

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 W. Washington
Conference Room 308
Phoenix, Arizona 85007
Wednesday, July 29, 2009 – 1:00 p.m.

Present:	Brian Delfs	Chairman (telephonic)
	Marcia Weeks	Vice Chairman
	Louis W. Lujano, Sr.	Member (telephonic)
	John A. McCarthy, Jr.	Member
	David Parker	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Renee Pastor	Self Insurance Manager
	Gary Norem	Chief Financial Officer
	Glenn Hurd	Asst. Chief Financial Officer
	Jeri McAnerny	Tax Accountant
	Darin Perkins	Director, ADOSH
	Teresa Hilton	Commission Secretary

Vice Chairman Weeks convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Scot Butler, the agency's lobbyist, Robert Reder Esq. and Richard Horton of Ashton, Jen Jones of Snell & Wilmer, Jonathan Payne of PEO Edge and Susan Meyer of Kinerk & Associates.

Approval of Minutes of July 8, 2009 Meeting

The Commission unanimously approved the Minutes of the July 8, 2009 meeting on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion & Action of Requests for Renewal of Self Insurance Authority

Arizona Counties Workers' Compensation Pool – Renee Pastor presented staff's renewal report along with current Dunn and Bradstreet credit report ratings. Ms. Pastor advised the pool's investment guidelines allow no more than 10% be allocated to any one investment. She advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the pool's solid financial condition with assets of just over \$15 million, the posting of two clean audit reports and an acceptable credit rating. The Commission unanimously approved continuance of self-insurance authority and signed a Resolution to that effect on motion of Mr. Lujano, second of Mr. McCarthy.

Vice Chairman Weeks invited Scot Butler to give his presentation regarding developments at the legislature.

Discussion &/or Action regarding Legislation

Scot Butler provided a summary of activity at the Capitol related to the current special session. He advised that negotiations are continuing in Special Session to address the state's budget issues.

Discussion & Action of Requests for Renewal of Self Insurance Authority
(Continued)

Mayo Clinic – Renee Pastor presented staff's renewal report along with current Dunn and Bradstreet credit report ratings. Ms. Pastor responded questions from the Commissioners. She

advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the clinic's financial stability, total assets of just over \$8.3 billion, a clean audit report and an acceptable credit rating. Following discussion, the Commission unanimously granted renewal of self-insurance authority and signed a Resolution to that effect on motion of Mr. Lujano, second of Mr. McCarthy.

Peabody Western Coal Company – Renee Pastor presented staff's renewal report along with current Moody's, Fitch and Dunn and Bradstreet credit report ratings. Ms. Pastor responded to a question from Mr. Lujano concerning monitoring of operations in China and advised that she monitors quarterly reports from Peabody and reviews financial statements for all of the self insured employers every month due to the financial climate. Ms. Pastor advised that the agency is sending out an independent auditor to review Peabody's workers' compensation claims and denials since their denial rate is above the 12% standard. Ms. McGrory described the Commission's authority to approve or terminate self insurance authority.

Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority due to its parent's financial strength with total assets of just over \$9.8 billion in FY 2008, a clean audit report and acceptable credit ratings. Following further discussion, the Commission unanimously approved renewal of self-insurance authority and signed a Resolution to that effect on motion of Mr. McCarthy, second of Mr. Lujano.

Discussion & Action of Proposed Civil Penalty Against Uninsured Employer

2C08/09-1991 Mike Hernandez & Sandra Hernandez
 Husband & Wife dba Performance
 Motor Sports

Andrew Wade advised that a compliance investigation confirmed that the above listed employer was operating (or had operated) a business with employees, but without workers' compensation insurance. Giving consideration to the factors of A.R.S. §23-907(K), Mr. Wade recommended that a civil penalty of \$1,000.00 be assessed against employer #1991. Mr. Wade responded to questions from the Commissioners regarding this employer and their coverage history. The Commission unanimously assessed the recommended penalty of \$1,000.00 against employer #1991 on motion of Mr. Parker, second of Mr. Lujano.

