

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, July 26, 2012 – 1:00 p.m.

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|----------|-----------------------|---------------------------------|
| Present: | David Parker | Chairman (video conference) |
| | Kathleen Oster | Vice Chair |
| | John A. McCarthy, Jr. | Member |
| | Susan Strickler | Member |
| | Michael G. Sanders | Member (telephonic) |
| | Andrew Wade | Chief Counsel (Acting Director) |
| | Darin Perkins | Director, ADOSH |
| | Harriet Turney | Chief Administrative Law Judge |
| | Michael Hawthorne | Chief Financial Officer |
| | Teresa Hilton | Commission Secretary |

Chairman Parker convened the Commission meeting at 1:02 p.m. noting a quorum present. Commissioner Sanders had not yet joined the meeting. Also in attendance was Eda Barolli of Snell & Wilmer.

Approval of Minutes of July 11, 2012 Meeting

The Commission unanimously approved the Minutes of July 11, 2012 on motion of Mr. McCarthy, second of Ms. Strickler.

Consent Agenda:

- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
1. 2C11/12-2897 Christy Fisher, a Single Woman, dba Christy Fisher Studio aka Magpie
 2. 2C11/12-2210 Feature Marketing, Inc.
 3. 2C11/12-1045 Heidi Husk, a Single Woman, dba CD's Cattle Co.
 4. 2C10/11-1997 International Marketing Solutions, L.L.C. dba I.M.S.
 5. 2C11/12-2293 Rojco, Inc. dba Jordan's Automotive Specialists
 6. 2C11/12-2462 Truck Force, LLC (a Washington LLC)

Chairman Parker stated that consideration of the proposed civil penalties would be removed from the consent agenda. Andrew Wade explained that the information supplied to the Commissioners inaccurately described the nature of the business for Christy Fisher dba Christy Fisher Studio and he clarified the type of business. Mr. Wade advised that with regard to the above listed employers, a compliance investigation confirmed that they 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), he recommended civil penalties of \$1,000.00

be assessed against employers #2210, 1045, 1997, 2293 and 2462. He recommended a civil penalty of \$5,000.00 be assessed against employer #2897. Following discussion, the Commission unanimously assessed civil penalties of \$1,000.00 against employers #2210, 1045, 1997, 2293 and 2462 and a civil penalty of \$5,000.00 against employer #2897 on motion of Ms. Oster, second of Mr. McCarthy.

Discussion & Action of ADOSH Discrimination Complaints

#12-42 Christy Stevenson v. Skyline Country Club - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Ms. Stevenson. In her complaint, Ms. Stevenson alleged that her employment was terminated because she made a complaint to ADOSH about sewer odors in her office area. In response to the complaint, the employer presented its position with respect to Ms. Stevenson's separation from employment.

Mr. Perkins presented a history of Ms. Stevenson's employment and chronology of events and responded to questions from the Commission.

Mr. Sanders joined the meeting telephonically at this point at 1:18 p.m.

The Division recommendation was not to pursue the complaint because there was insufficient evidence to show employer knowledge of the protected activity prior to the decision to terminate. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Ms. Oster, second of Ms. Strickler.

#12-51 Clint Thomson v. Simply Bits, L.L.C. - Mr. Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Thomson. In his complaint, Mr. Thomson stated that his employment was terminated because he brought up safety concerns, including ladder defects. In response to the complaint, the employer presented its position with respect to Mr. Thomson's separation from employment.

Mr. Perkins presented a history of Mr. Thomson's employment and chronology of events and responded to questions from the Commission. The Division recommendation was not to pursue the complaint because there was insufficient evidence to support a causal link between protected activity and adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Ms. Oster, second of Ms. Strickler.

