MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Telephonic Meeting
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, February 25, 2021 – 1:00 p.m.

Present:

Dale L. Schultz

Chairman (Telephonic)

Scott P. LeMarr

Commissioner (Telephonic)

Steven J. Krenzel

Commissioner (Telephonic)

James Ashley

Director (Telephonic)

Gaetano Testini Jason M. Porter Chief Legal Counsel (Telephonic)

Trevor Laky

Deputy Director (Telephonic)

Renee Pastor

Legislative Affairs Chief/Public Information Officer (Telephonic) Self Insurance (Telephonic)

Jessie Atencio Anna Maria Stonerock ADOSH Director (Telephonic) 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 John Ashton, Tracy Foss, Roshell Lee, Garrett Mahoney and Lori Jundt (Securis Insurance Pool); Chris Hansen and Nichole Martinez (City of Tempe); Heng Chin and Libby Block (Roehl Transport, Inc.); Adam Sheppard, Nathan Waite and Paul Gomez (K.L.A.S.S. Services, Inc.); John Baca (NU Flow Services of Phoenix, LLC); and Savannah Scharnhorst (Snell & Wilmer).

Approval of Minutes of February 11, 2021 Regular Meeting Minutes.

Commissioner Krenzel moved to approve the Minutes of the February 11, 2021 regular session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, 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. 2CC20/21-0076 Alba Construction LLC \$5,000
- 2. 2CSP20/21-0068 Valley Hospice of Arizona Inc \$1,000
- 3. 2CNP20/21-0284 Safe Clean Sanitation LLC \$1,000
- 4. 2CSP20/21-0071 RV Life Enterprises Inc dba Dead Horse Diesel & RV \$1,000

- b. Approval of Requests for Renewal of Self-Insurance Authority.
 - 1. City of Tempe
- c. <u>Discussion and Action of Application for Self-Insurance Authority.</u>
 - 1. Roehl Transport, Inc.

Chairman Schultz thanked Ms. Pastor for recalculating the experience modification factor for Roehl Transport, Inc. to an Arizona only experience modification factor which resulted in .82 which is satisfactory for authorization to self-insure.

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

Chairman Schultz thanked Ms. Pastor for her excellent write-up on both the City of Tempe, explaining their progress in implementing new safety initiatives, and for Roehl Transport, Inc. and all of the efforts to ensure good financially solid self-insured participants.

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

Ms. Pastor explained that Securis is doing well and is very conservative with its reserves. Securis is well managed and are building their trust to a 70% confidence level. The security deposit exceeds 125% of the claim reserves. She recommended continuance of self-insurance and will keep reporting on a quarterly basis until the first renewal in January 2022.

Chairman Schultz noted the plan for completing capitalization.

Mr. Ashton appreciated that Ms. Pastor attends the Securis meetings and that the Industrial Commission is interested in the success of Securis.

Commissioner Krenzel moved to approve continuing the current security deposit and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

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.

K.L.A.S.S. Services, Inc.

Complaint

12819 W. Missouri Ave

Years in Business:

Empl. Covered by Inspection:

8 4

Litchfield Park, AZ 85340

3322 S. Ellsworth Road

Mesa, AZ 85212

Inspection No:

Site Location:

O3895 - 1501332

Inspection Date:

11/5/2020

SERIOUS – Citation 1 - Item 1 –

a) 3322 S. Ellsworth Road, Mesa AZ 85212: Two employees were working in a trench 7'11" deep and 8'6" wide without training on the hazards related to excavation or trench safety. 29 CFR 1926.21(b)(2)

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS - Citation 1 - Item 2a -

a) 3322 S. Ellsworth Road, Mesa AZ 85212: Two employees were working in a trench 7'11" deep and 8'6" wide, without a visual and manual inspection conducted by a competent person. 29 CFR 1926.651(k)(1)

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS - Citation 1 - Item 2b -

a) 3322 S. Ellsworth Road, Mesa AZ 85212: Two employees were working in a trench 7'11" deep and 8'6" wide, installing concrete storm drain pipe, without an adequate protective system in place. 29 CFR 1926.652(a)(1)

Div. Proposal - \$0.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$3,000.00

TOTAL FORMULA AMT. - \$4,500.00

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

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

Mr. Sheppard inquired about the citation process and Mr. Atencio explained the citation process.

Mr. Sheppard explained that since the inspection all of the employees have been trench trained which was scheduled immediately after, and they now have a "competent person" on each job site. He would contest one area that would be in question is the pipe crossing and that they did have mechanical shoring, and was pulled because the pipe was installed and there were not people working in that area.

Mr. Atencio received follow-up information that the company trained with Cooper Safety Services on January 22, 2021 and had 16 employees for excavation safety training and competent person training.

Mr. Sheppard noted that was the soonest training available after the ADOSH inspection. He wanted to get everything caught up and was not aware those employees were not current on their certifications.

