

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Auditorium and Conference Room 308  
Phoenix, Arizona 85007  
Thursday, June 18, 2015 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	David M. Parker	Commissioner
	Michael G. Sanders	Commissioner
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Accounting
	William Warren	ADOSH Director
	Jessie Atencio	ADOSH Assistant Director
	Brett Steurer	Compliance Officer
	Ana Maldonado	Compliance Officer
	Patrick Ireland	Compliance Officer
	Candice Casiano	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the Commission meeting at 1:00 p.m. noting a quorum present. He explained that the Commission meeting will be recessed after the second agenda item, regarding the one-half percent assessment under A.R.S. § 23-1065(F), and that the Commission meeting will move to the third floor Commissioners' Conference Room for consideration of the remaining agenda items. Commissioner Joseph Hennelly and Commissioner Clint Bolick were not able to attend.

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.

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Chairman Schultz welcomed interested parties to the public hearing and stated that the Commission published notice of this hearing on May 7, 2015 inviting public comments. He described the process for today's hearing and explained that the record will close at the conclusion of the hearing. He further explained that the Commission will discuss and may take action on this assessment at a later scheduled meeting.

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(B) and (C) exceed six million dollars. She explained the previous assessment history and stated that as of June 30, 2014 the Special Fund's total actuarial liability for apportionment under A.R.S. § 23-1065(B) and (C) was \$93 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.

Chairman Schultz invited comments from those in attendance. There were no comments and Chairman Schultz concluded the public hearing and closed the record.

At 1:05 p.m., Chairman Schultz recessed the meeting to move the remainder of the meeting to Conference Room 308.

The meeting reconvened at 1:12 p.m. in Conference Room 308. Also present at the meeting were Jim Buhr, Joe Wisto, Elva Vivas and Gregg Tucek from Bashas' and Jason Weber from Snell & Wilmer.

Approval of Minutes of June 11, 2015 Regular Meeting.

The Commission unanimously approved the Minutes of the June 11, 2015 Regular Session meeting on motion of Commissioner Sanders, second of Commissioner Parker.

Consent Agenda:

Approval of Proposed Civil Penalties Against Uninsured Employers.

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C14/15-0293 Gus Brose Painting, LLC
2. 2C14/15-1382 La Paloma Homecare, L.L.C.
3. 2C14/15-1090 Maria & James Heywood, H&W, dba Madera Assisted Living Home
4. 2C14/15-1292 Paprika Mediterranean Cuisine, L.L.C.
5. 2C14/15-0208 State Master Builders, LLC
6. 2C14/15-0728 UPA Data, LLC dba United Processing Advisors

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

1. Bashas', Inc.

Chairman Schultz stated that agenda item a.6. and b.1., would be removed from the consent agenda and heard separately. The Commission unanimously approved the remaining items on the consent agenda on motion of Commissioner Parker, second of Commissioner Sanders.

Andrew Wade advised that a.6. UPA Data, LLC dba United Processing Advisors, has obtained workers' compensation insurance and staff is recommending a reduced penalty of \$500.00, instead of staff's previous recommendation of a \$1,000.00 civil penalty. The Commission unanimously assessed the recommended penalty of \$500.00 against the employer on motion of Commissioner Parker, second of Commissioner Sanders.

Bashas', Inc. - Ms. Pastor introduced Jim Buhr, CFO, Joe Wisto, Corporate Controller, Elva Vivas, Director of Finance, and Gregg Tucek, VP HR & Benefits. Ms. Pastor noted a correction to line item 7. Ms. Pastor presented staff's renewal report and summarized some historical information related to the self-insurance renewal process. She recommended renewal of Bashas' workers' compensation self-insurance authority and recommended the security deposit be set at 125% of unpaid net liability.

Commissioner Parker commented on the Commission's concerns that led to the prior claims review. He described the improvements as an extraordinary turn around and representative of Bashas' local leadership. He referred to the experience modification (e-mod) and described his expectations for the future. Commissioner Parker commented on management commitment at all levels and bottom up engagement, and the potential for Bashas' program to serve as a model for others.

Chairman Schultz commented on the increase in the total claims filed, the number of open claims, and changes in the way claims were administered. He asked for an explanation regarding the increase in the number of claims. Ms. Pastor offered potential reasons and described some of Bashas' practices regarding the reporting of injuries.

Chairman Schultz asked if there were any comments from the Bashas' representatives. Ms. Vivas and Mr. Wisto thanked Ms. Pastor and complimented Commission staff for being cordial and helpful throughout the process. Chairman Schultz added that it was obvious that Bashas' had committed the resources necessary to change and had changed the culture. He thanked the Bashas' representatives for attending the meeting today. The Commission unanimously granted renewal of self-insurance authority on motion of Commissioner Parker, second of Commissioner Sanders.