Discussion & Action of Proposed OSHA Citations & Penalties

Empire Metal Products, Inc.
2037 W. Ironwood Drive
Phoenix, AZ 85021

Planned
Yrs/Business - 8
Empl. Cov. by Insp. - 60

Site Location: 2037 W. Ironwood Drive, Phoenix, AZ 85021
Inspection #: H1793/316482066
Insp. Date: 04/20/12

SERIOUS - Citation 1 - Item 1 - A 40 ton ironworker machine was lacking a guard to prevent the operator from placing any part of his body in the danger zone (1910.212(a)(1)). There were two other instances of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

Superior Equipment Sales and Service, Inc.
1007 E. Maricopa Freeway
Phoenix, AZ 85034

Referral
Yrs/Business - 20
Empl. Cov. by Insp. - 3

Site Location: 1007 E. Maricopa Freeway, Phoenix, AZ 85034

Inspection #: N9589/316452762

Insp. Date: 03/22/12

Insp. History: One inspection in the past three years with four serious violations and four non serious violations.

WILLFUL SERIOUS - Citation 1 - Item 1a - The employer did not establish and maintain a respiratory protection program which included the requirements outlined in 29 CFR 1910.134(c) when employees wearing respirators worked with volatile hydrocarbon-based coatings/paints, conducted metal welding inside confined spaces, and conducted spray finishing (1910.134(c)(1)).

Citation 1 - Item 1b - The employer did not provide a medical evaluation to determine the employee's ability to use a respirator, before the employee was fit tested or required to use the respirator in the workplace (1910.134(e)(1)).

Citation 1 - Item 1c - Employees using tight-fitting face piece respirators were not fit tested prior to initial use of the respirator (1910.134(f)(2)).

Citation 1 - Item 1d - The employer did not ensure that respirator inspection included a check of respirator function, tightness of connection, and the condition of the various parts including, but not limited to, the face piece, head straps, valves, connecting tube, and cartridges, canisters or filters (1910.134(h)(3)(ii)(A)).

Citation 1 - Item 1e - The employer did not provide training prior to requiring employees to use a respirator in the workplace (1910.134(k)(3)).

Div. Proposal - \$14,000.00

Formula Amt. - \$14,000.00

WILLFUL SERIOUS - Citation 1 - Item 2a - The employer failed to evaluate the workplace to determine if any spaces were permit-required confined spaces. Employees were tasked with cleaning and coating the interior of empty water tanks and welding within tanks which were permit-required confined spaces (1910.146(c)(1)).

Citation 1 - Item 2b - The employer did not develop and implement a confined space entry program to ensure safe entry for employees tasked with cleaning, coating/painting, and welding within permit required confined spaces (1910.146(c)(4)).

Citation 1 - Item 2c - The employer did not provide training to employees tasked with permit-required confined space entry (1910.146(g)(1)).

Div. Proposal - \$14,000.00

Formula Amt. - \$14,000.00

SERIOUS - Citation 2 - Item 1 - Greater than 300 linear feet of one inch diameter PVC piping was used for the transportation of compressed air. Reported line pressure was 120 psi (A.A.C. R20-5-628).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS - Citation 2 - Item 2a – The employer did not assess the hazards associated with application of epoxy coatings to the interior of the subject tank to determine what personal protective equipment was needed (1910.132(d)(1)).

Citation 2 - Item 2b – The employer did not select and require employee use of appropriate hand protection when employees' hands were exposed to irritating, corrosive and sensitizing epoxy coatings (1910.138(a)).

Div. Proposal - \$800.00

Formula Amt. - \$800.00

SERIOUS - Citation 2 - Item 3a – Portable fire extinguishers were not mounted, located and identified so that they were readily accessible without subjecting the employees to injury (1910.157(c)(1)).

Citation 2 - Item 3b – Portable fire extinguishers were not maintained in a fully charged and operable condition (1910.157(c)(4)). There was another instance of this violation.

Citation 2 - Item 3c – Portable fire extinguishers were not visually inspected at least monthly (1910.157(e)(2)).

Citation 2 - Item 3d – Portable fire extinguishers were not subjected to an annual maintenance check (1910.157(e)(3)).

Citation 2 - Item 3e – Employees were not provided training in the use of portable fire extinguishers used for incipient stage firefighting (1910.157(g)(1)).

Div. Proposal - \$800.00

Formula Amt. - \$800.00

SERIOUS - Citation 2 - Item 4a – The subject lift truck did not have the manufacturer provided load charts in place (1910.178(a)(6)).

Citation 2 - Item 4b – The employer did not certify that each fork truck operator had been trained and evaluated for each type of fork truck operated by employees (1910.178(I)(1)(i)).

