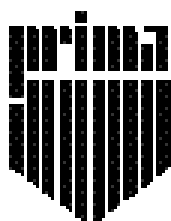




Inside this issue:

President's Letter	2
Regional Meetings	2
Conference Scholarships	3
Risk Management Awards	3
Winning With Wellness	4
Do I Need To Register With Medicare as a RRE?	4
Board of Directors	5
Highlight: Platinum Sponsors	5-6
2010 Texas PRIMA Nominations & Elections	6
Carrier's Subrogation Rights	6-8
PRIMA Newsletter Update	7
Chapter Sponsors	8



RISKS ARE EVERYWHERE. ARE YOU A TARGET? ... AND WHO CAN YOU TRUST?

Mark Your Calendars!

No one needs a reminder of what occurred less than a year ago when Hurricane Ike slammed into the upper Gulf Coast, and specifically Galveston.

Though signs of rebuilding remain, I think you will be amazed at the recovery of this area from what has been billed as one of the most devastating storms ever to hit the U.S. The resolve of those in this, and other areas impacted by Ike is a testament to the will and resilience of Texas (and Texans)!

I proudly invite you to Texas PRIMA's 20th Annual Conference and Exhibition. With special gratitude to our sponsors (both long-time and new), we certainly have come a long way since our first conference in McAllen (1989). This year, we had an overwhelming response to our call for speakers and topics — and with the enthusiasm, creativity and spirit of our Texas Chapter PRIMA members, this year's conference will be our best yet. We are all facing uncertainty and economic challenges. However, I can promise that the information and tools available at this year's conference will pay dividends — helping both you and

your organization contain and save costs. I hope to see you there!

David Kester,
President

2009 TEXAS PRIMA CONFERENCE

The Texas PRIMA Conference session schedule has been finalized and should be a well rounded agenda. Conference education sessions will include topics regarding Hurricane Ike lessons learned, navigating FEMA requirements, return-to-work, worker's compensation, fleet safety, insurance, wellness, tort liability and health care reform, to name a few.

The keynote speaker is Tim East, Director of Risk Management for The Walt Disney Company in California. Tim is responsible for risk financing, information systems, captive administration and risk management for Hong Kong Disneyland. The closing session speaker is J.P. Riordan, Weapons of Mass Destruction Coordinator, FBI Houston Office.

**For more information, visit
www.texasprima.org**

FROM THE KEYBOARD OF THE PRESIDENT

PAGE 2



Newsflash.....it rained! After several weeks of no significant rainfall...it rained! I and others on my street stood outside and wanted to dance in it. There were even some neighbors down the street who collected some of it in buckets. Amazing how much you appreciate things once you don't have them.

Although much of the state remains in drought conditions, even what little rain we have had is welcome and a relief. While we certainly cannot control the weather, we can prepare and adjust for it. September 13th will be the one year anniversary of Ike. For years we have prepared for the "big" one, but nothing can teach us better than the real thing. Three weeks without electricity can really make you appreciate a working light switch, and even more air conditioning.

When it comes to safety and risk management, we hope that folks do not have to suffer the consequences of not preparing or taking the steps to prevent an avoidable accident or injury, but unfortunately that is sometimes what it takes. What works? Sometimes we do not have the answers, but they are there and it is our job to help find them. The answers may come from the folks we are trying to "protect," so a good place to start would be there. To find out, you have to get out (of the office and into the field). Take the time....today....to reach out to those who we serve and hear from them.

What am "I" waiting for? See you in "the field."

DEWEY DEFEATS TRUMAN! THREE LEGGED MAN GIVES BIRTH! BOND...JAMES BOND!

Ok, did I get your attention? Good. Now, please remember some significant items coming up. First is the election of your Board of Directors. Information is included in this newsletter from our Nominations Chair, Gary Urban regarding opportunities for the Board of Directors. Also, while you may not have a three legged man to display, your entity may have an item to showcase for our annual Achievement Awards or you may want to nominate a well deserving individual for either the Risk Manager or Risk Associate of the Year award. Look for information by Dan Mansour and the awards committee and show your stuff. Finally, it is soon to be all about "conference." Tracy Seiler and a host of "volunteers" (some who truly have volunteered and some who were coerced) have worked hard to finalize details on our 20th Annual Texas PRIMA conference to be held in Galveston November 18-20th.

