

# THE INDUSTRIAL COMMISSION OF ARIZONA



## LEGAL DIVISION

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LAURA L. MCGRORY, DIRECTOR

June 3, 2015

The Honorable Michael A. Mosesso  
ALJ Division  
Industrial Commission of Arizona  
800 W. Washington Street, 4<sup>th</sup> Floor  
Phoenix, AZ 85007

Re: ADOSH vs. ARIZONA STATE FORESTRY DIVISION  
Inspection No: L3419-317242683

Dear Judge Mosesso:

Enclosed for filing please find the signed settlement agreement. A proposed Findings and Order will be submitted shortly.

Thank you for your consideration in this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Valli Goss".

Valli Goss  
Attorney for ADOSH

Enclosure

c: David Selden, Esq.(by mail and email)  
Joy Hernbrode, Esq. (by mail and email)

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12 Co-Counsel for Respondent  
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14 BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA

15 DIVISION OF OCCUPATIONAL SAFETY &  
16 HEALTH OF THE INDUSTRIAL  
17 COMMISSION OF ARIZONA,

18 Complainant,

19 v.

20 STATE OF ARIZONA, ARIZONA STATE  
FORESTRY DIVISION

21 Respondent.  
22

NO. L3419-317242683

SETTLEMENT AGREEMENT

(Assigned to the Honorable Michael  
A. Mosesso)

23 On July 1, 2013 through December 3, 2013, Arizona Division of Occupational  
24 Safety and Health ("ADOSH") conducted an inspection of Respondent Arizona State  
25 Forestry Division's ("ASFD" or "Respondent") worksite located at the Weaver  
26 Mountains/Yarnell Hill Fire, Yarnell, Arizona 85362 (the "Fire"), resulting in the issuance

1 of the following citations on December 5, 2013.

2 Citation 1, Item 1 was issued for an alleged Willful Serious violation of A.R.S. §  
3 23-403 (A). Citation 1, Items 1(a) through (d) had an assessed penalty of \$70,000.00.

4 Citation 1, Item 1 was also issued with an additional penalty under A.R.S. § 23-  
5 418.01 for each employee that died, in the total amount of \$475,000.00.

6 Citation 2, Item 1 was issued for an alleged Serious violation of A.R.S. § 23-  
7 403(A). Citation 2, Items 1(a) through (c) had an assessed penalty of \$7,000.00.

8 Citation 2, Item 2 was issued for an alleged Serious violation of A.R.S. § 23-  
9 403(A). Citation 2, Items 2(a) through (b), had an assessed penalty of \$7,000.00.

10 WHEREAS, Respondent filed a timely notice of contest on December 19, 2013,  
11 with respect to the above-referenced citations, and ADOSH and Respondent now desire to  
12 settle this matter without the necessity and uncertainty of a formal hearing. Both parties  
13 agree that it is in their respective best interests and the best interests of the State of  
14 Arizona to settle this matter without going through the procedures, as well as, time and  
15 expense associated with litigating through a formal hearing.

16 WHEREAS, a dispute exists between the parties regarding the Citations, as ASFD  
17 strongly denies that there is any validity to the above-referenced Citations and strongly  
18 asserts that it has complied with all OSHA standards, that all of its actions to plan,  
19 coordinate and execute efforts to contain the Fire equaled or exceeded all industry  
20 practices for wildland firefighting, and that ADOSH's allegations are groundless.

21 WHEREAS there have been no hearings or adjudicated findings of fact or  
22 conclusions of law adjudicating whether there is any validity to any of the allegations in  
23 the Citation.

24 NOW, THEREFORE, the parties agree as follows:

25 1. This Agreement shall not be deemed as an admission of any matter and  
26 Respondent does not admit that it violated any of the standards cited.

1           2. Information developed by ADOSH in the course of ADOSH's inspection or  
2 investigation in this case is not admissible in any court or before any administrative body  
3 except as provided in A.R.S. § 23-408(E) and this paragraph. ADOSH may waive its  
4 rights and privileges under A.R.S. § 23-408(E) in any criminal proceeding, in any case or  
5 proceeding in which the Industrial Commission of Arizona ("Commission") or State of  
6 Arizona is a party or potential party, and in any case or proceeding, the outcome of which,  
7 may affect the operations of the Commission.