Citation 2 - Item 4c – The subject lift truck was not examined before being placed in service (1910.178(q)(7)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS - Citation 2 - Item 5a – The subject grinder was not equipped with an adjustable work rest (1910.215(a)(4)).

Citation 2 - Item 5b – The subject grinder was not equipped with an adjustable tongue guard (1910.215(b)(9)).

Div. Proposal - \$100.00

Formula Amt. - \$100.00

SERIOUS - Citation 2 - Item 6 – The pinch-point between power transmission belts and pulleys was not fully guarded (1910.219(d)(1)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS - Citation 2 - Item 7 – The subject angle grinder equipped with an abrasive wheel was used without a safety guard (1910.243(c)(3)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS - Citation 2 - Item 8 - The exterior and individual interior conductor insulation of the flexible motor power supply cord was deteriorated and weathered thereby exposing employees to live conductors (1910.303(b)(1)). There was another instance of this violation.

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS - Citation 2 - Item 9 - The cover on the motor junction box was not in place thereby exposing 125 volt conductors (1910.303(g)(2)(i)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS - Citation 2 - Item 10 - A portable (125 volt) electric lamp was used to provide illumination within a confined space during coating operations using a flammable epoxy coating. The subject lamp was not approved for use in Class I, Division 1 or Division 2 flammable atmospheres (1910.307(c)(2)(i)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS - Citation 2 - Item 11 - An employee performing epoxy coating of the interior of the subject tank was exposed to toluene at greater than 500 ppm for more than 10 minutes (1910.1000(b)(2)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS - Citation 2 - Item 12 - The employer did not develop or implement at the workplace a written hazard communication program when employees handle hazardous chemicals such as epoxy coating, paint, and welding supplies (1910.1200(c)(1)).

Div. Proposal - \$ 1,000.00

Formula Amt. - \$ 1,000.00

TOTAL PENALTY - \$38,700.00

TOTAL FORMULA AMT. - \$38,700.00

Mr. Perkins advised that this case file had been presented to the Commission several weeks ago at which time the matter was tabled and ADOSH was directed to reconsider whether the grouped citations are appropriate and to investigate the number of workers employed in the business. Mr. Perkins stated that after reviewing the policies for grouping of citations and the citations, the grouping of citations is appropriate and he does not recommend any changes. Regarding the number of employees, he advised that the original information that the employer had three employees appears accurate but new information indicates that the business may now have only one employee. He summarized the citations and proposed penalty as listed and stated the Division proposal for Citation 2, item 1 should have been shown as \$300.00 rather than \$1,000.00. He responded to questions from the Commissioners. The Commissioners expressed concern over the employer's intent and the egregious nature of the violations since the employer knew the dangers involved. The Commissioners stated the incident could have easily been a fatality.

In response to questions from the Commissioners, Mr. Perkins explained the ADOSH follow-up and reinspection policies, in addition to how the citations are presented to the employer and the informal conference and settlement process. Following further discussion, Mr. McCarthy made a motion which was seconded by Mr. Sanders to issue the citations and increase the penalty to \$66,700.00 by assessing \$1,000.00 for Citation 2, item 1 and modifying the adjustment factor for size for the willful serious violations to 60% rather than 80% which results in penalties of \$28,000.00 for each of the two willful serious citations with no reduction in informal conference. Mr. Wade requested clarification of the motion regarding ADOSH's authority to modify the penalty amount. Following further discussion, the Commissioners

General Session – Discussion & Action regarding Appointment of Administrative Law Judge

Upon return to General Session, the Commission unanimously agreed to offer the position to candidate A on motion of Mr. Sanders, second of Ms. Oster.

Announcements and Scheduling of Future Meetings

In addition to the meetings scheduled for August 1, 10 and 22, the Commission tentatively scheduled meetings for September 5, 19 and 26. Mr. McCarthy suggested that a Commission meeting be held in Tucson. Chairman Parker agreed that was a good idea.

There being no further business to come before the Commission and no public comment, Chairman Parker adjourned the meeting at 2:40 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

Andrew Wade
Andrew Wade, Acting Director

ATTEST:

Teresa Hilton
Teresa Hilton, Commission Secretary