Don't miss the chance to attend what should prove to be our biggest and best conference ever!

Hope to see you there!

David Kester

REGIONAL MEETINGS

The Corpus Christi Regional Meeting was held on July 31st at the Central Library and included members from City of Corpus Christi and surrounding areas. The topics covered were "When Domestic Violence Comes to Work", outlining how to prepare for, respond to and recover from threats and acts of domestic violence in the workplace; and "What a Risk Manager Needs to Know to Implement a Crisis Management Plan", outlining the FEMA Planning Model of Preparedness, Mitigation and Prevention, Response and Recovery.

I want to thank Carlos Garcia, Raul Vasquez and the rest of the City of Corpus Christi Risk Management Department for a job well done to help make this meeting a success.

Texas PRIMA will hold regional meetings in The Valley and in the Dallas Metro Area in September, so be sure to watch for the announcement.

Regan J. Rychetsky

TEXAS PRIMA CONFERENCE SCHOLARSHIPS



Scholarship applications for Texas PRIMA's 20th Annual Conference in Galveston, November 18-20th are now being accepted. We have enhanced the scholarship award this year by including **all costs** related to conference attendance including travel. That's right; the Texas PRIMA scholarship is going to cover 100% of the costs for conference this year!

There are many deserving people who may not be aware of our scholarship program, which is why we are encouraging you to promote it to any of your public entity colleagues and clients who might qualify. The scholarship program is designed to assist risk management professionals whose public entity might be unable to afford the cost of attending Texas PRIMA's 20th Annual Conference. The scholarship includes:

- Conference Registration Costs
- All costs related to attending the conference, including travel, lodging at the conference hotel.
- Complimentary membership in Texas PRIMA through 2010, which includes quarterly newsletters, membership directory for networking with Risk Management professionals across the state, and e-mail updates throughout the year announcing educational opportunities and announcements.

Every effort will be made to provide the reimbursement at the conference, provided all proper expense documentation is submitted. Applications must be received no later than October 1, 2009 and a limited number of scholarships will be awarded. Scholarship information can be found online at texasprima.org. We appreciate you helping us spread the word about the Texas PRIMA's 20th Annual Conference and our scholarship program.

Donna James-Spruce, Member Services Chairperson

TEXAS PRIMA'S 2009 RISK MANAGEMENT AWARDS

Texas PRIMA has three award levels that serve to recognize deserving programs or individuals who stand out for their work in public risk management. Awards are presented at the November Conference held this year at Moody Gardens, Galveston, Texas. The awards committee needs nominations for these awards. The membership is the best place to get these nominations because you know of excellent programs and people who are deserving. A brief description for each award follows:



Achievement Award

If you have a program, or know of one, that has made a positive difference in managing risk take this opportunity to submit the program for recognition by Texas PRIMA.

Risk Management Associate of the Year

We all know of a deserving risk management staff person whose abilities and hard work contributes to a successful risk program. This award focuses attention on that person for their risk management accomplishments. If you know of a deserving member, propose that they be considered for this award.

Risk Manager of the Year

Risk Managers wear many hats in their daily work. Good leadership and management skills are among the most prevalent traits of a successful Risk Manager. The ability to communicate new ideas or resolve difficult situations of a sensitive nature requires diplomacy and tact. Risk Managers face complex issues, some of which elevate the Risk Manager for recognition by their peers. Please take a moment to consider a colleague to recommend for the Risk Manager of the Year award.

To access forms go to texasprima.org and click on Awards then in the right column click on Download Application for the appropriate award. Contact Dan Mansour at dan.mansour@co.travis.tx.us or Bill Tarro at btarro@lubbockisd.org for any additional information.

