



LOOKING AT WORKERS' COMPENSATION IN HUMAN TERMS

While the true cost of workers' compensation is the life altering injuries to our employees, too often as employers and insurers, we view workers' compensation only in financial terms. Direct costs, indirect costs, premium, average claim cost, average weekly wage, medical inflation, and compensation rate are all financial measures related to the cost of injuries. Lost in all the financial measures is the reality that we are talking about the life and health of our employees.

Each year thousands and thousands of work-related accidents occur producing life altering injuries. Serious permanent injuries, catastrophic brain stem and spinal injuries, horrific burns,

amputations, and death occur in the U.S. with considerable frequency. The sad thing is that most are preventable. Dehumanizing the impact of these injuries and focusing on the financial impact only, we may come to accept injuries as a cost of doing business.

Dehumanizing the cost of workplace injuries has had another side effect. It causes employers to misdirect their cost containment efforts. Many current loss control initiatives ignore behavior and focus on engineering solutions, the requirement to wear personal protective equipment, and discipline. While these controls are important, they don't necessarily address the inner values of our employees and their behavior, which is the major cause of workplace injury.

So how does an employer quit thinking about workers' compensation just in dollar terms and start focusing on the people as well? The simple answer is to focus on eliminating the behaviors that cause the injuries. Train employees how to do their jobs safely. Reinforce safe behavior through front line supervisors. Provide immediately the resources to eliminate workplace hazards. Set goals and make those goals known. Reinforce "good" behavior. Hold all accountable for their participation. Share results. Track progress. Above all - Communicate, Communicate, Communicate!

- Adapted and edited with permission from an article by Steven J. Link, published in the Self-Insurance Bulletin, Volume 7, Issue 3, December 2005.

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National PRIMA 2006 Annual Conference

Viva Las Vegas! Get ready for another Annual Conference with strong educational sessions, a dynamic exhibit hall, and professional networking opportunities. Mark your calendars for June 11 – 14, 2006 at the Paris Hotel in Las Vegas, Nevada. A special guest room rate has been arranged for PRIMA attendees! For more information about the conference and hotel accommodations, or to register online, visit www.primacentral.org.

THE 2006 MEMBERSHIP DIRECTORY IS COMING SOON . . .

The 2006 Texas PRIMA Membership Directories are being prepared for distribution in a few short weeks. The Directory is a great networking tool, so please be sure that your membership and that of your associates has been renewed so you are included in this year's edition! If you have any questions about the status of your membership, you can contact the Texas PRIMA office by phone at (512) 394-0719 or by email at info@texasprima.org.



Musings From The President...

Scott Payne

As I sit here, trying to compose a few lucid and coherent thoughts for this column, it strikes me how surreal of an experience my PRIMA journey has been. When I began my career in public sector risk management way back in 1991, I don't believe anyone, including my boss at the time, Robby Neill, could have pictured where that journey would take me. But thanks to Robby's support and encouragement, and thanks to the many other PRIMA members who have touched my life and helped shape my career, here I am today. I am truly humbled and honored to serve as President of Texas PRIMA for 2006. Thanks for allowing me to serve as your president!

Well, 2006 is already off to a fast start. We are privileged to welcome Joe DePalma, State Office of Risk Management, and David Kester, Harris County, to the Board. Joe has been a frequent presenter at our Annual Conference as well as helping with the CEU process for the Annual Conference and the newsletter. David, who was appointed by the Board to fill Shannon Morgan's unexpired term, is a former Board member and has chaired both the Legislative and Election Committees in recent years. On a personal note, it was largely due to David's arm-twisting that I initially ran for the PRIMA Board so I guess I have him to thank, and you all have him to blame, for my tenure as President!

I guess I would be remiss in my first message to the membership if I didn't at least try to articulate some of my hopes and goals for the coming year. Along those lines, the Board hopes to have a formal strategic planning session at our next Board meeting to help prioritize and develop action plans to bring these goals into focus.

My first goal for 2006 is to continue to grow our membership base. PRIMA has always been about our members... that's why we exist! But each of us probably knows a public entity risk manager in our own geographical area that is not a member of PRIMA. There are also many smaller entities that may not have someone with the title of Risk Manager but probably perform many of the typical risk management duties. I think we need to reach out to our neighbors and find a way to get the message of PRIMA out to these folks.