Status Report and Discussion Regarding Portfolio Liquidations and Guaranty Fund Workers' Compensation Account Transfers as Required under S.B. 1181 enacted in the 51<sup>st</sup> Legislature, Second Regular Session, 2014.

Laura McGrory explained the 2014 legislation that shifted responsibility for the administration and payment of insolvent workers' compensation insurance carrier claims from the Industrial Commission's Special Fund to the Arizona Property and Casualty Insurance Guaranty Fund. She also explained the transfer of funds and liabilities to the Guaranty Fund. Ms. Simpson summarized the funds transfer. Ms. McGrory added that the Guaranty Fund has reportedly entered into an arrangement with CopperPoint Mutual for continued administration of insolvent insurance carrier claims. She noted that the Industrial Commission's Special Fund remains responsible for the claims of the bankrupt self-insured employers and that the Special Fund will begin processing and paying those claims directly on July 1<sup>st</sup> of this year.

Chairman Schultz commented on CopperPoint processing and paying claims for the Guaranty Fund. Commissioner Parker commented that he was impressed with how well the funds transfer went considering the limited time to liquidate investments. Ms. Simpson explained why the Commission's June 30 financial reports should not include the insolvent carrier liability.

Commissioner Sanders asked if the transferred liability included vocational rehabilitation. Ms. Simpson responded that the liability that is being transferred is solely the insolvent carrier claims and all the other Special Fund programs remain. Commissioner Sanders asked why the vocational rehabilitation program was not transferred. Ms. McGrory explained that the focus of the legislation was solely about liability and administration of insolvent carrier claims and she commented on some reasons why there was insurance industry support for the legislation.

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

Ms. McGrory stated there was nothing to report.

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

KLJ Leasing, LLC 102 S. 95 <sup>TH</sup> Ave Tolleson, AZ 85353	Fatality/Accident Years in Business: 8 Empl. Covered by inspection: 15
Site Location: 17124 W Peoria Ave Surprise, AZ 85388	
Inspection No: J9925-1020665	
Inspection Date: 1/23/2015	

SERIOUS – Citation 1 - Item 1 – Agriculture Field near 17124 W Peoria Ave, Surprise, AZ 85388: An employee was not wearing his seatbelt when his high clearance John Deere tractor (#126) rolled over into a pond. (29 CFR 1928.51(b)(2)(i)(B)).

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

William Warren summarized the investigation into the death of an employee and explained the citations and proposed penalty as listed. Commissioner Sanders ask about the cause of the accident. Mr. Steurer responded to the question. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$2,500.00 on motion of Commissioner Sanders, second of Commissioner Parker.

Arizona Park Holdings, LLC dba Wet N Wild Phoenix 4243 W. Pinnacle Peak Rd Glendale, AZ 85310	Complaint Years in Business: 7 Empl. Covered by inspection: 5
Site Location: 4243 W. Pinnacle Peak Rd Glendale, AZ 85310	
Inspection No: U9805-1058726	
Inspection Date: 4/27/2015	

SERIOUS – Citation 1 - Item 1 – 4243 W. Pinnacle Peak Rd., Glendale, AZ: Pits and vaults: The employer did not evaluate all pits and vaults to determine if any spaces are permit-required confined spaces. (29 CFR 1910.146(c)(1)).

Div. Proposal - \$2,250.00	Formula Amt. - \$2,250.00
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SERIOUS – Citation 1 - Item 2 – 4243 W. Pinnacle Peak Rd., Glendale, AZ: Maintenance Shop: Employees working with and around corrosive materials have not been supplied with an adequate emergency drenching or flushing system for the eyes and body. (29 CFR 1910.151(c)).

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

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner Parker asked about the proposed non-serious citations related to chemicals, employee exposures, the respiratory protection program, and whether the proposed non-serious citations have monetary penalties. Ms. Maldonado responded to the questions. Chairman Schultz asked if the covers are locked, whether the areas are fenced, whether the employees use the buddy system or if the employer designated hazardous areas. Ms. Maldonado provided additional details regarding the

work site and the employer's practices. Commissioner Sanders asked if the spaces were permit-required confined spaces and Ms. Maldonado summarized the employer's obligations to determine if spaces are permit-required confined spaces. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$4,500.00 on motion of Commissioner Sanders, second of Commissioner Parker.

Elite Landscaping, LLC  
P.O. Box 763  
Yuma, AZ 85366

Planned  
Years in Business: 9  
Empl. Covered by inspection: 5

Site Location: 2851 S. Avenue B #6  
Yuma, AZ 85364  
Inspection No: P0775-1052173  
Inspection Date: 3/23/2015

SERIOUS – Citation 1 - Item 1 –

(a) East side of building: Two employees were observed installing cantera stone from a scaffold that was 10.5 feet high, 5 feet wide and 10 feet long, that was not fully planked. (29 CFR 1926.451(b)(1)).

