



Conference Planning



Greetings from Gotham City! Okay, it really isn't Gotham City but sometimes with all the challenges we face on a day to day basis, it seems that we could use "Batman" or some other Superhero to help us battle the evils of "Risky City". Texas PRIMA's 2008 Annual Conference theme will celebrate the "Superheroes" of Risk Management and help you with the tools and information you need to protect your entity.

This year's conference is scheduled November 19 – 21, 2008. In addition to a wide variety of educational sessions, the conference will provide our largest exhibition ever and many networking opportunities with your peers and our corporate members and sponsors.

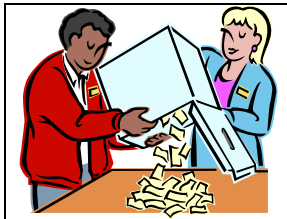
We will begin the conference with our traditional golf tournament followed by afternoon educational sessions and a "super hero" opening reception. Additional details will follow, but you will want to plan to participate by dressing for the occasion and maybe even participating in the first (and maybe last) PRIMA IDOL contest. Either way, you won't want to miss any part of the conference so make your plans accordingly.

May the force be with you and I will see you all in November!

Submitted by David Kester

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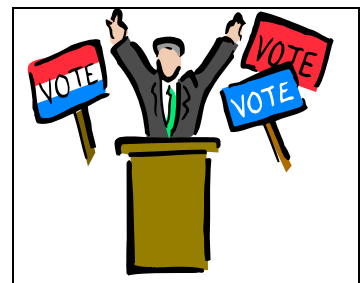


Once again, TX PRIMA members have the opportunity to be a leader in the best local Chapter of the Public Risk Management Association. The Texas Chapter of PRIMA continues to stand out among the rest in the nation and you can be a part of the action by serving as a member of the Board.

The Board consists of a President, President-Elect, Secretary, two Past Presidents, an appointed Treasurer, a Director Emeritus, and four Directors. Each year the President-Elect becomes our new President and the Secretary becomes a nominee for President-Elect. In addition to the Secretary position, nominations are solicited to elect two Director Positions each year.

If you want a challenge and have the desire to participate in the management of your professional association, prepare to run for a Board position. You can also nominate another member whom you believe will further the objectives of public risk management.

Be on the lookout for nomination packages that will be coming out in the near future.



A Message From The President



Melissa Sullinger

Well, it is now August and we are more than half way through a very exciting year. This first half has been fast paced and productive. I wonder, as does my boss, if sometimes Texas PRIMA becomes a full time job. But all of the successes are very fulfilling knowing that we are working hard to make the organization a first rate professional association. Since the last newsletter, we have had several regional meetings, met with the Texas Municipal Human Resources Association (TMHRA) to discuss an alliance, attended the National PRIMA conference in Anaheim, and met with the Conference Planning Committee to discuss plans for our conference in November.

The main focus of Texas PRIMA is to create networking and educational opportunities. Our Education Committee has been developing and managing our regional meetings, which have all been a great success. We would like to say a special thanks to the committee and our corporate members who have helped us with these regional meetings. The topics have included the elements of an RFP, legal updates, and retiree benefit plan programs. Regional meetings not only offer great educational information but also a unique chance to expand our networking opportunities.

The meeting with the TMHRA board was a great success also. We proposed several ideas that would allow the two organizations to form an alliance that can only be beneficial to both of our memberships and we were very excited about working together. You will see several educational opportunities offered by TMHRA via e-mail. I have attended several meetings and the information provided is excellent.

The state of Texas was well represented, both in the number of attendees and in personal recognition at the National PRIMA conference in Anaheim. Alan Smith, Risk Manager, Garland ISD, received National's International Exchange Participant award allowing him to travel to the ALARM conference representing PRIMA. Victoria Calder and Cheryl Johnson of Dallas Public Schools were awarded the 2008 Public Risk Author of the Year award and Gary Urban, Director of Risk Management, City of Waco, received the Texas Chapter Service Award. Congratulations to these valued members. We would also like to extend a special thank you to all of the sponsors who co-hosted the annual Texas dinner in honor of our award winners.

