

MINUTES OF MEETING  
 OF THE INDUSTRIAL COMMISSION OF ARIZONA  
 Held at 800 West Washington Street  
 Conference Room 308  
 Phoenix, Arizona 85007  
 Wednesday, February 20, 2013 – 1:00 p.m.

|          |                    |                             |
|----------|--------------------|-----------------------------|
| Present: | David Parker       | Chairman (video conference) |
|          | Kathleen Oster     | Vice Chair                  |
|          | Susan Strickler    | Member                      |
|          | Michael G. Sanders | Member                      |
|          | Laura McGrory      | Director                    |
|          | Andrew Wade        | Chief Counsel               |
|          | Jessie Atencio     | Acting Director, ADOSH      |
|          | Jenny Mandeville   | ADOSH Compliance Officer    |
|          | Erik Anderson      | ADOSH Compliance Officer    |
|          | Chris Brandon      | ADOSH Compliance Officer    |
|          | Robert Breakiron   | ADOSH Compliance Officer    |
|          | Brian Johnson, Sr. | ADOSH Compliance Officer    |
|          | Phil Murphy        | ADOSH Compliance Officer    |
|          | Renee Pastor       | Manager, Self-Insurance     |
|          | Michael Hawthorne  | Chief Financial Officer     |
|          | Kamen Kovatchev    | Self Insurance              |
|          | Teresa Hilton      | Commission Secretary        |

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. John McCarthy was not able to attend. Also in attendance were Scot Butler, the agency's lobbyist; Jason Weber of Snell and Wilmer; and Dianne Shoemake and Lorena Sanchez of City of Glendale.

Approval of Minutes of February 6, 2013 Meeting

The Commission unanimously approved the Minutes of February 6, 2013 on motion of Mr. Sanders, second of Ms. Oster.

Consent Agenda:

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C11/12-0889 A&J Biz, L.L.C.
2. 2C11/12-1500 Arizona Frame & Fabrication, LLC
3. 2C12/13-0237 Chukar Pts, LLC
4. 2C12/13-0339 Goulas, L.L.C. dba Burger Factory
5. 2C11/12-2345 Logan Roberts, a single man, dba Logan's Valley Motorcycles, aka Valley Motorcycles and Marine
6. 2C11/12-2697 Premier Assisted Living, L.L.C.
7. 2C12/13-0530 Pub N Grub, Inc. dba Pub N Grub
8. 2C11/12-0734 Body Therapy & Hair Spa, Inc.
9. 2C11/12-1587 JNJ Ventures, L.L.C. dba Roadrunner Restaurant & Saloon

10. 2C12/13-0701 JSJ Tucson Enterprises, Inc. dba Handyman Matters
11. 2C11/12-1699 K.V.M. Inc. dba Direct Buy of Phoenix East
12. 2C11/12-1830 Kelly's Kritter Clips, L.L.C.
13. 2C11/12-1844 Moksha Enterprises, L.L.C. dba The Casablanca Lounge
14. 2C12/13-0711 Prince & Princess Enterprise, L.L.C. dba Magnum's Cigar Lounge aka Magnum's Cigar Wine Liquor Emporium
15. 2C11/12-1548 The French Bee, L.L.C.
16. 2C12/13-0719 Viking Precision, Inc. dba International Metal Pallets

b. Discussion & Action regarding Application for New Employment Agency License

1. Nicole Dimitri-Seidberg on behalf of Kavir Model and Talent Management, LLC

Chairman Parker stated that employer #7 – Pub N Grub, Inc. dba Pub N Grub needed to be removed from the consent agenda for individual consideration. The Commission unanimously approved the remaining items on the consent agenda on motion of Ms. Oster, second of Mr. Sanders.

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

7. 2C12/13-0530 Pub N Grub, Inc. dba Pub N Grub

Mr. Wade advised that the above listed employer has obtained workers' compensation insurance. He recommended a civil penalty of \$500.00 be assessed rather than the \$1,000.00 originally recommended. The Commission unanimously assessed the recommended penalty of \$500.00 on motion of Mr. Sanders, second of Ms. Strickler.