(b) East side of building: Two employees were observed installing cantera stone from a scaffold that was 10.5 feet high, 5 feet wide and 10 feet long, that lacked mud sills. (29 CFR 1926.451(c)(2)).

(c) East side of building: Two employees were observed installing cantera stone from a scaffold that was 10.5 feet high, 5 feet wide and 10 feet long, that did not have the proper locking pins. (29 CFR 1926.451(f)(4)).

(d) East side of building: Two employees were observed installing cantera stone from a scaffold that was 10.5 feet high, 5 feet wide and 10 feet long, that was missing the stacking pins. (29 CFR 1926.452(c)(3)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 2 – East side of building: Two employees were observed installing cantera stone from a scaffold that was 10.5 feet high, 5 feet wide and 10 feet long, that was not inspected for visual defects by a competent person. (29 CFR 1926.451(f)(3)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3 – East side of building: Two employees were observed installing the cantera stone from a scaffold that was 10.5 feet high, 5 feet wide and 10 feet long without any fall protection. (29 CFR 1926.451(g)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4 – East side of building: Two employees were observed installing cantera stone from a scaffold that was 10.5 feet high, 5 feet wide and 10 feet long, and had not been trained to recognize the hazards associated with the type of scaffold being used and to understand the procedures to control and minimize those hazards. (29 CFR 1926.454(a)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

TOTAL PENALTY - \$3,000.00

TOTAL FORMULA AMT. - \$3,000.00



conditions and the regulations applicable to excavations to control or eliminate any hazards or other exposure to illness or injury. (29 CFR 1926.21(b)(2)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 2 – East of Parking Garage: One employee was exposed to soils that could roll into an excavation approximately 80 feet long with depths that vary from 4 feet 8 inches to 11 feet 2 inches, in that the excavated soil was piled to the edge of the excavation. (29 CFR 1926.651(j)(2)).

Div. Proposal - \$600.00

Formula Amt. - \$600.00

SERIOUS – Citation 1 - Item 3 – East of Parking Garage: Employees worked in an excavation approximately 80 feet long with depths that vary from 4 feet 8 inches to 11 feet 2 inches that had not been inspected by a competent person prior to the start of work and as needed throughout the shift. (29 CFR 1926.651(k)(1)).

Div. Proposal - \$600.00

Formula Amt. - \$600.00

SERIOUS – Citation 1 - Item 4 –

- a) East of Parking Garage: Employees were potentially exposed to working in a trench with a Pro-Tec Hydraulic Shoring system, that was not designed by the Registered Professional Engineer to be used in a Type C soil excavation. (29 CFR 1926.652(a)(1)).
- b) East of Parking Garage: The employer did not have the manufacturer tabulated data on site during the construction of the Pro-Tec Hydraulic Shoring System installed as employee protection for an excavation approximately 80 feet long with depths that vary from 4 feet 8 inches up to 11 feet 2 inches. (29 CFR 1926.652(c)(2)(iii)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

TOTAL PENALTY - \$2,700.00

TOTAL FORMULA AMT. - \$2,700.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner Parker asked about Citation 1, Item 4(b) and requirement that the manufacturer tabulated data be on site and for additional details on what it meant that the employer did not have the manufacturer tabulated data on site. Mr. Ireland responded to the question. Chairman Schultz asked for additional details about the manufacturer tabulated data. Mr. Ireland responded to the question. Commissioner Parker asked about specific contents of the data and if the use of the data helps provide safer shoring. Mr. Ireland responded to the question. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$2,700.00 on motion of Commissioner Sanders, second of Commissioner Parker.

#### Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. McGrory commented that next week's agenda will include an item for discussion and action regarding a draft of the Review of Sunset Factors for the Industrial Commission and related advisory/review boards. Ms. McGrory described the expected timetable to complete the Review.

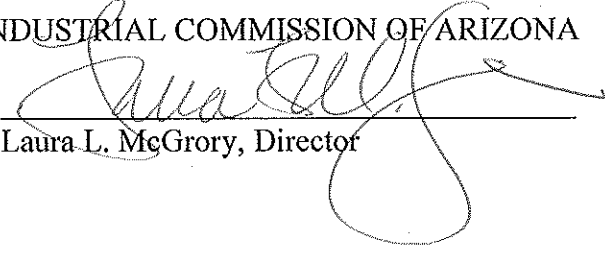
Commission meeting dates were confirmed through August.

There was no public comment and Chairman Schultz asked if there was a motion to adjourn. Commissioner Sanders moved to adjourn and Commissioner Parker seconded the

motion. The Commission unanimously voted to adjourn and the meeting was adjourned at 2:12 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
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Laura L. McGrory, Director

ATTEST:

  
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Kara Dimas, Commission Secretary