

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Telephonic Meeting
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, August 19, 2021 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman (Telephonic)
	Scott P. LeMarr	Commissioner (Telephonic)
	D. Alan Everett	Commissioner (Telephonic)
	James Ashley	Director (Telephonic)
	Gaetano Testini	Chief Legal Counsel (Telephonic)
	Trevor Laky	Legislative Affairs Chief/Public Information Officer (Telephonic)
	Renee Pastor	Self Insurance (Telephonic)
	Jessie Atencio	ADOSH Director (Telephonic)
	Charlie Preciado	ADOSH Compliance (Telephonic)
	Steven Black	ADOSH Compliance (Telephonic)
	Miguel Castillo	ADOSH Compliance (Telephonic)
	Anna Maria Stonerock	ADOSH Admin (Telephonic)
	Kara Dimas	Commission Secretary (Telephonic)

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance on the telephone, confirmed by roll call, were Jose Luis Huerta and Marisa Valencia (Manuel Huerta Trucking, Inc); Joshua Schiro (Materion Brush, Inc.); Damaris Cota (Next of Kin); Susan Bingham and Scott Sanders (Sanders Wood Products, Inc.); and Luis Quezada (Next of Kin).

Approval of Minutes of August 5, 2021 Regular Meeting Minutes

Commissioner LeMarr moved to approve the Minutes of the August 5, 2021 regular session meeting and Commissioner Everett seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. 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.

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2CC20/21-0107 East Valley Painters, Inc \$1,000
2. 2CNP20/21-0743 Hope Care Assisted Living, LLC \$1,000
3. 2CNP20/21-0792 Aglynx Supply, LLC \$1,000

b. Approval of Requests for Renewal of Self-Insurance Authority.

1. BH Automotive, LLC
2. Nordstrom, Inc.
3. Pilot Travel Centers, LLC
4. Southwest Gas Corporation
5. Trademark Construction

Chairman Schultz noted Southwest Gas Corporation has an enviable experience modification factor and is doing an excellent job in their safety experience compared to others in the same industry.

Commissioner LeMarr moved to approve the items on the Consent Agenda and Commissioner Everett seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Discussion and Action Regarding Amendment to the Provisional Approval of the Learjet, Inc Renewal of Self-Insurance Authority and Discussion and Action Regarding the Amount of Security Required Pursuant to A.R.S. 23-961 (A)(2).

Ms. Pastor noted that Learjet did meet with ADOSH Consultation in October and November and during those visits they found 15 hazards which were abated at the time of the visit or within 20 days of the visit. After consultation, they evaluated Learjet using Form 33 and Ms. Pastor asked Mr. Atencio to elaborate on Form 33.

Mr. Atencio explained that anytime there is a visit from health and safety consultants, ADOSH is required to do a Form 33. The form contains 53 questions which assess the safety and health management system at the worksite. Ratings are from a low of 0 to a high of 3, with 0 demonstrating a lack of safety programs, 1 demonstrating major deficiencies, 2 being average and 3 demonstrating a robust safety and health program. Learjet received 2.8 out of 3 which is very good and would place them in a position to elect to go VPP or become a SHARP site, if they are small enough.

Chairman Schultz added that he received a note from HYTE Johnson, who runs safety at Raytheon which is virtually next door to Learjet. Mr. Johnson said they were actively involved in mentoring Learjet and felt like they were making significant progress in improving their safety program. Chairman Schultz was pleased to get the additional assurance that Learjet and Bombardier are on the right track.

Commissioner LeMarr moved to approve staff recommendation to renew Learjet, Inc. self-insurance authority with \$452,658 of security which is 135% of their unpaid liability. Commissioner Everett seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Discussion & Action regarding Appointment of Special Assistant to the Industrial Commission of Arizona.

Mr. Testini made the request on behalf of the Claims Division to appoint Jennifer Grabowski as a Special Assistant for the Commission pursuant to the delegation power contained under A.R.S. §23-108.03(B)(1), that Ms. Grabowski be granted the power necessary to work through the Claims Division and that the Resolution be signed electronically.

Mr. Atencio noted that the Compliance Officer, Mr. Preciado was available for questions. Mr. Atencio discussed ADOSH's fatality investigation, summarized the citation and proposed penalties, and reviewed the photographs.

Chairman Schultz checked if Mr. Huerta or Ms. Valencia would like to comment. Mr. Huerta did not comment.

Ms. Valencia did not comment.

Chairman Schultz asked Ms. Valencia how the insurance company was to work with for a claim for benefits.

Ms. Valencia noted they did get assistance with workers' compensation making sure they kept in touch and were very helpful answering any questions. She will be going over any updates on a later phone call, but have had a lot of help with workman's compensation making sure they are doing the training they need to prevent his from happening.

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

Materion Brush Inc.	Fatality/Accident	
6100 S Tucson Blvd	Years in Business:	41
<u>Tucson, AZ 85706</u>	Empl. Covered by Inspection:	45
Inspection No:	T3633 - 1532540	
Inspection Date:	5/24/2021	
Site Location:	6100 S Tucson Blvd	
	Tucson, AZ 85706	

Mr. Atencio summarized ADOSH's fatality investigation and reviewed the file and photographs. ADOSH was not recommending a citation for Materion Brush Inc. Mr. Atencio noted that the Compliance Officer, Mr. Black was available for questions.