Discussion & Action of ADOSH Discrimination Complaints

#09-38 Angelina Ricardo v. All Smiles Dental Care - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Ms. Ricardo. In her complaint, Ms. Ricardo alleged that she was terminated for refusing to clean out non-reusable biohazard containers. The employer stated that the dentist as well as staff members frequently complained about Ms. Ricardo and she was terminated for not being compatible with the team.

Mr. Perkins described the allegations and the employer's response in detail. The Commissioners discussed the company's lack of a progressive discipline program. Mr. Perkins agreed that there was nothing in writing documenting problems with Ms. Ricardo and that the employer reported that they had spoken with her several times about the job performance problems. In response to another question, he stated that he was not aware whether the company had an employee manual. Mr. Perkins stated that based on the information gathered during the investigation, it did not appear that the evidence established or indicated a connection between Ms. Ricardo's termination and the protected activity and recommended that the case not be pursued. The Commission unanimously voted not to pursue the complaint on motion of Mr. McCarthy, second of Mr. Parker.

#09-39 James Hudson v. Delta Diversified Enterprises, Inc. - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Hudson. In

his complaint, Mr. Hudson alleged that he was terminated because he had refused to report to work while he was under the influence of a prescription pain medication and because he brought up concerns about the company's lockout-tagout program. The employer stated that Mr. Hudson was terminated because he missed work on two separate days without calling in and was caught sleeping on the job.

Mr. Perkins described the allegations and the employer's response in detail. He responded to questions from the Commissioners and advised that sleeping on the job was an offense that could result in termination and that Mr. Hudson was not treated differently than any other employees. Mr. Perkins stated that based on the information gathered during the investigation, there did not appear to be any connection between Mr. Hudson's termination and what Mr. Hudson reported as protected activity and recommended that the case not be pursued. The Commission unanimously voted not to pursue the complaint on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion & Action of Proposed OSHA Citations and Penalties

Palomar E-Z Cable, LLC 3642 S. Prism Sky Drive Tucson, AZ 85735	Planned Yrs/Business - 12 Empl. Cov. by Insp. - 4
Site Location: Tangerine Road & Dove Mountain, Marana, AZ 85735	
Inspection #: A9339/313573016	
Insp. Date: 06/05/09	

SERIOUS - Citation 1, item 1 - An employee was working from an aerial lift at 20' above the ground level without the use of fall protection.
(No inspection history in the past three years).

Div. Proposal - \$750.00	Formula Amt. - \$750.00
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SERIOUS - Citation 1, item 2 - The employer allowed an employee to remain in the aerial lift bucket at 20' above ground while the truck was moving backwards along the north side of the road.

Div. Proposal - \$ 750.00	Formula Amt. - \$ 750.00
TOTAL DIV. PROP. - \$1,500.00	TOTAL FORMULA AMT - \$1,500.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$1,500.00 on motion of Mr. McCarthy, second of Mr. Parker.

Pisani Construction, LLC 3126 E. Iris Street Mesa, AZ 85213	Planned Yrs/Business - 29 Empl. Cov. by Insp. - 35
Site Location: 19555 N. 59 th Avenue, Glendale, AZ 85308	
Inspection #: Q7984/313223760	
Insp. Date: 04/24/09	

SERIOUS - Citation 1, item 1 - One employee was working from an 8' step ladder approximately 10' above ground level without the use of a fall protection system to prevent a fall.

(One inspection with one serious and one nonserious violation in the past three years).

Div. Proposal - \$1,250.00	Formula Amt. - \$1,250.00
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SERIOUS - Citation 1, item 2 - The safety monitor was not on the same walking/working surface and within visual sighting distance while two employees were installing a strap to a wall approximately 20' above ground level.