As time continues to fly, another event that will be here before you know it is the Annual Texas PRIMA Conference & Exhibition. This year's conference will be held at the Marriott Waterway in The Woodlands, Texas, November 19 – 21, 2008. We had our most recent Board meeting at the Marriott Waterway to check out the hotel and the surrounding area -- both are beautiful and the service is excellent. David Kester, our President Elect, and his Conference Planning Committee have been meeting to develop great ideas surrounding the conference theme. Regan Rychetsky, Secretary, is in charge of obtaining speakers. We had a great response from quality speakers who would like to present at Conference. The hardest part was choosing among them. Along with Conference comes our awards program. You will be receiving an 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. No program is too small or insignificant. If you believe in your program, submit it and let others know what is working for you. You can't win if you don't play!

Well, that pretty much brings you up to date as to the happenings of late. I guess that is enough for this issue. I look forward to seeing everyone in The Woodlands! Until then, submit those nominations and get ready for a wonderful fun-filled Conference.

*From Melissa Sullinger, President-Texas PRIMA
melissa.sullinger@baytown.org*

PRIMA MEMBERSHIP NOW HALF OFF

PRIMA has created a new membership initiative specifically for its chapter members. As a member of a local PRIMA chapter, you know the benefits that come from being part of a group. Now you can join PRIMA National for half price and reap the benefits of a national network of public sector risk managers. If you are not currently a PRIMA National member, now is the time to join. For more information on this initiative, please visit the Chapter section of www.primacentral.org.

From now until December 31, 2008, join PRIMA for 50% off! That's right, YOU can join PRIMA for half price! Don't delay...put the power of PRIMA membership to work for you today!

For more information, contact Allyson Little, membership-marketing manager, at 703-253-1270 or alittle@primacentral.org. This offer is available to new PRIMA members only and only for GOVERNMENT members.

Sponsor Meeting

The Chapter officers met with Texas PRIMA's top-level (Diamond) sponsors on June 26th for our annual partnership meeting. Texas PRIMA has held these face-to-face meetings with our top-level sponsors since 2006. They provide Texas PRIMA with the opportunity to discuss ways of improving and expanding partnerships with all of our vital contributors.

As always, many valuable ideas were discussed and we hope to have the opportunity to utilize these insights as we proceed with conference planning for this year and in the future. The Officers and Sponsors brainstormed ideas and made suggestions to enhance membership benefits, expand educational opportunities, increase conference participation, and make more resources available on the website.

The Texas PRIMA Board appreciates the continuing support of all of our sponsors and will work to implement many of the recommendations generated from this valuable partnership meeting.

Submitted by Tracy Seiler

Texas Chapter PRIMA 2008 Awards Program

Texas Chapter PRIMA needs your help to recognize exceptional public entity members for their successes. Risk Manager of the Year, Risk Management Associate of the Year, and Risk Management Achievement Award nominations are now being accepted. Each of us knows a deserving person or program that meets the criteria to be nominated. This year we have simplified the nomination process.

Nominations for each category are evaluated by a panel whose leader is a previous award recipient. Bill Tabor is panel leader for Risk Manager of the Year. Joey Page is panel leader for the Risk Management Achievement Award. Cindy Purinton is panel leader for the Risk Management Associate Award. Each panel leader will recruit members for their respective panels so if contacted, please consider serving as an evaluation panel member.

This is your opportunity to help recognize deserving individuals or entities by taking a few moments to complete a nomination form. Nominees must be current Texas Chapter PRIMA public entity members. 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 the award nominations may be downloaded from the Chapter website at www.texasprima.org. The deadline for receiving nominations is **FRIDAY, August 29, 2008**. Successful award recipients will be notified of the award in October and will be presented the award at our Awards Luncheon on November 20, 2008, in The Woodlands.

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

Submitted by Dan Mansour, 2008 Awards Chairperson

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It's a Bird...It's a Plane...No...it is the Texas Legislative Session!

