decision and she briefly described correspondence ADOSH Director Warren sent to federal OSHA that outlines ADOSH contingency planning regarding residential fall protection enforcement. Mr. Parker commented on the correspondence and noted that it further explains that there will be no gap in coverage or enforcement. Ms. McGrory described ADOSH's educational outreach efforts.

Discussion and Action of Request for Lump Sum Commutation. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(2) and (A)(3) to discuss or consider records exempt by law from public inspection or to consult with its attorneys of legal advice.

Mr. Wade described some changes to the format in which confidential information is communicated to the Commission and he explained the reasons behind those changes. Ms. McGrory added that claimants will still be asked to sign a waiver in case it is necessary for the Commission to discuss or take action regarding some confidential information in public session. Mr. Parker commented that these changes may serve to provide some comfort for those who want to pursue a lump sum commutation yet may want to reduce the amount of their medical information that may become public. Mr. Wade noted that if the Commissioners desired additional information from staff or Mr. Arbizu, who is present, it would be appropriate to move into executive session and he described the types of information that could be discussed in executive session but any legal action would still need to be taken in public session.

Brian Arbizu - Kathy McLeod presented this lump sum petition with a recommendation for approval. Ms. McLeod explained the reasons for staff's recommendation and noted that the self-insured employer has consented to the lump sum commutation. Ms. McLeod responded to questions from the Commissioners. Mr. Parker addressed Mr. Arbizu to confirm that he understands that he is giving up a substantial amount of benefits over time to take a smaller amount today and that this lump sum commutation will finalize all benefits as provided in the Findings and Award dated May 24, 2013. Mr. Arbizu stated that he understood. The Commission unanimously approved the lump sum commutation on motion of Mr. Sanders, second of Ms. Strickler.

Discussion and Action and Potential Resolution regarding proposed rulemaking to A.C.C. R20-5-629 to adopt Federal Occupational Safety and Health rule amendments related to Occupational Injury and Illness recording and reporting requirements, 29 CFR 1904.

Mr. Warren explained that federal OSHA has amended the regulations related to injury and illness recording and reporting and that ADOSH recommends the Commission proceed with a notice of proposed rulemaking to adopt the amendments. Mr. Warren noted that under the new

regulations employers will be required to report all work-related inpatient hospitalizations, amputations, and loss of an eye to OSHA within 24 hours of the event. Mr. Parker commented on some concerns and described positive aspects such as consistent reporting throughout the nation. Ms. Strickler explained her concerns regarding requiring employers to report hospitalizations within 24 hours and how that may pose challenges to determine whether a hospitalization is work-related in such a short time frame and the impact this may have on the accuracy of the data. Following discussion, the Commission unanimously approved ADOSH proceeding with a notice of proposed rulemaking on motion of Mr. Hennelly, second of Ms. Strickler.

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

Barnett's Towing, L.L.C. 1498 E. Fry Blvd Sierra Vista, AZ 85635	Fatality/Accident Years in Business: 51 Empl. Covered by Inspection: 12
Site Location: U.S. Highway 191, milepost 201.88 Alpine, AZ 85920	
Inspection No: T3633-317695211	
Inspection Date: 5/09/2014	

This agenda item involved a fatality and was for discussion only. Mr. Warren summarized the investigation into the death of a tow truck operator. Mr. Warren noted that ADOSH did not recommend any citations, explained why, and responded to questions from the Commissioners.

Martenson Construction, LLC 8628 N Dysart Road, #100 El Mirage, AZ 85335	Fatality/Accident Years in Business: 20 Empl. Covered by Inspection: 5
Site Location: 2485 W Gunnison Court Flagstaff, AZ 86001	
Inspection No: A7746-317783058	
Inspection Date: 6/19/2014	

SERIOUS – Citation 1 - Item 1 –

- a) The frame scaffold system the employees were working from had not been inspected for visible defects by a Competent Person capable of identifying existing and predictable hazards or working conditions which are dangerous or hazardous to the employees. (1926.451(f)(3)).
- b) East side: The frame scaffold system was not sitting on an adequate firm foundation in that a scaffold support leg on the ground was lacking a mud sill underneath the base plate. (1926.451(c)(2)).
- c) A window 45" inches above the working surface of the scaffold was used to directly access and egress the scaffold by employees getting on or off of the scaffold. (1926.451(e)(1)).
- d) The frame scaffold system was lacking complete guardrail and endrail systems on all open sides and ends of the work platforms. (1926.451(g)(4)(i)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1 - Item 2 – Employees working from a frame scaffold system had not been provided scaffold training by a qualified person to recognize the hazards associated with the type of scaffold being used or how to minimize those hazards. (1926.454(a)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

TOTAL PENALTY - \$14,000.00

TOTAL FORMULA AMT. - \$14,000.00

Mr. Warren summarized the citation and proposed penalty as listed and responded to questions from Commissioner Sanders. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$14,000.00 on motion of Mr. Sanders, second of Mr. Hennelly.

