

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, December 3, 2015 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Commissioner
	Clint Bolick	Commissioner
	Scott P. LeMarr	Commissioner
	Robin S. Orchard	Commissioner
	James Ashley	Director
	Andrew Wade	Chief Legal Counsel
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Accounting
	Larry Gast	Assistant ADOSH Director
	Billie Gingrass	Compliance Officer
	Karen Axsom	Labor Director
	Kara Dimas	Commission Secretary

Chairman Schultz convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance was Jason Weber of Snell & Wilmer.

Approval of Minutes of November 12, 2015 Regular Meeting and Executive Session.

Commissioner LeMarr moved to approve the regular and executive minutes of the November 12, 2015 meeting. Commissioner Hennelly seconded the motion. Chairman Schultz, Commissioner Hennelly, and Commissioner LeMarr voted in favor of the motion. Commissioner Bolick and Commissioner Orchard did not vote.

Approval of Minutes of November 19, 2015 Regular Meeting and Executive Session.

Commissioner Orchard noted that "Commission Bolick" should be changed to "Commissioner Bolick" on pages 5, 7 and 8 of the regular minutes. Commissioner Bolick moved to approve the regular minutes with those amendments, as well as the executive minutes, of the November 19, 2015 meeting. Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner Bolick, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. Commissioner Hennelly did not vote.

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. 2C15/16-0250 Alpha Auto Glass, L.L.C.
  2. 2C15/16-0792 Carousel Learning Centers, Inc., dba Lea's Carousel Learning Center
  3. 2C14/15-1411 Christian Adult Care Home, Inc.
  4. 2C13/14-0741 Earthstone Enterprises, L.L.C., dba AM Transport
  5. 2C15/16-0794 Gecko Cactus, Inc., dba B&B Cactus Farm
  6. 2C15/16-0950 Gus Brose Painting, LLC
  7. 2C15/16-0982 Philip Nathanson & Kimberly Nathanson, H/W, dba The Nathason Law Firm
  
- b. Approval of Requests for Renewal of Self-Insurance Authority.
  1. Banner Health
  2. Hyatt Corporation
  3. Marriott International, Inc.

Chairman Schultz asked if any agenda items needed to be removed from the Consent Agenda. Commissioner Bolick requested that a.7. be heard separately. Chairman Schultz noted that a.6. will also be heard separately. The Commission unanimously approved the remaining items on the consent agenda on motion of Commissioner Hennelly, second of Commissioner LeMarr.

Commissioner Bolick referred to a.7., Philip Nathanson & Kimberly Nathanson, H/W, dba The Nathason Law Firm, and asked about the timing and the prior civil penalty. Andrew Wade described the process and explained that the civil penalty is for not complying with the statutory requirement to carry workers' compensation insurance and not for having failed to pay the \$1,000.00 civil penalty.

Chairman Schultz referred to a.6., Gus Brose Painting, LLC, and noted the delay from the prior civil penalty. Mr. Wade commented on the investigation process. Chairman Schultz noted that it appeared the employer obtained coverage for a short time in 2014 and added that the penalty was appropriate.

Commissioner LeMarr asked about collection practices. Mr. Wade commented on the Commission's practices. Commissioner LeMarr asked about the lag time between the prior civil penalty and the present recommendation for a \$5,000.00 penalty. Mr. Wade responded to the question and added that a recommendation for a \$5,000.00 or \$10,000.00 civil penalty is completely disconnected from whether the employer has paid a prior civil penalty. He commented on the Superior Court injunction process. Commissioner Bolick asked if staff was proceeding with an injunction action against this employer and Mr. Wade commented on how the likely hazards and risks in places of employment factor into enforcement approaches. Mr. Ashley asked about the process and timeline for an employer to obtain coverage and Mr. Wade summarized the process.

Chairman Schultz asked if there was a motion to approve the \$5,000.00 penalty for a.6. Gus Brose Painting, LLC. The Commission unanimously assessed the recommended penalty of \$5,000.00 against the employer on motion of Commissioner Bolick, second of Commissioner Orchard.

Chairman Schultz asked if there was a motion to approve the \$5,000.00 penalty for a.7. Philip Nathanson & Kimberly Nathanson, H/W, dba The Nathason Law Firm. The Commission unanimously assessed the recommended penalty of \$5,000.00 against the employer on motion of Commissioner Bolick, second of Commissioner LeMarr.