Every two years in our great state, thousands descend on our capitol city for something other than some good live music or spending time on the lake. Yes, next year (beginning January 13, 2009) will be our bi-annual legislative session, and there is sure to be a flurry of activity from many sources. While our Association has adopted a strict "neutral" policy relating to supporting or opposing any specific legislation, PRIMA members are encouraged to participate in the legislative process by providing their employer organization facts relating to the impact of proposed legislation as well as appropriate input allowed by your entity.

Last legislative session had over 10,000 bills and resolutions introduced, so keeping up with those that affect us and our profession is quite onerous if not impossible. We encourage you to be familiar with the tools provided by the Legislature to track bills and other valuable resources on their web site www.capitol.state.tx.us. However, keeping track on-line will do little without knowing your local legislator and informing him/her as to how a potential law will affect your job function(s) and thus your entity. Various statewide organizations are also excellent sources of information as well.

Bottom line is to be knowledgeable about the process and be informed as much as you can about the impact of legislative changes.

A complete copy of Texas PRIMA's legislative policy can be found on our web site www.texasprima.org.

Submitted by David Kester

Update Your Directory Information

It's amazing how much our members work together via electronic means, never having actually seen one another! It was recommended that photos of members be included on the Texas PRIMA website along with the member contact information; that way you can put a face with the name. You can post your photo on the website home page, by clicking on the "view/edit my profile" button on the left navigation bar. When your profile comes up, click on "edit", then select "add picture".

Economic Woes Affect Risk Management

An article in [Business Insurance](#) may be interesting to members or others. It's about how economic woes are causing public entity risk managers to cut their budgets.

http://www.businessinsurance.com/cgi-bin/article.pl?article_id=25063

Submitted by Courtney Sturgeon

City of Mesquite Hosts Risk Management Scholar

What does the City of Mesquite have in common with various corporations such as Starbucks Coffee, ElKay Manufacturing, and Orbital Sciences Group, to name a select few? These organizations are among a group of only 15 selected to host paid internships through the Risk & Insurance Managers Society Spencer Scholarship program. This program underwrites the salary of the interns selected for the experience.

The Spencer Scholarship program requires each intern to experience eight weeks working in a risk management department capable of providing a broad view of the risk management effort within the host organization. The experience provides students with an opportunity to enhance their resume and prepares them for the world of work they are about to enter.

The City of Mesquite, Texas is honored to be the only public entity among a select group of organizations that are participating in mentoring the future leaders of the risk management profession during 2008.

The City of Mesquite is proud to have Katherine (Katie) Geyer, in the position of Risk Management Intern. Katie is a senior at Baylor University, with a double major in Risk Management & Insurance, as well as Financial Services & Planning. She will graduate in May 2009. Katie is working with City of Mesquite Risk Management staff to provide services that protect employees, assets, and the community-at-large from the effects of accidental loss. Charles Gillenwater, Risk Manager, along with Courtney Sturgeon, Risk Analyst, is committed to making Katie's experience educational as well as memorable. You can welcome her to our profession via email at KGeyer@ci.mesquite.tx.us

Replacement Costs Considerations for Construction Materials

Materials Price Surge: 2008 is different from 2004

The current surge in prices of construction materials is similar in scale to the initial period of the steep price rises in 2004-05. This is ominous. That period of rapidly rising materials costs persisted for 22 months with an accumulated 18.3% rise in costs. Materials prices rose at a 16.5% annual pace in the first four months of 2008, close to the 18.4% rise in the same months in 2004.

However, the current period of rapidly rising materials costs differs in two significant ways from the previous price surge in 2004. First, metals, lumber, cement and gypsum drove the price increases in 2004. Now, lumber, cement and gypsum prices are approximately steady but energy and petrochemical prices are soaring. As a result, in contrast to 2004, single-family construction is now experiencing relatively little materials cost increases while highway construction is now experiencing relatively high materials cost inflation.