Suntec Concrete, Inc.
2221 W Shangri-La Rd
Phoenix, AZ 85029

Fatality/Accident

Years in Business: 30

Empl. Covered by Inspection: 5

Site Location: 8223 E Pecos Rd
Mesa, AZ 85142

Inspection No: N4762-317801058

Inspection Date: 7/11/2014

SERIOUS – Citation 1 - Item 1 – The employer had not performed an evaluation of a forklift operator at least once every three years, who was operating a SkyTrak Telehandler rough terrain forklift, Model 8042, S/N 0160030556. (1910.178(1)(4)(iii)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS – Citation 1 - Item 2 – A SkyTrak Telehandler rough terrain forklift, Model 8042, S/N 0160030556, was operated without securing the pickblock (hook) attachment to the forklift, which is not in accordance with the requirements of ANSI B56.1, Section 605D. (1926.602(c)(1)(vi)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

TOTAL PENALTY - \$9,250.00

TOTAL FORMULA AMT. - \$9,250.00

Mr. Warren summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. Mr. Parker commented on the quality of the photographs provided by the police department and how helpful those photographs are to document a scene, for distance, and for detail. Mr. Sanders asked whether the pickblock would have held if the safety chain had been attached and Mr. Warren responded to the question. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$9,250.00 on motion of Mr. Hennelly, second of Mr. Sanders.

Kirkland's Stores, Inc. – Peoria, Arizona
5310 Maryland Way
Brentwood, TN 37027

Planned

Years in Business: 48

Empl. Covered by Inspection: 4

Site Location: 24650 N Lake Pleasant Pkwy
Peoria, AZ 85383

Inspection No: Q6169-317829208

Inspection Date: 8/7/2014

SERIOUS – Citation 1 - Item 1 – Warehouse: Exit doors were not free and unobstructed, as a cart with boxes and trash blocked access to the emergency exit doors located at the south wall. (1910.37(a)(3)).

Div. Proposal - \$1,800.00

Formula Amt. - \$1,800.00

SERIOUS – Citation 1 - Item 2 – Office: One 120-volt duplex receptacle located above the counter top and in use had live parts exposed to employee contact in that the face plate of the receptacle was missing. (1910.305(j)(1)(i)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

TOTAL PENALTY - \$4,050.00

TOTAL FORMULA AMT. - \$4,050.00

Mr. Warren summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$4,050.00 on motion of Ms. Strickler, second of Mr. Hennelly.

Kirkland's Stores, Inc. – Mesa, Arizona
5310 Maryland Way
Brentwood, TN 37027

Planned

Years in Business:

48

Empl. Covered by Inspection:

2

Site Location: 1854 S Val Vista Dr
Mesa, AZ 85204

Inspection No: Q6169-317858678

Inspection Date: 9/11/2014

SERIOUS – Citation 1 - Item 1 – Warehouse: One employee accessing storage area was not protected from falling approximately 10' to the ground by the use of half door, or equivalent barrier. (1910.23(b)(1)(i)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1 - Item 2 – Warehouse: One employee used a 10' aluminum Louisville step ladder in the closed position. (1910.26(c)(3)(vii)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 3 – Warehouse: Exit doors were not free and unobstructed, as boxes and trash blocked access to the emergency exit doors located on the east wall. (1910.37(a)(3)).

Div. Proposal - \$1,800.00

Formula Amt. - \$1,800.00

TOTAL PENALTY - \$5,850.00

TOTAL FORMULA AMT. - \$5,850.00

Mr. Warren summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. Mr. Parker commented on photograph number 4 with the blocked exit and the sign on the door that reads "Safety First." Ms. McGrory noted that this was the third store in the chain with the same violation. Mr. Warren commented on the frequency of this violation. Mr. Parker asked ADOSH to explore whether ADOSH could push an information campaign through retail industry associations. Mr. Sanders commented on the items blocking the exit and whether the items were permanent. He added that if there is a problem company wide, the employer should address the problem. Mr. Parker commented on potential outreach approaches and Mr. Warren responded to the comments. Mr. Parker asked Mr. McCarthy about getting the word out to some of the grocery store chains and Mr. McCarthy responded to the question. Ms. Strickler commented on the significance of the penalty. Following further

discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$5,850.00 on motion of Mr. Sanders, second of Mr. Hennelly.