Capital Metro in Austin, Texas has defied the odds and bucked national trends when it comes to dealing with spiraling healthcare and absenteeism costs. Their Wellness Program, which was implemented in 2003, has won local, state and National awards including the Work-Life Innovation Excellence Award from the Alliance for Work-Life Progress. At the same time, the program which includes fitness centers staffed with personal trainers, wellness coaches and a staff nutritionist, has reduced costs dramatically. As Risk Manager, Mike Nyren, puts it, “We have worked very hard to create a culture of Wellness and it seems to be paying off.”



The following is a quote from the CDC’s article [A Comprehensive Worksite Wellness Program in Austin, Texas: Partnership Between Steps to a Healthier Austin and Capital Metro Transportation Authority:](#)

“Since its beginning in 2003, the wellness program at Capital Metro has shown promising results in improving employee health and reducing costs associated with health care and absenteeism,

and the financial benefits outweigh the annual investment (2.43 ROI). Employees engage in more physical activity, have better knowledge of disease management (diabetes and asthma), have better eating habits, and smoke less than they did before the program was implemented. Health care and absenteeism costs have been reduced and are continuing to decline, most likely as a result of the program. Managerial staff have reported that employee morale has increased since the program was implemented. Most importantly, however, we believe that the wellness program has the potential to reduce the prevalence and severity of chronic diseases, allowing Capital Metro employees to lead longer, healthier lives.

-CDC April 2009

To see the video, visit:

capmetrolog.blogspot.com/2009/07/texas-bringing-healthy-back.html

DO I NEED TO REGISTER WITH MEDICARE AS A RESPONSIBLE REPORTING ENTITY (RRE)?

If you are a public entity paying out any claims that include Liability Insurance (including Self - Insurance) No-Fault Insurance, or Workers Compensation, then the answer is YES. The registration deadline is September 30, 2009. Every public entity must register with the Center for Medicare Services (CMS) as an authorized representative. The entity’s representative must have the legal authority to bind the organization to the terms of MMSEA, Section 111. The Registration process only takes about twenty minutes and can be done on-line at <http://www.section111.cms.hhs.gov>.

The entity’s authorized representative will receive an acknowledgement letter from CMS via the US Postal Service. This acknowledgement letter, which should arrive within 10 days after registration, will contain an RRE ID, pin number and EDI representative information. The authorized representative must give the RRE ID and pin to the entity’s account manager to complete the account set-up. The authorized representative and the account manager cannot be the same individual. The acknowledgment letter will be the only correspondence that the entity will receive from CMS regarding the establishment of the account.

After receipt of the RRE ID, pin number and EDI representative information, the public entity, or their third party administrator (TPA), will be able set up the account and designate the account manager, as well as any other designees they wish to assign to the account.

Important dates to remember:

July 1, 2009 * Testing and Production Queries Begin to be Accepted

September 30, 2009 * RRE Registration Deadline

January 1, 2010 * Claim Input File Testing Begins

April 1, 2010 * Mandatory Claims Reporting Begins

For more information on MMSEA section 111 Medicare Secondary Payer Mandatory Reporting, visit the CMS website at <http://www.cms.hhs.gov/mandatoryinsrep/>

Jeff Hord, AS&G Claims Administration Inc.

DAVID E. KESTER, PRESIDENT
DIRECTOR, HUMAN RESOURCES
AND
RISK MANAGEMENT, HARRIS
COUNTY
713-755-5586,
DAVID_KESTER@HCTX.NET

REGAN J. RYCHETSKY, PRESIDENT—
ELECT
HHS ENTERPRISE DIRECTOR OF
RISK MANAGEMENT
TEXAS HEALTH & HUMAN SERVICES
COMMISSION
512-424-6985,
REGAN.RYCHETSKY@HHSC.STATE.
TX.US

