

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington

Conference Room 308

Phoenix, Arizona 85007

Thursday, February 18, 2010 – 1:00 p.m.

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

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Also present was Scot Butler, the agency's lobbyist; Vince Tracey, Loss Prevention, Pima County; and Jason Weber of Snell & Wilmer.

Approval of Minutes of February 4, 2010 Meeting

The Commission approved the Minutes of February 4, 2010 on motion of Mr. Lujano, second of Mr. Parker. Mrs. Weeks abstained.

Discussion &/or Action regarding Legislation

Scot Butler provided a summary of proposed legislation of interest to the Commission and responded to questions from the Commissioners. He advised that the bill deadline was last week and gave a summary of the new bills that were introduced including HB's 2717, 2749 and SB 1403. Mr. Butler advised that HB 2228, the elevator third party inspections bill, cleared the house with additional wording. Discussion followed regarding the Commission's role and responsibilities with regard to this legislation. He also gave an update regarding HB 2639 and stated that he is putting together some information on the federal minimum wage law and youth employment in Arizona for the bill's sponsors.

On the budget side, Mr. Butler advised that the Special Session ended last week. A bill was passed referring the 1 cent sales tax to the ballot on May 18<sup>th</sup> along with bills regarding further borrowing, securitization of the lottery and budget cuts. There is still a \$200 to \$300 million deficit for the current year, but 80% of the deficit has been closed down. The projected deficit for next year is \$3.3 to \$3.4 billion.

Mr. Butler also responded to questions regarding SB 1070 and its House version, HB 2532 and HB 2465.

Discussion & Action of Proposed OSHA Citations and Penalties

David's Framing, Inc.  
2947 N. Cebarel Lane  
Nogales, AZ 85621

Fatality  
Yrs/Business – 25  
Empl. Cov. by Insp. – 2

Site Location: 4 Camino Cielito, Tubac, AZ 85646  
Inspection #: F3875/313963134  
Insp. Date: 11/06/09

SERIOUS – Citation 1, item 1 – An employee conducting work from the second story balcony at a height of 9'8" above a lower level was not protected from falling by the use of a guardrail system, a safety net system or personal fall arrest system (1926.501(b)(1)).

(No inspection history in the past three years).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1, item 2 – Employees exposed to fall hazards were not trained to recognize the hazards of falling or in procedures to be followed in order to minimize those hazards (1926.503(a)(1)).

Div. Proposal - \$ 7,000.00

Formula Amt. - \$ 7,000.00

TOTAL DIV. PROP. - \$14,000.00

TOTAL FORMULA AMT - \$14,000.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. He advised that the Division recommendation 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 \$14,000.00 on motion of Mr. Lujano, second of Mr. Parker.

Cochise School District #26  
P.O. Box 1088  
Cochise, AZ 85606

Accident  
Yrs/Business – 99  
Empl. Cov. by Insp. – 4

Site Location: 5025 N. Bowie Avenue, Cochise, AZ 85606  
Inspection #: T3633/314142332  
Insp. Date: 01/11/10

SERIOUS – Citation 1, item 1 – An employee used a 20' metal extension ladder to access a rolling tower scaffold and the ladder was not placed with a secure footing (1910.26( c)(3)(iii)).

(No inspection history in the past three years).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1, item 2 – An employee was working from a manually propelled mobile scaffold which had a split-level platform, with the higher platform section 14' above the floor. The single guardrail on the side with the higher platform was approximately 24" above the platform and there was no guardrail or midrail on one side of the platform (1910.29(a)(3)(vii)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – Employees changed light ballasts in the gymnasium and the employer had not established energy control (lockout/tagout) procedures and employee training to ensure that the equipment would be isolated and rendered inoperative prior to any work where the unexpected energizing could occur and cause injury (1910.147( c)(1)).



the subsequently accepted claims should be subtracted from the total claims filed or just from the denials. Ms. McGrory stated that she would look into the calculations that are being used and respond back to the Commission. Mr. Delfs questioned whether the drop in the profitability ratio was a cause for concern. Ms. Pastor responded that she did not believe this was a problem since the ratio will increase when the construction has been completed and that they are increasing the number of employees. Mr. Delfs requested that staff obtain quarterly financial statements for the next year and add the company to the watch list.

