



1,300 Attend National PRIMA

PRIMA Central's 28th annual conference was held June 10-13, 2007, in Boston and featured educational sessions, including the organization's first benefits track. Other sessions focused on accounting issues, enterprise risk management, police liability, professional development, returning veterans, school safety, terrorism, and workplace safety.



Kathy Hale, Gary Urban, Melissa Sullinger

Next year's annual conference is scheduled for June 1-4, 2008, in Anaheim, Calif. Educational sessions will be held at the Hilton Anaheim hotel, and the conference's exhibitions hall will be at the adjacent Anaheim Convention Center.

Risk managers can purchase a multimedia CD-ROM containing records of and handout materials for all or selected sessions of this year's conference by calling 888-609-8273. Prices for the CD's vary, depending on the number of sessions purchased. A CD covering all of the sessions costs \$205, including shipping.

The conference drew 1,300 attendances and 116 exhibitors. Further information about PRIMA is available at the organization's Web site, www.primacentral.org.

Submitted by Dave Lenckus



Scott Payne, Kathy Peeling, James Huckaby

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August 2007

BOARD NOMINATIONS AND ELECTIONS

Lots of exciting things are happening at Texas PRIMA and your opportunity to become involved on the Texas PRIMA Board during these exciting times is just around the corner. Watch for e-mails, if you haven't already received one, for the "Call for Nominations", which marks the beginning of the election process for our 2008 Board of Directors.

Our Board is comprised of a President, President Elect, and Secretary, who serve as Officers, plus two immediate Past Presidents, an appointed Treasurer, a Director Emeritus, and four Directors elected by voting members. Each year the President-Elect becomes our new President and the Secretary becomes a nominee for President-Elect. In addition to the Secretary position, we are soliciting nominations to fill two Director's positions whose terms will expire at the end of 2007.

The call for nominations is the chance to indicate your desire to become more involved in our Chapter; or to nominate a colleague you believe would be an asset in a leadership role in our organization. Everyone should consider the many new and rewarding challenges and experiences awaiting you through service on our Texas PRIMA Board of Directors.

Submitted by the Nominating Committee

Sparks from the Smith's Anvil...



Alan W. Smith

What an exciting time to be a part of Texas PRIMA. There are so many good things going on. Melissa Sullinger, our President Elect, has been meeting with the Conference Planning Committee and they are coming up with some great ideas for the opening reception.

David Kester, Secretary, is in charge of obtaining speakers. He had an overwhelming response of quality speakers who want to present at Conference. The hardest part was choosing among them. Hopefully some that could not be accommodated because of space will speak at our regional get-togethers.

Daniel Mansour, the Director in charge of awards, has sent out a blast e-mail asking for nominations for Risk Manager of the Year, Risk Management Associate of the Year, and Risk Management Achievement Awards.

The Risk Management Achievement Awards program is a great way to brag about your success stories. Be sure to submit a name and a program for each award category. You deserve to be honored and it always helps to promote your programs.

We had our most recent Board meeting at the Moody Gardens Hotel, in Galveston, to preview it for this year's annual conference (Nov. 14, 15 & 16). They have added new space that we will use for our opening reception. The place is beautiful and the service is excellent.

We have several Board positions open for 2008, and will need good people to fill these spots. I would like to see more of our membership (that means you) involved in Texas PRIMA and would love to hear from you about how we can do this.

Texas PRIMA needs help with the regional meeting program. Maybe you would be willing to sponsor a regional meeting in your area in the future. Maybe you could provide us with a presentation topic. We also need to reach out to our colleagues who are not members and invite them to become members.

The networking of members helps each of us develop professionally, which means greater knowledge and better salaries. Risk management is still a relatively new function among political subdivisions. So, it is up to us to spread the word about the benefits of risk management and help new risk managers become the best they can be.

*– Alan Smith, CPCU, ARM
President*



Denton County Earns Safety Award

Denton County has been awarded a 2006 Gold Star Safety Award by the Texas Association of Counties (TAC), which administers various self-insurance pools for counties and other local governments.

The Gold Star award was earned through a record of excellence in the involvement and commitment to safety in the workplace, as well as for controlling workers' compensation claims. Only ten counties in Texas received this prestigious award making it a truly exceptional award reserved for counties with the highest degree of safety commitment and success.

The Texas Association of Counties presents a Gold Star Award to Counties and other pool participants that have demonstrated actions and implemented procedures, which are recognized as proactive in total risk management.

These safety and loss control programs are evaluated by the Texas Association of Counties safety specialists who work with each pool member to develop and enhance their safety management and training efforts.

Criteria used to consider the award of the Gold Star include a review of safety program elements; activity and success of programs in the 2006 calendar year; support for the program by upper management; recent loss history; and improvement in the safety program since 2005.

Denton County Risk Manager Honored

Gustavo Hernandez, Denton County Risk Management Specialist, has been awarded the "Making a Difference" Award by the Texas Association of Counties (TAC), which administers a workers' compensation self-insurance pool for counties and other local governments.