TRACY SEILER, SECRETARY
MANAGER OF RISK FINANCE, THE
UNIVERSITY OF TEXAS SYSTEM
512-499-4401,
TSEILER@UTSYSTEM.EDU

SCOTT PAYNE, CGBA, TREASURER
RISK MANAGER, CITY OF DENTON
940-349-7836,
SCOTT.PAYNE@CITYOFDENTON.C
OM

MELISSA SULLINGER, IMMEDIATE
PAST PRESIDENT
RISK MANAGER, CITY OF BAY-
TOWN
281-420-5362,
MELISSA.SULLINGER@BAYTOWN.O
RG

ALAN W. SMITH, CPCU, ARM, PAST
PRESIDENT
RISK MANAGER, GARLAND I.S.D.
972-494-8382, AWS-
MITH@GARLANDISD.NET

DIRECTORS

CHARLES GILLENWATER
SAFETY & RISK MANAGER, CITY OF
MESQUITE
972-216-8168,
CGILLENW@CI.MESQUITE.TX.US

DONNA JAMES-SPRUCE
RISK MANAGER, CITY OF CORPUS
CHRISTI
361-826-3739, DON-
NAJ@CCTEXAS.COM

DANIEL MANSOUR, ARM-P, CGBA
RISK MANAGER, TRAVIS COUNTY
HRMD
512-854-9499,
DAN.MANSOUR@CO.TRAVIS.TX.US

BILL TARRO
EXECUTIVE DIRECTOR OF RISK
MANAGEMENT, LUBBOCK ISD
806-766-1109,
BTARRO@LUBBOCKISD.ORG

DIRECTOR EMERITUS
CINDY KIRK, CGBA
RISK MANAGEMENT DIRECTOR,
CITY OF BRYAN
979-209-5054,
CKIRK@BRYANTX.GOV

LEGAL COUNSEL
DAVID J. LABREC
ATTORNEY, STRASBURGER & PRICE,
LLP
214-651-4752,



**McGRIFF, SEIBELS
&
WILLIAMS, INC.**

McGriff, Seibels & Williams joined the BB&T family of companies in 2004 creating the 6th largest insurance brokerage company in the U.S. and the 7th largest in the world. The BB&T family has over 29,000 employees and over \$152 billion in assets. B&T is currently ranked #250 on the Fortune 500 list. McGriff and BB&T are one of the largest providers of insurance and risk management services to public entities in the U.S. with offices in 32 states and is the largest Public Entity broker in Texas.



Thank you to Diamond Sponsor AS&G Claims Administration, Inc. for their continued partnership with Texas PRIMA. AS&G illustrates their support to the public sector through their sponsorship of Texas PRIMA and their participation in our annual conference and programs throughout the year.

Founded in 1983 in Houston, Texas, AS&G Claims Administration, Inc. provides quality and cost-effective claims administration with an emphasis on customer service for public and private entities. The AS&G staff has vast experience, highly skilled adjusters, and consider their reputation as their most valued asset.

“Not just your TPA—but an active part of your risk management team.”

continued on page 6

2010 TEXAS PRIMA NOMINATIONS AND ELECTIONS

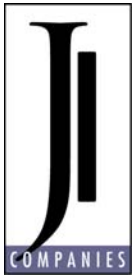
Texas PRIMA members have the opportunity to be a leader in the best state Chapter of the Public Risk Management Association. The Texas Chapter of PRIMA continues to stand out among the rest in the nation and you can be a part of the action by serving as a member of the Board.



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.

Watch for nomination packages that will be coming out this month.



Serving employers since 1985, JI Companies specialize in third party administration for all forms of self-funded risk management programs: Workers' Compensation, and Liability and Property coverage. JI provides a single source Workers' Compensation solution—JI does more than just handle claims, we help our clients actively manage their programs.

Our integrated systems are fully paperless and provide clients full 24/7 access to all of their claims real time. Online claim submission and web-based reports round out JI's end-to-end systems solution. JI provides public and private entities and associations with efficient claims administration, integrated medical & pharmacy benefit management, delivering performance-driven results and unparalleled customer service.

We approach each client relationship as a true partnership and respect our resources by being good stewards of that trust. Your program executive and account manager will ensure we meet your expectations $\frac{3}{4}$ we want you to hold us accountable! We hold ourselves accountable. Try the JI way.



