

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Telephonic Meeting
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, December 3, 2020 – 1:00 p.m.

Present: Dale L. Schultz	Chairman (Telephonic)
Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
Scott P. LeMarr	Commissioner (Telephonic)
Steven J. Krenzel	Commissioner (Telephonic)
James Ashley	Director (Telephonic)
Gaetano Testini	Chief Legal Counsel (Telephonic)
Jason M. Porter	Deputy Director (Telephonic)
Trevor Laky	Legislative Affairs Chief/Public Information Officer (Telephonic)
Jessie Atencio	ADOSH Director (Telephonic)
Anna Maria Stonerock	ADOSH Admin (Telephonic)
Renee Pastor	Self Insurance (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 John Ashton, Tracy Foss, Austin Schell, Garrett Mahoney and Lori Jundt (Securis Insurance Pool); Doug Consaul (Consaul Ranches, LLC); Victor Guzman (Baruc Construction, LLC); Melissa Harclerode (representing Dollar Tree Stores, Inc.); Nathan Fraley (The Kroger Co.).

Approval of Minutes of November 19, 2020 Regular Meeting Minutes.

Commissioner LeMarr moved to approve the Minutes of the November 19, 2020 regular session meeting and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel 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. 2CRP19/20-0056 Blue Mountain Renovations LLC \$1,000
2. 2CSP20/21-0037 Durable Metals LLC \$1,000
3. 2CC20/21-0028 Granite Dude LLC \$1,000

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

1. Ruan Transportation Management Systems, Inc.
2. The Kroger Co.

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

Update Regarding Securis Insurance Pool, Inc.'s Experience Modification and Discussion of Security Requirements.

Ms. Pastor explained that since it takes about 30 days at the end of a quarter to get the financial reports completed the next quarterly review will be February. Ms. Pastor noted that the Securis Insurance Pool ("Securis") added additional members to the pool which now has 42 members. Ashton Tiffany continues to handle the day to day management of the pool. After reviewing the claims and financial reports, Ms. Pastor recommended that the commissioners approve that Securis maintains the same security deposit and approve the additional members of the pool.

Chairman Schultz asked if Ashton Tiffany would like to make any comments. Ms. Foss thanked Ms. Pastor for her support and attending their meetings. Moving forward they are looking to improve and develop their programs to help with the health and safety of member employees.

Chairman Schultz noted the significant positive growth and understood the additional claims were not unexpected but noted that the presumption claims are limited and discussed the COVID claims. He noted the Commission is watching COVID claims for frequency and costs of the individual claims.

Vice Chair Hennelly, Ms. Pastor and Mr. Ashton discussed the actuarial report, fund equity ratio for the pool, the large number of additional members joining and the accounting standards being used by Securis.

Chairman Schultz and Ms. Pastor discussed the monthly claim expenses.

Vice Chair Hennelly moved to approve continuing the current security deposit and approve the additional new members that have joined the pool and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Chairman Schultz thanked the members of Securis for attending and thanked Ms. Pastor for her efforts in analyzing this new pool that has additional risks.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 3 –

- a) 17419 W Andora St, Surprise, AZ 85388: Three employees were not provided with fall protection while installing decking on a new residential home at a height of 10 feet 7 inches. 29 CFR 1926.503(a)(1)

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$3,600.00

TOTAL FORMULA AMT. - \$3,600.00

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

Mr. Guzman had questions regarding Items 2 and 3, noting that at the time of inspection, he went to the jobsite and fixed the problems and sent a packet of pictures using fall protection and he did provide them with PPE for safety and they decided not to use it, his only option is to fire them because they are not using safety and not following the plan. He asked what his options were. Mr. Atencio explained the foreman, who acts as employer knowledge, was also not using the PPE and recommended spot checks and coaching.

Chairman Schultz thanked Mr. Guzman and appreciated his understanding and attitude toward improving safety, and noted sometimes difficult decisions need to be made. He also noted extensive programs in place are only as good as they are used and enforced.

Chairman Schultz and Mr. Atencio discussed the powder-actuated tool and eye protection requirements.

Mr. Atencio will look for the abatement information provided by Mr. Guzman. Mr. Guzman described the training on the powder-actuated tool and the certification and what he is doing now for training using glasses, ear protection and cleaning. He also explained the fall protection training provided including harnesses and anchor points was included in the package sent.

Commissioner Krenzel moved to amend the Citation and proposed a reduction of penalties by 25% for Good Faith abatement efforts and fall protection training for a total of \$2,700.00. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Dollar Tree Stores, Inc.
502 W Ajo Way
Tucson, AZ 85713

Complaint	
Years in Business:	14
Empl. Covered by Inspection:	14

Site Location:	502 W Ajo Way Tucson, AZ 85713
Inspection No:	R3180-1493669
Inspection Date:	09/18/2020

REPEAT-SERIOUS – Citation 1 - Item 1 –

- a) Stock Room: Boxes and materials in the stock room were not stored in a manner to prevent sliding or collapsing.

- b) Stock Room: Boxes and materials stored were not stored in a manner to prevent sliding or collapsing on an employee u-boat cart. 29-CFR 1910.176(b)

The Dollar Tree Stores, Inc., was previously cited for a violation of this Occupational Safety And Health Standard or its equivalent 29 CFR 1910.176(b) which was contained in ADOSH Inspection Number 1351299, Citation Number 2 Item Number I, issued on 2/22/2019 and was final order on 8/05/2019 and abated on 3/06/2019, with respect to the workplace located at 9820 W Lower Buckeye Rd, Tolleson, AZ.

Div. Proposal - \$15,000.00

Formula Amt. - \$1,500.00

REPEAT NON-SERIOUS – Citation 2 - Item 1 –

- a) Northeast exit: One emergency exit route was partially blocked by a shopping cart and boxes. 29 CFR 1910.37(a)(3)

The Dollar Tree Stores, Inc., was previously cited for a violation of this Occupational Safety And Health Standard or its equivalent 29 CFR 1910.36(0)(2) which was contained in ADOSH Inspection Number 1351299, Citation Number 1 Item Number 1, issued on 2/22/2019 and was final order on 8/05/2019 and abated on 3/04/2019, with respect to the workplace located at 9820 W Lower Buckeye Rd, Tolleson, AZ.

Div. Proposal - \$2,000.00

Formula Amt. - \$200.00

TOTAL PENALTY - \$17,000.00

TOTAL FORMULA AMT. - \$1,700.00

Mr. Atencio discussed ADOSH's investigation, summarized the citations and proposed penalties, and reviewed the photographs.

Commissioner Krenzel asked if there was a district or regional manager or safety officer to get the information to all of the stores or just location by location. Mr. Atencio responded that based on his past experience with the corporate office and the safety programs and what they are doing to prevent stock buildup, there were no safety officers but instead employees take on that role to help make sure the store is orderly.

Ms. Harclerode did not have any presentations to make today.

Chairman Schultz thanked Ms. Harclerode for joining the meeting noting the Commission appreciates when employers join the discussion.

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

Chairman Schultz thanked Mr. Atencio for providing the summary of lessor penalty violations noting there have been a lot of inspections helping keep Arizona employees safe.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through January 2021. Vice Chair Hennelly noted he will not be available for the December 10th meeting.

Public Comment.

Mr. Guzman inquired about contesting the citations. Mr. Atencio noted the next steps for Mr. Guzman.

There was no other public comment.

Commissioner Krenzel moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 2:20 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley
James Ashley, Director

ATTEST:

Kara Dimas
Kara Dimas, Commission Secretary