Prices surged in 2004 when the economic recovery, overseas as well as in the US, was earlier and stronger than anticipated. This forced materials suppliers to ration supplies with price increases until they could expand production. The 2004 price surge began when extra capacity was available, with a brief lag, from most materials supply industries.

The current surge in materials prices is being driven by a physical shortage of raw commodities, especially for energy and metal ores. This is unlike four years ago when mothballed capacity could be brought back into production reasonably quickly. More ore and oil supply now requires additional and more expensive mines and oilfields.

The implications of this are frightening. We could be facing a period much longer than 22 months to boost supply up to the demand level. Realistically, some the potential price increases will be bled off in the form of a slower growth economy as materials buyers react to higher prices. An additional complication is that food prices are also rising quickly now for the same reasons and that will also likely be absorbed, in part, by slower economic growth.

The term "stagflation" — slow growth and high inflation — has recently reappeared in the news after an absence of about two decades. Expect to see it more often in the next few years as we make the hard choice between growth and inflation.

Help is on the way. So far the U.S. has borne far more than its share of the burden of adjusting to strained energy supplies. That is because of the combination of the declining U.S. dollar and our practice of setting energy prices in competitive markets. Outside of the U.S., prices for nearly half of the world's oil have been restrained by rising currencies and price controls on energy products. The energy subsidies used in much of the world, including China and India, will be about \$100 billion this year. This is double last year and again double from several years ago.

Most foreign governments, excepting oil-exporting countries, cannot sustain these subsidies. Already some Asian and Latin American countries have cut subsidies and raised selling prices substantially. More countries will follow suit, eventually even China and India. As this happens through next year, some of the price adjustment burden will be lifted from U.S. energy buyers and assumed abroad. Energy prices will begin to decline.

Submitted by Johnny L. Fontenot, Sr. Vice President, McGriff, Seibels & Williams, Inc.

A Cold Day in July: The PRIMA International Exchange Program



Exchange Risk Managers:
Alan Smith of Garland ISD and Jenette
Collins of Wiltshire County, England

Alan Smith is PRIMA's Exchange Risk Manager for 2008

The day was July 7th, the temperature was 50°F and there was a light drizzle, and I was in England. In thought, it might be a cold day in July before this Texan would win the National PRIMA exchange program award and so it was.

I was very fortunate to be this year's recipient of the international exchange program award. My exchange partner was the England Risk Manager of the Year award winner, Jan Collins. She works as a risk manager for Wiltshire County Council. Wiltshire County is where Stonehenge and the ancient Roman City of Bath are located, to name a few of their historic sites.

While Ms. Collin was visiting us in Texas, we saw the Mesquite Rodeo and the Fort Worth Stockyards. At the stockyards, they told us that one of their turnstiles was a hundred years old. Jan said her house is over a hundred years old as are most of the houses in her village.

Garland ISD hosted a lunch in her honor, and about twenty-five risk managers came from our area to meet her. She talked to us about enterprise risk management. She said that as she toured Garland ISD, she saw that we did a lot of operational risk management. We did not do a lot of strategic risk management. The combination of strategic and operational risk management make up what she called enterprise risk management.

What I learned from this exchange

Every time I get with a group of risk managers I hear a cry for more support from management. This experience with Jan and the international exchange program opened my eyes to the key to the perception that senior management does not support risk management at the level we think they should. We lack support because we have not become a part of management's strategic plan. Because we are not in the strategic planning process, we end up mopping up after a problem occurs.

The enterprise risk manager is connected strategically at the planning level and coordinates throughout the organization to make sure everyone knows what is going on. The enterprise risk manager raises questions of hazards that have to be overcome, and identifies those who are responsible for addressing those problems.

I found the ultimate goal of enterprise risk management is to impact the operations of the public entity to run smoothly and efficiently. The enterprise risk manager in England has become a valued part of the management team. They ensure that workers and the public are properly protected, enabling innovative actions be taken to resolve hazards and take responsible controlled risks. Perhaps, we can learn something from the English in this regard. I did.