Discussion &/or Action regarding Legislation

Scot Butler provided an updated report of current legislative activity and advised that three new bills of interest to the Commission were added to the report, HB's 2623, 2639 and 2640. Mr. Butler also discussed bills that had activity, SB's 1148, 1310 and 1380 and responded to questions from the Commissioners. He stated that he, Director McGrory, and Chief Counsel Wade have had meetings with various sponsors of the bills, interested parties and legislators and would continue to do so. He recommended that with regard to SB's 1310 and 1380 that the Commission not take any position at this time.

Discussion & Action of ADOSH Discrimination Complaints

#12-65 Kevin Thomas vs. Robert C. Jewell dba Affordable Movers – Jessie Atencio presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Thomas. In his complaint, Mr. Thomas alleges that Mr. Jewell suspended him after he complained about safety problems on the truck they were driving, and fired him after he made a complaint to OSHA. In response to the complaint, the employer presented its position with respect to Mr. Thomas' separation from employment.

Mr. Atencio presented a history of Mr. Thomas' employment and chronology of events and responded to questions from the Commission. The Commissioners raised several issues including whether other employees who complained about safety were treated differently and whether there was a progressive discipline program. Chairman Parker requested an OSHA inspection to see if the truck had been repaired and a review by the Legal Division. Mr. Atencio responded to questions regarding the scope of an inspection. Based on the discussion and issues raised, Chairman Parker asked that the file be referred to the Legal Division for further review and tabled consideration of the matter.

#12-57 Ann Marie Miller vs. Colmed Collection Services, Inc. – Chairman Parker stated that consideration of this discrimination complaint was being tabled.

Mr. Sanders requested that the Commission receive status reports concerning the matters the Commission voted to pursue. Ms. McGrory stated that staff will provide status reports on those matters.

Discussion & Action of Proposed OSHA Citations & Penalties

Action Lighting Inc. dba  
Action Sign & Lighting  
2660 E. Mohawk #17  
Phoenix, AZ 85050

Accident  
Yrs/Business – 11  
Empl. Cov. by Insp. – 16

Site Location: 2660 E. Mohawk #17, Phoenix, AZ 85050  
Inspection #: N9589/316801869  
Insp. Date: 10/22/12

SERIOUS – Citation 1 - Item 1 – A Lift-All Webmaster 20 foot sling, Type EE2-802D, with tears, cuts, broken and worn stitches was used to lift a scoreboard and not removed from service. (1926.0251(e)(8)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 2 – A scoreboard was rigged and hoisted into place by crane without a qualified rigger resulting in a rigging failure and the injury of two employees. (1926.0753(d)(2)(iii)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

GROUPED SERIOUS – Citation 1 - Item 3(a) – Monthly inspection records were not documented and maintained for a Skyhook Model 85HD truck crane as required. (1926.1412(e)(3)).

Citation 1 - Item 3(b) – Annual inspections of a Skyhook Model 85HD truck crane were not conducted by a qualified person, documented, or records for a minimum of 12 months. (1926.1412(f)(7)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$6,500.00

TOTAL FORMULA AMT. - \$6,500.00

Jessie Atencio summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Division proposal for Item 2 was for the gravity-based penalty with no adjustment factors because the violation resulted in, caused, or contributed to the serious injury of worker(s). Mr. Sanders requested a copy of the narrative and asked that in the

future the narrative be provided along with the packet. Chairman Parker stated that would be something new to discuss at a future time. In response to a question from Mr. Parker, Mr. Atencio stated that ADOSH will explore whether it would be appropriate to include a citation for employee(s) being under the load. Chairman Parker stated that the matter would be tabled.

