

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, May 14, 2015 – 1:00 p.m.

Present:	David M. Parker	Chairman
	Susan Strickler	Vice Chair
	Michael G. Sanders	Commissioner
	Joseph M. Hennelly, Jr.	Commissioner
	Dale L. Schultz	Commissioner (audio)
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	William Warren	ADOSH Director
	Chris Brandon	Compliance Officer
	Erik Anderson	Compliance Officer
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Accounting
	Kara Dimas	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Stephanie Coulter of The Cavanagh Law Firm and Jason Weber of Snell & Wilmer.

Approval of Minutes of May 6, 2015 Regular Session Minutes.

The Commission unanimously approved the Minutes of the May 6, 2015 Regular Session meeting on motion of Commissioner Schultz, second of Vice Chair 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. 2C14/15-1802 Allen Hanson Incorporated dba Skipper's Central Tire
2. 2C14/15-1249 PMD, LLC, dba Thai Basil Scottsdale
3. 2C14/15-1880 Phil Reddick & Ruthann Reddick, h/w, dba Southwest Outdoor Services, Inc. (a dissolved corporation)

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

1. Pima County

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 Commissioner Sanders, second of Commissioner Hennelly.

Discussion and Action Regarding Requests to the Governor's Office for Approval Under Executive Order 2015-01 to Proceed with Rulemaking.

Laura McGrory noted a conversation she had with the Office of the Arizona Governor and described the expected time-frame for responses to requests for approval to proceed with rulemaking.

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

Wal-Mart Stores, Inc. dba Wal-Mart #5428	Fatality/Accident	
1710 S Greenfield Rd	Years in Business:	10
Mesa, AZ 85206	Empl. Covered by inspection:	20
Site Location:	1710 S Greenfield Rd	
	Mesa, AZ 85206	
Inspection No:	J7272-1042952	
Inspection Date:	2/26/2015	

William Warren stated this was a report on a fatality investigation, explained that the investigation did not identify any violations, and the Arizona Division of Occupational Safety and Health (ADOSH) was not recommending any citations. Chairman Parker asked about the work the decedent performed and whether that work was appropriate. Mr. Brandon responded to the question. Commissioner Sanders asked about limiting factors for different job positions. Mr. Brandon responded to the question. Commissioner Sanders asked if an autopsy had been performed and Mr. Brandon responded to the question. Vice Chair Strickler asked about appropriate footwear and the possibility of condensation. Mr. Brandon responded to the question and provided a summary of the environmental conditions in the freezer. Commissioner Sanders asked for more details concerning the cause of the fatality and Mr. Brandon summarized what some employees said during interviews. Commissioner Sanders asked for more details concerning the ladder and the potential for condensation and Mr. Brandon provided additional details regarding his observations of the freezer. Chairman Parker commented on just-in-time inventory, the contents and size of the freezer, and whether employees working in the freezer was likely a regular activity.

Gorman Roofing Services, Inc.	Complaint	
2229 E University Dr	Years in Business:	16
Phoenix, AZ 85034	Empl. Covered by inspection:	9
Site Location:	900 W Grove Parkway	
	Tempe, AZ 85283	
Inspection No:	T9350-1045223	
Inspection Date:	3/10/2015	

SERIOUS – Citation 1 - Item 1 – Building 5: Two employees were engaged in roofing construction activities on a 4:12 low sloped roof, at a height of approximately 30 feet above

ground elevation, and was not protected from falling to the ground below. (29 CFR 1926.501(b)(10)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 2 – Building 6: Three employees engaged in roofing construction activities on a steep slope roof with 6:12 pitch, at a height of approximately 20 feet, were not protected from falling by the use of guardrail systems with toe boards, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(11)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 3 – Building 5: Two employees were working at approximately 30 feet above the ground and, the Company did not provide fall protection training to enable each employee to recognize the hazards of falling and the procedures to be followed in order to minimize these hazards. (29 CFR 1926.503(a)(1)).