CIGNA

® CIGNA is the nation's leading health service company with a proud history dating back to 1792. CIGNA's mission, "To help the people we serve improve their health, well-being and security," is supported by a wide spectrum of initiatives that focus on improving the health and productivity of its customers. As a result of these initiatives, CIGNA has received recognition both within and outside the health care industry:

For the seventh straight year, the independent National Committee for Quality Assurance measured "effectiveness of care" of all health plans and CIGNA surpassed the Quality Compass® national average. CIGNA also surpassed the average of its main competitors for the majority of key health measures such as preventive care, health screenings, treatment of chronic conditions, behavioral care and access and availability of care (getting needed care and getting care quickly).¹

CIGNA is the first national health carrier endorsed by the J.D. Power and Associates Certified Call Center ProgramSM for providing "An Outstanding Customer Service Experience." This certification has been awarded for three years running, based primarily on surveys conducted with individual customers, and on audits done within customer service call centers. J.D. Power and Associates is the most demanding and well-respected quality certification in customer service today, regardless of industry.²

CIGNA is the only health service company to expand customer service hours to 24/7 – including weekends, holidays and overnight hours. No other health care plan is available 24/7 – all 365 days of the year – to support your employees and answer their questions.

Readers of Business Insurance magazine chose CIGNA as offering the nation's best health plans in 2008. The award recognizes the company that the magazine's subscribers believe offers the best combination of quality, service, value, and innovation.

For more information about CIGNA, visit www.cigna.com or call Brian Dickerson at 972.582.7650.

CARRIER'S SUBROGATION RIGHTS; EMPLOYEE'S ATTORNEY GETS FEES

Summary:

It is well established in Texas that the workers' compensation carrier has a subrogation interest in uninsured (UIM) benefits paid from a policy purchased by the employer.

Any proceeds recovered from the third party go first to the workers' compensation carrier until the carrier is reimbursed in full.

Attorney fees are required "when the attorney has represented the insurance company's interest"

Here is the rest of the story:

An uninsured driver struck Arturo Garza in December of 2004 while he was in the course and scope of his employment. Financial Insurance Company of America (FIC) was the workers' compensation carrier. Resolution Oversight Corporation (Resolution), the Special Receiver for FIC, paid the workers' compensation benefits totaling \$145,704. The UIM carrier, Home States, eventually tendered its policy limit of \$504,000 to Garza.

Continued on page 7

Each of us knows there is a difference between managing risk and responding to loss in our respective entities. Quality organizations rely on a combination of expertise that includes education, training, job knowledge, institutional knowledge and a desire to excel at providing quality service.



PRIMA Board is pleased to introduce Ms. Courtney Sturgeon, Risk Analyst, for the City of Mesquite, Texas as the newsletter editor.

Courtney has served on the newsletter committee over the past 2 years. She entered the risk management profession after completing college, and has worked at the City of Mes-

quite for 3 years. Courtney holds an adjuster's license from the state of Texas, and has earned her Associate in Risk Management designation within the past year. In addition to her risk management duties at the City of Mesquite, Courtney is gladly managing the dynamic risks associated with family and home. She, and husband Paul, have a four month old daughter, Corie.

One of the great things about Texas PRIMA is the commitment to excellence in providing information and news about the insurance industry, risk management profession, Texas PRIMA and our members in an easy to read format. TXPRIMA members have benefited from the stewardship of Henry Kaplan, Risk Management Specialist, Garland ISD, as newsletter editor and Chief Information Gatherer for 8 years.

Courtney will work closely with Henry, and the Board of Directors, to make sure newsletter content and quality continues to meet chapter needs today, and well into the future. Members with suggestions for newsletter articles or other content, should send the information to info@texasprima.org.