I also hope that we can continue to grow the depth of leadership within Texas PRIMA by encouraging more involvement from the membership on our various committees. I have asked each of the committee chairs to invite non-Board members to serve on their respective committees. If you have an interest in serving on a particular committee, please contact the chair and volunteer. Or, if you get a call from a committee chair asking you to serve, please consider it.

Other goals, though not as glamorous, are to better formalize processes and define duties among the Board positions and to continue to build financial strength for our organization. With the weather disasters we saw in 2005, it becomes abundantly clear that we could lose a conference along the coast should our site be damaged by a hurricane. PRIMA needs to have sufficient financial reserves to allow us to continue with our plans should that eventuality occur.

Finally, I hope that we can continue to increase and ensure the value of Texas PRIMA to all our members. We plan on getting surveys out throughout the year to find out what the members need from this organization and how best to provide that value to you.

In closing I want to reiterate what an honor it is to serve as President of this organization. I know that PRIMA has played a vital role in my development and progression as a public entity risk manager. The members of PRIMA are some of the best risk managers you will ever meet... but they are even better people and friends. PRIMA is about its members... we are what make PRIMA... well, PRIMA! With that being said, PRIMA needs each of you to be involved with this organization. Attend a regional meeting, submit an article for the newsletter, or volunteer to serve on a committee. We can always use a helping hand.

I think you will find that PRIMA will give you all that you ask of it... but if you give a little to PRIMA you may find you get even more than you ever dreamed of... I know I have. Thank you for this opportunity and please let me know if I can assist you in any way.

Scott Payne
President, Texas PRIMA
Risk Manager, City of Denton

2006 Committee Assignments

COMMITTEES

Executive

Chair: Scott Payne, Members: Alan Smith, Melissa Sullinger, Linda Spacek.

By-Laws & Governance

Chair: Gary Urban, Members: Scott Payne, Tina Paquet, Linda Spacek, David J. LaBrec.

Nominations & Elections

Chair: Mark Barta, Members: David Kester.

Legislation

Chair: Martha Rider, Members: Mark Barta, David Kester.

Finance

Chair: Linda Spacek, Members: Scott Payne, Gary Urban.

Member Services

Chair: Melissa Sullinger, Members: Cindy Kirk, Regan Rychetsky.

Communications

Chair: Joe DePalma, Members: Tina Paquet, Cindy Kirk, Sam Lawrence
Newsletter Editor: Henry Kaplan; *Correspondents:* Committee Chairs

Professional Development

Chair: Mark Barta, Members: Alan Smith, Scott Payne, Joe DePalma.

Regional Programs/Education Committee

Chair: Regan Rychetsky, Members: Melissa Sullinger, Joe DePalma.

Future Conference Planning

Chair: Tina Paquet, Members: Linda Spacek, Gary Urban, Cindy Kirk.

Conference 2006

Chair: Alan Smith, Members: Conference Related Committee Chairs - Y.Etta McCutcheon, Tammy Leverett, Robert Waggoner, Tracy Seiler, Rene Carnles.

Speakers & Sessions

Chair: Melissa Sullinger, Members: Regan Rychetsky – Worker’s Comp, Tina Paquet – Risk Management, David Kester – Benefits, Joe DePalma – Safety.

Sponsors & Exhibitors

Chair: Cindy Kirk, Members: Scott Payne, Board Members (as needed), Conference Planner.

2006 PRIMA Golf Tournament

Chair: Regan Rychetsky, Members: Gary Urban, Mark Barta
Conference Planner, Contract Management.

Awards & Awards Program

Chair: David Kester, Members: Martha Rider, Conference Planner.

2006 BOARD OF DIRECTORS

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Cindy Kirk: International Risk Manager

Congratulations to Cindy Kirk, PRIMA's 2006 International Exchange Program winner. This is an extraordinary opportunity for Cindy to broaden her horizon by visiting with her risk management counterparts in the U.K. As PRIMA's exchange winner, Cindy will spend a maximum of 10 days on location with two additional international travel days.

The visit will coincide with the Association of Local Authority Risk Managers (ALARM) Annual Conference June 26 - 28, 2006, held at the University of Manchester in Manchester, England. During the visit, she will be mentored by Gerald Tait (Dalkeith, Scotland), her U.K. counterpart, who will also arrange meetings with other risk managers.

As part of the program, her U.K. counterpart will visit the United States at which time Cindy will act as mentor. That visit will coincide with PRIMA's Annual Conference held June 11 - 14, 2006, in Las Vegas. The exchange program requires the PRIMA participant to attend the ALARM conference and the ALARM participant to attend PRIMA's conference.

Annual State Conference



Alan Smith, Chapter Vice President and Risk Manager for the Garland ISD is the responsible person to make sure that the Conference is well planned and then goes as planned. He welcomes all the help from the members that he can get. The location of the state conference this year is going to be really great: beautiful Corpus Christi, Texas. Although, we do not have the catch phrase for the theme exactly hammered out, it is going to be on the theme of the "Roaring Twenties". We are telling every one very early so you can start working on your costume for the "Opening Gala" on Wednesday night.

Melissa Sullinger, Chapter Secretary, will coordinate the conference speakers. She would welcome ideas on speakers and on topics. We are looking for new and fresh topics and HOT issues. What are the Hot issues that our profession is facing or will face in the coming years? If you have a suggestion, let Melissa know.

Cindy Kirk, Director Emeritus, is working with vendors. Are there some types of products you would like to see or learn? Or, are there products that work for you that you would like the rest of us to know about? If you have any suggestions, let Cindy know.

The purpose of the annual conference is to reach out to all Texas public entities and help them achieve excellence in serving their respective publics.

Members of the conference planning committee may be calling members asking for their help in planning the annual conference. If you would like to volunteer now, let us know. You can reach us at the PRIMA Web site www.texasprima.org or email Alan Smith at awsmith@garlandisd.net.

Texas PRIMA Regional Meetings



Just when we thought we had it all figured out, the PRIMA Board and the Regional Programs Committee have expanded the regional meetings format. If you have had a chance to visit the website, you may have noticed the Regional Meetings for 2006 link in the top left-hand corner of the web page. Our meetings are now called conferences because they are one full day and are patterned

after the Central Texas one-day conference that was held last summer.

One day conferences were scheduled on February 24th in San Antonio, March 17th in Baytown, April 7th in Plano, and May 9th in Lubbock. There will be a conference in Edinburg in June, but the date and location have not been decided. The conferences begin at 9:30 a.m. and end at 3:00 p.m. Registration is from 8:30 a.m. to 9:30 a.m. The cost is \$25.00 per person, and lunch is included.

The topics will be the same at each meeting, so members will not miss out on any information if they miss the San Antonio or Baytown conference. The topics for the one-day regional conferences will include tort litigation update for public entities, worker's compensation health care networks, and a roundtable discussion regarding worker's compensation healthcare networks.

- Submitted by Regan J. Rychetsky

Calling All Members!

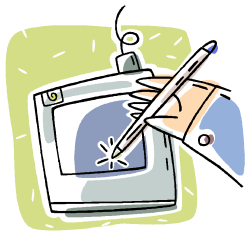


The Board of Directors needs your help! Our goal is to assist you as a Texas PRIMA member and, foremost, as a risk management leader by providing resources to help you do your job.

We are developing a survey to be sent via e-mail, asking for your feedback on what you want from your membership and participation in Texas PRIMA. You will be asked what services are important to you, what you would like on the Chapter website, what locations and topics you would like to see at mini-conferences and at the annual conference, and other membership enhancements you would like to see.

We ask that you please participate in this survey so that the Board can identify the needs of our members. You, as our members, are what Texas PRIMA is all about.

- Submitted by Melissa Sullinger



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Texas Association of School Boards (TASB)
Texas Municipal League - Intergovernmental Risk Pool
Texas Association of Counties
ScriptNet, Inc.
CCS Holdings, L.P.
Willis CAPS
Palmer & Cay of Texas, L.L.C.
Concentra Medical Centers
Scott & White Prescription Services
Dean Pappas & Associates, P.C.

2006 National SALGBA Conference

Join other state and local government benefits professionals in Louisville, KY, April 30 to May 3, 2006 at the new Louisville Marriott Downtown. The conference offers many educational sessions, roundtable discussions, service/product resources, and networking opportunities with the latest information on hot topics, tools, and techniques to improve benefit plan performance. Several educational sessions will address how some members have accomplished their goals and overcame obstacles in creating programs that have proven successful. For more information or to register online, please visit www.salgba.com or contact the SALGBA Office at 859-622-2535.

Are You Immune From Lawsuits?

Beginning with *General Servs. Comm'n v. Little-Tex Insulation Co.*, 39 S.W.3d 591, 594 (Tex. 2001) and *Texas Nat. Res. Conserv. Comm'n v. IT-Davy*, 74 S.W.3d 849, 853 (Tex. 2002), courts began to recognize a new defense involving whether governmental entities are "immune from lawsuits". This concept of immunity from lawsuits is different and far broader than governmental, sovereign or official immunity which have long protected governmental entities and their employees from liability. Now, before plaintiffs can even sue a governmental unit, they must show Legislative authority that permits the public entity to be sued; otherwise the public entity is completely immune from being sued. The court decisions vary significantly depending upon the type of governmental entity and the language of the laws creating them. Courts have even held that if a public entity signs a contract, it may not be sued even if it breaches its duties under that contract!

As a result, the 2005 Texas Legislature placed some significant limitations on this phenomenon by allowing more instances where plaintiffs can sue governmental entities. One such change waives immunity from suit, and allows plaintiffs to sue cities, school districts, junior college districts, and special districts (but not counties or units of state government) for certain breach of contract claims. Additionally, two recent cases have held that when a governmental unit files suit against a private party seeking damages, it waives immunity from suit for related claims and defenses. *City of Dallas v. Saucedo-Falls and Reata Const. Corp. v. City of Dallas*. The Texas Supreme Court has recently heard oral arguments in *State v. City of Galveston* on whether a city, when in the performance of governmental functions, is immune from suit by the state of Texas and whether the State itself is immune from counter-suit when it sues. The Supreme Court has a number of other cases pending before it as well, which, once decided, will clarify the extent to which public entities are immune from suit.

- Submitted by Ashley M. Stewart, Strasburger & Price, LLP

Denial of Promotion Costs School Board

According to an article in the Dallas Morning News, the Texas Association of School Boards and the former Superintendent of the Greenville Independent School District were ordered to pay more than \$650,000 in attorney fees and costs in a lawsuit. The suit was brought by an employee who was denied a promotion because her children were enrolled in private school. The federal lawsuit had been working its way through the system for about five years.

- Article by Diane Jennings, Dallas Morning News, 12/22/05.

City Not Liable for Sewage Spill In Subrogation Case

In a suit involving the City of Arlington, the Texas Supreme Court found that the City was immune from liability for its governmental actions and that operation of a sewer system is a governmental function. In summary, the City of Arlington sewage system caused two sewage spills in the home of a resident, who was insured by State Farm. State Farm then brought a subrogation suit against the City seeking to recover the amounts it had paid to its insured parties. State Farm alleged nuisance and an unconstitutional taking of property. Based on favorable jury findings, the trial court awarded State Farm \$42,900. The Court of Appeals affirmed. However, on further appeal, judgment was rendered by the Texas Supreme Court in favor of the City.

- Adapted by an article by Jay Downs, The TORT Times, Downs and Stanford, P.C.

General Counsel Named for DWC

Commissioner Betts has appointed Norma L. Garcia as the Division of Workers' Compensation (DWC) General Counsel. Garcia previously served as Deputy Commissioner for Legal and Compliance at the Texas Department of Insurance.

- Submitted by Randy McNeel, H & H Bulletin 05-120, 11/17/05

MARK YOUR CALENDARS

Texas PRIMA

17th Annual Conference

November 8-10, 2006

Omni Bayfront Hotel
Corpus Christi, Texas



San Antonio One-Day Conference Held



The San Antonio Regional Workers' Compensation Health Care Networks and Tort Review Conference was held at North East ISD Piper Bass Student Center on February 24th.

In the morning session, Merritt Clements of Stasburger & Price, LLP, presented the Governmental Liability tort review. Merritt covered sovereign immunity, its history, protections, immunity from suit versus immunity from liability, claims for equitable and declaratory relief, suits between governmental entities and Eleventh Amendment immunity; as well as waivers of sovereign immunity covering statutes that hold to waive and not to waive immunity, failure to assert immunity as a defense, waiver by filing suit, and waiver of immunity in breach of contract cases.

Merritt also reviewed the Texas Tort Claims Act, the entities covered and the three categories of cases which immunity is waived: (1) losses caused by negligent operation of a motor-driven equipment or motor-driven vehicle, (2) losses caused by the condition or use of tangible property, and (3) liability for premises defects. Also covered were exceptions and exclusions that include proprietary and discretionary acts, police and fire protection exemption and intentional tort exclusion.

The afternoon was filled with visions of workers' compensation health care networks dancing in our heads. Argus Services, Inc.'s President, Roger Williams assembled and served as moderator for a distinguished panel consisting of Milton Plomarity (Argus), Brandi Prejeon (Harris & Harris), Robert Schultz (National Choice Care), Bill Baker (First Health), Nikesh Patel (Health South), Melissa West (National ChoiceCare), Yogi Cruz (Via Metropolitan Transit), and Gonzaga Medical Group.

The panel addressed issues surrounding the development of workers' compensation health care networks, the requirements of HB 7 as it relates to the networks, how the rules have impacted the network administrator, employer and medical provider, and reviewed the eight key elements of Chapter 504.

The Chapter wants to express their thanks to Mario Ward, Carlos, and all of the staff at North East ISD that made the San Antonio meeting happen. Thanks to North East ISD for hosting the event, which was attended by over 75 members.

To learn more about Texas PRIMA's one day conferences visit our website, www.texasprima.org. Then, make plans to attend any of the future conferences in: Baytown (3/17), Plano (4/7), Lubbock (5/19) or Edinburg (June TBD). The same topics will be presented, at each conference.

- Submitted by Regan J. Rychetsky

Eight Steps to a Successful Playground

Almost 200,000 school aged children suffer injuries requiring emergency room care each year. Almost 80 percent of those injuries that happen on school property happen on the playground. To reduce the risk of injury, School Planning and Management magazine recommends the following 8 steps.

- Step 1: Involve Children.
- Step 2: Look around for obvious hazards.
- Step 3: Plan play space with an expert.
- Step 4: Find the right product for your needs
- Step 5: Design the play space.
- Step 6: Install equipment with trained personnel.
- Step 7: Teach safe play to children.
- Step 8: Play, play, play.

- Adapted from *School Planning and Management*, December 2005.

Norman Davis Named Injured Employee Public Counsel

Governor Perry appointed Norman W. Darwin of Weatherford, Texas, to serve as the first Injured Employee Public Counsel in the Office of Injured Employee Counsel. His term will expire February 1, 2007. The Office of Injured Employee Counsel (OIEC) was created under HB 7 during the 79th Regular Legislative Session. The OIEC oversees the ombudsman program and advocates on behalf of injured employees as a class to ensure balance and fairness for all in the Texas workers' compensation system. Darwin is an attorney in Fort Worth whose private practice is devoted exclusively to representing injured workers.

- Submitted by Randy McNeel, *H & H Bulletin 05-126*, 12-08-05

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IMPORTANT DATES

TEXAS PRIMA:

2006 Events

April 6 - 8	Board of Directors Meeting
July 14 - 15	Board of Directors Meeting
September 14 - 15	Board of Directors Meeting
November 8 - 10	Texas PRIMA Conference & Exhibition (Corpus Christi)

NATIONAL PRIMA ANNUAL CONFERENCES:

June 11 - 14, 2006	Las Vegas, NV
June 10 - 13, 2007	Boston, MA

About This Newsletter

This newsletter is published quarterly for the benefit of the members of Texas PRIMA. However, the opinions expressed in the newsletter are those of the writers and do not necessarily represent the views of Texas PRIMA. The aim of this newsletter is to provide information to our members about Chapter events and risk management issues. Please send news, information, comments, etc. to the editor via email, hdkaplan@garlandisd.net.

The deadline for the next issue of this newsletter is three weeks following the next meeting of the Board of Directors.

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