Div. Proposal - \$4,000.00

Formula Amt. - \$4,000.00

SERIOUS – Citation 1 - Item 4 – Building 5: The Foreman was operating a GEHL forklift Model DL1155H, Serial number 10135974, then dismounted the forklift and left the forklift unattended while the elevated load was at an approximate height of 30 feet. (29 CFR 1926.602(c)(1)(vi)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

TOTAL PENALTY - \$10,000.00

TOTAL FORMULA AMT. - \$10,000.00

Mr. Warren summarized the investigation and explained the citations and proposed penalty as listed. Commissioner Sanders asked about forklift outrigger practices and Mr. Warren responded to the question. Chairman Parker commented on the use of outriggers.

Chairman Parker commented on fall protection during roofing operations and the use of permanent anchors. Mr. Erik Anderson commented on the existence of permanent anchors. Chairman Parker commented on potential liability concerns expressed by contractors regarding leaving anchors in place. Commissioner Sanders noted potential issues with permanent anchors including weathering. Mr. Anderson stated that there are buildings in Phoenix that have permanent anchors that window washer use on a regular basis. Commissioner Sanders asked about inspection practices for those anchors and Chairman Parker commented on the potential for the discussion to move off topic.

Vice Chair Strickler asked about mounted photograph 11 and 12 and the fall protection plan for this project. Mr. Anderson responded to the question. Vice Chair Strickler asked Mr. Anderson to describe what the foreman said about the training issue. Mr. Anderson commented on what the foreman said. Chairman Parker asked Mr. Anderson for more details regarding the employee's inability to identify the names on the sign-in sheet. Mr. Anderson provided additional details. Chairman Parker commented on whether the facts would support a willful. Mr. Wade asked Mr. Anderson if he explored whether the employers representative, the supervisory individual on site, knew of the requirements. Mr. Anderson provided a brief summary of the inspection findings. Ms. McGrory stated that she would recommend that Legal review this file and she explained why.

Chairman Parker recommended Legal review this file. Chairman Parker asked if there were any other questions to cover now or have included in the review and there were no further questions or comments.

Discussion and/or Action pursuant to A.R.S. §23-1041(E) to Adopt the Maximum Average Monthly Wage under A.R.S. §23-1041(D)(8) for Calendar Year 2016.

Andrew Wade provided a brief historical summary of the Commission's ministerial duty to adopt a maximum average monthly wage, or statutory cap, and to do so no later than August 1 of each year for the next calendar year and how this maximum average monthly wage is used in workers' compensation claims. He explained that the applicable statute directs the Commission to use a general index, the "Employment Cost Index," published by the Bureau of Labor Statistics (BLS) and to use the increase in that index to increase the maximum average monthly wage. Mr. Wade noted that the applicable statute limits the amount of any increase to the prior year's maximum average monthly wage to no more than 5 %. He added that A.A.C. R20-5-165 directs the Commission to use the *Employment Cost Index for Wages and Salaries, for Civilian Workers, by Occupational Group and Industry, All Workers*, referred to as Table 8.

Mr. Wade explained that staff recommends the Commission adopt the sum of \$4,428.91 for calendar year 2016 based on the reported 2.1 % increase in the Index, comparing December 2014 to December 2013. Chairman Parker commented on the Commission's obligation to adopt the maximum average monthly wage and why the Commission uses Table 8.

The Commission unanimously set the maximum average monthly wage at \$4,428.91 for calendar year 2016 on motion of Commissioner Sanders, second of Commissioner Hennelly.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Chairman Parker said he and Commissioner Sanders will be joining Kitchell Construction for their VPP (Voluntary Protection Program) Award Ceremony and he noted the significance of a construction company qualifying for the VPP.

Chairman Parker commented on certain conferences including the Commission's Claims Seminar scheduled for August. He noted the Commission meeting scheduled for Friday during that conference. The Commission reviewed the meeting schedule through July.

There being no further business to come before the Commission and no announcements, future scheduling of meetings, or public comment, the meeting was adjourned at 1:31 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura McGrory, Director

ATTEST:



Kara Dimas, Commission Secretary