Commissioner LeMarr asked about collections approaches with employers that do not pay the first civil penalty. Mr. Wade responded to the question. Commissioner Bolick asked about filling a vacant position that assists the collections section and Mr. Wade replied that he was attempting to fill that position.

Commissioner Orchard asked about recovering from employers for benefits paid on uninsured employers' workers' compensation claims and Mr. Wade replied that the collections section also collects on those accounts.

Discussion and/or Action regarding Legislation. This agenda item may include discussion and/or action regarding the Sunset Review of the Industrial Commission of Arizona, and related Boards, Committees or Councils.

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Mr. Ashley stated there was no action to take regarding any legislation at this time and commented on the use of nonbinding resolutions. He explained that some stakeholders are in favor of the concept and he summarized the process and explained why nonbinding resolutions may be helpful.

Chairman Schultz commented on the nonbinding aspect and he described some benefits.

Mr. Ashley described some of his expectations regarding the Commission's PIO, or Public Information Officer, and the PIO's role in providing the Commissioners with information about legislation.

Chairman Schultz asked Mr. Wade about the use of nonbinding resolutions and Mr. Wade replied to the question.

Mr. Ashley also updated the Commission regarding meetings that he will be scheduling with various Legislators and Legislative staff and other stakeholders. He suggested that he would also like to invite a Legislator to be a speaker at the Commission's annual claims seminar.

Chairman Schultz commented on the Commissioners participating in those meetings. Mr. Ashley offered to supply Commissioners with details concerning the scheduling of the meetings.

Presentation and Discussion regarding Arizona Division of Occupational Safety and Health adoption of quick-fix penalty reduction to the Field Operations Manual.

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Mr. Ashley noted that Commissioner Bolick had asked that he explore the quick-fix penalty reduction in greater detail. He described his work on the topic and referred to the applicable portion of the Field Operations Manual (FOM). He noted that the FOM provides that the quick-fix penalty reduction applies only in limited circumstances and commented on not wanting to limit the Commissioner's statutory discretion. Mr. Ashley described directives to the ADOSH compliance officers regarding abatement photographs, supplying additional background information related to inspection findings, and whether ADOSH has considered a reduction in the nature of a quick-fix

penalty reduction. He described how the additional information will be supplied and efforts to include pending files.

Chairman Schultz added that he did not want cases pending Commission review to be delayed. He invited suggestions to improve the process.

Commissioner LeMarr asked about compliance officer practices that may provide an incentive for an employer to quickly abate and Mr. Gast commented on how a compliance officer can encourage prompt abatement and the impact that doing so may have on the citation process.

Chairman Schultz asked if the Commission has opted out of the quick-fix part of the FOM. Mr. Ashley commented on the time frames related to adopting the new federal FOM with Arizona specific standards. Mr. Gast added that ADOSH intends to adopt the new FOM with modifications.

Commissioner LeMarr asked for the reason ADOSH opted out of adopting the quick-fix penalty reduction as part of the FOM and Mr. Gast offered possible reasons.

Commissioner Bolick thanked Mr. Ashley for addressing this topic with great alacrity and thanked the ADOSH team as well. He explained his view that prompt abatement is critically important to the Commission's role with workplace safety and if providing an additional financial incentive for an employer to make the workplace safe quickly, and the employer does so, then the Commission has achieved success. He suggested that ADOSH include with its educational and outreach efforts, the potential for a lesser penalty in cases where the employer promptly abates and how that benefits all those involved.

Chairman Schultz commented on his attending safety oriented meetings with ADOSH and wherever possible he will make sure that folks understand that the ADOSH safety program is about making the workplace safe, first and foremost, and reducing injuries, and definitely not about generating revenue for the State's coffers.

Commissioner LeMarr asked about the next step. Mr. Ashley responded that ADOSH would opt out of the federal FOM's quick-fix penalty reduction in its entirety. Chairman Schultz added that this approach will preserve the Commission's discretion to modify the citations and the penalties.

