

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Telephonic Meeting

Held at 800 West Washington Street

Phoenix, Arizona 85007

Thursday, October 28, 2021 – 1:00 p.m.

Present: Dale L. Schultz	Chairman (Telephonic)
Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
Scott P. LeMarr	Commissioner (Telephonic)
D. Alan Everett	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)
Renee Pastor	Self Insurance (Telephonic)
Jessie Atencio	ADOSH Director (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 was Jim Meehan (Parker Hannifin Corporation).

Approval of Minutes of October 21, 2021 Regular Meeting Minutes.

Commissioner LeMarr moved to approve the Minutes of the October 21, 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. Vice Chair Hennelly abstained.

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. 2CNP21/22-0070 Good Samaritan Residential LLC \$1,000
  2. 2CNP20/21-0716 Phat Turtle LLC dba Phat Turtle Media \$1,000
  
- b. Approval of Requests for Renewal of Self-Insurance Authority.
  1. FedEx Freight, Inc.
  2. Parker-Hannifin Corporation
  3. Ruan Transportation Management Systems, Inc.

Chairman Schultz highlighted the enviable experience modification for FedEx Freight.

Commissioner Everett moved to approve the items on the Consent Agenda as presented and Commissioner LeMarr 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. Meehan for joining the call noting Parker-Hannifin Corporation is in good shape.

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.

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Montrose and Edwards –Mr. Montrose was hired when the claim had been denied and represented Ms. Edwards through a series of hearings including testimony from lay witnesses and medical testimony. The Judge awarded a compensable claim for Ms. Edwards making her eligible to receive compensation benefits. Following the hearing Mr. Montrose responded to the first level appeal, the Request for Review filed by the carrier's attorney. Shortly thereafter Mr. Montrose filed a 1061J motion to secure benefits for the applicant because she was not being paid timely. That petition was eventually withdrawn. Mr. Montrose received no fees for his representation of the applicant throughout the process and was let go shortly thereafter. He has estimated a total of 50 hours of work for the claim and the Legal Department finds that is a reasonable amount of hours given the complexity of the case and the posture that the case is in at the time of his representation. The Legal Division's recommendation is to award \$200 an hour for the 50 hours for a total of \$10,000 for his representation of the applicant throughout her claim and that would be taken through 25% of the applicant's future indemnity benefits for a maximum total of ten years or until \$10,000 is recovered, whichever occurs first.

Commissioner LeMarr commented that the applicant thought there was a lack of proper communication on multiple occasions between herself and petitioner. She felt he did not provide adequate legal services. Given the applicant's complaints, Commissioner LeMarr asked how a conclusion could be reached that someone had spent 50 hours on this?

Mr. Testini responded that often what happens in these cases is a waiting game. You apply for the hearing, go through the process and by the time you are done with the hearings, you are probably looking at about a seven-month period and a lot of that time is spent waiting for the next hearing and then you wait for the decision which takes about a month. The expectations are that when they finish the hearing they are going to receive a check. In this particular case after they were successful at the hearing, the carrier filed a request for review, which is the first level of appeal, and that also probably did not make the applicant happy that they had to wait even longer for their benefits. The applicant's frustration probably extends from the applicant feeling that it is taking too long for all of this process but some of the waiting time is built into the process, with hearings, depositions, request for review which requires going through all of the transcripts.

Commissioner LeMarr thanked Mr. Testini for the explanation.

Vice Chair Hennelly commented that having reviewed the packet and seeing this went from a denied claim to a successful claim and appeal and did not think you could ask for much more from the counsel and maybe communication was not what they expected.

Chairman Schultz commented that Mr. Testini gave an excellent explanation of how people can get frustrated with the time period which is why the Commission has been so focused trying to find alternatives to the legal process and much quicker means of resolving these issues because they drag on.

Chairman Schultz had a process question for Mr. Testini, in going through the materials he noticed the hourly rate is that memo from 2013 and would appreciate his thoughts about his view of those rates in the current marketplace.

Mr. Testini noted it is difficult, because most of the applicant attorney's use a 25% contingency fee, and to try to translate that to an hourly fee is difficult when you are looking at applicant work. On the defense side, that is about what defense attorneys are charging, somewhere in the \$170 to \$180 an hour. The defense attorneys get guaranteed payment, where the applicant attorneys if you lose a case on a contingency fee you get \$0, so if you were to translate that the \$200 seems reasonable given that they have more risk involved than the defense attorneys do.

Vice Chair Hennelly moved to adopt the recommendation from the Legal Department for the Findings and Award granting attorney's fees and to allow electronic signatures of the Award 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.

#### Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley updated the Commissioners with the AMS scorecard metrics for the fiscal year-to-date. He reviewed the metrics for ADOSH: Outreach-Safety Consultations-High Hazard; Outreach-Employees Trained; Outreach-Employees Impacted; Outreach-Hazards Abated; Outreach-Partnership Programs; Avg. Compliance Lapse Time; Oldest Pending Whistleblower Case; # Whistleblower Claims Closed/Dismissed. The tracking metrics for % Reduction of Whistleblower Backlog; # Compliance Matters Processed in New System; and % Compliance Forms Submitted Via Webform.

Chairman Schultz was pleased with the number of High Hazard Consultations given the turnover and how many new employees are in ADOSH.

Mr. Ashley and Mr. Atencio commented on the new partnership with the merger of Diversified Roofing and Star Roofing who were both part of the Roofer's Alliance. Chairman Schultz wanted to think that the Commission putting rivals together to talk about things that are a common interest like safety helps to foster those kinds of relationships.

Mr. Ashley noted that the Governor's Office is hosting a Director's and Deputy Director's retreat next week, and he and Mr. Porter will be attending the full day retreat.

Ms. Dimas confirmed Commission meeting dates through December 2021. Confirming that Vice Chair Hennelly would be available on November 4<sup>th</sup> to have a quorum.

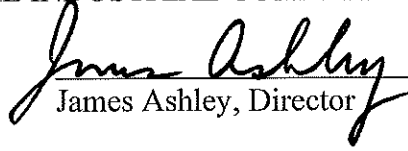
#### Public Comment.

There was no other public comment.

Commissioner Everett moved to adjourn and Vice Chair Hennelly 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 1:29 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
James Ashley, Director

ATTEST:

  
Kara Dimas, Commission Secretary