Imperial Ironworks, LLC  
7910 W. Market St.  
Peoria, AZ 85380

Complaint  
Yrs/Business – 20  
Empl. Cov. by Insp. – 15

Site Location: 7910 W. Market St., Peoria, AZ 85380  
Inspection #: R1538/316801927  
Insp. Date: 10/22/12

GROUPED SERIOUS – Citation 1 - Item 1(a) – The employer did not establish and implement a written respiratory protection program where employees were required to use respirators. (1910.0134(c)(1)).

Citation 1 - Item 1(b) – An employee required to wear a 3M half-mask respirator had not been medically evaluated prior to using the respirator. (1910.0134(e)(1)).

Citation 1 - Item 1(c) – The employer did not ensure that employees required to wear 3M half-mask respirators were fit tested. (1910.0134(f)(1)).

Citation 1 - Item 1(d) – The employer did not ensure that employee utilizing 3M respirator could demonstrate knowledge of why the respirator was necessary and how improper fit, usage, or maintenance could compromise the protective effect of the respirator. (1910.0134(k)(1)(i)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 2 – Employees operating a Daewoo forklift (model G25S-2, serial number 12-02492) were not trained in the safe operation of powered industrial trucks (1910.077853(l)(1)(i)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3 – The cut-off saw was inadequately guarded. (1910.0215(b)(5)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

GROUPED SERIOUS – Citation 1 - Item 4(a) – A 220 volt homemade black flexible extension power cord with a pendant box (labeled for in wall use) on the end which was supplying power to the welder was not used in accordance with instructions included in the listing or labeling. (1910.0303(b)(2)).

Citation 1 - Item 4(b) – One 20 foot orange extension cord that is used daily to power a handheld grinder and other hand tools, had two cuts in the cord approximately one-half inch long. Damage on the cord was 3 feet from the end of the cord. There were two other instances of this violation.

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$3,000.00

TOTAL FORMULA AMT. - \$3,000.00

Mr. Atencio stated that this file had been presented to the Commission previously at which time they requested the file be reviewed by the Legal Division for a possible willful. Mr. Wade stated that staff has concluded there is insufficient evidence to support a willful

classification. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,000.00 on motion of Mr. Sanders, second of Ms. Oster.

New ADOSH Compliance Officers Erik Anderson, Chris Brandon, Robert Breakiron, Brian Johnson, Sr., and Phil Murphy were introduced to and welcomed by the Commissioners.

#### Discussion & Action regarding Applications for Renewal of Self-Insurance Authority

City of Glendale – Ms. Pastor advised that the City has requested consideration of renewal of self-insurance authority be tabled until additional staff from the City can be here. Chairman Parker stated the matter would be tabled until March 6, 2013.

City of Peoria – Ms. Pastor presented staff's renewal report along with a current Fitch, Moody's and Experian bond and credit ratings and responded to questions from the Commissioners. Administration is recommending renewal of workers' compensation self-insurance authority based on the financial stability of the fund; the financial stability of the City; a clean audit report and good credit ratings. Administration is also recommending approval of utilizing the City of Peoria's internal service workers' compensation trust fund as an alternative from the requirement to post securities pursuant to A.A.C. R20-5-1114. Mr. Sanders made a motion for approval which was seconded by Ms. Oster for purposes of discussion.

Mr. Parker expressed concern regarding waiving the security deposit based on Pinnacle Risk Management's discounting claims at the actual claim level. Discussion followed regarding the reserving practices and discounting. Ms. Pastor stated that the City is issuing a request for proposals for a new claims servicing agent and that the City's risk manager is aware of the practice. Ms. McGrory commented on the reserving practices and the posting of a statutory deposit. Following further discussion, Mr. Parker stated that based upon the funding level and Mesirov's actuarial report he could vote for renewal, but for the next renewal period he would like to see the actuarial specifically addressing that they have considered the impact of reserve discounting at the claim level. Chairman Parker called for the vote and the Commission unanimously approved renewal of self-insurance authority.