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

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Best Life Pharmanaturals LLC  
3110 Potter Dr  
Tempe, AZ 85282

Site Location: 3110 Potter Dr  
Tempe, AZ 85282  
Inspection No: S8089-1082423  
Inspection Date: 08/04/2015

Complaint  
Years in Business: 16  
Empl. Covered by inspection: 40

SERIOUS – Citation 1 - Item 1 – Receiving area: One employee was operating a Hyster forklift, model S50 XM serial number D187VC14006W, while not wearing the seatbelt. (29 CFR 1910.132(a)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 2 – 3110 S Potter Dr. Tempe, AZ 85282: Two employees were not trained in the safe operation of a Hyster forklift, model S50 XM serial number D187VC14006W which had been used to load and unload palletized materials and equipment from delivery trucks. (29 CFR 1910.178(l)(1)(i)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 3 – Receiving area: Inspections were not conducted on a Hyster forklift, model S50 XM serial number D187VC14006W, prior to the powered industrial truck being placed into service. (29 CFR 1910.178(q)(7)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL PENALTY - \$3,500.00

TOTAL FORMULA AMT. - \$3,500.00

Larry Gast summarized the citation and proposed penalty as listed. Commissioner LeMarr asked for details regarding the complaint and for Mr. Gast to explain the distinction between a complaint and a referral. Mr. Gast responded to the questions.

Chairman Schultz commented on the daily inspection requirement, the frequency of violations, and asked whether ADOSH consultation services has a sample of an appropriate daily inspection sheet. Mr. Gast responded to the question.

Commissioner LeMarr asked if an employer is required to document inspections and Mr. Gast responded to the question. Commissioner LeMarr asked about forklift training requirements and Mr. Gast responded to the question and noted that the requirement to train and to certify that operators are trained are two separate requirements.

Commissioner Bolick moved to issue the citation with a \$3,500.00 total penalty and Commissioner LeMarr seconded the motion. The Commission unanimously voted in favor of the motion.

Landmark Metal Builders, Inc.  
5077 E. Buffalo Soldier Trail  
Sierra Vista, AZ 85650

Referral  
Years in Business: 8  
Empl. Covered by inspection: 8

Site Location: 14591 South Mission Road  
Sahuarita, AZ 85629  
Inspection No: E5149-1072829  
Inspection Date: 06/12/2015

SERIOUS – Citation 1 - Item 1 – Southwest area of Shop: Employees engaged in the installation of metal roof decking at approximately 20' above the ground level had not been adequately trained in fall protection and in procedures to be followed in order to minimize those fall hazards. The employees working at the elevated level did not understand the pendulum effect in a fall protection system. (29 CFR 1926.503(a)(1)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1 - Item 2 – Southwest area of Truck Shop: Two employees not protected with adequate fall protection system and not engaged in the installation of a safety system were walking

and working on the purlins installing the cross-bracing and insulation that resulted in one of the employees falling 20 feet to the ground below. (29 CFR 1926.758(h)).

Div. Proposal - \$5,000.00	Formula Amt. - \$5,000.00
TOTAL PENALTY - \$7,500.00	TOTAL FORMULA AMT. - \$7,500.00

Mr. Gast summarized the citation and proposed penalty as listed and reviewed the photographs. Commissioner LeMarr asked about the harnesses being used and Mr. Gast responded to the question. Commissioner LeMarr asked about the absence of adjustments in item 2. Mr. Gast explained that the adjustment factors are not applied where a violation caused or contributed to a serious injury or death.

Commissioner Orchard asked about the employer's inspection history and inspection practices regarding record keeping. Mr. Gast described some circumstances where a compliance officer will review records. Commissioner Orchard asked about Mr. Gast's use of the term "MSHA" and Mr. Gast replied that it meant Mine Safety and Health Administration. Commissioner Orchard referred to certain mounted photographs and asked about the employer's safety consultant. Mr. Gast responded to the question. Commissioner LeMarr suggested some details regarding an employer's safety consultant that would be helpful to know.

Commissioner Orchard explained why she would support a lesser penalty. Mr. Wade and Mr. Gast commented on the presence of a safety consultant during the opening conference.

Commissioner Orchard moved to issue the citations and apply a 10% adjustment factor for history on citation 2 for a penalty of \$4,500.00 for citation 2 and a total penalty of \$7,000.00. Commissioner LeMarr seconded the motion. Chairman Schultz and Mr. Wade commented on the penalty structure. The Commission unanimously approved the motion.

Commissioner LeMarr asked about follow-up and Mr. Gast commented on the employer's obligations regarding abatement.