Submitted by Alan Smith

Landowner Has No Duty to Warn Independent Contractor of Known Hazards

The Texas Supreme Court has ruled that when a defendant hires an independent contractor to come on premises and perform work as it sees fit, the defendant may reasonably expect the contractor to instruct its own employees on the safe means of doing so. In this case (*General Electric Co. v. Arthur Lee Moritz*, No. 04-0871, 6/13/08) Arthur Moritz delivered parts for General Electric (GE). Moritz had picked up the parts from the same GE warehouse everyday for 18 months. Tarrant County Limited Partnership owned the warehouse.

Moritz generally loaded parts by backing his pickup into the warehouse on a concrete ramp or by backing next to a door to the warehouse. He had previously complained to GE that there were no handrails on the ramp. On the day he was injured, Moritz parked his pickup on the ramp and loaded it with the assistance of two GE employees. While securing the load, he fell off the side of the ramp and fractured his hip, pelvis, and thumb.

Moritz sued GE and other parties alleging that as owners or occupiers, they were liable for negligence regarding activities and premises conditions. The trial court granted a summary judgment for all defendants, but the court of appeals found fact questions and reversed the decision. The Supreme Court held that the trial court correctly found no duty, and the court of appeals erred in reversing its decision.

In its review, the Supreme Court found that the summary judgment record did not contain evidence that Moritz's duties were controlled by a contract. It did find that, in practice, there was some evidence that GE controlled where he parked his pickup, but there was no evidence that GE controlled how or where Moritz secured his load for delivery.

Submitted by Randy McNeel, Bulletin 27-08, 06-16-08

Talk Is Not Cheap

WHY EMPLOYEE CELL PHONE USE IS COSTING EMPLOYERS MORE THAN THE PRICE OF THE PHONE

Increasingly, employers are providing employees with company cell phones to facilitate communication and increase productivity. Meanwhile, state legislatures and local governments are aggressively targeting cell phone use by drivers, only allowing use with a hands-free device and even prohibiting such use altogether for certain drivers. These newly enacted statutes are fueling litigation against employers for accidents that occur when employees are using cell phones while driving.

Increasing Use of Cell Phones in the Car

The most recent estimates suggest there were 182 million cellular subscribers in the United States in 2004. More than 40 percent of Americans admit to using a cell phone while driving, such that, at any given moment throughout the day, eight percent of the drivers on the road are using their cell phones.

Accidents Caused by “DWT” – Driving While Talking

While no one would question the danger of driving while intoxicated, the danger of driving while talking is not always appreciated. Yet, studies show the performance of drivers who are using cell phones are more impaired than drivers who are intoxicated. According to one study, drivers on cell phones have more accidents and slower reaction times than drivers who are legally drunk. Interestingly, the authors of the study attributed the findings to an “inattention blindness,” suggesting that the danger posed by cell phones is the cognitive distraction to the driver as opposed to the physical distraction of manually holding or manipulating a cell phone.

Legislative Response

Given these findings, state legislatures are enacting new driving laws, banning the use of handheld cell phones, banning the use of cell phones altogether for novice drivers, and banning text messaging. Currently, five states -- California, Connecticut, New Jersey, New York, and Washington, the District of Columbia, and the Virgin Islands -- have enacted laws prohibiting the use of handheld cell phones while driving. Four states -- Alaska, Minnesota, New Jersey and Washington -- ban text messaging for all drivers, and many other states have introduced similar legislation. Finally, seventeen states and the District of Columbia have special cell phone driving laws for novice drivers, some of which include complete prohibitions on use of cell phones while driving.

Sampling of DWT Lawsuits

Not surprisingly, given the increased focus on the dangers posed by using a cell phone while driving and the growing number of employers issuing cell phones to their employees, the victims of accidents (or their families) are filing civil actions against the employers, and, as illustrated by the following cases, are winning, either by way of a substantial settlement or jury award, and often recovering millions in damages.

In 1999, a stockbroker struck and killed a motorcyclist on his way to a business-related event. The employee was making a sales call at the time of the accident. The employer paid \$500,000 to settle the case even though it did not provide the employee with the cell phone.

