

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, November 3, 2022 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
	Scott P. LeMarr	Commissioner
	D. Alan Everett	Commissioner
	James Ashley	Director
	Gaetano Testini	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief/Public Information Officer
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Self-Insurance (Telephonic)
	Jessie Atencio	ADOSH Director
	Chuck Thompson	ADOSH Compliance
	Taryn North	ADOSH Compliance
	Tom Martz	ADOSH Compliance
	Andrew Dimas	ADOSH Compliance
	Jonathan Wright	ADOSH Compliance
	James Reitmeier	ADOSH Compliance
	Anna Maria Stonerock	ADOSH Admin
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. In attendance, confirmed by roll call were Anne Ryman (Arizona Republic); Kaila Hopkins (Snell & Wilmer); John Gombos and Lisa Stiles (The Gombos Company LLC); Jay Zweig (Ballard Spahr representing the Gombos Company); Joe Locke and Rafael Quiroya (Roofsavers Locke Roofing).

Approval of Minutes of October 27, 2022 Regular Meeting Minutes.

Commissioner LeMarr moved to approve the Minutes of the October 27, 2022 regular session meeting and Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Discussion and Action regarding the Setting of Assessments under A.R.S. §§ 23-961(G), 23-1065(A), and 23-1065(F) for Calendar Year 2023.

Ms. Simpson discussed the Commission's authority to levy assessments pursuant to A.R.S. §§ 23-961(G), 23-1065(A), and 23-1065(F) and set forth the maximum and current assessment rates. The Commission is authorized under § 23-961(G) to levy an assessment to fund the Administrative Fund. The maximum allowed is 3% and the current Administrative Fund rate for calendar year 2022 is 1.75%. In fiscal year 2022 the total assessment revenue for the Administrative Fund was \$18.7 million and total expenses were \$20 million resulting in a change to the operating cash balance of \$1.3 million. The Commission is authorized under § 23-1065(A) and 23-1065(F) to levy assessments to fund the obligations of the Special Fund. The maximum assessments allowed are 1% for 1065(A) for general Special Fund liabilities and 1/2% under 1065(F) for Apportionment for

a combined maximum rate of 1.5%. For calendar year 2022 the assessment rate is 0% under both statutes.

Ms. Simpson reviewed the four premium options for calendar year 2023 of 2%, 1%, no change and decrease of 1% from the current 1.75% in premium projections along with the cash balance, operating budget and expenditures. If the Commission wishes to maintain at least \$5 million operating cash in the Administrative Fund Account, which is a goal and not a rule, Ms. Simpson recommends increasing the rate by .25% bringing the rate to 2%. This would provide sufficient funds and an operating cushion.

Ms. Simpson reviewed the options for 2023 for §§ 23-1065(A) and 1065(F), noting the fund is actuarially sound as of June 30, 2022 with a healthy unrestricted balance. A number of large term gains that have helped offset short term losses and the Fund is strong so it has maintained a strong balance. Ms. Simpson recommended maintaining the 0% rate for both §§ 23-1065(A) and 1065(F) for CY 2023.

Chairman Schultz noted the decrease for self-insured employers and did not see any information behind the decrease and asked if it was due to a loss of self-insurers because he did not think we lost anybody or if it is lower employment among self-insurers with decreased payroll or the result of the calculation of their taxes based upon the standard rate classifications.

Ms. Simpson noted the self-insureds have improved their risk programs which means bringing in a little less but agrees with the points made by Chairman Schultz.

Ms. Pastor noted we are in the process of getting the rates ready to present and did a rate evaluation last year and noted municipals have been undervalued and seen decrease after decrease in regards to the NCCI rates. Over the next couple years there will be a lot of leveling out of the rates and we should have a good grasp going forward.

Chairman Schultz followed up to see if Ms. Pastor anticipated any impact on the tax revenues from the change in the self-insurance rules.

Ms. Pastor noted it was hard to tell, it will be data driven. She anticipates a slight increase but we will see clear emods starting in 2023 and going forward will have a good grasp of the injuries, payroll and premiums will be better than where they are now.

Ms. Simpson noted they have worked with the actuaries as much as possible to figure out a revenue neutral position and did not want to overly burden anyone and wanted everyone to pay what they should be paying based on their trends, but its too early to tell.

Ms. Pastor noted the neutrality will depend on the emods and for those that have high emods which are artificially high considering the rates were too low to begin with it will help make it more revenue neutral. It will also provide incentives for safety, the better the emods, the better the discount and hopefully see leveling of revenue and predictability and also create a safer work environment.

Chairman Schultz thought it would also create better equity between employers who purchase insurance and the options they have for adjustable rates and the self-insurers and will be very positive.