City of Phoenix – Ms. Pastor presented staff's renewal report along with a current Fitch, Moody's, Standard & Poor's, and Experian bond and credit ratings. Administration is recommending renewal of workers' compensation self-insurance authority based on the City's financial stability; protections afforded it as a governmental entity, and a clean audit report. The Commission unanimously approved renewal of self-insurance authority on motion of Mr. Sanders, second of Ms. Strickler.

Dignity Health fka Catholic Healthcare West – Ms. Pastor presented staff's renewal report along with current Moody's, Fitch, and Experian bond and credit ratings and responded to questions from the Commissioners. Administration is recommending renewal of workers' compensation self-insurance authority based on its financial stability, large size with assets above \$13.5 billion; a clean audit report; acceptable bond scores and an acceptable credit rating. Following discussion, the Commission unanimously approved renewal of self-insurance authority on motion of Ms. Oster, second of Ms. Strickler.

Mesa Unified School District No. 4 – Ms. Pastor presented staff's renewal report along with current Moody's and Experian bond and credit ratings. Administration is recommending renewal of workers' compensation self-insurance authority based on the District's stable

financial condition, ability to raise funds as a government entity; the receipt of a clean audit report; and good bond and credit ratings. The Commission unanimously approved renewal of self-insurance authority on motion of Mr. Sanders, second of Ms. Oster.

University of Arizona Health Network – Ms. Pastor presented staff's renewal report along with information from the annual financial statement of UAHN and Experian credit rating and responded to questions from the Commissioners. Administration is recommending renewal of workers' compensation self-insurance authority based on the Network's financial stability; a clean audit report; acceptable bond and credit ratings; and total assets of \$912.5 million. Mr. Sanders made a motion for approval which was seconded by Ms. Strickler for purposes of discussion. Ms. Oster noted that this employer has not had an ADOSH inspection in the past five years. Ms. Pastor described other regulatory inspections of health facilities. Ms. McGrory explained how ADOSH uses certain criteria to select worksites for inspections. The Commission unanimously approved renewal of self-insurance authority.

Arizona Counties Workers' Compensation Pool – Susan Strickler recused herself from this agenda item. Renee Pastor presented staff's renewal report along with a current Experian credit rating. Administration is recommending renewal of workers' compensation self-insurance authority based on the Pool's solid financial condition with assets of just under \$24.8 million as of June 30, 2010, two clean audit reports and acceptable credit ratings. The Commission approved renewal of self-insurance authority on motion of Ms. Oster, second of Mr. Sanders with a vote of three in favor and none opposed. Ms. Strickler did not participate in the discussion or the vote.

#### Announcements and Scheduling of Future Meetings

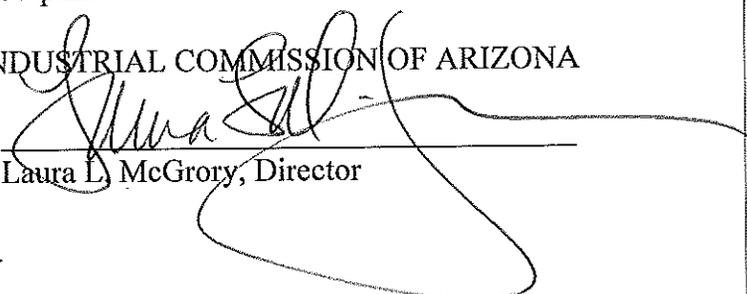
Ms. McGrory provided a brief update of the work of the advisory committee on evidence based treatment guidelines. She also provided to the Commissioners information for temporary access to MDGuidelines, which temporary access had also been provided to committee members.

Chairman Parker confirmed the Commission meeting dates of March 6, 13, 27, April 3, 10 and 17, 2013.

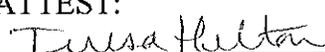
There being no further business to come before the Commission and no public comment, Chairman Parker adjourned the meeting at 2:35 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
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Laura L. McGrory, Director

ATTEST:

  
\_\_\_\_\_  
Teresa Hilton, Commission Secretary