Discussion & Action regarding Arizona Minimum Wage Rate for 2015.

Ms. Axsom explained that A.R.S. § 23-363(B) directs that the minimum wage shall be increased on January 1, 2008 and on January 1 of successive years by the increase in the cost of living and that the increase in the cost of living shall be measured by the percentage increase as of August of the immediately preceding year over the level as of August of the previous year of the consumer price index (all urban consumers, U.S. city average for all items) or its successor index as published by the U.S. Department of Labor or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of five cents. She provided a computation of the proposed increase in the Arizona minimum wage to become effective January 1, 2015. Ms. Axsom explained that the Consumer Price Index as of August 2014 was 1.7 percent higher compared to August 2013. She explained that this results in an increase of \$0.13 per hour and the statute directs the wage increase be rounded to the nearest multiple of five cents which means the increase will be \$0.15 per hour. Adding \$0.15 to the 2014 Arizona minimum wage of \$7.90 results in the amount of \$8.05. In accordance with the requirements of the statute, she stated that the Labor Department recommends the Commission approve a new rate of \$8.05 per hour effective January 1, 2015. The Commission unanimously approved the Arizona minimum wage of \$8.05 effective January 1, 2015 for calendar year 2015 on motion of Ms. Strickler, second of Mr. Sanders.

Ms. McGrory commented on actions taken with respect to the Commission's press release regarding the new Arizona minimum wage. Mr. Parker asked how the Arizona minimum wage compares to the federal minimum wage and Ms. Axsom responded that the federal minimum wage is \$7.25.

Discussion & Action regarding the Setting of Assessments under A.R.S. §§23-961(J), 23-966(D), 23-1065(A), and 23-1065(F) for Calendar Year 2015.

Ms. Simpson noted the Commission has the authority to levy assessments under A.R.S. §§ 23-961(J), 23-966(D), 23-1065(A) and 23-1065(F). She described that the authority to set assessment rates is based on any combination of the four assessments and she described the assessments and the purpose for each assessment.

She provided the Commissioners with a cash flow analysis for the administrative fund and explained that under A.R.S. § 23-961(J) the Commission may assess a maximum of 3.0% premium tax for the Administrative Fund. She reviewed her analysis and explained the basis for her recommendation that the Commission establish a rate of 1.50% for calendar year 2015.

Ms. Simpson then described the financial condition of the Special Fund, the projected future liabilities for Special Fund, and the funding that is required to meet the projected liabilities. She explained the CY 2014 Special Fund assessments and the impacts resulting from the recent passage of Senate Bill 1181. She reviewed her analysis and explained the basis for her recommendation that the Commission establish a total rate .75%, which represents .58% under A.R.S. § 23-1065(A) and .17% under A.R.S. § 23-1065(F).

Mr. Parker commented on the Special Fund's unrestricted net asset position and Ms. Simpson described a potential strategy to fund future claims. Mr. Parker recalled the Commissions desire to ensure the Special Fund was actuarially sound and the expectations with investment returns. He noted that the Commission moved to funding new liabilities on a prospective basis, addressing outstanding liabilities separately, and how present uncertainties may impact that strategy.

In response to a question from Mr. Sanders, Ms. McGrory explained that the Special Fund is vulnerable to a sweep. Mr. Sanders commented on staff's analysis to use a portion of the unrestricted net position to fund new claims. Ms. Simpson and Ms. McGrory explained how fluctuations in the net position occur as a result of market changes in the investment portfolio and how this, and other factors justify retaining a portion of the net position. Following further discussion, the Commission unanimously set the § 23-961(J) assessment for the Administrative Fund at 1.5% on motion of Mr. Sanders, second of Mr. Hennelly. The Commission unanimously set the § 23-1065(A) assessment at 0.58% on motion of Mr. Sanders, second of Mr. Hennelly. The Commission unanimously set the Special Fund § 23-1065(F) assessment at 0.17% on motion of Mr. Parker, second of Mr. Sanders.

Ms. McGrory advised that this information will be posted on the agency's web site.

Announcements and Scheduling of Future Meetings.

Ms. McGrory presented a retirement resolution for signature for Dolores Quintana for 18 years of state service with the Claims Division.

Mr. Parker inquired if there were any changes needed to the future meeting schedule and it appeared that no changes were needed at this time and the dates for December 4th, 11th, and 18th were set. The next meeting is scheduled for October 30, 2014.

Mr. McCarthy address the Commission he wanted to thank everyone for the hard work and misses everyone and let the Commission know what a great staff that the Commission has and wished the rest of the world ran this way and put in a lot of work and care about the citizens of the state.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 2:25 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:



Kara Dimas, Commission Secretary