Gustavo Hernandez

Mr. Hernandez earned the award through his continuing involvement, commitment, and leadership in Denton County's Safety Program. Through the county's involvement in the safety program, the county obtains substantial savings for their taxpayers as a result of their TAC workers' comp coverage. Premiums are reduced for public entities who have lowered their claims rates and who participate in other coverages through the self-insurance pools administered by TAC.

Each year these awards are given to individuals who are regarded as keys to the success of their respective counties and safety programs. Only four "Making A Difference" Awards were given statewide.

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PRIMA and RIMS Speak to Congress

This past June, 50 professional risk managers descended on our nation's capitol. Their objective was to speak with congressional legislators and ensure that the voice of risk management is being heard and incorporated into the relevant bills that lawmakers will be debating on the floor in the coming months.

Although the Terrorism Risk Insurance Act (TRIA) was the main issue of discussion, other important insurance proposals such as the Optional Federal Charter and Surplus Lines legislation were discussed. For a detailed review of PRIMA's position on the Terrorism Risk Insurance Act, go to the national PRIMA website (www.primacentral.org) and look for the TRIA position statement.

PRIMA was well represented by national members from Connecticut, Maryland, California, Florida, Massachusetts, New York, and Canada. This RIMS (Risk & Insurance Managers Society) "On the Hill" outing marked the 9th consecutive year RIMS has organized the event, allowing risk managers from the public and private sectors to speak to Congress about the issues which affect all industry in one form or another.

The team of Texas risk managers met with legislative staffers in the Senate and the House of Representatives.

Senator John Cornyn (R-TX) is in his 1st term in office; John A. Culberson, House of Representatives (R-Houston), is in his 4th term in office; and Nicholas V. Lampson (D-Stafford) is in his 5th term in office; all were visited.

Our congressional representatives hear from a variety of stakeholders that represent the business interests of insurance carriers. Rarely do they hear from those who have the responsibility of protecting the entities they serve.

PRIMA members, who may be familiar with current insurance related proposals, may contact Representatives who will be involved in passing legislation that will impact their ability to secure protection from the effects of adverse loss. However, due to safety procedures currently in effect in the United States Senate and House of Representatives, postal mail will take several weeks to reach any legislator.

In order to deliver information more quickly, anyone may reach their representative online through the web sites of each representative. For Senators, go to www.senate.gov, and for House members, go to www.house.gov. Find the respective Congressman and follow the prompts to send an email.

Return-To-Work Guidelines Required

The Texas Department of Insurance, Division of Workers' Compensation has posted a news release titled Disability Management Requirements Begin for Workers Compensation Health Care on the agency website at:

<http://www.tdi.state.tx.us/wc/news/2007/news200760.html>

Disability management rules adopted by the Division require non-network system participants to follow the Division's treatment and return-to-work guidelines beginning May 1, 2007. In preparation for this new requirement, the Division is providing training and educational resources which are accessible through the agency website at:

<http://www.tdi.state.tx.us/wc/dm/index.html>.

The disability management rules apply to all workers compensation claims with a date of injury occurring on or after January 1, 1991. Treatment and return-to-work guidelines are effective May 1, 2007 and apply to treatments and services. Treatment and services which exceed or are not included in the guidelines require preauthorization in accordance with Division rules.

Re-defining What "Incurred" Means

Texas Civil Practice and Remedies Code Section 41.0105 provides that "recovery of medical or health care expenses incurred is limited to the amount actually paid or incurred by or on behalf of the claimant."

This language has generated friction as plaintiffs argue that the entire medical bill is "incurred" because it is owed. Defendants, on the other hand, argue that this provision means that all amounts "written off" are not recoverable, because they are no longer owed, thus reducing the amount recoverable to that amount not written off by insurance.

In *Mills v. Fletcher* the San Antonio court of appeals resolved this conflict by holding that the language means what it says. The court held that "actually incurred" necessarily means something other than "incurred," and thus means the amount the plaintiff actually owes after write-offs. This case is still pending publication, and thus subject to revision. Nevertheless, it is of importance to litigation ongoing throughout the State. The case also drew a dissent from one judge on the panel, making review by the Supreme Court of Texas somewhat more likely.

*Submitted by Fletcher &
Springer, L.L.P.*

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Texas PRIMA 2007 Awards Program

It's not the Oscars but just as glamorous. It's not the Tonys but just as sophisticated. It's not the Emmys but more entertaining. It is the Texas PRIMA 2007 Awards!

Each year, at its annual conference, Texas PRIMA recognizes exceptional public entity members for their successes. The Risk Manager of the Year and Risk Management Associate of the Year awards honor individuals who exemplify the risk management profession through continual innovation and commitment to excellence. Risk Management Achievement Awards honor public entities who respond to challenges with creative and prize-winning risk management programs.

This is your opportunity to help recognize deserving individuals or entities by taking a few moments to complete a nomination form. All nominees must be a current Texas PRIMA public entity member. Nominees for Risk Manager of the Year or Risk Management

Associate of the Year must have been employed by the same public entity for a minimum of two years.