Mr. Norem advised that Administration is recommending renewal of workers' compensation self-insurance authority based on UMC's total assets of just under \$628.8 million, a clean audit report and acceptable credit ratings. The Commission unanimously granted renewal of self insurance authority on motion of Mr. Lujano, second of Mr. McCarthy and added to the motion that quarterly reports will be obtained.

Yuma County – Gary Norem presented staff's renewal report along with current Moody's and Fitch bond ratings and a Dunn and Bradstreet credit rating. He advised that the County is requesting that its fully funded risk management fund be approved as an alternate security to its current security. Ms. Pastor stated that the County has a solid base with internal service fund total assets of \$535,679 and that the current deposit of \$120,000 would be released back to them and deposited into the account. Mr. Parker explained that the County has a 55% confidence level, does not discount losses, has an actuarial report every year, and considers compensation and medical in their projections. Ms. Pastor agreed and stated that their assets are cash rather than capital assets.

Mr. Norem advised that Administration is recommending renewal of workers' compensation self-insurance authority due to the financial strength of the County with total governmental assets of over \$432 million, the financial protections afforded it as a governmental entity, the receipt of a clean audit report, acceptable ratings for revenue and debt service bonds and acceptable credit ratings. The Commission unanimously approved continuance of self insurance authority on motion of Mr. Lujano, second of Mr. Parker and added to the motion that the Commission approve the request that the fully funded risk management fund be accepted as alternate security.

#### Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C09/10-1040	E.D.S. Manufacturing, Inc.
2C09/10-1038	Kahan Enterprises, P.C. dba Chino Valley Animal Hospital
2C09/10-0300	RWC Transport, LLC
2C09/10-0701	Royal Enterprises, Inc. dba Big Tiger aka 7 <sup>th</sup> St Exxon South
2C09/10-0642	Stanley Babowicz, a Single Man dba BTEK Software, Inc.
2C09/10-0039	Vee Corporation

Mr. Wade advised that a compliance investigation confirmed that the above listed employers were 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), civil penalties have been recommended. With regard to employer #0642, this employer has obtained coverage and he recommended a reduced penalty of \$500.00. Mr. Wade further recommending civil penalties of \$1,000.00 be assessed against employers #1040, 1038, 0300, 0701 and 0039. Mr. Wade gave information regarding number of employees and the compliance history of these employers. He further explained that with regard to employer #0039, the employer is a touring company that comes to Arizona every year. The employer's current workers' compensation insurance does not cover Arizona. Mr. Parker questioned whether the Commission could suspend the penalty to give them the incentive to get coverage. Mr. Wade explained the current

process. The Commission unanimously approved civil penalties of \$1,000.00 be assessed against employers #1040, 1038, 0300, 0701 and 0039 and a civil penalty of \$500.00 against employer #0642 and authorized staff to accept \$750.00 from employer #0039 if they can provide proof of insurance within 30 days on motion of Mr. Parker, second of Mr. Lujano.

Discussion &/or Action regarding Budget and Operations of the Industrial Commission including Overview of Projects Managed by the Management Information Systems (MIS) Division

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Laura McGrory introduced Michael Hempel, the agency's chief information officer. Mr. Hempel gave an overview of the current projects being undertaken by MIS to update the agency's systems, 90% of which are 20 to 30 years old. He explained the new technology and changes that have been implemented or are in the process of being implemented in procurement, accounting, and claims. He responded to questions from the Commissioners and described the processes related to the back up of records and disaster recovery.

The Commissioners expressed their appreciation for the outstanding job Ms. McGrory, Mr. Hempel and the rest of the staff are doing with regard to the modernization of the agency's technology.

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

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Mr. Wade stated that there was nothing new to report.

Announcements and Scheduling of Future Meetings

Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Thursday, February 25<sup>th</sup>.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 3:00 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By *Brian C. Delfs*  
Chairman

By \_\_\_\_\_  
Vice Chairman

By *Louis W. Lyman, Sr.*  
Member

ATTEST:

By *John M. C. J.*  
Member

*Teresa Hulston*  
Commission Secretary

By \_\_\_\_\_  
Member