SERIOUS – Citation 1 - Item 3a –

- a) Warehouse: Two authorized employees were conducting service on the MJB340 mobile natural hay bale press SN: 10NV0509 and failed to have a Lockout/Tagout program in place to prevent injury.
- b) Warehouse: One affected employee had access to an area where stored gravitational energy was present and did not have Lockout/Tagout program in place to prevent an injury or in this case, death. 29 CFR 1910.1417(c)(1)
 Div. Proposal - \$4,200.00 Formula Amt. - \$4,200.00

SERIOUS – Citation 1 - Item 3b –

- a) 5315 W Pretzer Rd Eloy, AZ 85131: Two employees were conducting maintenance on the hay press with no established lock out procedures. 29 CFR 1910.147(c)(7)(i)
 Div. Proposal - \$0.00 Formula Amt. - \$4,200.00

SERIOUS – Citation 1 - Item 4 –

- a) Warehouse: Three employees operated an orange straight mast Cat brand forklift, model and serial numbers unknown, without training.
 - b) Warehouse: Three employees operated a white straight mast forklift, brand, model, and serial numbers unknown, without training. 29 CFR 1910.178(l)(2)(ii)
 Div. Proposal - \$1,500.00 Formula Amt. - \$1,500.00
- TOTAL PENALTY - \$7,650.00 TOTAL FORMULA AMT. - \$11,700.00

Mr. Atencio discussed ADOSH’s inspection, summarized the citation and proposed penalties, and reviewed the photographs.

Commissioner LeMarr asked if there was a requirement for hard hats because he did not see any in the photographs.

Mr. Atencio noted it was part of the 29 CFR 1910.132(d)(2) citation for PPE, there has to be some initial PPE assessment done for the location. Whenever you have something that is overhead and has the potential to fall, you will see a lot in the industry, they will not use a hard hat necessarily but will use a bunk cap, and will provide the same type of support in the event something does fall. The employer would have to consider that if they would have done the actual assessment.

Chairman Schultz checked if anyone would like to comment. Mr. Zweig declined to make any comments.

Chairman Schultz thanked everyone for joining the meeting.

Commissioner LeMarr moved to approve the citation and proposed penalties as presented and Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

AMMA Investment Group, LLC
2935 E. Frontage Rd

Complaint
Years in Business:

Mr. Atencio commented that Jennifer George, the President of ARCA had already advised him that Nat Carrol with Insure Compliance will be helping them and have training classes to reemphasize safety and believed they had training and that can be looked at during the informal conference. They have been reactive and seem to be on the right path.

Commissioner LeMarr moved to amend based on Mr. Locke stating that they do have MSDS sheets available and employees have access to that and explanations, it seems that Item 4a conflicts with what Mr. Locke said and suggested a 25% Good Faith Discount for Item 4a based on the fact that the employer does have regular safety meetings and fall protection issued to every employee with instructions how to use it. For a total penalty of \$10,566.50. Mr. Locke noted that they have to teach them the difference of what is required and what they think is safe, and the unfortunate part for the personal fall protection, they have it with them every day but they do not want to wear it because they think it is a danger. Chairman Schultz noted they might think differently if they hear the fatalities that the Commission sees for roofers every year. Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Discussion, Action, and Potential Resolution regarding Final Rulemaking to Title 20, Chapter 5, Article 5 Elevator Safety.

Mr. Testini noted we would like to enter into final rulemaking process for Article 5. He summarized the steps taken so far and requested authorization to move forward with the final rulemaking process.

Commissioner LeMarr moved to approve final rulemaking for Title 20, Chapter 5, Article 5: Elevator Safety. Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Chairman Schultz thanked Mr. Testini and his team and Mr. Atencio and the elevator team that worked hard on proposing the amendments, which are a step forward.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley made additional comments regarding the rulemaking packet with the elevator rulemaking and the good clean up and updates and making sure the most recent safety standards are adopted.

Chairman Schultz noted this is the internal business that the Commission does to improve our processes so we are able to keep the assessments as low as possible for insurers and self-insures in the State of Arizona and maintain a very fiscally sound administrative fund and fiscally sound Special Fund and all part of managing the workers' comp system in Arizona.

Mr. Ashley noted the introduction to AMS for the new ADOSH compliance team and the online huddles.

Mr. Ashley noted that other agencies would visit the ICA to have a chance to tour our huddle boards and a chance to listen to our AMS journey as they work toward their own AMS journey and it was not uncommon for those agencies to incorporate our best practices.

Mr. Ashley updated the Commissioners with the AMS scorecard metrics for the Legal Division metrics starting with workers' compensation coverage obtained as a result of our efforts which has been one of our initial metrics and are exceeding our goals. The next was the number of Special Fund cases resolved prior to a hearing and the metric is in the green. Mr. Testini noted the focus on this metric is to try to get to the cases quicker and see which ones could be resolved to not put a burden on the ALJ Division and is a new focus.

Mr. Ashley noted the workers' compensation system can be defined by observers as very complex and multi layered with a lot on intricacy. For the public and unrepresented workers it is a lot to maneuver and we want to make sure to promptly answer procedural questions about the process. We are making some changes to the Ombudsman position and expanding the scope of the Ombudsman function and expanding the scope by creating a team which will be housed in the Legal Division. The new head of the Ombudsman unit reporting to Mr. Testini will be Allen Shayo, a former ALJ Judge in the ALJ division. This will continue to improve customer service for all stakeholders.

Mr. Ashley also noted that the 23G and 21D Federal grant funds were successfully utilized for FFY 2022.

Mr. Ashley invited the Commissioners to a Thanksgiving lunch hosted by ADOSH on November 17 in the ADOSH Division prior to the Commission Meeting.

Ms. Dimas confirmed Commission meeting dates through December 2022.

Mr. Ashley thanked the Commissioners for accommodating the meeting on December 19th for the next step in the rulemaking process for Article 12 to proceed.

Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion and the meeting was adjourned at 2:32 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By  _____
James Ashley, Director

ATTEST:

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Kara Dimas, Commission Secretary