Applications and instructions for these awards may be downloaded from the chapter website at www.texasprima.org. Information on last year's award recipients is available on the website as well.

The deadline for receiving nominations is FRIDAY, September 7, 2007. Successful award recipients will be notified of their award in October and recognized at the awards luncheon at our annual conference on November 14, 2007 in Galveston.

We encourage you to nominate a deserving individual for either the Risk Manager or Risk Management Associate award as well as submitting your program, product or project to showcase as an example of innovation or excellence in our profession.

Questions may be directed to Dan Mansour at 512-854-9499 or emailed to dan.mansour@co.travis.tx.us.

Texas Public Risk & Safety Partnership

Many of PRIMA's members are familiar with PRIMAtalk, National's forum for posting questions and exchanging ideas and information. Brandon Honea, the Safety Specialist in Waco thought it would be a good idea to have a Texas version. Judging by the number of replies he received to his exploratory email, he was correct!

To help move the idea along, Plano Risk Manager Joey Page offered to host the site, utilizing Advanced Risk Systems (ARS). For several years now, Plano has partnered with ARS to administer online safety, health, and human resources training; as well as employee surveys, loss analysis, and the City's new risk management dashboard. ARS had the site up and running in short order; and it is now ready for you to use.

The forum is named the Texas Public Risk & Safety Partnership, and is intended for risk managers, loss control specialists, and safety officers to discuss best practices and common issues in risk and safety areas. It is designed just for Texas and our unique challenges. Joey announced the site to the members present at the Texas reception in Boston during the national conference. Only operational since June, 16 threads have already been posted including drug and alcohol testing, CDL driving requirements, and safety perception surveys.

Initially, when you go to the site, you will be asked to register and an email will be sent to one of the Forum's moderators (Brandon Honea of Waco and Tim Billingham of Plano). The purpose of the screening is to assure that only PRIMA member entity employees have access to the Forum. The Forum is intended to be an informational mechanism for risk and safety professionals upon which frank discussions can take place. Once approved, you will receive an email with login information and you are good to go.

So, why not click on <http://talk.advrisksys.com> right now and be on your way to accessing the wealth of experience and knowledge your fellow Texas risk and safety professionals can offer you?

Contractual Subrogation Not Subject To Made Whole Doctrine

The Texas Supreme Court issued its opinion in *Fortis Benefits v. Cantu* holding that the made whole doctrine did not apply to an insurer's claim that is based on a contractual right to subrogation. The decision abrogated the Austin Court of Appeals' holding in *Esparza v. Scott and White Health Plan* and limited the holding in *Ortiz v. Great Southern Fire and Casualty Insurance Company* to equitable subrogation only.

The Supreme Court recognized the made whole doctrine 27 years ago in the *Ortiz* case by holding that "an insurer is not entitled to subrogation if the insured's loss is in excess of amounts recovered from the insurer and the third party causing the loss".

The *Esparza* case in 1995 held that the subrogation provision of an insurance contract calling for the insurer to be fully reimbursed out of the first monies obtained did not override the equitable principals of subrogation. The court stated that the equitable principle that the risk of loss should be borne by the insured "could not be summarily overcome by a boilerplate provision in an insurance contract". *Scott and White* was awarded 50% of its contractual subrogation claim.

In *Fortis*, the court discussed the three types of subrogation---equitable, contractual, and statutory. It then affirmed that contractual subrogation rights generally arise from contract language and do not derive their validity from the principles of equity. This effectively separated contractual subrogation from equitable subrogation that the *Esparza* court had commingled.

Note that the *Fortis* opinion has not been released for publication in the permanent law reports. Until released, it is subject to revision or withdrawal. However, if *Fortis* stands, the law in Texas will be that any benefit or insurance policy with contractual subrogation will have the right of first recovery to any monies received by a plaintiff from a third-party tortfeasor.

Submitted by Randy McNeel

Coordinating TIBs and Assault Leave

The Texas Department of Insurance, Division of Workers' Compensation recently released Appeals Panel Decision (APD) 061713-S, which prohibits carriers from treating assault leave as a Post Injury Earning for public school employees. Carriers may no longer stop or fail to initiate Temporary Income Benefits (TIBs) if assault leave is paid at 100% of Average Weekly Wage (AWW).

The Appeals Panel agreed with the hearing officer's analysis of the Texas Education Code 22.003(b). According to the wording in the Education code, assault leave policy benefits due to an employee should be coordinated with temporary income benefits due from workers' compensation so that the employee's total compensation from temporary income benefits and assault leave policy benefits equals 100 percent of the employee's weekly rate of pay.

Mark Your Calendars!



**Texas PRIMA's
North Texas Regional Meeting
September 21, 2007
Mesquite, Texas - Mesquite I.S.D.**

Visit www.texasprima.org
for the latest details.

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IMPORTANT DATES

TEXAS PRIMA:

2007 Events

November 14 - 16 Texas PRIMA Conference & Exhibition (Galveston)

NATIONAL PRIMA ANNUAL CONFERENCES:

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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