Chairman Schultz checked if the representative from Materion Brush would like to comment. Mr. Schiro had no comments or questions.

Chairman Schultz checked if the Ms. Cota would like to comment. Ms. Cota had no comments.

The Commission took no action.

Sanders Wood Products, Inc.	Fatality/Accident	
PO Box 356	Years in Business:	30
<u>Thatcher, AZ 85552</u>	Empl. Covered by Inspection:	2
Site Location:	600 E Center St	
	Pima, AZ 85543	
Inspection No:	T3633 - 1537459	
Inspection Date:	6/18/2021	

Commissioner LeMarr commented on the photographs of abatement, and inquired how quickly the hazards were abated.

Mr. Atencio noted it was roughly 10 days for abatement.

Chairman Schultz checked if anyone on the phone would like to comment.

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

Discussion and Action of Attorney Fee Petition. This agenda item may include discussion concerning the processing of attorney fee petitions and the reasonable hourly rates used in analyzing fee petitions.

Mr. Testini noted pursuant to §23-1069 an attorney or applicant can request that the Commission enter an award for reasonable attorney's fees on a workers' compensation matter. Today there are two requests and supporting material were previously provided to the Commissioners for review. For expedient purposes he asked that both awards be signed electronically by the Commission.

Muhammad and Taylor & Associates, P.L.L.C. – Mr. Testini discussed the benefits resulting from Roger Schwartz's representation of Mr. Muhammad for his injuries resulting in monthly LEC benefits by award dated December 14, 2014. Since Mr. Schwartz's retirement, Tom Whitley has overseen the applicant's claims, represented the applicant in several negotiations and the applicant remains represented by Mr. Whitley. The fee agreement calls for the industry standard of 25% fee for 10 years maximum from the date of the award. The Legal Division recommends that Mr. Whitley be awarded attorney fees for a period of 10 years from the December 14, 2014, award.

Chairman Schultz noted it appears that Mr. Muhammad received excellent representation from Mr. Whitley and will entertain a motion to approve the recommendation that Taylor & Associates be awarded attorney's fees for a period of 10 years from December 15, 2014, the day the applicant's waiver of further review or appeal was exhausted and the final effective date of applicant's award. The total fee shall be 25% of \$757.11 for a hundred and twenty months which is \$22,713.60 minus fees already received.

Commissioner LeMarr moved to adopt the Findings and Award granting attorney's fees and to allow electronic signatures of the Award and Commissioner Everett seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Wisniewski and Payan – Mr. Testini noted this petition for attorney fees was submitted by Bob Wisniewski regarding his representation of Mr. Payan following the carrier's denial of certain medical treatment on May 17, 2019. Mr. Testini discussed the benefits resulting from the representation by Mr. Wisniewski and was recommending that the fee agreement be enforced for 25% of the benefits. Mr. Wisniewski has not received any fees on the matter to date and the scheduled award has been paid to the applicant in full. The Legal Division recommends that Mr. Wisniewski be awarded 25% of the scheduled award of the applicant resulting in a fee of \$355.37 to be withheld from future benefits if the claim is ever reopened.

Chairman Schultz will entertain a motion to accept the recommendation of the Legal Division that Petitioner Mr. Wisniewski receive 25% of applicant's scheduled award benefits which is \$355.37 with the credit to be applied to any future benefits.

Commissioner LeMarr moved to adopt the Findings and Award granting attorney's fees and to allow electronic signatures of the Award and Commissioner Everett seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley commented on Governor Ducey's Executive Order entitled Returning to Our Principles of Governance which was issued on Monday. The Executive Order reiterates several aspects of Arizona Statutes related to mandates and the public health emergency and also reiterates the Commission's jurisdiction of enforcing the Earned Paid Sick Time law. The Executive Order states that counties, cities, towns, and political subdivisions who fail to provide earned paid sick leave to an employee, if it is recommended that that employee stay home due to exposure to COVID-19 are in violation of the Fair Wages and Healthy Families Act and that action may be taken by individuals either through the courts or the Industrial Commission.

Mr. Ashley also discussed the annual ICA Claims Seminar, held virtually again this year, which was a great event and thanked the Chairman for his opening remarks on the second day. Feedback from the survey is coming back with positive responses.

Chairman Schultz wanted to extend his appreciation to all of the managers and staff, he was able to sit in on many parts, and everything he saw was absolutely wonderful, the folks were terrific, information was excellent and presented well and the panels that were created with outside stakeholders were also incredibly helpful and provided great information in a very consumable manner. Chairman Schultz wanted to also thank all of the staff that worked to put the Seminar together, which came together very nicely.

Ms. Dimas confirmed Commission meeting dates through October 2021.

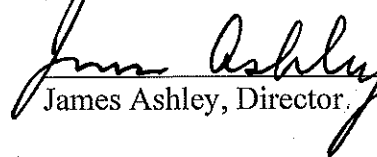
Public Comment.

There was no other public comment.

Commissioner LeMarr moved to adjourn and Commissioner Everett seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Everett voted in favor of the motion and the meeting was adjourned at 2:28 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary