



REGIONAL MEETINGS UPDATE

The PRIMA Regional meetings for 2007 started in March and will run through October. The new meeting schedule will be posted on the website for easy reference during the year.

The regional conferences will be a full day of education, covering topics important to public entity risk management, benefits and safety personnel. Since the Employee Health Clinic “Hot Topic” conference last year was such a great success, we decided to have two this year; one in Austin and the other in South Padre. We will also have a legislation review to cover bills effecting public entities; once the bills have been signed by Governor Perry.

The following is the schedule of meetings to be held throughout the year:

May – Tyler, Irving and Fort Bend County

June – Corpus Christi

August – Austin
(Hot Topic Seminar)

September – Dallas and South Padre
(Hot Topic Seminar)

October – Houston

The regional meetings will cost PRIMA members \$25; the cost to non-members will be \$40. If non-members want to join Texas PRIMA at the regional conference, the \$40 will be used to pay the annual dues.

Something new for this year, if a region wants to have additional meetings on their own, they may certainly do so. Just contact Regan Rychetsky at (512) 424-6985 for additional information.

TEXAS PRIMA PARTNERSHIP MEETING

The Chapter officers met with Texas PRIMA’s top level (Diamond) sponsors on February 1, 2007. Texas PRIMA held its first ever face-to-face meeting with our top-level sponsors in 2006 to discuss ways to expand our partnerships with these vital contributors. Many valuable ideas were generated, including the change in exhibitor hours at the 2006 conference. This first meeting proved so valuable in planning for the Chapter, we continued the tradition.

The Officers and Sponsors brainstormed ideas and made suggestions to enhance membership benefits, educational opportunities, conference participation, and the resources available on the website in the Members Only section.

The Board of Directors appreciates the continuing support of all of our sponsors and is working to implement the recommendations generated from this Partnership meeting.

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April 2007

GOLF CARTS ARE MOTOR VEHICLES

In summary, a recent Texas Attorney General’s opinion stated the following: “Texas courts have determined under section 101.051 of the Texas Civil Practice and Remedies Code that a tractor is a motor vehicle but that a forklift is not. Texas courts would likely determine that a self-propelled golf cart that does not operate on stationary rails or tracks is a motor vehicle under section 101.051. Similarly, Texas courts would likely determine that other “electric or motorized carts” that are self propelled and do not operate on stationary rails or tracks are motor vehicles.”

The opinion was issued by, GREG ABBOTT, Attorney General of Texas.

Sparks from the Smith's Anvil...



Alan W. Smith

The first time I became president of Texas PRIMA was in 1990. We were a group of about 100 relatively new Risk Managers of cities, counties, water districts, schools, and universities. The State Office of Risk Management was not yet in existence.

At the time, no one knew what a Risk Manager was. Consequently, salaries were low and there were not many of us in public entities.

Now, only seventeen years later, Texas PRIMA has grown to 500 members. Salaries are at a professional level, and people not only have heard of the job risk manager, but public entities want to have one. Yet, public entities have just scratched the surface of the benefits of a good risk management program. That is where Texas PRIMA still has a big job to educate, not only the leaders of the cities, counties, special districts, state, schools, and universities, but to help individual risk managers grow in their job.

Every risk manager pays for themselves several times over in financial savings to the entity of their employment, not to mention the savings in human pain, suffering and death. I see our goal in Texas PRIMA to help empower our members to be their best through risk management training and networking. As those that have gone before me, I would like to continue to build training opportunities and our membership. I would like to build depth in our organization by getting more of our members involved in doing the work of Texas PRIMA. I would like for the networking opportunities between each other to grow, so together we can meet the challenges before us in our very uncertain world.

In short, what I would like to see is Texas PRIMA grow in depth of membership through better networking and good educational programs which will ultimately grow our numbers and the understanding of the importance of risk management in today's public entity. Together we will do this, I feel certain.

– Alan Smith, President

An Open Letter from National PRIMA

Dear PRIMA Member,

As we prepare for PRIMA's 28th Annual Conference, I wanted to invite you to join us in Boston for what promises to be the Association's largest and most comprehensive conference yet.

This year, PRIMA has put together an exceptional program with sessions focusing on the ever-expanding and changing role of public sector risk managers. This year's conference theme, "Risk Management Heard around the World," addresses the role of the risk manager of today and the skills risk managers need for the future. This June 10-13, more than 1,000 public sector risk managers will convene for three days of thought-provoking sessions in one of eight educational tracks, including the new employee benefits track.

As always, PRIMA's Annual Conference is the ideal setting for peer-to-peer networking with others in the profession. Learn how other risk managers have dealt with the day-to-day challenges we all face in our entities. Risk managers will be able to share ideas and successful programs they have implemented in their entities during any of the social events planned for the conference.

If you have never attended PRIMA's Annual Conference, this is the year to start. If you are a yearly attendee, I look forward to seeing you again.

Join us in Boston, June 10-13, for a "revolutionary" conference and help us make our risk management voices "heard around the world."

Sincerely,
Katharine Peeling, CPCU, ARM
PRIMA President

Cindy Conyers is Safety Manager of the Year



The National Safety Council honored Cindy Conyers, Loss Prevention Manager for the City of San Marcos, as their Safety Manager of the Year. This honor was made during the Texas Conference and Exhibition held in Houston in March.

Conyer's service to the Risk Management profession includes participation on various committees for Texas Chapter PRIMA over the past 10 years and service as the Secretary for the Texas Safety Association. Cindy is also a volunteer for the American Red Cross.

Last year, the National Safety Council assumed all the duties and responsibilities of the Texas Safety Association and has continued the tradition of an annual Texas safety conference.

MARK YOUR CALENDARS NOW!



Texas PRIMA 18th Annual Conference

November 14-16, 2007

Moody Gardens
Galveston, Texas

Texas PRIMA Committee Chairs

President: Alan W. Smith

Finance: Linda Spacek

Annual Conference: Melissa Sullinger (chair); *Speakers:* David Kester;
Golf: Regan Rychetsky, Gary Urban.

Sponsors/Exhibitors: Cindy Kirk, Tracy Seiler

Awards Programs: Dan Mansour

Education: David Kester

Bylaws and Governance: Gary Urban

Nominations and Elections: Robby Neill

Future Conference Planning: Tina Paquet

Member Services: Donna James-Spruce, (*Board Liaison:* Tracy Seiler)

Legislation: Sharon Messa, (*Board Liaison:* Joseph DePalma)

Communications: Charles Gillenwater (chair); *Newsletter:* Courtney Sturgeon and Henry Kaplan; *Website:* Joseph DePalma, (*Board Liaison:* Scott Payne)

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SPOTLIGHT: Texas PRIMA Partners



Abercrombie, Simmons & Gillette, Inc. has been administering claims since 1983 and formed AS&G Claims Administration, Inc. in 1996 to specifically handle claims as a Third Party Administrator. With this combination of services, they can offer detailed claims administration as well as independent adjusting for all situations. AS&G does not instruct clients on how their claims will be handled. They develop claims handling procedures based on each client's needs and desires.

AS&G Claims Administration, Inc. provides quality claims administration for all types of losses while specializing in workers' compensation. They offer tailored, cost effective and responsive claims administration to achieve customer satisfaction, compliance with all pertinent laws and regulations and claims cost reduction. Their staff has vast experience, adjusters are highly skilled and their reputation is considered by them as their most valued asset.



With more than 60 full-time benefit professionals in their Dallas office alone, Holmes Murphy & Associates is the 29th largest independent benefits, risk-management and insurance brokerage firm in the United States.

As the premier public sector benefits consulting firm in Texas, Holmes Murphy is committed to delivering the highest quality insurance products and services including employee benefits, property and casualty, and retirement plan services. Holmes Murphy also prides itself on being industry leaders in wellness and prevention initiatives. Clients have successfully achieved "true ROI" (return on investment) through implementation of their clinical and wellness program strategies. And while Holmes Murphy is proud of what these leading edge programs have been able to achieve, they are far more excited about the next generation of wellness strategies they are just now rolling out.

Robinson Nominated for TASBO's Highest Honor

The Texas Association of School Business Officials (TASBO) congratulates Judyann Robinson, Risk Manager at Irving ISD, on her nomination for the 2007 Commitment to Excellence Award. This award is the highest honor bestowed on TASBO members by their peers, and was presented during the 61st Annual Conference and Exhibits at the Dallas Convention Center on February 15, 2007. Each fall, TASBO research committees and affiliate organizations recommend nominees for this award. Those nominations are forwarded to the TASBO board of directors, who vote for the winner in a blind process based on the nominees' commitment to TASBO, the profession of school business and operations, and to the community.



Judyann Robinson

Robinson has been in her present position, risk manager for Irving ISD, since 2006; prior to that she was employed with Mesquite ISD as Safety Officer in the Risk Management department. She frequently shares her expertise as a certification course instructor, and is a past chair of the TASBO Risk Management Research Committee.

An independent, not-for-profit professional association founded in 1946, the Texas Association of School Business Officials (TASBO) is the trusted resource, innovator and educator for school financial management and operations in Texas. Currently, TASBO has more than 4,300 members and 25 regional affiliates, representing more than 850 school districts in Texas.

Governor Perry Re-appoints Commissioner Betts

On March 6, 2007, Texas Governor Rick Perry, announced that Albert Betts Jr. has been reappointed as the Commissioner of the Texas Division of Workers' Compensation for a second term. Commissioner Betts' new term will expire Feb 1, 2009, and his reappointment is now subject to confirmation by the Texas Senate. Governor Perry initially appointed Commissioner Betts to this post in September of 2005, when House Bill 7 created the Division of Workers' Compensation under the Texas Department of Insurance replacing the Texas Workers' Compensation Commission.

Commissioner Betts Names New Division Medical Advisor

Commissioner of Workers' Compensation Albert Betts recently named Howard L. Smith, M.D., as Medical Advisor for the Texas Department of Insurance (TDI), Division of Workers' Compensation.

Dr. Smith has been a practicing physician since 1985, specializing in brain and spinal surgery. He has served as a designated doctor in the Texas workers' compensation system since 2005 and previously was certified as an independent medical examiner. Dr. Smith also has been a practicing attorney since 2002.

As Medical Advisor for the Division, Dr. Smith will review complaints on quality of care received through the TDI Complaint Resolution and Customer Services section and serve as chair of the Medical Quality Review Panel (MQRP).

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Dean G. Pappas & Associates, P.C.
ARMKO Industries, Inc.

Defining the Sovereign Immunity Waiver

Two Courts Apply Reata to Suits Involving Hospital Districts and Physicians

Recently, two different Texas courts of appeals have considered breach of contract lawsuits between hospital districts and physicians. These are the first health law related decisions dealing with sovereign immunity applying the Texas Supreme Court's recent 2006 decision in *Reata Construction Co. v. City of Dallas*. In each case, a hospital district sued the physicians for breaching their recruitment agreements. These cases demonstrate two things: (a) Texas sovereign immunity law still limits physicians in the amount of damages they can recover from hospital districts; but (b) physicians are able to raise numerous and varied counterclaims to defend themselves from a hospital district's claims against them for damages.

The hospital districts in both cases sought dismissal of the physicians' claims because the hospital districts enjoyed sovereign immunity and had not waived their immunity simply by demanding reimbursement under their respective physician recruitment agreements. Citing the *Reata* decision, the courts refused to dismiss the physicians' claims.

Under *Reata*, a government entity that files suit against a private entity does not have the immunity as to the private entity's claims that are "germane to, connected with, and properly defensive to the [governmental

entity's] claims, to the extent [the private entity's] claims offset those asserted by the [governmental entity]." This standard is broader than the traditional standard for compulsory counterclaims, which would require the private entity's claim to arise out of the same transaction or occurrence that supports the governmental entity's claim.

The lesson to be learned from these decisions is that the *Reata* standard for waiver of sovereign immunity allows the entity that has been sued – in these cases, a physician – a broader scope of counterclaims in which to defend itself and potentially reduce hospital district's recovery of damages. Indeed, the tortious interference and defamation claims allowed by the court all occurred after the physician and the hospital district had ceased working together, and in fact, the physician could have alleged and proven these claims regardless of the existence of a prior contractual relationship between the parties. Thus, hospital districts should be aware that, if they want to sue a private entity for breach of contract, their own post-contract conduct may become actionable as a counterclaim. Conversely, physicians or other entities suing or defending lawsuits against the hospital districts should be aware that they may not be limited to claims arising from the same transaction upon which the hospital district bases its own claims for affirmative relief.

Submitted by David LaBrec, Strasburger & Price, LLP

Additional Insureds

On December 22, 2006, the Texas Supreme Court issued opinion in *Via Net v. TIG Insurance Co., Inc.*, (50 Tex. Sup.Ct.J. 296), addressing whether the discovery rule applies to claims arising from breach of contract for failing to name a party as an additional insured.

This opinion is significant for all clients who enter into contracts where one party is required to name another as an additional insured, as virtually everyone requires only that a certificate of insurance be provided for evidence of coverage. However, every ACORD Certificate of Insurance issued by a broker has a disclaimer at the bottom, warning that the certificate does not confer rights on the holder, and that it does not alter the policy wording. Historically, contrary to the representations on the certificate, many certificate holders do not discover that they are not additional insureds under the policy until a claim has been brought against them and they seek coverage under the policy.

The *Via Net* opinion indicates that the date of discovery of the breach does not trigger the four-year statute of limitations for breach of contract; rather, the breach occurs at the time the party fails to procure the requested coverage. Although most parties will likely discover such a breach within the four-year limitations period (as claims that fall under CGL coverage are typically subject to a 2-year limitations period), there may be instances when the "discovery" will fall outside the four-year statute of limitations for breach of contract. For this reason, everyone needs to be informed that they cannot rely on the statements set forth in insurance certificates, but should specifically request copies of the actual policies and/or additional insured endorsements to ensure that the requested coverage has actually been procured.

Submitted by Katherine T. Garber, Strasburger & Price, LLP

PRIMA Members Support University of North Texas Risk Management and Insurance Program

City of Mesquite Risk Analyst and PRIMA Member, Courtney Sturgeon, accompanied the University of North Texas Risk Management & Insurance Club to Austin to experience aspects of Risk Management they have learned about during their studies. The purpose of the trip was to educate those students majoring in Risk Management & Insurance on the diverse aspects and responsibilities of the insurance industry, by visiting various companies and related agencies. Ms. Sturgeon, along with Dr. Brenda Wells and Dr. Enya He, of the University's Risk Management Department, guided the students on this journey.



The group visited the Texas Department of Insurance, where they met Mike Geeslin, Commissioner of

Insurance. During this all-day tour, students got a first-hand look at all of the departments of TDI and learned about how each is run.

Students also visited the Texas Windstorm Insurance Association, Texas Mutual Insurance, and Zenith Insurance. Lunch and dinner arrangements gave students significant networking opportunities with individuals such as Mark Hanna, of Insurance Council of Texas, David

VanDelinder, Executive Director of Independent Insurance Agents of Texas, Kevin McGillicuddy, of Parker Claims and Russell Oliver, President of Texas Mutual Insurance.

According to Ms. Sturgeon, this trip was mutually beneficial for students, our profession, and her as well. "The knowledge gained by students who went on the trip will enhance their studies and professional endeavors. It certainly opened my eyes to how the Texas Department of Insurance functioned on a daily basis. I also, enjoyed getting to know Dr. Wells, Dr. He and the students."

PRIMA member, Charles Gillenwater, Risk Manager for the City of Mesquite and Committee Chair for Communication, supports providing opportunities for the next generation of Risk Managers to discover the employment options they will have upon graduation. In April, Charles and Courtney Sturgeon will be visiting The University of North Texas' Risk Management & Insurance Club to present additional information to students on public sector risk management career opportunities.

As future risk managers, insurance specialists, and PRIMA leaders, these students are on the road to success by expanding their knowledge of the profession and of great organizations such as PRIMA.

Submitted by Charles Gillenwater, City of Mesquite

Cost of Risk Survey Available



The Cost of Risk Survey gathered data on property and casualty trends from public entities in 48 states for 2005. The survey was conducted in 2006. The results are presented in the PERI/PRIMA Cost of Risk Survey Report and show that risk management practices have increased in importance within public entities. The comprehensive report offers an interesting glimpse into how risk management budgets are spent and the most commonly used cost cutting measures among public entities.

To order your copy, visit <http://www.primacentral.org> or contact Angela Shelton at ashelton@primacentral.org or (703) 253-1260.

New ARM 55 & RMPE 352 Sessions

National PRIMA will be offering new ARM 55 and RMPE 352 tutorial and testing sessions during the PRIMA Institute, October 22-26, 2007, at the DFW Lakes in Dallas. Please check the PRIMA website at http://www.primacentral.org/education/prima_edu_bro.pdf for a brochure about this program.

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IMPORTANT DATES

TEXAS PRIMA:

2007 Events

April 26 - 27

Board of Directors Meeting

November 14 - 16

Texas PRIMA Conference & Exhibition (Galveston)

NATIONAL PRIMA ANNUAL CONFERENCES:

June 10 - 13, 2007

Boston, MA

June 1 - 4, 2008

Anaheim, CA

May 31 - June 3, 2009

Dallas, TX

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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