Div. Proposal - \$1,250.00	Formula Amt. - \$1,250.00
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TOTAL DIV. PROP. - \$2,500.00

TOTAL FORMULA AMT - \$2,500.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$2,500.00 on motion of Mr. Lujano, second of Mr. McCarthy.

The Ashton Company Inc. Contractors and Engineers
2727 S. Country Club
Tucson, AZ 85713

Fatality
Yrs/Business - 63
Empl. Cov. by Insp. - 11

Site Location: Dodge Blvd & Rillito River, Tucson, AZ 85713
Inspection #: N5645/313060675
Insp. Date: 02/10/09

SERIOUS - Citation 1, item 1 - A hydraulic crane mounted on an International truck was operated within 10' of an energized 13.8Kv power line that had not been deenergized and visibly grounded, nor had adequate insulating barriers been erected to prevent physical contact with the line (1926.550(a)(15)(i).

(One accident inspection in the past three years with one unclassified and one nonserious violation with \$2750.00 in penalties).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS - Citation 1, item 2 - The employer did not designate a signal person to observe clearances between the equipment and energized overhead power lines (1926.550(a)(15)(iv).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS - Citation 1, item 3 - A light pole was picked and swung over the heads of employees (1926.550(1)(19)(i).

Div. Proposal - \$ 2,500.00

Formula Amt. - \$ 2,500.00

TOTAL DIV. PROP. - \$16,500.00

TOTAL FORMULA AMT - \$16,500.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. He advised that this case file and the next are related to a fatality at the same site. The Division recommendation for the first two citations was for the gravity-based penalties with no adjustment factors since the violations directly related to the fatality. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$16,500.00 on motion of Mr. Lujano, second of Mr. Parker.

Tucson Electric Power Company
P.O. Box 711
Tucson, AZ 85702-04

Unprogram Related
Yrs/Business - 117
Empl. Cov. by Insp. - 4

Site Location: Dodge Blvd. & Rillito River, Tucson, AZ 85716
Inspection #: N5645/313085110
Insp. Date: 02/10/09

SERIOUS - Citation 1, item 1 - Tucson Electric Power Company did not protect employees by installing sufficient insulating barriers to prevent physical contact of the equipment being operated and or hoisted within 10' of the power lines, or by deenergizing visibly grounding overhead lines (1626.550(1)(15)(i).

(No inspection history in the past three years).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS - Citation 1, item 2 - A light pole was lifted and swung over the heads of employees (1926.550(a)(19)(i).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

TOTAL DIV. PROP. - \$9,500.00

TOTAL FORMULA AMT - \$9,500.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$5,700.00 on motion of Mr. Parker, second of Mr. McCarthy.

Santa Fe Diversified LLC
10614 E. Kay Gartrell Place
Tucson, AZ 85747

Planned
Yrs/Business - 3
Empl. Cov. by Insp. - 6

Site Location: 60 E. Congress, Tucson, AZ 85701
Inspection #: F3875/313397994
Insp. Date: 05/31/09

GROUPED SERIOUS - The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from accident.

Citation 1, item 1a - Employees were working on a steel welded frame scaffold measuring 35' high, 5' wide and 14' long that was not fully planked between the front uprights and the guardrail supports, exposing employees to a 36" opening on the walking/working platforms (1926.451(b)(1).

Citation 1, item 1b - Employees were working on a steel welded frame scaffold measuring 35' high, 5' wide and 14' long and the scaffold frame posts were resting on loose lumber with no base plates or other adequate firm foundation (1926.451)(2).

Citation 1, item 1c - Employees were working on a steel welded frame scaffold measuring 35' high, 5' wide and 14' long and were not provided any ladder(s) or other safe means of access (1926.451(e)(1).

Citation 1, item 1d - The employer failed to provide a competent person to conduct daily inspections of the scaffold for visual defects such as missing planks, base plates, ladders and guardrails (1926.451(f)(3).