Chairman Schultz complimented Mr. Sheppard because from the trenching that was done, it is obvious that the hazards were recognized and the company was trying to protect the employees which is very important to this Commission to keep a safe workplace. It is easy to lose track of who has been trained. Chairman Schultz thanked him for his efforts and thought the employer was close to doing everything right.

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

Chairman Schultz thanked Mr. Sheppard, Mr. Waite and Mr. Gomez for their participation and interest in providing a safe workplace.

NU Flow Services of Phoenix, LLC

Referral

3045 S 46th St

Years in Business:

Empl. Covered by Inspection:

6

Phoenix, AZ 85040

1007 S 7th Ave

Phoenix, AZ 85007

Inspection No:

Site Location:

Y8817 - 1495512

Inspection Date:

10/2/2020

SERIOUS – Citation 1 - Item 1 –

a) 1007 S 7th Ave, Phoenix, AZ 85007: Three employees were working on a 14 ft. high roof clearing a clogged drainpipe using a ladder that did not extend three feet above the landing. 29 CFR 1910.23(c)(11)

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS - Citation 1 - Item 2 -

a) 1007 S 7th Ave, Phoenix, AZ 85007: Three employees worked on a 14 ft. high roof to clear a clogged drainpipe without an adequate fall protection system in place. 29 CFR 1910.28(b)(1)(i)

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 3 –

a) 1007 S 7th Ave, Phoenix, AZ 85007: Three employees working on a 14 ft. high roof were not provided with fall protection training. 29 CFR 1910.30(a)(1)

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$4,500.00

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

Commissioner Krenzel and Mr. Atencio discussed that the fall protection equipment was at the jobsite, but the employees were told they were not necessary to use the- safety harnesses.

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

Mr. Baca appreciated the feedback and the company learned through this process how to provide a safer place for their employees. They had the inspection on 10/2/2020 and on 10/16/2020 they used RTS as their OSHA certified trainer and shut down the work for the day to have fall protection classes for all 35 techs to obtain their OSHA fall protection cards. This was a learning experience, as they are growing and take this opportunity to become a better company and try to

provide a safer environment for all of their people and are thankful for ADOSH bringing it to their attention. It has really opened their eyes.

Chairman Schultz appreciated the fact that they do have an extensive safety and health program and it is a good start but it's about the implementation of the program and where the rubber meets the road. Chairman Schultz also thanked him for taking the inspection in the spirit it was intended, this Commission is very focused on helping businesses to understand how to work safely and to promote businesses in being profitable by working safely. Chairman Schultz thanked him for his cooperation with the inspection.

Commissioner Krenzel clarified with Mr. Baca that everyone attended the class for fall protection and basically pulled all of the techs off of the job for a day to go through this training and going forward intends to use tool box talks to carry forward some of this training education and awareness. Mr. Baca noted every Monday morning they have a foreman's meeting and talk about a specific topic. They have been doing that for some time, but they need to make sure that they are following the safety rules and the company needs to hold everybody accountable to keep them safe.

Commissioner Krenzel moved to amend the citation and proposed penalties to include as 25% reduction for good faith consideration for the efforts made by the employer for a total penalty of \$3,375.00. Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley commented the Industrial Commission's pursuit and achievement of VPP status caught the attention of the Arizona Department of Administration (ADOA), who in acknowledgement of the great work the ICA safety committee does invited Janine Locke and Rebecca Schaar to share and present information about the agency's Near Miss program to 30 other agencies. He shared a letter he received from the Loss Prevention Manager, Doug Brown.

Chairman Schultz thanked Mr. Ashley, he noted it was an arduous journey to achieve VPP status and it's about continual improvements and recognized how much Mr. Ashley wanted an effective safety program at the Commission to use VPP and the efforts of the ICA as an example for other state agencies and employers throughout Arizona to try to lift everyone up and it is working.

Mr. Ashley thanked Chairman Schultz for joining the Special Fund Division for the virtual farewell to Bonnie Holly, the Special Fund Manager as Ms. Holly will be leaving the agency relocating outside of the Valley. He highlighted Ms. Holly's contributions to the success of the Special Fund, the agency and the state for the functions they perform and the great standards that they have set.

Chairman Schultz noted the Special Fund is a terrific team who has made huge strides in an area that is very special as the Special Fund handles claims when employers have failed to fulfill their obligation to their employees by purchasing workers' comp insurance to protect them and if there is an injury or claim the Special Fund picks up the ball; Chairman Schultz appreciates their focus on getting benefits out as quickly as possible and the fair adjudication of those claims.

Ms. Dimas confirmed Commission meeting dates through April 2021.

Public Comment.

There was no other public comment.

Commissioner Krenzel moved to adjourn and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 1:53 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

fames Ashley, Director

ATTEST:

Kara Dimas, Commission Secretary