As a risk professional, Henry has utilized his varied skills to not only keep our membership informed and updated, but to foresee the need to mentor a successor prior to his retirement from public service. To that end, the Texas

CARRIER'S SUBROGATION RIGHTS; EMPLOYEE'S ATTORNEY GETS FEES *continued*

Resolution sought to enforce FIC's subrogation rights and recover the \$104,704 it paid to Garza, and the matter ended up in a Travis County District Court. The parties filed cross-motions for summary judgment. The court granted Garza's motion and denied FIC's. FIC appealed and raised six issues that were organized into three questions. The questions and the Court of Appeal's decisions follow:

1. Does FIC have a valid interest in the UIM benefits?

The question presented was whether Home States was "a third party who is, or becomes, liable to pay damages". The Court held that Section 417.001 of the Texas Labor Code (TLC) applies to all third parties, not just tortfeasors, to all forms of liability, whether grounded in tort or contract, and to all damages, not just tort damages. It is well established in Texas that the workers' compensation carrier has a subrogation interest in UIM benefits paid from a policy purchased by the employer. This was a policy purchased by the employer, and FIC had a valid subrogation interest.

2. If so, must Garza be made whole before the subrogation rights can be exercised?

Garza alleged that since he was not "made whole", the workers' compensation carrier did not have a right to any of the UIM settlement. The Court cited Section 417.002 of the TLC that provides that any proceeds recovered from the third party go first to the workers' compensation carrier until the carrier is reimbursed in full. This principle goes back to the 1917 Texas Workers' Compensation Act. Also, see *Argonaut Ins. Co. v. Baker*. The Court noted that there is no *Continued on page 5* provision in the statute for an analysis of whether an employee has been made whole.

3. Is Garza entitled to reasonable attorney fees from FIC's share of the UIM benefits?

Attorney fees are controlled by Section 417.003 of the TLC and provide that attorney fees are required "when the attorney has represented the insurance company's interest". The Court stated that the issue was not whether Garza's attorney represented FIC's interest in the subrogation proceedings, but whether the attorney represented FIC's interest in the claim against Home States. FIC was not represented by an attorney in the negotiations with Home State. Rather, Garza's attorney was solely responsible for negotiating the settlement. The Court found that the attorney fees are to be deducted from the third-party recovery before FIC is awarded any monies.

The Court held that FIC had a valid subrogation lien against the funds paid to Garza by Home State, reversed the trial court's summary judgment in favor of Garza, granted a summary judgment in favor of FIC as to the issue of its

Continued on page 8

Platinum

McGriff, Seibels & Williams, Inc.

AS&G Claims Administration, Inc.

JI Companies

CIGNA

Diamond

Holmes Murphy & Associates

Aetna

Gold

Harris & Harris

TRISTAR Risk Management

Munich Reinsurance America, Inc.

Texas Political Subdivisions

United Healthcare

Surplus Lines Stamping Office of Texas

Silver Sponsors

Forté, Inc.

CorVel Corporation

Texas Association of School Boards (TASB) Risk Management Fund

Review Med

Arthur J. Gallagher Risk Management Services, Inc.

Argus Services Corporation

CCS Holdings, L.P.

Texas Municipal League (TML) Intergovernmental Employee Benefits Pool

Wachovia Insurance Services, Inc.

Texas Municipal League (TML) Intergovernmental Risk Pool

Texas Association of Counties

Concentra

Scott & White Prescription Services

ARMKO Industries, Inc.

HMI Financial

Trident Insurance

York Insurance Services Group, Inc.

Thornton, Biechlin, Segrato, Reynolds & Guerra, L.C. Attorneys at Law

Cambridge Integrated Services

Hirons & Associates, Inc.

MetLife

Parker & Associates

Cotton USA



CARRIER'S SUBROGATION RIGHTS; EMPLOYEE'S ATTORNEY GETS FEES *continued*

subrogation rights and remanded the cause to the trial court for a determination of Garza's reasonable attorney fees.

Resolution Oversight Corporation v. Arturo Garza can be found at:

<http://www.3rdcoa.courts.state.tx.us/opinions/HTMLopinion.asp?OpinionID=18288>

Re-printed with permission. BULLETIN 86-09 by Randy McNeel, 7-14-09, Thornton, Biechlin, Segrato, Reynolds & Guerra, L.C.

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

For information about the Chapter, visit the Texas PRIMA website at

<http://www.texasprima.org>.

Communications Committee

Board Liaison:

Charles Gillenwater

Newsletter:

Judyann Robinson

Website:

Rene Burt

Newsletter Editor:

Courtney Sturgeon

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, info@texasprima.org.