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 2 - Employees were working on a steel welded frame scaffold measuring 35' high, 5' wide and 14' long that did not have any guardrails installed along the open sides and ends of the platforms (1926.451(g)(4)(i).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 3 - Employees working on a steel welded frame scaffold that was 35' high, 5' wide and 14' long were not trained by a qualified person in the subject matter to recognize the hazards associated with the type of scaffold being used and to understand the procedures to control or minimize those hazards (1926.454(a).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. -\$2,250.00

TOTAL FORMULA AMT - \$2,250.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$2,250.00 on motion of Mr. Lujano, second of Mr. Parker. In response to a question from Mr. Parker, Mr. Perkins explained that there are a variety of scaffolding training classes available, including those presented by individual scaffolding contractors and one of the associations also presents a low cost quarterly seminar on scaffold use.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 5 – The sizing saw had a horizontal drive belt on the south end of the machine which was not enclosed and pulleys which were not guarded. (1910.219(d)(1). There was another instance of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 6 – The sprocket wheel and chain drive for the conveyor, which moved spikes and plates to the sorting station, was not guarded. There were two other instances of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 7 – A six inch right angle grinder was not equipped with a safety guard. (1910.243(c)(3).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL DIV. PROP. - \$8,250.00

TOTAL FORMULA AMT - \$8,250.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$8,250.00 on motion of Mr. McCarthy, second of Mr. Lujano.

Discussion &/or Action regarding Operations of the Industrial Commission

Ms. McGrory advised that the Mexican Consulate has requested that the agency participate in an educational and outreach program that would focus on providing information on worker safety to the population they serve. They will be providing additional information on the proposed program, and she has indicated to them that upon receipt of information describing the scope and purpose of the program, the agency would be willing to provide the requested information and services.

Ms. McGrory stated that she has also had discussions with individuals from UC Berkeley regarding a curriculum that they have developed which focuses on educating youth on workplace safety and labor laws. She will keep the Commissioners informed of what may turn into a partnership that focuses on youth workers.

Ms. McGrory advised that the supplemental staff study on the Physicians' Fee Schedule update has been provided to the Commissioners. She recommended that the Commissioners schedule dates for consideration of the proposed updates and also to discuss the tax/assessment issue. With regard to the tax/assessment issue, she stated that staff will provide the Commissioners with an updated memorandum to address the tax rates and status of the Special Fund two weeks prior to consideration. The Commission scheduled future meetings for Thursday, August 20th, Thursday, August 27th and Wednesday, September 2nd and agreed to consider the fee schedule updates on the 20th and the tax assessment on the 27th. The next meeting of the Commission will be held on Wednesday, August 5th.

Discussion &/or Action regarding Industrial Commission of Arizona, for Itself and as Trustee for the Special Fund of the Industrial Commission of Arizona; and the Special Fund of the Industrial Commission of Arizona, Petitioners, v. Dean Martin, Arizona State Treasurer, in his official capacity; Janice K. Brewer, Governor of the State of Arizona, in her official capacity, Respondents. The Commission may move into Executive Session under A.R.S. §§38-431.03(A)(3) and (A)(4) for Discussion and Consultation with the Attorneys of the Public Body regarding Pending Litigation or Settlement Discussions in order to resolve Litigation. 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

Mr. Wade stated there was nothing new to report on the Superior Court action.

Announcements

Mr. Parker stated that he would like to publicly thank Mark Norton for coming up to Flagstaff to be the keynote speaker at the annual joint conference of the Arizona chapters of the Public Risk Management Association and the Risk and Insurance Management Society.

Ms. McGrory provided the Commissioners with copies of two articles regarding the nomination of a new Assistant Secretary for Federal OSHA by President Obama.

There being no further business to come before the Commission and no public comment, Vice Chairman Weeks adjourned the meeting at 2:55 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By *Brian C. Delp*
Chairman

By _____
Vice Chairman

By *Kenia W. Bufano, Sr.*
Member

ATTEST:

By *John A. McAty Jr.*
Member

Teresa Hulten
Commission Secretary

By *[Signature]*
Member