Metric Roofing, Inc.  
3811 W Lower Buckeye Rd  
Phoenix, AZ 85009

Complaint  
Years in Business: 22  
Empl. Covered by inspection: 4

Site Location: 3244 E Strawberry Dr  
Gilbert, AZ 85297  
Inspection No: H1793-1072233  
Inspection Date: 06/22/2015

SERIOUS – Citation 1 - Item 1 – Job Site Roof East and West Sides: Four employees were engaged in roofing construction on a steep-slope roof, at a height of approximately 20 feet from the roof edge to the ground and were not protected from falling. (29 CFR 1926.501(b)(11)).

Div. Proposal - \$3,000.00	Formula Amt. - \$3,000.00
TOTAL PENALTY - \$3,000.00	TOTAL FORMULA AMT. - \$3,000.00

Mr. Gast summarized the citation and proposed penalty as listed. Commissioner Bolick commented on the prior fall protection citations, suggested the size adjustment factor be removed, and explained why. Commissioner LeMarr agreed and would second the motion to issue the citation with a \$5,000.00 penalty. Chairman Schultz commented on the roofing industry and how not

applying the adjustment factor would be consistent with what had been done with other citations involving other roofing companies.

Chairman Schultz stated the penalty would be \$5,000.00 and asked if there were any further discussion. The Commission unanimously approved issuing the citation and assessed the penalty of \$5,000.00.

Presentation and discussion regarding the operations of the Industrial Commission of Arizona's Labor Division.

Karen Axsom summarized the operations of the Commission's Labor Division. She provided an organization chart and described the Division's main programs. Commissioner Bolick complimented her presentation and commented on the written report.

Commissioner LeMarr asked for more details about the 2882 wage claims, the meaning of "no jurisdiction," and for a specific explanation of what constitutes a "determination." Ms. Axsom responded to the questions. Commissioner LeMarr commented on the number of claims resolved before Ms. Axsom issues a determination. Ms. Axsom explained that some employers pay the employees after a claim is filed but before the investigation is completed.

Chairman Schultz asked about the determinations processed as judgments. Ms. Axsom explained that if the determination is in favor of the claimant and the employer fails to pay the wages, or appeal the determination within the time allowed by law, the Labor Department will file the determination with the Superior Court which converts the determination into a judgment. The judgment is then mailed to the wage claimant for collection. Ms. Axsom explained why the Labor Department does not function as a collection agency for the wage claimant.

Commissioner LeMarr commended her for processing 3700 wage claims, minimum wage complaints, employment agencies, and youth employment matters given the small staff size.

Chairman Schultz asked about the amount of time it takes to complete an investigation and issue a determination and for more details concerning the process. Ms. Axsom summarized the process. Chairman Schultz noted that the time allowed for the employer to respond to the wage claim and other procedural time frames largely dictate how long it takes to complete the process rather than a lack of attention. Ms. Axsom commented on another component of the time frame to complete the process.

Chairman Schultz and the Commissioners thanked Ms. Axsom for her presentation.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley commented on the division presentations to the Commissioners, noted that two Commissioners joined after ADOSH presented, and that ADOSH's presentation would be placed back on the schedule.

Commissioner Bolick stated he will be unable to attend the meeting scheduled for December 17 meeting and Commissioner Orchard stated she will be unable to attend the meeting scheduled for December 10.

Chairman Schultz referred to the tentative 2016 meeting schedule. Commissioner LeMarr commented on the specific dates added for the fee schedule hearing and the Claims Seminar. There were no changes to the meeting schedule for January 2016. Chairman Schultz commented on scheduling meetings in other parts of Arizona and how doing so may improve accessibility for those in other parts of the State.

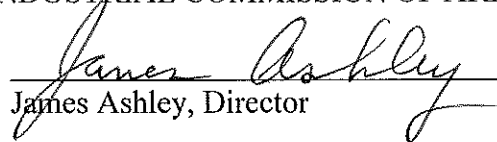
Ms. Dimas announced that Katherine Gosiger is retiring with 10 years of state service and she presented a retirement resolution for signature.

Public Comment.

There was no public comment and Chairman Schultz asked if there was a motion to adjourn. Commissioner Bolick moved to adjourn and Commissioner Hennelly seconded the motion. The Commission unanimously voted to adjourn and the meeting was adjourned at 2:33 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
James Ashley, Director

ATTEST:

  
Kara Dimas, Commission Secretary