8           3. Willful Serious Citation 1, Item 1, the additional penalties under A.R.S. §  
9 23-418.01, and Serious Citation 2, Items 1 and 2 shall be amended as follows:

10           Citation 1, Item 1 Type of Violation: Unclassified

11           A.R.S. § 23-403: The employer did not furnish to each of its employees  
12 employment and a place of employment which were free from recognized  
13 hazards that were causing or likely to cause death or serious physical harm,  
14 in that firefighters were exposed to the risk of smoke, fire, serious injury or  
15 death.

16           a. On June 30, 2013, personnel assigned to the Yarnell Hill Fire and under  
17 the management of the Arizona State Forestry Division failed to re-  
18 evaluate, re-prioritize and update fire suppression strategies and plans  
19 after fire behavior and weather conditions dramatically changed, which  
20 resulted in firefighter exposure to serious hazards resulting from a rapidly  
21 progressing, wind-driven wildland fire.

22           4. In lieu of payment of the assessed penalties to ADOSH, Respondent agrees  
23 that it will provide enhanced safety training for incident command management,  
24 additional fire suppression activities, and improved wildland firefighter safety, and agrees  
25 to pay to the dependents of each of the 19 firefighters who experienced fatal injuries the  
26 aggregate sum of Ten Thousand Dollars (\$10,000.00) for each decedent, unless waived as  
described herein. With respect to the twelve decedents of the named Plaintiffs in *Ashcraft  
et al. v. State of Arizona, et al.*, U.S. District Court for the District of Arizona, Cause No.  
CV-14-02308, this obligation shall be satisfied upon the execution of a waiver by each

1 Plaintiff in that case. With respect to each of the remaining seven decedents, this payment  
2 obligation shall be satisfied upon payment to the spouse; or if no spouse, to the children  
3 pro rata; or if no children, to the parents; the aggregate amount of such payments shall not  
4 exceed \$70,000.00. This Settlement Agreement shall not be deemed an admission by  
5 Respondent of the existence of or merit to any of the elements, alleged grounds for, or  
6 statutory requirements for the imposition of any penalty under A.R.S. § 23-418.01.

7 5. Respondent represents as a material fact leading to the Settlement  
8 Agreement that, without admitting that Respondent violated any OSHA standards in the  
9 suppression of the Yarnell Hill Fire, Respondent is in compliance with A.R.S. § 23-403 as  
10 of the date of this settlement.

11 6. The parties agree that Respondent, by this Settlement Agreement, moves to  
12 withdraw its Notice of Contest regarding Inspection No. L3419-317242683. This  
13 withdrawal is conditioned on the presiding Administrative Law Judge, pursuant to A.A.C.  
14 R20-5-828 of the Occupational Safety and Health Rules of Procedure before the Industrial  
15 Commission of Arizona, waiving the legal effect of A.A.C. R20-5-817.

16 7. Each party agrees to bear its own attorneys' fees and costs. The parties also  
17 agree that ADOSH is not responsible for any portion of mediator Chris Skelly's fees.

18 8. This Settlement Agreement is a full and final determination of this matter  
19 and alleviates any need for and constitutes a waiver of the right to hearing or alternative  
20 determination on the merits of the citations, classifications, and stated penalties.

21 9. The parties covenant and agree that this is a settlement of a disputed matter,  
22 that the citation, classification, notification of penalty, this Settlement Agreement and/or  
23 the Administrative Law Judge's final Order, individually and/or collectively, is not an  
24 admission by ASFD nor any of its employees, that it or they violated, knowingly or  
25 otherwise, the requirements of A.R.S. § 23-403 or any standard or regulation adopted  
26 pursuant to A.R.S. § 23-410 or § 23-414 or any provision of the article enumerated and

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A.R.S. § 23-401, et al., nor is it an admission by ASFD, nor any of its employees, that any of the matters alleged in the citations issued as a result of Inspection No. L3419-317242683 existed, nor were it or they a cause or proximate cause of any injuries or fatalities.

10. This Settlement Agreement is in furtherance of the purpose of industrial safety and the Arizona Occupational Safety and Health Act of 1972 and represents a full and final determination of this matter.

RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of June, 2015.

THE CAVANAGH LAW FIRM, P.A.

By: David A. Selden

David A. Selden  
Julie A. Pace  
Justin V. Niedzialek  
Attorneys for Respondent

DIVISION OF OCCUPATIONAL SAFETY AND  
HEALTH OF THE INDUSTRIAL COMMISSION OF  
ARIZONA

By: Valli Goss

Valli Goss  
Attorneys for Complainant