In 2000, a lawyer struck and killed a teenage girl in Virginia. The attorney, who was returning from a work meeting, was allegedly talking on her cell phone with a client at the time of the accident. The decedent's family filed a \$30 million lawsuit against the employer. The employer law firm settled with the family for an undisclosed amount.

In 2001, a Miami jury found an Arkansas lumber company liable for more than \$20 million in damages after one of its employees struck another car, gravely injuring a passenger. The employee was using his cell phone for a sales call when the accident occurred. The company settled the case for \$16.1 million.

In 2001, an appeals court ordered the State of Hawaii to pay \$1.5 million in damages after a state teacher, who had just completed a cell phone call, struck a pedestrian while driving to work.

Legal Basis for Employer Liability

The general basis for liability is the theory of *respondeat superior*. Under this theory, an employer is liable for the negligent actions of an employee if the employee was acting within the scope of his or her employment at the time of the accident. As an initial matter, plaintiffs will likely have an easier time establishing the negligence of the employee if, at the time of the accident, the employee was in violation of one of the newly enacted state statutes pertaining to cell phone use by drivers. Further, as the

cases above illustrate, conducting employer business on a cell phone at the time of an accident, even if outside of normal business hours, is readily found to be within the scope of employment since it results in a benefit to the employer.

Another basis for liability is a direct claim of negligence against the employer. Essentially, the allegation is that the employer is negligent when it issues cell phones to employees or when it knows that employees are using their own cell phones to conduct business, without providing any sort of limitations, training or guidance, or prohibiting use while driving.

Hold that Call – Why it is Necessary to Have a Cell Phone Policy

The bottom line is that employers face substantial liability exposure for accidents caused by employees using cell phones to conduct business. Thus, regardless of whether cell phones are company-issued, employers must implement and enforce a written cell phone usage policy for its employees, the violation of which results in disciplinary action. While not an impermeable shield, the existence of such a policy should provide a strong argument for an employer that it was not negligent and that it cannot be held vicariously liable since the employee was acting outside the course and scope of employment.

To be effective, a cell phone usage policy should be specifically tailored to the needs of the employer and to the job descriptions of the employees. For instance, a complete usage ban may be necessary for some employees, such as commercial truck drivers. For other employees, such as physicians required to be “on call,” the requirement of a hands-free device may be most appropriate. While there is not a “one-size-fits-all” policy, consider the following example:

Employer recognizes that the use of a cell phone while driving a motor vehicle can cause distraction to the driver, which can result in accident, injury, or death. Employees are required to comply with all state and local laws regarding the use of cell phones while driving. Whenever possible, employees should not make or receive telephone calls while driving. Employees should let incoming calls go to their voicemail and then find a safe place to pull over and park before initiating a call. If cell phone usage while driving is unavoidable, a hands-free device must be utilized. Employees are prohibited, without exception, from using a handheld cell phone while driving. Further, under no circumstances should employees use cell phones, even with a hands-free device, while driving in adverse weather or difficult traffic conditions. Employer takes its cell phone usage policy seriously. Any violations of this policy will subject employees to disciplinary action, up to and including termination of employment.

Submitted by David LaBrec

<p>Correspondence The Texas PRIMA Press is the official newsletter of Texas PRIMA. Correspondence should be sent to: Texas PRIMA PO Box 4693 Austin, TX 78765-4693 Telephone: 512-394-0719 Fax: 512-394-0720</p> <p>For information about the Chapter, visit the Texas PRIMA website at http://www.texasprima.org.</p>	<p>Communications Committee Chair: Charles Gillenwater Board Liaison: Scott Payne Newsletter: Courtney Sturgeon Judyann Robinson Website: Rene Burt</p> <p>Newsletter Editor: Henry Kaplan, ARM, ALCM 972-494-8382 hdkaplan@garlandisd.net</p>	<p>About This Newsletter This newsletter is published quarterly for the benefit of Texas PRIMA members. 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.</p>
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Texas PRIMA Annual Conference
November 19-21, 2008
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